

File No. 080830

Committee Item No. 1  
Board Item No. 14

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance

Date July 30, 2008

Board of Supervisors Meeting

Date 8/5/08

#### Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input type="checkbox"/>	<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Budget Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form (for hearings)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

#### OTHER

(Use back side if additional space is needed)

<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

_____
_____
_____
_____
_____

Completed by: Victor Young

Date July 25, 2008

Completed by: Victor Young

Date 7/31/08

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

FILE NO. 080830

ORDINANCE NO.

[Pre-Tax Commuter Benefits for Qualifying Transit.]

**Ordinance amending the San Francisco Environment Code by adding a new Section 421 to require San Francisco employers to offer commuter benefits to encourage employees to use public transit or van pools; to authorize the Department of the Environment to implement an Emergency Ride Home program; and making environmental findings.**

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

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

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

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

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

(c) Existing Federal Tax law, 26 U.S.C. § 132(f) [Internal Revenue Code], allows employers and employees to reduce the cost of public transit by enabling employers to deduct as a business expense, qualified transportation benefits that the employer provides for employees' *personal* transportation costs for commuting to and from work, or by allowing

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.**  
24  
25

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  
25

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

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,  
25

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. 080830 and is incorporated herein by reference.

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

16 By:

17   
18 CATHARINE S. BARNES  
19 Deputy City Attorney  
20  
21  
22  
23  
24  
25



## LEGISLATIVE DIGEST

**Ordinance amending the San Francisco Environment Code by adding a new Section 421 to require San Francisco employers to offer commuter benefits to encourage employees to use public transit or van pools; to authorize the Department of the Environment to implement an Emergency Ride Home program; and making environmental findings.**

### Existing Law

City law does not currently require employers to offer employees an opportunity to purchase transit passes or vanpool transit with pre-tax dollars. Federal tax law offers employers an option of allowing their employees to elect to use up to \$110 dollars in pre-tax dollars per month to purchase IRS qualifying transit passes, vanpool charges or parking.

The Department of the Environment currently administers a grant-based program whereby employees of Grantee companies who use public transit or other alternative modes of transportation to commute to work may be reimbursed for transportation costs home caused by an emergency or similar unforeseen event.

### Amendments to Current Law

This Ordinance would require San Francisco employers with 20 or more employees either to offer their employees (1) the option to use pre-tax wages to purchase IRS qualifying transit passes or vanpools charges, (2) employer supplied transit passes or vanpools charges at least equal to the value of a monthly MUNI fast Pass, or (3) employer supplied vanpools or buses.

Reimbursement of parking costs does not qualify under the Ordinance even though it would qualify as an eligible transit cost under federal law.

The Ordinance includes graduated penalties for non-complying employers.

The Ordinance designates the Department of the Environment as the implementing authority. The Ordinance also authorizes the Department of the Environment to establish and implement a Citywide Emergency Ride Home program for eligible commuters in place of the current program that is only available to employees of Grantee businesses.

### Background Information

This Ordinance is intended to encourage commuters to use public transit by lowering the after-tax costs of transit passes, lowering the payroll taxes for employers and removing an obstacle to commuters who fear being stranded in the City without access to private cars in case of family illness or other unexpected event.

CITY AND COUNTY



OF SAN FRANCISCO

## BUDGET ANALYST

1390 Market Street, Suite 1025, San Francisco, CA 94102 (415) 554-7642  
FAX (415) 252-0461

July 24, 2008

**TO:** Budget and Finance Committee

**FROM:** Budget Analyst

**SUBJECT:** July 30, 2008 Budget and Finance Committee Meeting

Item 1 – File 08-0830

**Department:** Department of the Environment (DOE)

**Item:** Ordinance amending the San Francisco Environment Code by adding a new Section 421 to require employers located in San Francisco to offer commuter benefits to encourage employees to use public transit or van pools; to authorize the Department of the Environment to implement an Emergency Ride Home Program; and making environmental findings.

**Description:** The proposed ordinance is intended to encourage employees working in San Francisco to use public transit by (a) requiring employers located in San Francisco to offer their employees pre-tax transit dollars, employer paid transit benefits, or employer provided transit, and (b) facilitating employees' ability to return home quickly in case of an emergency under a voluntary Emergency Ride Home Program.

## **I. Transit Benefit Programs**

The proposed ordinance would require employers located in San Francisco with 20 or more employees to offer their employees one of the following programs:

- 1) **Pre-Tax Transit:** a pre-tax deduction program under IRS code which allows employees who work in San Francisco to elect to use up to a maximum level of pre-tax dollars allowed by Federal tax law, which is currently \$110 per month, to purchase either (a) transit passes or (b) vanpool rides; or
- 2) **Employer Paid Transit Benefits:** a program whereby employers located in San Francisco provide either (a) a free transit pass for the public transit systems as requested by each employee, or (b) reimbursement for the cost of equivalent vanpool charges at least equal in value to the purchase price of a MUNI Fast Pass, which is currently \$45 per month for adults; or
- 3) **Employer Provided Transit:** free transportation provided by employers located in San Francisco to their employees working in San Francisco. Such transportation would be provided through a vanpool, bus, or similar multi-passenger vehicle.

Under the proposed ordinance, except the Emergency Ride Home Program (see Comment No. 3), employers located in San Francisco would be required to comply with at least one of the above Transit Benefit Programs. Non-compliance would result in an infraction punishable by a fine not to exceed (a) \$100 for a first violation, (b) \$200 for a second violation within the same year, and (c) \$500 for each additional violation within the same year. The Director of the DOE, or his or her designee, would be authorized to issue citations to non-complying employers. Ms. Catharine Barnes, Deputy City Attorney, anticipates that penalty revenues to be realized to the City would be negligible, and that any such revenues collected would be expended to fund the above noted implementation and enforcement of the Transportation Benefits Program, subject to Board of Supervisors appropriation approval.

## **II. Emergency Ride Home Program**

According to Mr. Faiz Khan, Transportation Demand Manager with the DOE, the DOE currently administers an existing Emergency Ride Home Program, which is a voluntary program for employers located in San Francisco who meet the City's vendor requirements. Under the existing program, employers are reimbursed by DOE for the expenses incurred to pay for emergency rides home for employees working in San Francisco who do not drive to work.

However, according to Ms. Barnes, employers in San Francisco not meeting the City's vendor requirements are not currently eligible for the existing Emergency Ride Home Program. Under the proposed ordinance, the DOE would be authorized to allocate grant funds to reimburse all employers located in San Francisco for the cost of employees' emergency rides home.

Under the existing Emergency Ride Home Program employers located in San Francisco apply annually with the DOE to be eligible for reimbursements and must reapply with DOE annually to continue participation in the program. Under the proposed ordinance, employers would not need to reapply with DOE annually, and DOE would allocate grant funds for Emergency Ride Home Program reimbursements to employers on an ongoing, as-needed basis.

### **Program Costs:**

As shown in the table below, based on data provided by Mr. Khan, in FY 2008-2009 DOE will expend a total of \$236,541 for the transit programs described above on (a) salary and benefits for four DOE transit benefit staff, (b) outreach, and (c) employer reimbursement. Such expenditures include \$223,231 for the three Transit Benefit Programs plus \$13,310 for the Emergency Ride Home Program. According to Mr. Khan, all program expenses are funded by grants from the San Francisco County Transportation Authority (SFCTA) and the Bay Area Air Quality Management District (BAAQMD).

<b>Transit Benefit Program Revenues and Expenditures by Source and Category, FY 2008-2009</b>			
	<b>Transit Benefit Programs</b>	<b>Emergency Ride Home Program</b>	<b>Total</b>
<b>Revenues</b>			
San Francisco County Transportation Authority	\$165,674	\$13,310	\$178,984
Bay Area Air Quality Management District	57,557	0	57,557
<b>Total Revenues</b>	<b>\$223,231</b>	<b>\$13,310</b>	<b>\$236,541</b>
<b>Expenditures</b>			
Salary and benefits	221,138	11,310	232,448
Outreach materials	2,093	0	2,093
Reimbursements to Employers	0	2,000	2,000
<b>Total Expenditures</b>	<b>\$223,231</b>	<b>\$13,310</b>	<b>\$236,541</b>

According to Mr. Khan, the four grant-funded DOE Transit Benefit Program staff currently telephone businesses to advise and assist in implementing the existing voluntary Pre-Tax Transit Program and the Emergency Ride Home Program. Under the proposed ordinance, these four DOE staff would additionally (a) conduct follow-up telephone calls to evaluate the transit benefit programs for infractions and (b) issue citations if employers fail to enroll in and comply with at least one of the above-described transit programs. According to Mr. Khan, the DOE would not require any additional staffing or related funding to administer the proposed required Transit Benefit Programs and Emergency Ride Home Program.

#### **Employer Costs**

According to Mr. Khan, the Employer Paid Benefit Program and the Employer Provided Transit Program would be provided by employers located in San Francisco directly to their employees working in San Francisco and would require no administrative or fiscal assistance from the City. According to Mr. Khan, DOE does not have estimates of the costs to employers for implementing the Transit Benefit Programs, except for the existing voluntary Emergency Ride Home Program as noted below (see Comment No. 1).

**Comments:**

1. Mr. Khan advises that there are currently 150 employers located in San Francisco enrolled in the existing Emergency Ride Home Program. The DOE disburses the above noted grants to employers as follows: (1) 100% of employer costs up to \$700 annually per employer and (2) 50 percent of employer costs after the initial \$700 up to \$2,000 annually. According to Mr. Khan, the total amount of reimbursements is an estimated \$1,800 annually, for 150 San Francisco employers. Mr. Khan expects the number of enrollees and amount of reimbursements to double by the end of FY 2009-2010, but does not anticipate requiring additional staff to administer these programs.

2 The proposed ordinance states that the proposed Emergency Ride Home Program would be implemented to the extent funding is available from BAAQMD and SFCTA. Ms. Barnes advises that should funding for the Emergency Ride Home Program be exhausted, grant monies would not be allocated to DOE or San Francisco employers for the costs associated with the Emergency Ride Home Program.

3. According to Mr. Khan, there would be no infractions or citations issued for noncompliance with the Emergency Ride Home Program.

4. Parking costs would not qualify for reimbursement under this proposed ordinance.

**Recommendation:**

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.



BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Planning Department  
Environmental Review Officer

FROM: Angela Calvillo, Clerk of the Board

DATE: June 24, 2008

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS  
Budget and Finance Committee

The Board of Supervisors Budget and Finance Committee has received the following, which is being referred to the Planning Department for determination as to whether the proposed fee increase will impact the environment.

File: 080830

Pre Tax Commuter Benefits for Qualifying Transit

Please return this cover sheet with the Commission's response to Victor Young, Clerk, Budget and Finance Committee.

cc: Leigh Kienker, Major Environmental Analysis  
Viktoriya Wise, Major Environmental Analysis

\*\*\*\*\*

RESPONSE FROM PLANNING DEPARTMENT - Date: July 1, 2008

☐ No Comment  
☒ Recommendation Attached

*Categorically exempt per Section 15308  
of the CEQA Guidelines.*

\_\_\_\_\_  
Bill Wycko, Environmental Review Officer



(

(

(