
SEC. 427. 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.), van-pool, 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 subsection (b).

(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 1/2 of the seating capacity of such vehicle (not including the driver).

(b) **Transportation Benefits Program.** 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)(A);

(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; 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 427.

(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.

(Ord. 278-10, File No. 101009, App. 11/18/2010; amended by Ord. [75-14](#), File No. 140226, App. 5/28/2014, Eff. 6/27/2014)