



Office of the City Manager

CONSENT CALENDAR

April 29, 2014

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Andrew Clough, Director, Department of Public Works

Subject: Coordinated Enforcement of Berkeley's Tax Relief Action to Cut Commuter Carbon Ordinance with the Bay Area Commuter Benefits Program

RECOMMENDATION

1. Adopt a Resolution recognizing that compliance with Bay Area Air Quality Management District Regulation 14: Mobile Source Emissions Reduction Measures, Rule 1: Bay Area Commuter Benefits Program satisfies Berkeley Municipal Code Chapter 9.88 Commuter Benefit Program (Tax Relief Action to Cut Commuter Carbon).
2. Direct the City Manager to execute an Agreement between the City of Berkeley, the Bay Area Air Quality Management District, and the Metropolitan Transportation Commission to coordinate implementation of the City's employer-provided Commuter Benefits Program with the Bay Area Commuter Benefits Program.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Council adopted Ordinance No. 7,113-N.S. in 2009 adding new Berkeley Municipal Code (BMC) Chapter 9.88 for an employer-provided Commuter Benefit Program (Tax Relief Action to Cut Commuter Carbon, TRACCC). Since then, the Bay Area Air Quality Management District (Air District) and the Metropolitan Transportation Commission (MTC) developed, and in March 2014 each agency's board unanimously approved adoption of Regulation 14: Mobile Source Emissions Reduction Measures, Rule 1: Bay Area Commuter Benefits Program. This serves as the foundation for the Bay Area Commuter Benefits Program, an implementation of the rule by the Air District. The rule took effect upon approval by both governing boards, and the Air District's authority will remain in effect until January 1, 2017, unless a subsequent State statute deletes or extends that date.

Provisions of the Air District rule are substantially similar to BMC Chapter 9.88. The primary difference between these regulations is that the Air District requires employers with 50 or more full-time employees within the jurisdiction of the Air District to offer commuter benefits to their employees, while the Berkeley Ordinance applies to

employers with 10 or more employees, regardless of whether the employees are located in Berkeley or any place else. Employers in Berkeley with 50 or more full-time employees within the geographic jurisdiction of the Air District are subject to both the Berkeley Ordinance and the Bay Area Program.

The Bay Area Commuter Benefits Program requires employers with 50 or more full-time employees in the Air District jurisdiction to provide 1 of 4 Commuter Benefit Options:

Option 1: Employer allows employees to exclude their transit or vanpool costs from taxable income;

Option 2: Employer provides a subsidy to cover or reduce the employee's transit or vanpool cost;

Option 3: Employer provides free or low cost transit for employees via bus, shuttle, or van;

Option 4: Employer proposes an alternative commuter benefit that would provide at least the same reduction in single-occupant vehicle trips as any of the 3 other options. The Air District will evaluate and approve alternative commuter benefits proposed by an employer pursuant to Option 4.

In addition to providing one of these commuter benefit options, the employer must also designate a commuter benefits coordinator, register with the Bay Area Program on an annual basis, notify employees on an annual basis about the commuter benefits and how to take advantage of the benefits, and provide information needed for program evaluation to the administrators of the Bay Area Program. Violations of the Bay Area Program are subject to the civil penalty provisions for enforcement of air pollution control laws in the California Health and Safety Code.

## BACKGROUND

In October 2009, the Berkeley City Council adopted Ordinance No. 7,113-N.S.<sup>1</sup>, Tax Relief Action to Cut Commuter Carbon (TRACCC), which added BMC Chapter 9.88 mandating an employer-provided Commuter Benefit Program. This regulation requires employers in the City of Berkeley with a total of 10 or more employees in all their locations, including those outside of Berkeley, to offer commuter benefits to their employees. The TRACCC Ordinance requires employers covered by the regulation to provide 1 of 3 Commuter Benefit Options:

Option 1: Employer allows employees to exclude their transit, vanpool, or bicycle costs from taxable income;

Option 2: Employer provides a subsidy to cover or reduce the employee's transportation costs;

Option 3: Employer provides free transit for employees via bus, shuttle, or van.

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<sup>1</sup> Council report on TRACCC Ordinance: [www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2009/10Oct/2009-10-27\\_Item\\_13\\_Ordinance\\_BMC\\_New\\_Chapter\\_9.88\\_for\\_Tax\\_Relief\\_Action\\_to\\_Cut\\_Commuter\\_Carbon.pdf](http://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2009/10Oct/2009-10-27_Item_13_Ordinance_BMC_New_Chapter_9.88_for_Tax_Relief_Action_to_Cut_Commuter_Carbon.pdf)

The TRACC Ordinance provides that an employee who alleges violation of the ordinance may report such acts to the City. City staff will respond to any such complaints by providing compliance information and instructional materials to the employer. If the employer remains in violation after an initial complaint, an employee may bring action in the Superior Court of the State of California. Additionally, violations of the Berkeley Municipal Code are subject to penalties as described in BMC 1.20.010.

#### ENVIRONMENTAL SUSTAINABILITY

Commute travel accounts for approximately 25% of trips and 33% of vehicle miles traveled on a typical weekday. By coordinating with the Air District to require provision of Commuter Benefits, employees will be further encouraged to undertake their trips via public transit or vanpool in order to realize significant tax savings. The reduction in single-occupancy vehicles will continue to result in fewer emissions and improved air quality throughout the City and region.

#### RATIONALE FOR RECOMMENDATION

Because the substantive requirements of both the City's TRACCC Ordinance and the Bay Area Program are very similar, coordination will help implement these programs, communicate clearly with employers subject to both programs, and avoid duplication to demonstrate compliance with both programs.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Farid Javandel, Director, Transportation Division, Public Works Department, 981-7010  
Andrew Heidel, Associate Transportation Planner, Public Works Department, 981-7066

#### Attachments:

1: Resolution

Exhibit A: Regulation 14: Mobile Source Emissions Reduction Measures, Rule 1:  
Bay Area Commuter Benefits Program

RESOLUTION NO. ##,###-N.S.

COORDINATED ENFORCEMENT OF BERKELEY'S TAX RELIEF ACTION TO CUT COMMUTER CARBON ORDINANCE (BMC CHAPTER 9.88) WITH THE BAY AREA COMMUTER BENEFITS PROGRAM

WHEREAS, the City of Berkeley enacted the Tax Relief Action to Cut Commuter Carbon (TRACCC) Ordinance, codified as Berkeley Municipal Code Chapter 9.88 Commuter Benefit Program, requiring employers located in the City of Berkeley with a total of 10 or more employees in all locations to offer commuter benefits to their employees; and

WHEREAS, the Bay Area Air Quality Management District and Metropolitan Transportation Commission have adopted Regulation 14: Mobile Source Emissions Reduction Measures, Rule 1: Bay Area Commuter Benefits Program, which serves as the foundation for the Bay Area Commuter Benefits Program, an implementation of the rule by the Air District; and

WHEREAS, the Bay Area Commuter Benefits Program requires employers with 50 or more full time employees in the Air District jurisdiction to provide 1 of 4 Commuter Benefit Options, and provisions of the Bay Area Commuter Benefits Program are substantially similar to the City's Tax Relief Action to Cut Commuter Carbon (TRACCC) Ordinance (BMC Chapter 9.88); and

WHEREAS, there is a desire to communicate clearly with employers that are subject to both programs, and avoid the need for an employer to submit duplicate information to demonstrate compliance with both programs.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that compliance with Bay Area Air Quality Management District Regulation 14: Mobile Source Emissions Reduction Measures, Rule 1: Bay Area Commuter Benefits Program satisfies the requirements of the City of Berkeley's TRACCC Ordinance (BMC 9.88).

Exhibits

A: Regulation 14: Mobile Source Emissions Reduction Measures, Rule 1: Bay Area Commuter Benefits Program

**REGULATION 14  
MOBILE SOURCE EMISSIONS REDUCTION MEASURES  
RULE 1  
BAY AREA COMMUTER BENEFITS PROGRAM**

**INDEX**

<b>14-1-100</b>	<b>GENERAL</b>
14-1-101	Description
14-1-102	Applicability
14-1-103	Disclaimers
<b>14-1-200</b>	<b>DEFINITIONS</b>
14-1-201	Air Pollution Control Officer (APCO)
14-1-202	Alternative Commute Modes
14-1-203	Commuter Benefits
14-1-204	Commuter Benefits Coordinator
14-1-205	Covered Employee
14-1-206	District
14-1-207	Employee
14-1-208	Employer
14-1-209	Full-time Employee
14-1-210	Seasonal/Temporary Employee
14-1-211	Transit
14-1-212	Transportation Management Association
14-1-213	Vanpool
<b>14-1-300</b>	<b>STANDARDS</b>
14-1-301	Commuter Benefit Options
13-1-302	Alternative Commuter Benefit Program
<b>14-1-400</b>	<b>ADMINISTRATIVE REQUIREMENTS</b>
14-1-401	Notification to Employers
14-1-402	Determination of Employee Count
14-1-403	Designate Commuter Benefits Coordinator
14-1-404	Initial Registration
14-1-405	Employee Notification
14-1-406	Annual Registration Update
14-1-407	Program Evaluation
14-1-408	Role of Transportation Management Association
14-1-409	Violations
<b>14-1-500</b>	<b>MONITORING AND RECORDS</b>
14-1-501	Record-keeping Requirements

**REGULATION 14**  
**MOBILE SOURCE EMISSIONS REDUCTION MEASURES**  
**RULE 1**  
**BAY AREA COMMUTER BENEFITS PROGRAM**

**14-1-100 GENERAL**

**14-1-101 Description:** This rule serves as the regional commute benefits ordinance authorized by California Government Code section 65081. The purpose of this rule is to improve air quality, reduce emissions of greenhouse gases and other air pollutants, and decrease traffic congestion in the San Francisco Bay Area by encouraging employees to commute to work by transit and other alternative commute modes.

**14-1-102 Applicability:** This rule applies to all public, private, and non-profit employers for which an average of 50 or more full-time employees per week perform work for monetary compensation within the geographic boundaries of the Bay Area Air Quality Management District (District) as determined pursuant to Section 14-1-402.

**14-1-103 Disclaimers:** This rule shall not be interpreted to:

103.1 Prevent an employer from offering a commuter benefits program that is more generous than the minimum requirements described in this rule, provided that the employer complies with all provisions of this rule.

103.2 Require any employee to change his or her commute mode.

103.3 Absolve any employer or other party from any obligation required by an existing collective bargaining agreement with employees, or any provision of law.

**14-1-200 DEFINITIONS**

**14-1-201 Air Pollution Control Officer (APCO):** The Executive Officer of the Bay Area Air Quality Management District, or a designee of the APCO.

**14-1-202 Alternative Commute Modes:** Transit, vanpool, carpool, bicycling, or walking.

**14-1-203 Commuter Benefits:** Benefits, services, and information provided by an employer, consistent with Section 14-1-300, to encourage employees to commute by alternative commute modes.

**14-1-204 Commuter Benefits Coordinator:** An employee or other agent designated by the employer who is responsible for implementing the employer's commuter benefits program and complying with the requirements of this rule.

**14-1-205 Employee:** Any person who performs services for the employer in return for monetary compensation and to whom the employer has provided or will provide an Internal Revenue Service Form W-2.

**14-1-206 District:** The Bay Area Air Quality Management District.

**14-1-207 Covered Employee:** An employee who performed an average of at least 20 hours of work per week within the previous calendar month within the geographic boundaries of the District, excluding a seasonal/temporary employee as defined in Section 14-1-210.

**14-1-208 Employer:** Any public, private, or non-profit entity (person, corporation, partnership, business firm, government agency, special purpose agency, educational institution, health care facility, etc.) for which an average of 50 or more full-time employees per week perform work for monetary compensation within the geographic boundaries of the District as determined pursuant to Section 14-1-402. The term excludes seasonal/temporary employees as defined in Section 14-1-210.

**14-1-209 Full-time Employee:** An employee who performed an average of at least 30 hours of work per week within the previous calendar month within the geographic boundaries of the District, excluding a seasonal/temporary employee as defined in Section 14-1-210.

**14-1-210 Seasonal/Temporary Employee:** An employee who works for the employer 120 days or less within the calendar year.

**14-1-211 Transit:** Bus, rail, or ferry service operated by a public agency or a private entity.

**14-1-212 Transportation Management Association (TMA):** An organization, funded in whole or in part by employers and/or property owners, through which employers, developers, property managers or owners, business improvement districts, and/or local government agencies work together to provide information and services to encourage the use of alternative commute modes. The employer financial contribution to a TMA may be in the form of a direct membership payment, via an assessment earmarked for specific commuter benefit programs or services, or indirectly through the rent paid to a business park or building covered by a TMA.

**14-1-213 Vanpool:** A commute mode using a vehicle with a seating capacity of at least six adults (not including the driver) that meets the definition of “commuter highway vehicle” in Internal Revenue Code Section 132(f)(5)(B).

#### **14-1-300 STANDARDS**

**14-1-301 Commuter Benefit Options:** No later than six (6) months after adoption of this rule by the District Board of Directors and concurrence by the MTC Commission, whichever is later, each employer subject to this rule must offer, either directly or through a TMA as defined in Section 14-1-212, at least one of the following commuter benefit options to all covered employees.

301.1 Option 1: Pre-tax option: A program, consistent with Section 132(f) of the Internal Revenue Code, allowing covered employees to elect to exclude from taxable wages costs incurred for transit passes or vanpool charges, up to the maximum amount allowed by federal tax law.

301.2 Option 2: Employer-paid benefit: A program whereby the employer offers employees a subsidy to offset the monthly cost of commuting via transit or by vanpool. In 2013, the subsidy shall be equal to either the monthly cost of commuting via transit or vanpool, or seventy-five dollars (\$75), whichever is lower. The APCO shall annually adjust this amount consistent with the California Consumer Price Index for San Francisco-Oakland-San Jose. An employer may also elect to provide a subsidy for bicycle commuting costs in addition to subsidies for transit and vanpool costs.

301.3 Option 3: Employer-provided transit: Transportation furnished by the employer at no cost, or low cost as determined by the APCO, to employees in a vanpool or bus, or similar multi-passenger vehicle operated by or for the employer.

**14-1-302 Alternative Commuter Benefit Program:** Pursuant to Government Code sections 65081(d) and (g), in lieu of complying with Section 14-1-301, an employer may offer an alternative benefit, either directly or through a TMA as defined in Section 14-1-212. The alternative benefit must be proposed in writing, must comply with guidelines issued by the APCO, and must be approved in writing by the APCO. The criterion for approval of an alternative commuter benefit is that it must provide at least the same reduction in single-occupant vehicle trips as any of the options described in Section 14-1-301.

#### **14-1-400 ADMINISTRATIVE REQUIREMENTS**

**14-1-401 Notification to Employers:** The APCO will provide notice to employers within the District regarding the adoption and implementation of this rule by means of written notice and/or email notification.

**14-1-402 Determination of Employee Count:** For purposes of determining applicability of this rule pursuant to Section 14-1-102, the number of full-time employees employed by an employer shall be determined by calculating the average number of employees per week carried on the payroll over the course of the most recent three-month period, consistent with guidelines issued by the APCO.

**14-1-403 Designate Commuter Benefits Coordinator:** Employers subject to this rule shall designate a Commuter Benefits Coordinator who is responsible for implementing the employer's commuter benefits program and complying with the requirements of this rule.

**14-1-404 Initial Registration:** Employers subject to this rule shall submit an initial registration to the APCO no later than six (6) months after the adoption of this rule by the District Board of Directors and concurrence by the MTC Commission, whichever is later. In registering, the

employer shall provide information necessary for purposes of this rule, consistent with any guidance issued by the APCO, and shall verify the accuracy of the information. This information shall include:

- 404.1 The employer name;
- 404.2 The name, job title, and contact information for the Commuter Benefits Coordinator;
- 404.3 The total number of full-time employees and covered employees within the geographic boundaries of the District;
- 404.4 The location of each work site within the District boundaries;
- 404.5 The number of full-time employees and covered employees at each work site;
- 404.6 The commuter benefits option that the employer has chosen to implement to comply with Section 14-1-300.
- 404.7 Employers who become subject to this rule at any time pursuant to Section 14-1-402 shall register with the APCO and comply with all requirements in this rule no later than six (6) months of becoming subject to this rule.

**14-1-405 Employee Notification:** Using appropriate means such as email messages, paper memos, in-house newsletters or bulletins, and/or conventional or electronic bulletin boards, the employer shall:

- 405.1 Notify all covered employees that the employer is subject to the requirements of the rule;
- 405.2 Inform employees as to which of the commuter benefit options the employer will offer;
- 405.3 Provide information as to how a covered employee may apply for and receive the commuter benefit;
- 405.4 Provide a point of contact within the organization for further information about the commuter benefit; and
- 405.5 Provide commuter benefits information as part of the employee benefits package explained to all newly hired employees.
- 405.6 The employer shall provide to employees the notifications required by Sections 14-1-405.2, 405.3, and 405.4 when the commuter benefit is first made available to employees, and at least once per year thereafter.

**14-1-406 Annual Registration Update:** After initially registering with the APCO pursuant to Section 14-1-404, the employer shall update and verify its registration information on an annual basis.

**14-1-407 Program Evaluation:** Employers shall provide information needed to evaluate the results of the rule, or facilitate the development of such information, upon request by the APCO.

**14-1-408 Role of Transportation Management Association:** An employer that participates in a TMA as defined in Section 14-1-212 may authorize the TMA to fulfill any or all of the administrative requirements described in Section 14-1-400.

**14-1-409 Violations:** Violations of this rule are subject to the civil penalty provisions for enforcement of air pollution control laws in the California Health and Safety Code beginning at section 42402.

#### **14-1-500 MONITORING AND RECORDS**

**14-1-501 Recordkeeping Requirements:** An employer, or a TMA as defined in Section 14-1-212 on behalf of an employer, shall:

- 501.1 Maintain and retain records, files, and documentation to establish compliance with the requirements of this rule;
- 501.2 Retain records, files, and documentation to establish compliance with this rule for a period of three years; and
- 501.3 Make records, files, and documentation available upon request by the APCO.