

FILE NO. 080830

ORDINANCE NO.

1 [Pre-Tax Commuter Benefits for Qualifying Transit.]

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3 **Ordinance amending the San Francisco Environment Code by adding a new Section**  
4 **421 to require San Francisco employers to offer commuter benefits to encourage**  
5 **employees to use public transit or van pools; to authorize the Department of the**  
6 **Environment to implement an Emergency Ride Home program; and making**  
7 **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.  
Board amendment deletions are ~~strikethrough normal~~.

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

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

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

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

21 (c) Existing Federal Tax law, 26 U.S.C. § 132(f) [Internal Revenue Code], allows  
22 employers and employees to reduce the cost of public transit by enabling employers to deduct  
23 as a business expense, qualified transportation benefits that the employer provides for  
24 employees' *personal* transportation costs for commuting to and from work, or by allowing  
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1 employees to elect to purchase qualifying transit passes or reimbursement for vanpool rides  
2 with pre-tax dollars.

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

7 (e) The Department of the Environment currently administers a grant-based  
8 Emergency Ride Home Program, funded by grants from the Bay Area Air Quality  
9 Management District's Transportation Fund for Clean Air and the San Francisco  
10 Transportation Authority, that removes a major barrier to using public transit or van pools by  
11 reimbursing transit and vanpool users for taxi fares, car rental or similar expenses they incur  
12 to return home for a family emergency, or other urgent, unanticipated situation.

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

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

19 Section 2. The San Francisco Environment Code is hereby amended by adding a new  
20 Section 421, to read as follows:

21 **SEC. 421. COMMUTER BENEFITS PROGRAM.**

22 **(a) Definitions.**

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

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

3           (2) “City” shall mean the City and County of San Francisco.

4           (3) “Covered Employee” shall mean any person who:

5                   (A) Performed an average of at least ~~eight (8)~~ ten (10) hours of work per week  
6 for compensation within the geographic boundaries of San Francisco for ~~his or her~~ the same  
7 employer within the previous calendar month; and

8                   (B) Qualifies as an employee entitled to payment of a minimum wage from the  
9 employer under the California minimum wage law, as provided under Section 1197 of the California  
10 Labor Code and wage orders published by the California Industrial Welfare Commission, or is a  
11 participant in a Welfare-to-Work Program.

12           (4) “Covered Employer” shall mean an employer for which an average of twenty (20) or  
13 more persons per week perform work for compensation. In determining the number of persons  
14 performing work for an ~~employee~~ employer during a given week, all persons performing work for  
15 compensation on a full-time, part-time or temporary basis, including those who perform work outside  
16 of the geographic boundaries of San Francisco, shall be counted, including persons made available to  
17 work through the services of a temporary services or staffing agency or similar entity.

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

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

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

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

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

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

14 **(b) Transportation Benefits Program.**

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

17 (1) A Pre-Tax Election: A program, consistent with 26 U.S.C. § 132(f), allowing  
18 employees to elect to exclude from taxable wages and compensation, employee commuting costs  
19 incurred for transit passes or vanpool charges (but not for parking), up to maximum level allowed by  
20 federal tax law, 26 U.S.C. 132 (f)(2), which presently is one hundred and ten dollars per month (\$110);

21 (2) Employer Paid Benefit: A program whereby the employer supplies a transit pass  
22 for the public transit system requested by each Covered Employee or reimbursement for equivalent  
23 vanpool charges at least equal in value to the purchase price of a monthly MUNI Fast Pass the

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1 appropriate benefit, which shall not exceed the cost of an adult San Francisco MUNI Fast  
2 Pass, which presently is \$45; or

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

6 **(c) Administration and Enforcement.**

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

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

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

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

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

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

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

15 **Section 3. Miscellaneous**

16 (a) Severability. If any section, subsection, sentence, clause, or phrase of this  
17 Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of  
18 competent jurisdiction, such decision shall not affect the validity of the remaining portions of  
19 the Ordinance. The Board of Supervisors hereby declares that it would have passed this  
20 Ordinance and each and every section, subsection, sentence, clause, or phrase not declared  
21 invalid or unconstitutional without regard to whether any portion of this Ordinance would be  
22 subsequently declared invalid or unconstitutional.

1 (b) No Conflict With Federal Or State Law. Nothing in this Ordinance shall be  
2 interpreted or applied so as to create any requirement, power or duty in conflict with any  
3 federal or state law.

4 (c) Undertaking for the General Welfare. In undertaking the implementation of this  
5 Ordinance, the City is assuming an undertaking only to promote the general welfare. It is not  
6 assuming, nor is it imposing on its officer and employees, an obligation for breach of which it  
7 is liable in money damages to any person who claims that such breach proximately caused  
8 injury.

9 Section 4. Environmental Findings.

10 The Planning Department has determined that the actions contemplated in this  
11 Ordinance are in compliance with the California Environmental Quality Act (California Public  
12 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the  
13 Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference.

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

17 By: \_\_\_\_\_  
18 CATHARINE S. BARNES  
19 Deputy City Attorney

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