

Model Ordinance: Pre-Tax Commuter Benefits

Effective January 19, 2009, San Francisco employers are required to offer a pre-tax commuter benefits program to encourage employees to use public transit or vanpools.

San Francisco's Commuter Benefits Ordinance allows employers and workers to tap into an existing federal program to pay for transit passes and van pool expenses. Employers save up to 9% on payroll taxes and employees save up to 40% on their transit costs. The benefit works like other pre-tax plans such as retirement, dependent care, and medical reimbursement, except that it's much simpler.

Employers can offer commuter tax benefits as a payroll deduction, a subsidized benefit, or a combination of the two. Employers can administer the benefit themselves, purchasing the transit tickets or vouchers each month and distributing them to employees. Some employers may find it more practical to hire a third-party administrator to manage their program.

All employers in San Francisco that have 20 or more persons performing work for compensation on a full-time, part-time, or temporary basis and who work an average of at least 10 hours a week while working for the same employer within the previous calendar month, must offer one of the following options:

1. **Pre-tax Transit:** Employer sets up a deduction program under existing Federal Tax Law 132(f), which allows employees to use up to \$230 a month in pretax wages to purchase transit passes or vanpool rides.
2. **Employer Paid Transit Benefits:** Employer pays for workers' transit fares on any of the San Francisco Bay Area mass transit systems or reimburses workers for their vanpool expenses. Reimbursements for transportation expenses must be of at least an equivalent value to the purchase price of a San Francisco MUNI Fast Pass, which is presently \$45.
3. **Employer Provided Transit:** Employer offers workers free shuttle service on a company-funded bus or van between home and place of business.

Frequently Asked Questions about Pre-Tax Commuter Benefits

Why go to the trouble of creating this ordinance?

This legislation saves employers money by reducing payroll taxes, save employees money by allowing them to use pre-tax dollars for transit costs, and helps local transit agencies by promoting public transit, at the same time that is help society at large by reducing traffic congestion and CO2 emission.

Why does it have the support of the business community?

The business community understands that they need to show that they have a commitment to the environment. They also want to show support for a program that has cost savings built in through a reduction of payroll taxes--and not be another unfunded mandate. Employers do not pay the 9% payroll tax on all funds employees set aside through the pre-tax program. It also offers other perks like the potential to free up street parking for customers. To quote the San Francisco Chamber of Commerce: "While the Chamber generally opposes mandates on business, the city's newest requirement that businesses with 20 or more employees working in San Francisco establish a program to promote the use of public transit can be an economic benefit. In addition to helping to reduce greenhouse gas emissions by getting people out of cars and onto transit, the law can be a money-saver for businesses." The Chamber should know—it has offered transit benefits for over 10 years.

What is the penalty for non compliance?

Non-compliance may result in fine: \$100 for a first violation, \$200 for a second violation within the same year, \$500 for each additional violation within the same year.

How was the penalty for non-compliance viewed by the business community?

They understood that unless there is a consequence, businesses have too many competing priorities to pay close attention. They also understood that intent of the city is to use penalties as a last resort.

Which key business groups in San Francisco lent their support?

Besides the San Francisco Chamber, BOMA SF (a leading voice for the local commercial real estate industry <http://www.bomasf.org/>); the Golden Gate Restaurant Association (www.ggra.org), The Union Square Merchants Association, and Transportation Management Association of San Francisco (www.tmasf.org).

What made the program rollout successful?

San Francisco offered a series of employer workshops--both live and via webinar--to give employers the information they needed to understand the details and create a program. The

workshops were vendor-neutral and lasted about 1 hour. The SF Chamber also gave a workshop for their members as well. Material was posted on various business association websites such as the Golden Gate Restaurant Association. The Dept. of the Environment also created a website to focused on the ordinance, including a list of vendors <http://www.commuterbenefits.org/>.

What is the maximum monthly pre-tax deduction approved by the Federal government?

Effective February 17, 2009 the maximum allowance allowed by the Federal government went up to \$230/month. This maximum may change January 1, 2011.

Who is a covered employer?

An employer with 20 or more employees who does business within the City & County of San Francisco and is required to obtain a business registration certificate.

What if an employee's hours fluctuate so that they might work over the minimum one month and not work the next month?

The employee must work a minimum of 10 hours per week averaged over one month. Employers are only required to cover the employee when they become eligible, but are welcome to offer the benefit to all employees, regardless of hours worked.

Can there be a grace period before an employee must be offered the benefit?

Yes, an employee's eligibility could be calculated up to one month after hiring.

Is an employer based outside of San Francisco, but has employees who perform work in the City, covered by the Ordinance?

Yes, if the employer is required to obtain a business registration certificate.

[Text of Model Ordinance]

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*~~.

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 employees to elect to purchase qualifying transit passes or reimbursement for vanpool rides with pre-tax dollars.

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

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

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

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

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

SEC. 421. COMMUTER BENEFITS PROGRAM.

(a) Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Transportation Benefits Program.

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

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

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

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

(c) Administration and Enforcement.

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

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

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

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

(5) The City may not recover both administrative and civil penalties for the same violation. Penalties collected under this Chapter, which may include recovery of

enforcement costs, shall be used to fund implementation and enforcement of the Transportation Benefits Program.

(d) Emergency Ride Home Program.

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

Section 3. Miscellaneous

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

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

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

Section 4. Environmental Findings.

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