

1 [Commuter Benefits]

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3 **Ordinance adding Section 410 of the Environment Code to require San Francisco**
4 **employers to offer commuter benefits to encourage employees to use public transit or**
5 **van pools; to authorize the Department of the Environment to implement an Emergency**
6 **Ride Home program; to transfer the existing Section 410 to Section 412 of the**
7 **Environmental Code; and to make environmental findings.**

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

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

13 Section 1. Findings. The Board of Supervisors hereby finds and declares:

14 (a) San Francisco is committed to protecting the public health, safety, welfare and
15 environment. Air pollution is one of the major public health threats in San Francisco and
16 contributes to asthma and other respiratory diseases. Encouraging commuters to use public
17 transit and vanpools to reach their place of employment will reduce air pollution from private
18 cars.

19 (b) In 1971, San Francisco adopted a Transit First policy to guide its land use
20 decisions. Encouraging more commuters to use public transit furthers the City's goals to
21 maximize the public's use of public transit.

22 (c) Existing Federal Tax law, Internal Revenue Code section 132(f) allows
23 employers and employees to reduce the cost of public transit by enabling employers to deduct
24 employer-provided transit benefits as business expenses, or by allowing employees to elect to
25 purchase qualifying transit passes or vanpool rides with pre-tax dollars.

1 (d) The City and County of San Francisco currently offers its 30,000 City
2 employees the opportunity to elect to use pre-tax dollars to purchase qualifying transit passes
3 and van pool transit through an Internal Revenue Code section 132(f) qualified Transit Benefit
4 Program.

5 (e) The Department of the Environment currently administers a grant-based
6 Emergency Ride Home Program, funded by grants from the Bay Area Air Quality
7 Management District's Transportation Fund for Clean Air and the San Francisco
8 Transportation Authority, that removes a major barrier to using public transit or van pools by
9 reimbursing persons who rely on such transit for their transportation costs home in cases of
10 emergency or other unexpected circumstances.

11 (f) The San Francisco Department of the Environment can assist employers in offering
12 commuter benefits through its commuter benefits hotline, fact sheets, and other technical
13 assistance.

14 (g) The City of New York has enacted legislation requiring employers in that city to offer
15 employees the opportunity to use pre-tax dollars to purchase qualifying transit passes and van
16 pool transit through an Internal Revenue Code section 132(f) qualified program.

17 (h) Commuter benefits programs will help the City achieve its goal to reduce CO2
18 emissions within the City and County of San Francisco to 20% below 1990 levels by the year
19 2012.

20 Section 2. Amending Section 410, to read as follows, hereby amends the San
21 Francisco Environment Code:

22 **SEC. 410. COMMUTER BENEFITS PROGRAM**

23 **(a) Definitions.**

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

25

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

3 "Employee" shall mean any person who is on their respective employer's payroll, working
4 either full-time or part-time positions. Employee shall further be defined as any person who is entitled
5 to payment of a minimum wage from an employer under the California minimum wage law, as provided
6 under Section 1197 of the California Labor Code and wage orders published by the California
7 Industrial Welfare Commission.

8 "Employer" shall mean any person, as defined in Section 18 of the California Labor Code,
9 including corporate officers or executives, who directly or indirectly, or through an agent any other
10 person, including through the services of a temporary services or staffing agency or similar entity,
11 employs or exercises control over the wages, hours or working conditions of ten (10) or more
12 employees who work at or out of a location within the City and County of San Francisco.

13 "Transit Pass" shall mean any pass, token, fare card, voucher or similar item entitling a person
14 to transportation on public transit, including but not limited to, travel by ferry, bus, trolley, streetcar,
15 light rail or train by MUNI, BART, AMTRAK, CALTRAIN, SAMTRANS or GOLDEN GATE TRANSIT.

16 "Vanpool" shall mean any highway vehicle:

17 (1) the seating capacity of which is at least 6 adults (not including the driver), and

18 (2) at least 80% of the mileage use of which can reasonably be expected to be-

19 (A) for the purpose of transporting employees in connection with travel between their
20 residences and their place of employment, and

21 (B) on trips during which the number of employees transported for such purposes is at
22 least ½ of the seating capacity of such vehicle (not including the driver).

23 **(b) Transportation Benefit Program**

1 No later than ninety days after the effective date of this Ordinance, all employers shall provide
2 at least one of the following transportation benefit programs:

3 (1) A Pre-Tax Election: A program, consistent with Section 132 of Title 26, United
4 States Code, that offers employees the option to elect to exclude from taxable wages and compensation,
5 employee commuting costs incurred through the use of public transportation or vanpools, up to
6 maximum level allowed by federal tax law, 26 U.S.C. 132 (f)(2), which presently is one hundred and ten
7 dollars per month (\$110);

8 (2) Employer Paid Benefit: A program whereby the employer supplies a transit pass or
9 reimbursement for equivalent vanpool charges at least equal in value to the purchase price of a
10 monthly MUNI Fast Pass, which presently is \$45, for the public transit system requested by the
11 employee; or to reimburse vanpool charges; or

12 (3) Transportation furnished by the employer at no cost to the employee in a vanpool or
13 bus, or similar multi-passenger vehicle operated by or for the employer.

14 **(c). Penalties**

15 (1) Any person who violates this Ordinance shall be guilty of an infraction. If charged as
16 an infraction, upon conviction thereof, said person shall be punished by (1) a fine not exceeding
17 \$100.00 for a first violation, (2) a fine not exceeding \$200.00 for a second violation within the same
18 year, and (3) a fine not exceeding \$500.00 for each additional violation within the same year.

19 (2) In the event that the City adopts an ordinance creating a procedure for imposing and
20 reviewing Administrative Penalties pursuant to California Government Code Section 53069.4, the City
21 may impose Administrative Penalties for violation of this Ordinance as follows:(1) in an amount not
22 exceeding \$100.00 for the first violation, (2) in an amount not exceeding \$200.00 for the second
23 violation in the same year, and (3) in an amount not exceeding \$500.00 for each subsequent violation
24 in the same year.

1 (3) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this
2 Ordinance, including without limitation, civil penalties in an amount not exceeding \$200.00 for the first
3 violation, \$400.00 for the second violation, and \$600.00 for each subsequent violation in any given
4 year.

5 (4) The City may not recover both administrative and civil penalties for the same violation.
6 Penalties collected under this Chapter, which may include recovery of enforcement costs, shall be used
7 to fund implementation and enforcement of this Chapter.

8 **(d.) Emergency Ride Home Program.**

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

17
18 ~~SEC. 410. SAN FRANCISCO MUNICIPAL RAILWAY BUSES.~~

19 ~~Acquisition of Clean Muni Buses. Muni shall replace all pre-1991 diesel buses on or~~
20 ~~before January 1, 2007.~~

21 ~~Phase Out of Highly Polluting Muni Diesel Buses. Muni shall remove from active or~~
22 ~~reserve service and shall no longer operate any diesel bus that exceeds its 12 year useful life~~
23 ~~based on the following schedule:-~~

1 ~~(1) All diesel buses that were purchased on or before December 31, 1988 shall be removed~~
2 ~~from active or reserve service on or before December 31, 2004;~~

3 ~~(2) All diesel buses that were purchased on or before December 31, 1989 shall be removed~~
4 ~~from active or reserve service on or before December 31, 2005;~~

5 ~~(3) All diesel buses that were purchased on or before December 31, 1990 shall be removed~~
6 ~~from active or reserve service on or before December 31, 2006.~~

7 ~~—— Extensions. If replacement buses are not commercially available or unforeseen~~
8 ~~circumstances prevent Muni from procuring new buses on a timely basis, Muni may seek a~~
9 ~~one-time extension of up to twelve months from the San Francisco Transportation Authority~~
10 ~~(TA) for any of the aforementioned deadlines. Approval for such extensions shall require eight~~
11 ~~or more votes by the Transportation Authority Board of Commissioners. Extension requests~~
12 ~~shall be submitted in writing at least sixty days prior to the deadline and shall include a~~
13 ~~detailed accounting of why Muni is unable to meet its obligations under this measure.~~
14 ~~Extension requests shall also include a list of specific actions that Muni will undertake to offset~~
15 ~~the emission reductions that would have resulted if no extension were granted. Proposed~~
16 ~~emission reductions should benefit Muni passengers or residents living near diesel bus routes~~
17 ~~or diesel bus yards. All extension requests shall be evaluated by the Department of the~~
18 ~~Environment to determine the validity of proposed emission reductions. The Department of~~
19 ~~the Environment shall report its findings to the Board of Commissioners at least one week~~
20 ~~prior to the extension request hearing date.~~

21 ~~Notwithstanding Section 406.(e)(2), the provisions of Section 406 shall apply to the acquisition~~
22 ~~of buses by Muni for its fleet.~~

23 ~~(Added by Proposition I, 3/2/2004)~~

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25

1 Section 3 The San Francisco Environment Code is hereby amended by adding a new
2 Section 412, to read as follows:

3 **SEC. 412. SAN FRANCISCO MUNICIPAL RAILWAY BUSES.**

4 Acquisition of Clean Muni Buses. Muni shall replace all pre-1991 diesel buses on or before
5 January 1, 2007.

6 Phase Out of Highly Polluting Muni Diesel Buses. Muni shall remove from active or reserve
7 service and shall no longer operate any diesel bus that exceeds its 12 year useful life based on the
8 following schedule:

9 (1) All diesel buses that were purchased on or before December 31, 1988 shall be removed from
10 active or reserve service on or before December 31, 2004;

11 (2) All diesel buses that were purchased on or before December 31, 1989 shall be removed from
12 active or reserve service on or before December 31, 2005;

13 (3) All diesel buses that were purchased on or before December 31, 1990 shall be removed from
14 active or reserve service on or before December 31, 2006.

15 Extensions. If replacement buses are not commercially available or unforeseen circumstances
16 prevent Muni from procuring new buses on a timely basis, Muni may seek a one-time extension of up to
17 twelve months from the San Francisco Transportation Authority (TA) for any of the aforementioned
18 deadlines. Approval for such extensions shall require eight or more votes by the Transportation
19 Authority Board of Commissioners. Extension requests shall be submitted in writing at least sixty days
20 prior to the deadline and shall include a detailed accounting of why Muni is unable to meet its
21 obligations under this measure. Extension requests shall also include a list of specific actions that Muni
22 will undertake to offset the emission reductions that would have resulted if no extension were granted.
23 Proposed emission reductions should benefit Muni passengers or residents living near diesel bus routes
24 or diesel bus yards. All extension requests shall be evaluated by the Department of the Environment to
25

1 determine the validity of proposed emission reductions. The Department of the Environment shall
2 report its findings to the Board of Commissioners at least one week prior to the extension request
3 hearing date.
4 Notwithstanding Section 406.(e)(2), the provisions of Section 406 shall apply to the acquisition of buses
5 by Muni for its fleet.

6 (Added by Proposition I, 3/2/2004)

7 Section 4. Environmental Findings

8 () On _____, the Planning Department determined that the actions
9 contemplated in this Ordinance are categorically exempt from the California Environmental
10 Quality Act (California Public Resources Code sections 121000 et seq). Said determination is
11 on file with the Clerk of the Board of Supervisors in File No. _____ and is incorporated herein by
12 reference.

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

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18 By: _____
19 Catharine Barnes
20 Deputy City Attorney

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