

THIS PRINT COVERS CALENDAR ITEM NO. : 12

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Taxis and Accessible Services

BRIEF DESCRIPTION:

Requesting that the Board of Directors adopt the Taxi Driver Drug and Alcohol Testing Policy, amend Transportation Code Division II, Article 1100, Sections 1102, 1103, 1104, 1106, 1108, 1118 and 1121 to implement the Taxi Driver Drug and Alcohol Testing Policy and to lower the barrier of entry for new medallion applicants, and amend Transportation Code Division II, Article 300 Section 310 to impose certain fines on a daily basis.

SUMMARY:

- California Government Code Section 53075.5 requires drug and alcohol testing for taxicab drivers that complies with guidelines set up by the U.S. Department of Transportation.
- The adoption of the Taxi Driver Drug and Alcohol Testing Policy, including notice that testing is required, the list of substances to be tested, method of testing, and consequences of testing positive, refusing to test, and/or tampering with the specimen would bring San Francisco into compliance with these requirements.
- A positive drug or alcohol test by a taxicab driver or applicant may lead to denial of a permit, suspension of a permit, or revocation of a permit.
- Staff is also proposing additional amendments to lower the barrier of entry for new medallion applicants, and to clarify that the fine for a color scheme that fails to affiliate with a dispatch service is a daily fine, and the fine for a dispatch service that fails to affiliate with an e-hail application provider is also a daily fine.

ENCLOSURES:

1. SFMTAB Resolution
2. Transportation Code Amendments
3. Drug Testing Policy

APPROVALS:

DATE

DIRECTOR _____ 10/13/15

SECRETARY _____ 10/13/15

ASSIGNED SFMTAB CALENDAR DATE: October 20, 2015

PURPOSE

Requesting that the Board of Directors adopt the Taxi Driver Drug and Alcohol Testing Policy, amend Transportation Code Division II, Article 1100, Sections 1102, 1103, 1104, 1106, 1108, 1118 and 1121 to implement the Taxi Driver Drug and Alcohol Testing Policy and to lower the barrier of entry for new medallion applicants, and amend Transportation Code Division II, Article 300 Section 310 to impose certain fines on a daily basis.

GOAL

Goal 1: Create a safer transportation experience for everyone.

Objective 1.3: Improve the safety of the transportation system.

Goal 2: Make transit, walking, bicycling, taxi, ridesharing, and carsharing the preferred means of travel.

Objective 2.1: Improve customer service and communications.

Objective 2.3: Increase use of all non-private auto modes.

Goal 3: Improve the environment and quality of life in San Francisco.

Objective 3.2: Increase the transportation system's positive impact to the economy.

Objective 3.4: Deliver services efficiently.

Goal 4: Create a workplace that delivers outstanding service.

Objective 4.4: Improve relationships and partnerships with our stakeholders.

DESCRIPTION

SFMTA's Taxis and Accessible Services Division is responsible for the regulation of the private businesses that make up the San Francisco taxi industry, including qualifying and licensing permit holders, monitoring regulatory compliance, and administering discipline for regulatory violations.

As part of that mandate, SFMTA's Taxis and Accessible Services strives to ensure that San Francisco taxicab drivers remain a safe public transportation choice. This includes creating, amending or deleting sections of the Transportation Code to help promote the integrity of San Francisco's motor vehicle for hire industry.

BACKGROUND:

California Government Code Section 53075.5 requires that local entities institute drug and alcohol testing for taxicab drivers. Section 53075.5 requires that the drug and alcohol testing program be substantially consistent with the federal regulations set forth in Parts 40 and 382 of Title 49 of the Code of Federal Regulations (CFR).

In order to comply and better assure cabdriver fitness for duty, and to protect the public from the risks posed by the use of alcohol and prohibited drugs, staff is proposing the Taxi Driver Drug and Alcohol Testing Policy.

The Taxi Driver Drug and Alcohol Testing Policy will require the following types of drug and alcohol tests for taxicab driver applicants and taxicab drivers:

- New permit issuance (paid for by the SFMTA)
- Permit renewal (paid for by the SFMTA)
- Reasonable suspicion (paid for by taxi companies)
- Post-accident (paid for by taxi companies)
- Optional return-to-duty testing (paid for by drivers)
- Optional follow-up testing (paid for by drivers)

The controlled substances that the taxicab driver will be screened for include marijuana, cocaine, opiates such as heroin, amphetamines/methamphetamines including ecstasy and MDMA, and phencyclidine (PCP), as required by California Government Code section 53075.5 and CFR Part 40 (commencing with Section 40.1) of Title 49 of the CFR. Taxicab drivers will also be required to take alcohol breath tests when required for post-accident, reasonable suspicion and optional return-to-duty and follow-up testing.

The SFMTA, through a contractor, will provide training to taxi company management staff regarding the taxi driver substance abuse testing program and reasonable suspicion testing requirements. SFMTA Taxi Investigators will also be trained by the contractor on reasonable suspicion testing.

The Taxi Driver Drug and Alcohol Testing Policy will utilize services at seven testing sites, all located within the City and County of San Francisco. At least one testing site will be available 24 hours a day, seven days a week.

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With this program in place all taxicab driver applicants will be required to be tested prior to obtaining an A-Card Permit, and taxicab drivers will be required to be tested annually upon A-Card renewal. Drug and alcohol testing will occur if there is reasonable suspicion that would require the testing of a driver, and in specific instances after a vehicular accident involving the taxicab driver while he or she is on duty. A post-accident drug and alcohol test would be conducted under the following circumstances:

1. When there is a fatality involved; or
2. When a driver receives a moving violation citation as a result of the accident and the accident involves bodily injury to any person who, as a result of the injury, is transported to a hospital for medical treatment; or
3. When a driver receives a moving violation citation as a result of the accident and one or more motor vehicles incurred disabling damage as a result of the accident requiring the motor vehicle to be towed away from the scene.

Driver Discipline

A taxicab driver applicant that tests positive for the required controlled substances will be automatically denied a taxicab permit.

The A-Card (Driver) permit of any taxicab driver who tests positive for any of the required controlled substances or alcohol will be summarily suspended under Transportation Code 1121. The suspension will remain in place, and the taxicab driver will therefore be ineligible to operate a taxi, until he or she is evaluated by a substance abuse professional under the SFMTA's program, successfully completes the program recommended by the substance abuse professional, and tests negative during a return to duty test administered by the third party administrator. If the taxicab driver fails to comply with the requirements for return to duty under within twelve months of a positive drug or alcohol test, the SFMTA will revoke the A-Card permit.

If a current permitted driver tests positive for any of the prohibited controlled substances or for alcohol twice within a two-year period, his or her taxicab driver permit will be summarily suspended and then revoked.

If a taxicab driver's A-Card is revoked due to a positive drug or alcohol test, the SFMTA will not accept a new application for an A-Card from that person for three years from the date upon which the revocation was final.

Color Scheme Responsibilities

The amendments to the Transportation Code would further require that Color Schemes comply with all provisions of the Taxi Driver Drug and Alcohol Testing Policy, including but not limited to removing a driver from duty after a positive drug or alcohol test, conducting reasonable suspicion tests in conformance with the Policy, conducting post-accident tests in conformance with the requirements of the Policy, ensuring that its staff has received appropriate training related to the Policy, providing all Drivers with educational materials supplied by the SFMTA related to the Policy, maintaining the confidentiality of any records related to the results of drug and alcohol tests of its drivers, and paying for reasonable suspicion and post accident testing.

Any taxicab driver who has tested positive must be immediately placed out of service and cannot be reinstated as a driver until cleared by the SFMTA. If a company allows a driver to operate a taxicab after being notified that the driver has tested positive for a controlled substance or alcohol, that company will be cited under Transportation Code Section 1105(a)(1), Section 1106(p)(2) and/or Section 1106(q)(4).

The SFMTA recognizes that the cost of a drug test payable by the taxicab driver would be a burden in the current motor vehicle for hire economy. For this reason, the SFMTA has opted to cover the costs of pre-permit and annual renewal testing for taxicab applicants and drivers.

Other Proposed Amendments to the Transportation Code

Eligibility to Purchase Medallion:

The SFMTA has reviewed the current medallion system and has determined that a driver who has driven 800 hours or more in the twelve month period preceding his or her submission of a medallion application to the SFMTA should be eligible to purchase a medallion. This amendment to 1104(c)(3) would substitute this new eligibility requirement for the current requirement, which is driving a taxicab 800 hours per year for four out of the last five years.

Per Day Fines and Penalties under Section 310

Currently Transportation Code Division II, Article 300, Section 310 contains daily fines for particular violations. These violations include fines generally related to Color Scheme operations, Dispatch Service operations and workers compensation requirements.

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Pursuant to San Francisco Charter Section 16.1112 and the Rules of Order of the SFMTA Board of Directors, published notice was placed in the San Francisco Examiner to inform the public that the SFMTA Board of Directors will hold a public hearing on October 20, 2015 to consider changes to Transportation Code Division II, Article 300, Section 310 that would impose a daily fine both on Color Schemes that fail to affiliate with Dispatch Services and Dispatch Services that fail to affiliate with an E-Hail Application provider that meets criteria established by the Director of Transportation. The notice was published from September 30, 2015 through October 5, 2015.

In order to retain consistency within the Code and ensure better service for the public through enforcement, staff has identified two other Code sections that should be included as per day violations, which also relate to Color Scheme and Dispatch operations.

1. The fine for failure of a Color Scheme to affiliate with a Dispatch Service under Section 1106(c) is currently \$504. This fine should be \$504 for each day that the Color Scheme remains unaffiliated with a Dispatch Service.
2. The fine for failure of a Color Scheme or a Dispatch Service to affiliate with an e-hail application under 1107(c)(7) is currently \$561. This fine should be \$561.00 for each day that a Color Scheme or Dispatch Service is unaffiliated with an e-hail application provider.

PUBLIC OUTREACH

In a continuing effort to remain open and transparent to the industry, staff discussed and elicited feedback regarding the drug testing program over the course of several years. Once a contractor was selected through a competitive solicitation process, the SFMTA began more focused outreach efforts. This program was the subject of several Color Scheme meetings in July and August of 2015. The matter also went before the Taxi Task Force on August 12, 2015. SFMTA Taxi Services also held an open meeting on August 20, 2015 at which the selected contractor, Energetix, appeared in person to answer all taxi industry questions. The unedited audio of that meeting was posted on taxi industry blogs for all interested parties to hear. The SFMTA expects to continue its outreach efforts related to this program.

The taxi industry's primary concern relates to the use of prescription medicinal marijuana. Many in the industry believe that a positive test for marijuana should be excused if the driver is able to present a prescription for medicinal marijuana. However, state law requires that testing comply with federal testing regulations. The federal regulations (49 CFR §40.137(e)(2)) do not recognize marijuana as having a legitimate medical explanation for a positive drug test. For this to change, state law would have to be amended.

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The other issue relates to the imposition of stricter standards on taxicab drivers than exist for Transportation Network Company (TNC) drivers. At this time TNC drivers are not required to undergo substance abuse testing. Many taxi industry representatives posit that there is an uneven playing field created when similar services have different requirements, such as substance abuse testing. The California Public Utilities Commission has jurisdiction over TNC drivers, and the SFMTA is unable to impose a substance abuse testing requirement on those companies and drivers at this time.

Taxi Services staff also conducted public outreach with respect to changing the eligibility requirement for Medallion permits and imposing daily fines for failure to affiliate with a Dispatch Service or an e-hail application. Staff brought these issues before the industry in Color Scheme meetings, Taxi Task Force meetings, and various subcommittee meetings beginning in July of 2015.

ALTERNATIVES CONSIDERED

The alternative to implementing the Taxi Driver Drug and Alcohol Testing Policy would be to retain the status quo, which would keep San Francisco out of compliance with state law as it relates to drug testing of taxicab drivers.

The alternative to lowering the barrier of entry for new medallion applicants would be to allow the medallion system to continue to have a very high barrier to entry for taxicab drivers interested in purchasing medallions.

An alternative to making Section 310 fines for failure to affiliate with a Dispatch Service or e-hail application daily would be to leave them as one-time fines. This alternative is inconsistent with the serious nature of the violation and the importance of ensuring that Color Schemes affiliate so that they can better service the public.

FUNDING IMPACT

The contract with Energetix to administer the Drug and Alcohol Testing Program (which is a separate calendar item) will be paid out of operating funds at a maximum cost of \$900,000 per year for three years, with two separate one-year renewal options. The FY 2016 Operating Budget includes funding for this program. The FY 2017 and 2018 operating budget will include funding for the 2nd and 3rd year of this program.

ENVIRONMENTAL REVIEW

On October 2, 2015, the Municipal Transportation Agency determined that the proposed Transportation Code amendments are not a “project” for purposes of environmental review under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Section 15060(c).

The Agency’s determination is on file with the Secretary to the SFMTA Board of Directors.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None

The City Attorney has reviewed this calendar item.

RECOMMENDATION

That the Board of Directors adopt the Taxi Driver Drug and Alcohol Testing Policy, amend Transportation Code Division II, Article 1100, Sections 1102, 1103, 1104, 1106, 1108, 1118 and 1121 to implement the Taxi Driver Drug and Alcohol Testing Policy and to lower the barrier of entry for new medallion applicants, and amend Transportation Code Division II, Article 300 Section 310 to impose certain fines on a daily basis.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
RESOLUTION No. _____

WHEREAS, The SFMTA's Taxis and Accessible Services Division is responsible for the regulation of the private businesses that make up the San Francisco taxi industry, including qualifying and licensing permit holders, monitoring regulatory compliance, and administering discipline for regulatory violations; and,

WHEREAS, California Government Code Section 53075.5 requires drug and alcohol testing for Taxicab drivers; and,

WHEREAS, San Francisco is the only major jurisdiction in California that does not have a drug testing protocol for its taxicab drivers; and,

WHEREAS, The SFMTA is proposing a pre-permit, annual permit re-certification, post-accident, and reasonable suspicion drug and alcohol testing for all eligible taxicab drivers and applicants; and,

WHEREAS, Staff has proposed additional amendments to the Transportation Code to lower the barrier of entry for new medallion applicants and impose certain fines on a daily basis; and,

WHEREAS, The proposed amendments to Transportation Code Division II do not constitute a project under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Section 15060(c); and,

WHEREAS, A copy of this determination is on file with the Secretary for the SFMTA Board of Directors; now, therefore be it

RESOLVED, That the Board of Directors adopts the Taxi Driver Drug and Alcohol Testing Policy; and be it further

RESOLVED, That the Board of Directors amends Transportation Code Division II, Article 1100, Sections 1102, 1103, 1104, 1106, 1108, 1118 and 1121 to implement the Taxi Driver Drug and Alcohol Testing Policy and to lower the barrier of entry for new medallion applicants, and amends Transportation Code Division II, Article 300 Section 310 to impose certain fines on a daily basis.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of October 20, 2015.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

RESOLUTION #

[Drug and Alcohol Testing Policy]

Resolution amending the Transportation Code to provide for adoption of a drug and alcohol testing policy for taxi drivers; to require taxi drivers to comply with that policy, which includes mandatory drug testing prior to issuance of a driver permit and upon renewal of the permit, and mandatory drug and alcohol testing after certain accidents, upon reasonable suspicion that the driver is under the influence of alcohol or drugs, prior to returning to work after a positive test result, and after return to work after a positive test result; to require taxi companies to comply with the requirements of the policy; to require SFMTA to deny or summarily suspend a driver permit upon the basis of a positive drug or alcohol test result; to require SFMTA to revoke a permit if the driver fails to satisfy return to duty requirements after a positive test result, or receives a positive test result twice within a two-year period; to bar applicants for driver permits from reapplying for a year after a positive pre-issuance drug test; to bar drivers from applying for a new driver permit for three years after revocation of the permit in connection with the drug and alcohol testing policy; to require revocation of the medallion permit of a medallion holder who has a driving requirement but does not have a valid driver permit; and to modify the eligibility requirement for a medallion to require that the applicant have complied with the full-time driving requirement for a year prior to application rather than for four of the last five years.

NOTE: Additions are single-underline Times New Roman;
deletions are ~~strike-through Times New Roman~~.

The Municipal Transportation Agency Board of Directors of the City and County of San Francisco enacts the following regulations:

Section 1. Article 300 of Division II of the Transportation Code is hereby revised by amending Section 310, to read as follows:

SEC. 310. SCHEDULE OF FINES.

Violation of any of the following subsections of the San Francisco Transportation Code governing the operation of a motor vehicle for hire shall be punishable by the administrative fines set forth below.

TRANSPORTATION CODE SECTION	DESCRIPTION	FINE AMOUNT Effective July 1, 2014	FINE AMOUNT Effective July 1, 2015
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CONDITIONS APPLICABLE TO COLOR SCHEME PERMITS			
Div II § 1106(s)	Dissolution plan	\$55.00 per day	\$57.00 per day
Div II § 1106(m)	Emissions reduction	\$55.00 per day	\$57.00 per day
Div II § 1106(n)	Required postings	\$82.00	\$85.00
Div II § 1106(o)	Required notifications	\$82.00	\$85.00
Div II § 1113(d)(3)	Required PIM	\$82.00	\$85.00
Div II § 1114(e)(3)	Receipts	\$82.00	\$85.00
Div II § 1114(e)(5)	Vehicle inventory changes	\$82.00	\$85.00
Div II § 1114(e)(7)	Weekly reporting requirements	\$82.00	\$85.00
Div II § 1106(e)	Transfer of business; New location	\$272.00 per day	\$280.00 per day
Div II § 1106(k)(1)	Facility to clean vehicles	\$272.00	\$280.00
Div II § 1106(i)	Workers' Compensation	\$327.00 per day	\$337.00 per day
Div II § 1106(p)	Obligations related to Drivers	\$435.00	\$448.00
Div II § 1106(r)	Found property	\$435.00	\$448.00
Div II § 1114(e)(1)	Waybills	\$435.00	\$448.00
Div II § 1114(e)(2)	Medallion Holder files	\$435.00	\$448.00

Div II § 1114(e)(6)	Current business information	\$435.00	\$448.00
Div II § 1124(b)(5)	Retaliation re credit card processing	\$435.00	\$448.00
Div II § 1124(c)	Overcharging gate fees	\$544.00	\$561.00
Div II § 1106(c)	Use of Dispatch Service	\$489.00 per day	\$504.00 per day
Div II § 1106(d)	Business premises	\$489.00	\$504.00
Div II § 1106(h)	Staffing requirements	\$489.00	\$504.00
Div II § 1106(l)(1)-(5), (7)	Use of spare vehicles	\$489.00	\$504.00
Div II § 1106(f)	Telephone directory	\$544.00	\$561.00
Div II § 1106(j)	Paratransit Broker contract	\$544.00	\$561.00
Div II § 1114(e)(8)	Required information	\$544.00	\$561.00
Div II § 1114(e)(9)	Required information	\$544.00	\$561.00
Div II § 1106(k)(2)-(4)	Nonworking equipment	\$1,000.00	\$1,000.00
Div II § 1106(q)(4)	Driver operating under the influence	\$1,000.00	\$1,000.00
Div II § 1106(a)	Color Scheme Permit required	\$5,000.00	\$5,000.00
Div II § 1106(1)(8)	Leasing spare vehicles	\$5,000.00	\$5,000.00
CONDITIONS APPLICABLE TO DISPATCH PERMITS			
Div II § 1107(c)(1)-(4)	Dispatch service operational requirements	\$55.00 per day	\$57.00 per day
Div II § 1107(e)	Dispatch equipment requirements	\$55.00 per day	\$57.00 per day
Div II § 1114(f)(1)-(2)	Electronic trip data; Integration with ETAS	\$55.00 per day	\$57.00 per day
Div II § 1114(f)(3)	Dispatch service reports	\$82.00	\$85.00
Div II § 1107(b)-(c)	Dispatch service standards and operational requirements	\$1,000.00	\$1,000.00
Div II § 1107(d) Div II § 1114(f)(4)	Found property	\$82.00	\$85.00
Div II § 1107(c)	Workers' Compensation	\$327.00 per day	\$337.00 per day
Div II § 1107(c)(5)	Improper dispatching	\$544.00	\$561.00
Div II § 1107(c)(7)	Affiliate with e-hail application	\$544.00 per day	\$561.00 per day

* * * *

Section 2. Article 1100 of Division II of the Transportation Code is hereby revised by amending Section 1102, to read as follows:

SEC. 1102. DEFINITIONS.

For purposes of this Article the following words and phrases shall have the meanings set forth below:

* * * *

~~"Controlled Substance Testing Program" shall mean a program adopted by the SFMTA Board to comply with California Government Code Section 53075.5.~~

* * * *

"Medallion Application" shall mean the form provided by the SFMTA and completed by a Driver who wishes to purchase a Medallion.

* * * *

"Prohibited Drugs" shall mean marijuana, amphetamines, methylenedioxyamphetaimie (MDMA), methylenedioxyamphetatamine (MDA), opiates, phencyclidine (PCP), and cocaine.

* * * *

"Taxi Driver Drug and Alcohol Testing Policy" shall mean the policy adopted by the SFMTA Board in compliance with California Government Code Section 53075.5, which requires that local entities regulating taxicab service adopt a mandatory drug and alcohol testing program for Taxi Drivers.

* * * *

Section 3. Article 1100 of Division II of the Transportation Code is hereby revised by amending Section 1103, to read as follows:

SEC. 1103. PERMIT APPLICATIONS AND RENEWAL.

* * * *

(c) Additional Requirements Applicable to Driver Permit Applications.

(1) Application Requirements. In addition to complying with all applicable requirements of this Section, each applicant for a Driver Permit shall:

(A) Provide his or her fingerprints; and

(B) Take and pass a written examination; and

(C) Take and pass a physical examination if required by the SFMTA; and

(D) Demonstrate that he or she has successfully completed a Driver Training Course for new Drivers; and

(E) Provide photographs of the applicant, taken no more than 12 months prior to the time of application; and

(F) Enclose a statement of affiliation signed by the applicant and the Color Scheme documenting the Color Scheme's commitment to offer the applicant a position as a Driver if the Driver Permit is issued; and

(G) Submit to a drug test as required by the Taxi Driver Drug and Alcohol Testing Policy. ~~Reserved: Controlled Substance Testing Program.~~

(H) As required by the Taxi Driver Drug and Alcohol Testing Policy, sign a written consent to allow the SFMTA to obtain information regarding the applicant's drug and alcohol testing history for the previous two years; and .

(I) As required by the Taxi Driver Drug and Alcohol Testing Policy, disclose whether applicant has, within the prior two years, ever failed a pre-employment drug or alcohol test that resulted in the applicant not getting hired.

(2) Driver Qualifications. Each applicant for a Driver's Permit must:

(A) Be clean in dress and person;

(B) Be free of any disease, condition, infirmity, or addiction that might render the applicant unable to safely operate a motor vehicle or that otherwise poses a risk to public health and safety;

(C) Have a current California driver's license and have held a valid driver's license issued in the United States for one year immediately prior to the date of application;

(D) Have the physical capacity to operate a motor vehicle for at least four hours per day;

(E) Have no prior convictions of a crime that would, in the judgment of the SFMTA, present a risk to public safety if the permit is granted, including but not limited to convictions involving sexual assault, the use of a vehicle in the commission of a felony, fraud, violence against a person, reckless disregard for public safety, two or more recent convictions of drug-related offenses, or two or more recent convictions of driving under the influence, whether or not such convictions occurred while driving a Motor Vehicle for Hire. The SFMTA may, in its discretion, issue a permit notwithstanding prior convictions if, following review of an individual case, it determines that the applicant or Permit Holder does not pose a current risk to public safety;

(F) Have attained the age of 21;

(G) Speak; read and write the English language;

(H) Receive a negative test result on the pre-issuance drug test under the Taxi Driver Drug and Alcohol Testing Policy. ~~Reserved: Controlled Substance Testing Program.~~

(I) Have not, within the past two years, failed a pre-employment drug or alcohol test that resulted in the applicant not getting hired.

(J) Have not, within the preceding twelve months, been denied a Driver permit for failure to comply with the requirements of subsection (H) or (I), above.

(3) Renewal of Driver's Permits.

(A) Drivers have an affirmative duty to report any criminal convictions that would be a basis for denying a permit pursuant to Section 1103(c)(2)(F). The SFMTA may refuse to renew a permit if the Permit Holder would not be eligible to receive a new permit pursuant to Section 1103(c)(2)(F).

(B) The SFMTA may require Drivers to successfully complete a Driver Training Course for current Drivers as a condition of renewal of their Driver Permits.

(C) Lapse of Active Permit Status; New Application; A-Card Seniority. A Driver Permit Holder who fails to renew his or her Driver Permit within the deadline for renewal set by the SFMTA may renew his or her Driver Permit upon submission of a new Driver Permit application and completion of all requirements for a new Driver Permit. If the Driver Permit Holder submits the new Driver Permit application and completes the requirements within two years of the renewal deadline, or prior to January 1, 1995, he or she shall retain A-Card Seniority based on the original issuance date of the Driver Permit. If, on or after January 1, 1995, the Driver Permit Holder submits a new Driver Permit application and completes the requirements more than two calendar years after the renewal deadline, he or she shall have an A-Card Seniority date as of the date of the most recent Driver Permit.

(D) Every Driver must submit to a drug test as a condition of renewal of his or her A-Card as provided by the Taxi Driver Drug and Alcohol Testing Policy, and must receive a negative test result as a condition for renewal of the A-Card.

* * * *

Section 4. Article 1100 of Division II of the Transportation Code is hereby revised by amending Section 1104, to read as follows:

SEC. 1104. ELIGIBILITY.

* * * *

(c) Eligibility for a Medallion.

(1) Applicants for a Taxi or Ramp Taxi Medallion must meet the eligibility requirements listed in Section 1103(c)(2)(A) through 1103(c)(2)(H) ~~and be in compliance with any Controlled Substance Testing Program adopted by the SFMTA Board.~~

(2) Each applicant for a Taxi or Ramp Taxi Medallion shall submit all completed application materials, including paper waybills and/or electronic trip data, and take any written, oral or practical examination required by the SFMTA within 45 calendar days of the date of the notice informing the applicant of the availability of a Medallion.

(3) Before issuing a Taxi or Ramp Medallion, in addition to all other eligibility requirements, the SFMTA must determine that the applicant has been a Full-Time Driver during the twelve month period immediately preceding his or her submission of a Medallion Application to the SFMTA. ~~four of five consecutive calendar years. At the applicant's election, the five years that the SFMTA considers may be either the five full calendar years immediately preceding the hearing, or the four full calendar years immediately preceding the hearing and the partial calendar year in which the hearing is held. The Full Time Driving requirement for the year in which the application is heard may not be pro-rated for the purpose~~

~~of determining whether to grant the application.~~ This requirement of Full-time Driving for twelve months ~~four of five consecutive years~~ may only be satisfied by driving a Taxi or Ramp Taxi for which a permit has been issued by the SFMTA. Paper waybills completed in compliance with Section 1109(c)(5), electronic trip data, or other corroborating documentary evidence, may be used to establish eligibility for a Medallion for the purposes of this Section.

* * * *

Section 5. Article 1100 of Division II of the Transportation Code is hereby revised by amending Section 1106, to read as follows:

SEC. 1106. CONDITIONS APPLICABLE TO COLOR SCHEME PERMITS.

* * * *

(q) ~~Taxi Driver Drug and Alcohol Testing Policy; Policy Controlled Substance Testing Program; Controlled Substances.~~

(1) ~~Reserved: Controlled Substance Testing Program.~~ Color Schemes must comply with all relevant provisions of the Taxi Driver Drug and Alcohol Testing Policy, including but not limited to the following:

(A) Removing a Taxi Driver from his or her duties temporarily as provided by the Policy after a test demonstrating that the Taxi Driver has a confirmed alcohol concentration of greater than 0.02 and less than .04;

(B) Referring and transporting Drivers for reasonable suspicion testing in conformance with requirements of the Policy, and paying the costs of such testing;

(C) Referring and transporting Drivers for post-accident testing in conformance with the requirements of the Policy, and paying the costs of such testing;

(D) Ensuring that at least one current on-site employee has received two hours of post-accident testing training and reasonable suspicion testing training within the past twelve months. Training shall be provided by the SFMTA's contractor at the Color Scheme's expense;

(E) Providing all Drivers with educational materials provided by the SFMTA related to the Policy and materials explaining the Color Scheme's policy regarding use of drugs and alcohol; and

(F) Maintaining the confidentiality of any records related to the results of drug and alcohol tests of Drivers administered under the Policy.

(2) A Color Scheme having actual knowledge that a Driver has tested positive for drugs or alcohol under the Taxi Driver Drug and Alcohol Testing Policy ~~a controlled substance as defined in 40 Code of Federal Regulations Title 49~~ shall not permit the Driver to operate a Taxi or Ramp Taxi until such time as the Driver has been cleared to return to work by the SFMTA under the provisions of the Policy ~~tested negative.~~

~~(3) Color Schemes shall maintain drug and alcohol free workplaces.~~

(34) No Color Scheme having actual knowledge that a Driver has used and is currently under the influence of alcohol or Prohibited Drugs ~~a intoxicating or controlled substance as defined in 49 Code of Federal Regulations Section 1308.01 et seq.,~~ shall permit that Driver to operate or continue to operate a Taxi or Ramp Taxi.

(5) A Color Scheme must report to the SFMTA contact person identified in the Policy any referral of a Driver for reasonable suspicion or post-accident testing under the Policy, and must do so within eight hours of the referral.

* * * *

Section 6. Article 1100 of Division II of the Transportation Code is hereby revised by amending Section 1108, to read as follows:

SEC. 1108. CONDITIONS APPLICABLE TO DRIVER PERMITS.

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(b) Taxi Driver Alcohol and Drug Testing Policy. ~~Controlled Substances.~~

(1) Drivers must comply with all relevant provisions of the Taxi Driver Drug and Alcohol Policy, including but not limited to submitting to reasonable suspicion and post-accident drug and alcohol testing at the direction of the Color Scheme and as provided by the Taxi Driver Drug and Alcohol Testing Policy.

~~(2)~~ No Driver may operate a Motor Vehicle for Hire while his or her driving ability is impaired by alcohol, any Prohibited Drug~~controlled substance, or including~~ prescription drugs. No Driver may consume alcohol or any Prohibited Drug ~~or be under the influence of any intoxicating substance~~ while operating a Motor Vehicle for Hire.

~~(2)~~ Drivers ~~shall maintain a drug and alcohol free workplace and shall not sell, use, or possess alcohol or Prohibited Drugs~~ ~~controlled substances~~ while operating a Motor Vehicle for Hire or at the Color Scheme's place of business.

* * * *

Section 7. Article 1100 of Division II of the Transportation Code is hereby revised by amending Section 1118, to read as follows:

SEC. 1118. REVOCATION, SUSPENSION, AND ADMINISTRATIVE FINES.

(a) Revocation, Suspension or Administrative Fine for Cause. The SFMTA may suspend or revoke any permit issued under this Article, and may impose an administrative fine against a Permit Holder, for good cause. "Good cause" hereunder shall include, but shall not be limited to, the following:

(1) A Permit Holder failed to pay a fine imposed by the SFMTA under Section 310 of this Code within 30 days of imposition or within such other time period as determined by the agreement of the Permit Holder and the SFMTA.

(2) A Permit Holder failed to pay a permit fee within 90 days following notice of nonpayment.

(3) A Permit Holder has been convicted of any crime that would disqualify him or her from holding a permit pursuant to Section 1103(c)(2)(F), or is otherwise ineligible for a permit under Section 1104(c) or (d) of this Article.

(4) The Permit Holder has violated any statute or ordinance, including any provision of Division I or II of this San Francisco Transportation Code, governing the operation or licensing of the vehicles and services regulated by this Code.

(5) A Taxi Driver fails to comply with the requirements for return to duty under the Taxi Driver Drug and Alcohol Testing Policy within twelve months of a positive drug or alcohol test.

(6) A Taxi Driver complies with the requirements for return to duty within the twelve-month period, but fails to comply with a follow-up requirement imposed by the substance abuse professional under the terms of the Taxi Driver Drug and Alcohol Testing Policy.

(7) A Taxi Driver receives a positive test result within the meaning of the Taxi Driver Drug and Alcohol Policy for any drug or alcohol test required by the Policy twice within any two-year period.

(8) A Medallion Holder who is subject to the Full-Time Driving Requirement does not have a valid A-Card because the Driver has failed to timely renew his or her A-Card or the SFMTA has revoked the A-Card.

(b) Suspension or Revocation of More Than One Permit. Where a person violating this Article holds more than one permit to operate a Motor Vehicle for Hire in the City, the SFMTA may revoke, suspend, or decline to renew all such permits.

(c) Operation During Suspension. In the event that a Taxi or Ramp Taxi Medallion is suspended for disciplinary reasons, the Color Scheme with which it is affiliated may continue to operate the Medallion during any such period of suspension by paying a monthly fee of \$1,900 to the Driver Fund. The total of the monthly fees for the entire suspension period is due as of the 15th day following the commencement of the suspension period. If the suspended Medallion is affiliated with a Color Scheme that is on Administrative Probation upon the date that the suspension commences, the Medallion may be operated by a Color Scheme designated by the Medallion Holder from among those Color Schemes that are not on Administrative Probation and have notified the SFMTA of their willingness to operate the Medallion during the suspension period.

(d) Administrative Fines. Administrative fines imposed under this Section 1118 for violations of Article 1100 of Division II of the Transportation Code shall be consistent with Section 310 of Division II of the Transportation Code, and are not subject to adjustment by the Hearing Officer in the context of an administrative hearing conducted under Section 1120.

(e) If the Driver's A-Card permit is revoked under subsection (a)(5), (a)(6) or (a)(7), above, the SFMTA shall not accept a new application for an A-Card from the Driver for three years from the date upon which the revocation was final.

Section 8. Article 1100 of Division II of the Transportation Code is hereby revised by amending Section 1121, to read as follows:

SEC. 1121. SUMMARY SUSPENSION OF PERMIT FOR HEALTH OR SAFETY REASONS.

(a) Summary Suspension. When the SFMTA determines that an alleged permit violation poses an ongoing risk to public health or safety, the SFMTA may

summarily suspend the permit pending the outcome of a hearing conducted pursuant to Section 1120. Any affected Permit Holder shall be given a Notice of Summary Suspension, in writing, delivered to said Permit Holder in person or by first-class U.S. Mail.

(b) Summary Suspension Hearing; Decision Following Hearing. Any Permit Holder who wishes to challenge the summary suspension of his or her permit may request, in writing, a hearing before a Hearing Officer. A summary suspension hearing shall be conducted pursuant to Section 1120, except that upon receipt of a Permit Holder's request for a summary suspension hearing, SFMTA shall promptly set the time and place for said hearing to occur within ten business days of receipt of the Permit Holder's request for a hearing. SFMTA shall cause notice of such hearing to be delivered to the Permit Holder in person or by first-class U.S. Mail. In addition, SFMTA must provide the Respondent with the written complaint within two business days of receipt of the request for a hearing, Respondent must provide the written response, if any, no later than two business days prior to the hearing, and the Hearing Officer shall issue a written decision, which shall take effect in accordance with Section 1120(f)(2) no later than the next business day following the summary suspension hearing.

(c) Appeal. If the Permittee appeals a Hearing Officer's decision upholding a summary suspension to the Board of Appeals, the summary suspension shall remain in effect until a final decision is issued by the Board of Appeals. Where a permit is revoked after a summary suspension, the revocation shall be effective immediately and, if the Permittee appeals to the Board of Appeals, shall remain in effect until a final decision is issued by the Board of Appeals.

(d) Ramp Taxis. While a Taxi or Ramp Taxi Medallion is suspended pursuant to this Section 1121, the SFMTA may allow continued operation of the Medallion with

the SFMTA's prior written approval, subject to any conditions specified in such approval.

(e) Taxi Driver Drug and Alcohol Testing Policy.

(1) To protect the public health and safety, the SFMTA shall summarily suspend the A-Card of any Driver who receives a positive drug or alcohol test result within the meaning of the Policy, which includes a refusal to submit to testing as defined by the Policy.

(2) The SFMTA shall lift the summary suspension if:

(A) The City's third party administrator under the Policy cancels the positive test result due to retesting requested by the Driver and performed in accordance with the requirements of the Policy;

(B) The Driver receives a negative test result after the Driver has refused to submit to testing and the third party administrator, in accordance with the terms of the Policy, directs the Driver to provide a second specimen; or

(C) The Driver completes the Policy's requirements for return to duty.

Section 9. Effective Date. This ordinance shall become effective 31 days after enactment. Enactment occurs when the San Francisco Municipal Transportation Agency Board of Directors approves this ordinance.

Section 10. Scope of Ordinance. In enacting this ordinance, the San Francisco Municipal Transportation Agency Board of Directors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, letters, punctuation marks, charts, diagrams, or any other constituent parts of the Transportation Code that are explicitly shown in this ordinance as additions or deletions in accordance with the "Note" that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Mariam M. Morley
Deputy City Attorney

I certify that the foregoing resolution was adopted by the San Francisco
Municipal Transportation Agency Board of Directors at its meeting of _____ .

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA) TAXI DRIVER DRUG AND ALCOHOL TESTING POLICY

1.0 PURPOSE

The purpose of this Policy is to assure Driver fitness for duty, and to protect the public from the risks posed by the use of Alcohol and Prohibited Drugs (as defined below) by: 1) taking appropriate action to assure that the City's Taxi Drivers are not impaired in their ability to perform in a safe, productive, and healthy manner; 2) encouraging Taxi Drivers to voluntarily seek professional assistance whenever personal problems, including alcohol or drug use, may adversely affect their ability to perform.

California Government Code section 53075.5 requires local entities regulating taxicabs to adopt a mandatory controlled substance and alcohol testing certification program with procedures that substantially comply with applicable regulations in Part 40 and Part 382 of Title 49 of the Code of Federal Regulations (CFR). This Taxi Driver Drug and Alcohol Testing Policy ("Policy") incorporates these federal requirements for Drivers, as well as other provisions, as noted. Compliance with this Policy and participation in the testing program is a requirement of each Taxi Driver and therefore is a condition of the Driver permit.

2.0 DEFINITIONS

2.1 Accident. An accident involving a taxicab in which:

- A. A person dies; or
- B. Within eight hours of the accident the Driver receives a citation under State or local law for a moving traffic violation arising from the accident, and the accident involved:
 - i. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - ii. Disabling Damage to one or more vehicles as a result of the accident that required the motor vehicle to be transported from the scene by a tow truck or other motor vehicle.

2.2 Adulterated Specimen. A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

2.3 Alcohol. The intoxicating agent in beverage alcohol, ethyl alcohol or other low

molecular weight alcohols including methyl or isopropyl alcohol. (The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.)

2.4 Breath Alcohol Technician. A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

2.5 Cancelled Test. A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which 49 CFR Part 40 otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

2.6 Dilute Specimen. A specimen with creatinine and specific gravity values that is lower than expected for human urine.

2.7 Direct Observation. Collection of a urine specimen performed while under the observation of a collector of the same gender as the individual providing the specimen, under the circumstances and according to the provisions set forth in 49 CFR Section 40.67.

2.8 Disabling Damage. Damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

A. *Inclusions.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

B. *Exclusions.*

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlight or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers that make them inoperative.

2.9 DOT. The United States Department of Transportation.

2.10 DOT Procedures. "Procedure for Transportation Work Place Drug Testing Programs" published by the Office of Secretary of Transportation in 49 CFR Part 40.

2.11 DOT Regulations. Alcohol and Controlled Substances Testing Regulations

published by the Secretary of Transportation in 49 CFR Part 382.

2.12 Invalid Drug Test. The result of a drug test or a urine specimen that contains an unidentified adulterant or an unidentified substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

2.13 Medical Review Officer (MRO). A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by a drug testing program and evaluating medical explanations for certain drug test results.

2.14 Non-negative Drug Test. A test result found to be Adulterated, Substituted, Invalid, or positive for drug/drug metabolites.

2.15 Performing (a Safety-Sensitive Function). A Covered Driver is considered to be Performing a Safety-Sensitive Function at any time in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

2.16 Positive Drug Test: A test result found to be Adulterated, Substituted, Invalid, or positive for Prohibited Drug/Prohibited Drug metabolites.

2.17 Positive Alcohol Test: A test revealing an Alcohol concentration of 0.04 or greater.

2.18 Primary Specimen. In drug testing, the urine specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing.

2.19 Prohibited Drugs. The following substances: marijuana, amphetamines, methylenedioxymetamphetamine (MDMA), methylenedioxyamphetamine (MDA), opiates, phencyclidine (PCP), and cocaine.

2.20 Refuse (Refusal) to Submit. A refusal to take a drug test as set out in 49 CFR Section 40.191 or an Alcohol test as set out in 49 CFR Section 40.261.

2.21 Safety-Sensitive Function. All time from the time a Driver begins to work or is required to be in readiness to work until the time he or she is relieved from work and all responsibility for performing work. Safety-Sensitive functions shall include:

- A. All time at company facility, or other property, or on any public property waiting to be dispatched, unless the Driver has been relieved from duty by company;

- B. All time inspecting equipment or otherwise inspecting, servicing, or conditioning any Taxi at any time;
- C. All time spent at the driving controls of a Taxi in operation;
- D. All time, other than driving time, in or upon any Taxi;
- E. All time loading or unloading a taxicab, supervising, or assisting in the loading or unloading of passengers, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for or compensation from passengers; and
- F. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

2.22 Service Agents. Any person or entity, other than the SFMTA or a Taxi Company, who provides services specified in 49 CFR Part 40 in connection with the drug and Alcohol testing requirements specified in this Policy. This includes, but is not limited to, collectors, Breath Alcohol Technicians, laboratories, TPAs, MROs, and SAPs.

2.23 Split Specimen. In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the Driver requests that it be tested following a verified positive test of the Primary Specimen or a verified Adulterated or Substituted test result.

2.24 Substance Abuse Professional (SAP). A licensed physician, psychologist, social worker, certified employee assistance professional, or nationally certified addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders who evaluates employees who have violated a drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

2.25 Substituted Specimen. A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

2.26 Taxi Company. A Color Scheme Permit Holder as defined in Transportation Code Article 1100.

2.27 Taxi Driver; Driver. A Taxi Driver who holds an "A-Card" or "Driver Permit" issued by the SFMTA to operate a taxi or ramp taxi in the City.

2.28 Third Party Administrator (TPA). A contractor hired by the SFMTA to administer

all aspects of the Taxi Driver drug and alcohol testing program.

3.0 APPLICABILITY

This Policy applies to all Taxi Drivers regulated by the SFMTA. Under this Policy all Taxi Drivers will be subject to pre-permit, permit renewal, reasonable suspicion, post-accident, return-to-duty and follow-up testing for Prohibited Drugs, and to reasonable suspicion, post-accident and return-to-duty and follow-up Alcohol testing. This Policy will be applied in an unbiased and impartial manner.

4.0 OPPORTUNITIES FOR REHABILITATION

4.1 Rehabilitation After a Positive Alcohol or Drug Test. When a Taxi Driver tests positive for Prohibited Drugs or over 0.04 for Alcohol, the SFMTA will suspend the Driver's A-Card, and the Third Party Administrator will refer the Driver to a SAP. If a Driver wishes to return to work as a Taxi Driver, he/she must properly follow the rehabilitation program prescribed by the SAP. The SAP will provide a written release to the Third Party Administrator certifying the Driver's eligibility to be considered for return to work only after the Driver has signed a return-to-work agreement. The return-to-work agreement shall outline the terms and conditions of continuing care and follow-up drug testing, which shall be the terms and conditions under which the SFMTA lifts the suspension of the Driver's A-Card.

The requirements for referral, evaluation and rehabilitation do not apply to applicants who refuse to submit to a permit issuance drug test or who test positive for Prohibited Drugs on a permit issuance test.

4.2 Cost of Rehabilitation. The SFMTA will not pay for the SAP's services, or for rehabilitation services, and will not require Taxi Companies to pay for such services. Instead, Drivers will be responsible for the cost of such services.

5.0 PROHIBITED SUBSTANCES

"Prohibited Substances" addressed by this Policy include the following:

5.1 Prohibited Drugs. No Taxi Driver will work under the influence of Prohibited Drugs. Any Taxi Driver discovered to be in violation of these prohibitions is required to cease operation of the taxicab immediately.

5.2 Alcohol. The possession and consumption of beverages containing Alcohol, or

substances, including any medication, containing Alcohol such that Alcohol is present in the body while Performing Safety-Sensitive Functions as a Taxi Driver, is prohibited

5.3 Legally Prescribed and Over-the-Counter Drugs. Prescriptions and over the counter drugs can adversely affect a Driver's job performance. However, the use of Legally Prescribed Drugs and over-the-counter drugs is permitted under the circumstances below. Legally Prescribed Drugs include those drugs approved and authorized by a physician for use during the course of medical treatment. For prescription drugs, the physician must issue a written prescription that clearly indicates the Driver's name, drug type, and proper dosage. If a Driver is taking prescription and/or over the counter drugs, he/she must obtain a signed note from a physician that the use of this drug(s) at the prescribed or authorized dosage is consistent with the safe performance of the Driver's duties. This note must be presented to the Taxi Company before driving a taxi. The authorized use of Legally Prescribed Drugs does not include the use of prescribed Prohibited Drugs.

In the event it is determined by the MRO that a Driver is taking or is under the influence of a prescribed medication that will reasonably impair the Driver's ability to safely and adequately perform their job, the Driver will not be allowed to drive until the condition requiring the taking of the medication is resolved or the Driver is no longer taking the medication.

6.0 PROHIBITED CONDUCT

6.1 Alcohol Use/Hours of Compliance. The following applies to the consumption of Alcohol by Taxi Drivers:

- A. No Taxi Driver should report for duty or remain on duty when his or her ability to perform Safety-Sensitive Functions is adversely affected by Alcohol while on duty or when his or her blood alcohol concentration is 0.04 or greater.
- B. No Taxi Driver shall use alcohol while on duty or while driving.
- C. No Taxi Company supervisor, manager, or other employee who has actual knowledge that any Driver Performing Safety-Sensitive Functions has an Alcohol level of .04 or greater, is using Alcohol while Performing Safety-Sensitive Functions, has tested positive for Alcohol, has used Alcohol within four hours prior to Performing a Safety-Sensitive Function, or has Refused To Submit to testing, shall not permit the Driver to perform or continue to Perform a Safety-Sensitive Function..
- D. No Driver shall drive within four hours after having consumed Alcohol.
- E. After an Accident, a Driver shall refrain from Alcohol use for eight hours or until a post-Accident alcohol test has been administered, whichever comes first. This prohibition relating to Alcohol includes over-the-counter medications and medical prescriptions that contain Alcohol. Drivers are advised to notify their physicians at the

time medication is prescribed as to be in compliance with the work place requirement to avoid Alcohol consumption in any form.

6.2 Prohibition Against Driving. No Taxi Driver shall Perform a Safety-Sensitive Function under the following circumstances:

- A. After testing positive or Refusing to Submit to Testing, a Taxi Driver shall not perform their functions unless he or she is referred for evaluation and testing, is approved and authorized to return to duty by a SAP, and the SFMTA has lifted the suspension of the Driver's A-Card.
- B. No Driver who has a Prohibited Drug or Alcohol testing violation shall Perform a Safety-Sensitive Function. No Taxi Company shall permit a Driver who has such a violation to perform any driving duties.
- C. If a Taxi Driver's drug test is reported as "negative dilute," the Taxi Driver will be immediately sent for another drug test. If the second test result is negative dilute, the result will be accepted and no further testing will be performed, unless directed by the MRO. Certain Dilute specimens may require retest under Direct Observation under 49 CFR Part 40. A required Direct Observed test will be performed by a person of the same gender as Driver.
- D. A Taxi Company must remove a Taxi Driver from his or her duties until the start of his or her next regularly scheduled duty period, but not less than 24 hours following administration of the test, if the Taxi Driver has a confirmed Alcohol concentration of greater than 0.02 and less than 0.04.

6.3 Refusal to Submit. A Taxi Driver, who Refuses to Submit to Prohibited Drug or Alcohol testing, as required, shall be prohibited from Performing or continuing to Perform Safety-Sensitive Functions. A Refusal to Submit to drug or Alcohol testing constitutes a verified positive drug or Alcohol test result. Any conduct or behavior as defined in the following list constitutes a Refusal to Submit and will be deemed a verified positive drug or Alcohol test:

- A. Failure to appear for any drug test (except a permit issuance or permit renewal) as directed by the SFMTA within a reasonable time, and failure to appear (for Alcohol testing within two hours of notification that he or she must be tested;
- B. Except for a permit issuance or permit renewal test, failure to remain at the testing site until the testing process is complete, or leaving the testing site before the testing process commences;

- C. Failure to permit the observation or monitoring of a specimen collection in the case of a Direct Observation drug test;
- D. Failure to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- E. Failure or declining to take a second drug test that the TPA or collection site personnel has directed the Taxi Driver to take;
- F. Failure to sign the certification at Step 2 of the alcohol testing form (“ATF”);
- G. Failure to cooperate with any part of the testing process (e.g., refusal to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process);
- H. The MRO reports a verified Adulterated or Substituted test result;
- I. Anytime the Taxi Driver is directed to provide another urine specimen because the temperature of the original specimen was out of the accepted temperature range of 90 degrees to 100 degrees F;
- J. Anytime the Taxi Driver is directed to provide another specimen because the original specimen appeared to have been tampered with;
- K. Anytime a collector observes materials brought to the collection site or the Taxi Driver’s conduct clearly indicates an attempt to tamper with the specimen;
- L. Anytime the Taxi Driver is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was Invalid and the MRO determined that there was not an adequate medical explanation for the result;
- M. Anytime the Taxi Driver is directed to provide another specimen because the MRO determined that the original specimen was positive, Adulterated or Substituted, but had to be cancelled because the test of the Split Specimen could not be performed;
- N. Anytime the Driver possesses or wears a prosthetic or other device that could be used to interfere with the collection process;
- O. The Driver admits to the MRO or collector that the he or she Adulterated or Substituted a specimen;

- P. Failure to follow the Observer's instructions during a Direct Observation collection, including instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if any type of prosthetic or other device could be used to interfere with the collection process.

7.0 TESTING FOR PROHIBITED SUBSTANCES

7.1 Procedures for Testing

7.1.1 General. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability, and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHHS). Testing for Prohibited Drugs and Alcohol on Taxi Drivers shall be conducted in accordance with the procedures set forth in 49 CFR Part 40, as amended. Non-federal Custody and Control Forms (CCF) (urine) and Alcohol Testing Forms (ATF) (breath) will be used. The procedures that will be used to test for the presence of illegal drugs or Alcohol misuse are designed to protect the Taxi Driver and the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct Taxi Driver.

7.1.2 Testing for Prohibited Drugs. The Third Party Administrator shall collect urine samples from Drivers to test for Prohibited Drugs. The Collector will split each urine sample collected into a Primary and a Split Specimen. The urine samples will be sent under seal, with required chain-of custody-forms, to a laboratory approved by DHHS. At the laboratory, all specimens are placed in secure storage. An initial drug screen will be conducted on each Primary Specimen.

For those specimens that are not negative, a confirmatory gas Chromatography/Mass Spectrometry (GS/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds established in 49 CFR Part 40. The specimen could be considered Adulterated or Substituted based on criteria established by DOT and DHHS. If the result of the test of the Primary Specimen is positive Adulterated, Substituted or Invalid, the Primary and Split Specimen will be retained in frozen storage for at least one year.

7.1.3 Specimen Validity Testing. Specimen validity testing is the evaluation of the specimen by the laboratory to determine if it is consistent with normal urine. Validity testing determines if the specimen contains adulterants or foreign substances, if the urine was diluted, or if the specimen was substituted, based on criteria established by DOT and DHHS. Validity testing is conducted on all specimens. Specimens that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term

frozen storage for at least 365 days as required by Part 40.

7.1.4 Alcohol Testing. Tests for alcohol concentration on Drivers will be conducted with a National Highway Traffic Safety Administration (NHTSA)-approved evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT) or as otherwise authorized by Part 40. In order to maintain quality assurance, EBTs must be externally calibrated in accordance with the plan developed by the manufacturer of the device. If the initial test (screening test) on an employee indicates an alcohol concentration of equal to 0.02 or greater, a second test will be performed to confirm the results of the initial test and must be conducted 15 minutes after the initial test. The confirmation test must be conducted using an EBT that prints out the test results, and the date and time the procedure was performed. The EBT also prints a sequential test number along with the name and serial number of the EBT. Alcohol testing will be administered for all Taxi Drivers under the following circumstances:

- A. Reasonable suspicion
- B. Post-Accident
- C. Optional return-to-duty (Drivers will be responsible for costs)
- D. Optional follow-up (Drivers will be responsible for costs)

7.1.5 Medical Review Officer (MRO). All drug testing results shall be interpreted and evaluated by an MRO, who shall be a licensed physician. The MRO shall comply with the drug testing procedures set forth in 49 CFR Part 40, as amended.

When the laboratory reports a confirmed positive, Adulterated, Substituted, or Invalid test, it is the responsibility of the MRO to: (a) within 24 hours after verifying the test, contact the Driver and inform him or her of the Positive, Adulterated, Substituted, or Invalid test result; (b) afford the Driver an opportunity to discuss the test results with the MRO; (c) review the Driver's medical history, including any medical records and biomedical information provided; and (d) determine whether there is a legitimate medical explanation for the result, including legally prescribed medication. If the Driver indicates that he or she has a medical explanation for the positive, Adulterated, Substituted, or Invalid test, he or she has up to five days to provide this information to the MRO.

The MRO has the authority to verify a positive or Refusal to Submit to testing without interviewing the Driver if: (a) the Driver refuses to discuss the test result with the MRO, (b) if the SFMTA or Taxi Company has successfully directed the Driver to contact the MRO, and the Driver has not made contact with the MRO within 72 hours, or (c) if neither the MRO nor SFMTA or Taxi Company has made contact with the Driver within 10 days of the date that the MRO received the test result from the laboratory.

The MRO shall not convey test results to the SFMTA or Taxi Company until the MRO has

made a definite decision that the test result was positive, Adulterated, Substituted, Invalid or negative. The MRO may request the laboratory to conduct additional analyses of the original sample in order to verify the accuracy of the test result.

The MRO will report the test to the SFMTA or Taxi Company as either negative, positive, a Refusal to Submit due to Adulteration or Substitution, or Cancelled (Invalid). When the MRO reports the results of the verified positive test to the SFMTA, the MRO will disclose the drug(s) for which there was a positive test. The MRO will also provide additional, clarifying information to the SFMTA for tests that are confirmed as a Refusal to Submit due to Adulteration or Substitution, or are Cancelled. The MRO may only reveal the quantitative amount of a positive drug test result to the SFMTA, Driver, or the decision maker in a lawsuit, grievance or other proceeding initiated by the Driver and arising from a verified positive drug test result.

When the MRO has verified a test positive or a Refusal to Submit as a result of Adulteration or Substitution, the MRO shall inform the Driver that he or she has 72 hours to request a test of the Split Specimen.

7.1.6 Direct Observation. The employer is required to conduct a directly observed collection when:

- A. The laboratory reports an invalid specimen and the MRO reports that there was not an adequate medical explanation for the result.
- B. Because the split specimen test could not be performed (e.g., split, lost, inadequate volume).
- C. The MRO reports a negative-dilute result with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL.
- D. The test is a return-to-duty or follow-up test.

Note: A Driver may not “volunteer” to have his or her specimen collected under direct observation.

7.2 Types of Testing. The SFMTA requires the following types of testing for Prohibited Substances for Taxi Drivers: permit issuance, permit renewal, reasonable suspicion, post-accident, optional return-to-duty, and optional follow-up testing.

7.2.1 Permit Issuance Testing. All Taxi Driver permit applicants shall undergo urine drug testing prior to issuance of a permit by the SFMTA. At the time they apply for a Taxi Driver permit, SFMTA will notify all applicants that they will be required to submit to a drug test if they are considered otherwise qualified for driving a taxicab and that they will

be required to comply with the terms and conditions of this Policy. No applicant for a permit will be issued a permit, unless he or she passes a drug test.

7.2.2 Permit Renewal Testing. Taxi Drivers will be subject to annual drug testing upon permit renewal, which is scheduled during the Driver's birth month; however, any prior negative test result shall be accepted for one year as meeting a requirement for periodic permit renewal testing if the Driver has not tested positive subsequent to a negative test. Failure to submit to permit renewal testing shall result in a non-renewal of the permit.

7.2.3 Reasonable Suspicion Testing. All Drivers shall be subject to reasonable suspicion testing, to include appropriate urine and/or breath testing, when there are reasons to believe that drug or alcohol use is adversely affecting job performance. A reasonable suspicion referral for testing will be made on the basis of documented objective facts and circumstances which are consistent with short-term effects of substance abuse. Reasonable suspicion tests for the presence of alcohol shall only be made just prior, during or immediately after performance of a Safety-Sensitive Function.

Reasonable suspicion determinations will be made by a Taxi Company employee who is trained to detect and document the signs and symptoms of drug and alcohol use and who reasonably concludes that the Taxi Driver may be adversely affected or impaired in his or her work performance due to prohibited substance abuse or misuse.

A written report describing the Taxi Driver's condition will be completed, dated and signed by a trained supervisor who either substantiated or was consulted about the report of reasonable suspicion. Copies of the report will be given to the Taxi Driver, and the trained employee will order the Driver to submit to drug testing.

In any reasonable suspicion circumstance, the Taxi Company will transport the Driver to the appropriate collection site facility and await the completion of the collection process. After the testing has been completed, the Taxi Company will transport the Driver back to the company premises. During the time period the Taxi Driver waits for the results, the Driver must not be allowed to drive a Taxi until his or her test is confirmed as negative. If the Taxi Driver's drug test comes back positive, then a spouse, family member, or someone else will be contacted to transport the Taxi Driver back to his or her residence. If no one is available, the Taxi Company will arrange to transport the Driver home by Taxi or other means. If the reasonable suspicion test is negative, the Taxi Company will reimburse the Driver the cost of any Taxi fare paid by the Driver for transport back to his or her residence.

7.2.4 Post-Accident Testing.

- A. **Testing Requirement.** Post-accident testing for Prohibited Substances shall be required of every Driver involved in an Accident as defined in Section 2, above.
- B. **Procedure.** Following an Accident, all Taxi Drivers shall remain readily available for testing. A Driver who fails to remain readily available, including notifying a supervisor of his or her location if he or she leaves the scene of the Accident prior to submitting to testing, may be deemed to have Refused to Submit to testing. The drug test shall occur as soon as practicable but not later than 32 hours after the Accident. An Alcohol test must be administered as soon as practicable following the Accident; if the Alcohol test is not administered within eight hours of the Accident, no test shall be given. Nothing in this section shall delay medical attention for the injured following an Accident or prohibit a Driver from leaving the scene of an Accident for the period necessary to obtain assistance in responding to the Accident or to obtain necessary emergency medical care when appropriate approval is given. The results of a breath or blood test for the use of Alcohol or a urine test for the use of Prohibited Drugs, conducted by federal, state or local officials having independent authority to test (e.g., local law enforcement if accident occurs in a remote area), shall be acceptable, provided that such tests conform to applicable federal, state or local requirements, and that the results of the tests are obtained by the Third Party Administrator and/or the Taxi Company.
- C. **Table.** The following table summarizes when a post-Accident test is required:

Type of Accident involved	Citation issued to the Driver	Test must be performed
i. Human fatality	YES NO	YES YES
ii. Bodily injury with immediate medical treatment away from the scene	YES NO	YES NO
iii. Disabling damage to any motor vehicle requiring tow-away	YES NO	YES NO

7.2.5 Return-to-Duty Testing/Follow-up Testing. Any Taxi Driver who has failed a drug test or tested in excess of 0.04 on an Alcohol test, or who has Refused to Submit to testing, must pass the return-to-duty tests ordered by the SAP at his or her own cost before the SFMTA will lift the suspension of the Driver's A-Card. The Driver also must have successfully completed the SAP recommendations and sign a return-to-work agreement, if required by the SAP, before the SFMTA lifts the suspension. Return-to-

duty and follow-up drug tests will be conducted using Direct Observation collection procedures.

7.2.6 Taxi Driver-Requested Drug Retesting. Any Taxi Driver who questions the results of a required drug test under Section 7.0 of this Policy may, within 72 hours of having been notified of a verified positive test, request that an additional test be conducted. This test must be conducted at a different DHHS-certified laboratory. Each urine sample shall be a minimum of 45 ml. The sample will be split at the time of collection into 30 ml. for the Primary Specimen test and 15 ml. for a re-test if the Primary Specimen tests positive. The additional test must be conducted on the Split Sample that was provided at the same time as the original sample. The method of collecting, storing, and testing the Split Sample shall be consistent with the procedures set forth in 49 CFR Part 40, as amended. The Taxi Driver's request for a re-test must be made to the MRO within 72 hours of notice of the initial test result. Requests after 72 hours will only be accepted if the delay was due to documentable facts that were beyond the control of the Taxi Driver. If the analysis of the Split Specimen fails to confirm the presence of the drug(s) detected in the Primary Specimen, or if the Split Specimen is unavailable, inadequate for testing, or untestable, the MRO shall cancel the test and report cancellation and the reasons for it to the SFMTA, the applicable Taxi Company, and the TPA. The Split Specimen test shall be paid for by the Taxi Driver.

8.0 CONSEQUENCES – Taxi Drivers and Taxi Companies

8.1 Positive Test Result. An Alcohol concentration of 0.04 or greater will be considered a positive Alcohol test and in violation of this Policy. The SFMTA shall summarily suspend the A-Card of a Driver who has (a) a positive drug test, as confirmed by the MRO or (b) a confirmed positive Alcohol test. The SFMTA shall then, at the Driver's request, refer the Driver for evaluation by a SAP who will inform the Driver of educational and rehabilitation programs available.

8.2 Compliance with Testing Requirements. A Refusal to Submit to testing shall be considered a positive result, and the SFMTA shall suspend the A-Card of a Driver who refuses to submit.

8.3 Return to Work. The SFMTA shall lift the suspension of the a Driver after the SAP has determined that the Driver has successfully complied with the prescribed rehabilitation program, the Driver has tested negative for Prohibited Drugs or Alcohol, and the Driver has signed a return-to-work agreement.

9.0 RETURN-TO-WORK CONDITIONS

Drivers may not return to work unless they have obtained a release-to-work statement from an approved SAP, have tested negative for drugs and/or Alcohol, have signed a return-to-work agreement, and the SFMTA has lifted the suspension of the Driver's A-Card.

Following the Driver's satisfactory completion of the SAP recommendation and a negative return-to-duty test, the SAP will provide the SFMTA and the TPA with a written statement of completion, along with a continuing care plan that may include a follow-up testing schedule.

10.0 TRAINING AND EDUCATION

All Taxi Drivers shall receive educational materials provided by the SFMTA that explain the requirements of the Policy, which will include distribution of informational material on substance abuse, and distribution of the Taxi Company's policy regarding the use of prohibited drugs. Drivers must sign a statement acknowledging receipt of these materials.

Those Taxi Company employees participating in reasonable suspicion testing will be required to have at least two hours of training to explain the criteria for reasonable cause testing paid for by the companies, including at least an hour on the physical, behavioral and performance indicators of probable drug use and another hour on the physical, behavioral, speech and performance indicators of probable alcohol misuse. The Taxi Companies shall be responsible for the cost of such training.

11.0 RECORDS; CONFIDENTIALITY

11.1 Access to Records. Information regarding a Driver's test results will be released, as necessary, to the Taxi Company, but will only be released to a third party upon the specific written consent of the Driver, except that such information must be released to a federal, state or local agency with regulatory authority over the SFMTA, the Taxi Company, or the Taxi Driver. Other exceptions to the confidentiality of the testing results are as follows:

- A. Release to the collection facility, testing laboratory, MRO, SAP, or designee.
- B. Release pursuant to a lawful court order or other law requiring disclosure.
- C. Release to a decision maker in connection with a Taxi Company or SFMTA disciplinary action, grievance, arbitration or other legal proceeding initiated by or on behalf of the individual and arising from a certified positive drug or Alcohol test or from the SFMTA's determination that the Driver engaged in conduct prohibited under this Policy.

- D. Release to a subsequent Taxi Company who seeks to hire the Driver upon receipt of a written request from a Driver.

11.2 Records Maintained. The Third Party Administrator and Taxi Company must maintain records relating to Prohibited Drug and Alcohol testing under this Policy in a secure location with controlled access. Taxi Companies may not make a Driver's drug and Alcohol testing records part of the Driver's personnel file.

The SFMTA shall maintain records as follows: (a) results of negative Prohibited Drug tests and Alcohol tests less than .02 -- one year; (b) records of collection and training -- two years; (c) records of verified positive drug test results and Alcohol tests .02 or greater, documentation of refusals, calibration documentation, referrals to the SAP and evaluations, reports to the SFMTA -- five years; and the records shall include the following information;

- A. The functions performed by the Driver who failed the drug test;
- B. The Prohibited Drugs that were used by Drivers who failed the drug test;
- C. The disposition of Drivers who failed the drug test (e.g., termination, leave without pay);
- D. The age of each Driver who failed the test.

The laboratory maintains all records relating to urine specimen analysis in confidence for at least two years. The laboratory may not disclose such records to anyone other than the SFMTA, the Taxi Company or the Driver, and the decision maker in a lawsuit, grievance or other proceeding initiated by the employee and arising from a verified positive drug or Alcohol test result.

11.3 Retention of Records of Questions or Complaints. The Third Party Administrator will retain records of questions or complaints related to the drug and alcohol testing process.

12.0 COMPLIANCE WITH BACKGROUND CHECK REQUIREMENTS

All applicants for Driver Permits are required to sign a written consent to allow SFMTA to obtain the following information regarding the applicant's drug and alcohol testing history for the previous two years:

- Alcohol tests with a result of .04 or higher;
- Verified positive drug tests;

- Refusals to Submit for testing, including verified Adulterations and Substitutions
- Other violations of drug and alcohol testing regulations; and
- Documentation of the applicant's successful completion of return-to-duty requirements and follow-up tests.

Information will be obtained from all companies (including Service Agents) for whom the applicant worked as a Taxi Driver or other driver subject to DOT testing for a period of two years prior to the date of the application. Such companies will be asked to include any Alcohol and Prohibited Drug test information obtained from previous employers or jurisdictions. For example, if a previous taxi company has information from other taxi companies or Service Agents (within the two-year period), that company is obligated to provide that information to SFMTA.

Additionally, the applicant must disclose if he or she has, within the prior two years, ever failed a pre-employment drug or alcohol test that resulted in the applicant not getting hired.

13.0 SYSTEM CONTACT

Any questions regarding this Policy or any other aspect of the Taxi Driver Drug and Alcohol Testing Program should be directed to the office of the following SFMTA representative:

Name: Peter N. Kashtanoff
Address: One South Van Ness Avenue, Seventh Floor
San Francisco, CA 94103-5417
email: peter.kashtanoff@sfmta.com
Telephone: (415) 581-5134