

1 [Pre-Tax Bicycle Commuting Benefits.]

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3 **Ordinance amending the San Francisco Environment Code by amending Section 421 to**
4 **add the option of qualified bicycle commuting reimbursements to the tax free**
5 **commuter benefits San Francisco employers are required to offer under existing law;**
6 **and making environmental findings.**

7 Note: Additions are *single-underline italics Times New Roman*;
8 deletions are ~~*strikethrough italics Times New Roman*~~.
9 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

10 Be it ordained by the People of the City and County of San Francisco:

11 Section 1. The San Francisco Environment Code is hereby amended by amending
12 Section 421, to read as follows:

13 SEC. 421. COMMUTER BENEFITS PROGRAM.

14 (a) Definitions.

15 Whenever used in this Section, the following terms shall have the meanings set forth
16 below.

17 (1) "Alternative Commute Mode" shall mean public transit (bus, train, ferry, etc.),
18 vanpool, carpool (including "casual carpool"), bicycling, and walking.

19 (2) "City" shall mean the City and County of San Francisco.

20 (3) "Covered Employee" shall mean any person who:

21 (A) Performed an average of at least ten (10) hours of work per week for
22 compensation within the geographic boundaries of San Francisco for the same employer
23 within the previous calendar month; and

24 (B) Qualifies as an employee entitled to payment of a minimum wage from
25 the employer under the California minimum wage law, as provided under Section 1197 of the

1 California Labor Code and wage orders published by the California Industrial Welfare
2 Commission, or is a participant in a Welfare-to-Work Program.

3 (4) "Covered Employer" shall mean an employer for which an average of twenty
4 (20) or more persons per week perform work for compensation. In determining the number of
5 persons performing work for an employer during a given week, all persons performing work
6 for compensation on a full-time, part-time or temporary basis, including those who perform
7 work outside of the geographic boundaries of San Francisco, shall be counted, including
8 persons made available to work through the services of a temporary services or staffing
9 agency or similar entity.

10 (5) "Employer" shall mean any person, as defined in Section 18 of the California
11 Labor Code, including corporate officers or executives, who directly or indirectly, or through an
12 agent or any other person, except through the services of a temporary services or staffing
13 agency or similar entity, employs or exercises control over the wages, hours or working
14 conditions of an employee. "Employer" shall not include any governmental entity.

15 (6) "Qualified bicycle commuting reimbursement" shall mean a reimbursement within the
16 meaning of § 26 U.S.C. § 132(f)(5)(F) and implementing federal regulations, as the Federal law may
17 be amended from time to time, in lieu of a transit pass benefit or van pool reimbursement benefit, for
18 reasonable expenses incurred by the employee during such calendar year for the purchase of a bicycle
19 and bicycle improvements, repair, and storage, if such bicycle is regularly used for travel between the
20 employee's residence and place of employment, subject to the annual limit as set forth in § 26 U.S.C. §
21 132(f)(5)(F).(ii), computed according to the number of qualified bicycle commuting months as set forth
22 in § 26 U.S.C. § 132(f)(5)(F).(iii).

23 ~~(6)(7)~~ "Transit Pass" shall mean any pass, token, fare card, voucher or similar item
24 entitling a person to transportation on public transit within the meaning of 26 U.S.C. §
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1 132(f)(5)(A), as the Federal law may be amended from time to time, including but not limited
2 to, travel by ferry, bus, trolley, streetcar, light rail or train by MUNI, BART, AMTRAK,
3 CALTRAIN, SAMTRANS or GOLDEN GATE TRANSIT.

4 ~~(7)~~(8) "Transportation Benefit Program" shall mean the program set forth in Section
5 421(b) ~~Sections 410(b)-410(d)~~ of this Ordinance.

6 ~~(8)~~(9) "Vanpool" shall mean a 'commuter highway vehicle' within the meaning of 26
7 U.S.C. § 132(f)(5)(B), as the federal law may be amended from time to time, which currently
8 means any highway vehicle:

9 (A) the seating capacity of which is at least 6 adults (not including the driver),
10 and

11 (B) at least 80% of the mileage use of which can reasonably be expected to
12 be (i) for the purpose of transporting employees in connection with travel between their
13 residences and their place of employment; and (ii) on trips during which the number of
14 employees transported for such purposes is at least ½ of the seating capacity of such vehicle
15 (not including the driver).

16 (b) Transportation Benefits Program.

17 No later than 120 days after the effective date of this Ordinance, all Covered
18 Employers shall provide at least one of the following transportation benefit programs to
19 Covered Employees:

20 (1) A Pre-Tax Election: A program, consistent with 26 U.S.C. § 132(f),
21 allowing employees to elect to exclude from taxable wages and compensation, employee
22 commuting costs incurred for transit passes, ~~or~~ vanpool charges or qualified bicycle commuting
23 reimbursement (but not for parking), up to maximum level allowed by federal tax law, 26 U.S.C.
24 132 (f)(2), which presently is one hundred and ~~ten~~ fifteen dollars per month (~~\$110~~115) for
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1 transit passes and/or vanpool charges, or up to a maximum of \$240 per year for qualified bicycle
2 commuting reimbursement in lieu of transit passes or vanpool charges;

3 (2) Employer Paid Benefit: A program whereby the employer supplies a
4 transit pass for the public transit system requested by each Covered Employee or
5 reimbursement for equivalent vanpool charges at least equal in value to the purchase price of
6 the appropriate benefit, which shall not exceed the cost of an adult San Francisco MUNI Fast
7 Pass, which presently is \$45; or

8 (3) Employer Provided Transit: Transportation furnished by the employer at
9 no cost to the covered employee in a vanpool or bus, or similar multi-passenger vehicle
10 operated by or for the employer.

11 (c) Administration and Enforcement.

12 (1) The Director of the Department of the Environment, in consultation with
13 the San Francisco Office of Labor Standards Enforcement shall promulgate rules and
14 regulations to implement the Transportation Benefits Program. Such rules and regulations
15 shall, to the extent consistent with this Ordinance, conform to IRS regulations under 26 U.S.C.
16 § 132(f). and rules for the City's Paid Sick Leave Ordinance, Administrative Code Section
17 12W and Health Care Security Ordinance, Administrative Code Chapter 14.

18 (2) The Department of the Environment shall maintain an education and
19 advice program to assist employers with meeting the requirements of the Transit Benefit
20 Program.

21 (3) Any Covered Employer who fails to offer at least one transportation
22 benefit programs to Covered Employees as required by Section 421(b) shall be guilty of an
23 infraction. If charged as an infraction, upon conviction thereof, said person shall be punished
24 by (A) a fine not exceeding \$100.00 for a first violation, (B) a fine not exceeding \$200.00 for a
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1 second violation within the same year, and (C) a fine not exceeding \$500.00 for each
2 additional violation within the same year.

3 (4) The Director of the Department of the Environment, or his or her
4 designee, may issue administrative citations to any Covered Employer who fails to provide at
5 least one transportation benefit programs to Covered Employees as required by Section
6 421(b). San Francisco Administrative Code Chapter 100, "Procedures Governing the
7 Imposition of Administrative Fines," is hereby incorporated in its entirety and shall govern the
8 amount of fees and the procedure for imposition, enforcement, collection, and administrative
9 review of administrative citations issued to enforce this Section 184.77.

10 (5) The City may not recover both administrative and civil penalties for the
11 same violation. Penalties collected under this Chapter, which may include recovery of
12 enforcement costs, shall be used to fund implementation and enforcement of the
13 Transportation Benefits Program.

14 (d) Emergency Ride Home Program.

15 The Department of the Environment is hereby authorized to establish an Emergency
16 Ride Home Program and, to the extent funding is available from the Bay Area Air Quality
17 Management District's Transportation Fund for Clean Air, the San Francisco Transportation
18 Authority, or other sources, to reimburse persons who commute to worksites in San Francisco
19 using an alternative commute mode, for transportation costs to return home, or to a transit
20 spot or remotely parked car, where such costs resulting from an illness or emergency of the
21 commuter or immediate family, or other verifiable, unexpected events out of the commuter's
22 control. The Department of the Environment shall adopt rules and regulations to implement
23 this program.

24 Section 2. Environmental Findings.
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1 The Planning Department has determined that the actions contemplated in this
2 Ordinance are in compliance with the California Environmental Quality Act (California Public
3 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the
4 Board of Supervisors in File No. _____ and is incorporated herein by reference.

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

8 By: _____
9 CATHARINE S. BARNES
10 Deputy City Attorney

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