



**METROPOLITAN  
TRANSPORTATION  
COMMISSION**

**Agenda Item 5**

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*Memorandum*

TO: Planning Committee

DATE: March 7, 2014

FR: Executive Director

W.I.: 1222

RE: Bay Area Commuter Benefits Program: Resolution No. 4134

This memorandum requests the Committee to forward Resolution 4134 to the full Commission for approval to support implementation of the Bay Area Commuter Benefits Program pursuant to Senate Bill 1339 in coordination with the Bay Area Air Quality Management District (Air District).

Background

Senate Bill 1339 (enacted in 2012) authorizes the Air District and MTC to adopt and implement a Bay Area Commuter Benefits Program (Program) on a pilot basis effective until January 1, 2017 that will require the roughly 10,000 employers with 50 or more full-time employees in the Bay Area to offer one of three commuter benefit options to their employees, or obtain approval of a suitable alternative. SB 1339 requires the Air District and MTC to jointly evaluate and report on the results of the Program no later than July 1, 2016. MTC and Air District staff have developed the Program under which the Air District will enforce compliance with the Program through adoption of a new ordinance (Regulation 14, Rule 1: Bay Area Commuter Benefits Program) and MTC will provide outreach services to inform and assist employers to implement the requirements.

The requirements of SB 1339 are similar to several local ordinances in the San Francisco Bay Area (including the City and County of San Francisco, City of Richmond, the City of Berkeley, and the San Francisco International Airport). The proposed regional program is being coordinated with these local programs to minimize confusion for employers.

Many Bay Area employers, especially large companies and organizations, already offer services and incentives to encourage the use of alternative commute modes and several employer assistance programs already exist in some counties to help Bay Area employers develop and implement effective programs. The proposed Bay Area Commuter Benefits Program will complement and build upon these existing programs.

Program Development

In the course of developing the proposed Program, Air District and MTC staff met with many business groups and employer organizations, including multiple Chambers of Commerce and

economic development associations in cities and counties throughout the region. Staff also engaged stakeholders, including Congestion Management Agencies, Transportation Management Associations, the staff of local cities with commuter benefit ordinances, vendors that administer commuter benefit programs for employers, and Bay Area transit agencies.

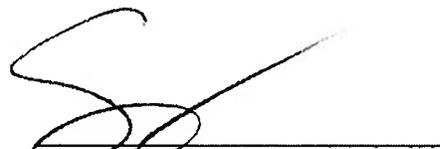
The Air District issued the preliminary draft Program in August 2013 for informal review of the ordinance. Formal public workshops were held in all nine Bay Area counties in October 2013 to solicit input on the draft Program. The comments received in response to the draft Program were reviewed and considered when preparing the final documents. The proposed final documents including: the proposed Regulation 14, Rule 1; a Staff Report; the Initial Study and Negative Declaration for purposes of CEQA, and a socio-economic analysis; were issued for public review and comment in January 2014, in anticipation of a public hearing before the Air District Board of Directors on March 19, 2014. A summary of the review process, comments received, and responses to these comments is provided in Attachment B.

Attachment C includes presentation slides that will be presented at your meeting and provide further detail on the program guidelines and implementation. The Air District and MTC will encourage compliance by means of outreach and education to employers and will assist employers that do not already have commuter benefit programs. Employer registration will be offered through an on-line system managed by the 511 Regional Rideshare Program. In the event that an employer does not register and comply with the rule by the September 30, 2014 deadline, enforcement will be pursued by the Air District using the civil enforcement powers granted to it by California Health & Safety Code section 42402.

MTC's primary role in implementing the program will be to develop and manage employer outreach activities through the 511 Regional Rideshare Program and provide user-friendly information to help employers comply with the Program. Commuter benefit information will be easily accessible on 511.org. The Air District's primary role is development of the Rule, Program compliance and enforcement, and to coordinate with MTC to complete the Program evaluation. These respective responsibilities are described in Resolution No. 4134.

#### Staff Recommendation

Staff will present the draft Program to the Policy Advisory Council on March 12 and will report on their input at your meeting on March 14, 2014. The Program and ordinance will be presented for approval by the Air District Board of Directors on March 19, 2014. Pending their approval, staff recommends that the Committee forward Resolution No. 4134 to the full Commission for approval to support implementation of the Bay Area Commuter Benefits Program pursuant to Senate Bill 1339.



Steve Heminger

SH: CMG

Date: March 26, 2014  
W.I.: 1222  
Referred by: Planning

ABSTRACT

Resolution No. 4134

Under this resolution, the Metropolitan Transportation Commission (MTC) adopts the Bay Area Commuter Benefits Program and ratifies the Bay Area Air Quality Management District's adoption of an Ordinance entitled Air District Regulation 14, Mobile Source Emissions Reduction Measures, Rule 1, Bay Area Commuter Benefits Program. This resolution implements MTC's obligations under Senate Bill 1339 (Yee, 2012).

Further discussion of this action is contained in the Executive Director's memorandum dated March 14, 2014.

Date: March 26, 2014  
W.I.: 1222  
Referred by: Planning

RE: Adopts the Bay Area Commuter Benefits Program

METROPOLITAN TRANSPORTATION COMMISSION  
Resolution No. 4134

WHEREAS, the Metropolitan Transportation Commission (MTC) is the regional transportation planning agency for the San Francisco Bay Area pursuant to Government Code 66500 et seq.; and

WHEREAS, the Bay Area Air Quality Management District (Air District) is the San Francisco Bay Area's air pollution control agency; and

WHEREAS, Senate Bill 1339 (Yee, 2012) (SB 1339), effective January 1, 2014, authorizes the Air District and the MTC to jointly adopt a commuter benefit ordinance on a pilot basis, effective until January 1, 2017; and

WHEREAS, SB 1339 requires the Air District and MTC to jointly evaluate and report on the results of the commute benefit ordinance no later than July 1, 2016; and

WHEREAS, pursuant to SB 1339, the Air District and MTC have developed the Bay Area Commuter Benefits Program (Program) and related Air District Regulation 14, Mobile Source Emissions Reduction Measures, Rule 1, Bay Area Commuter Benefits Program (Ordinance); and

WHEREAS, the primary goal of the Program is to expand the number of employers who provide commuter benefits and increase the number of employees who take alternative commute modes to driving as solo drivers, such as transit, vanpools, carpools, biking; and

WHEREAS, the Program will also reduce motor vehicle emissions, improve air quality and help the San Francisco Bay Area achieve the climate protection targets set by Assembly Bill 32 and Senate Bill 375 (Steinberg, 2008); and

WHEREAS, the Program will require employers with 50 or more full-time employees, in the geographic boundaries of the Air District, to offer one of three commuter benefit options, or

an equivalent benefit option, to their employees and implement the benefit, no later than six months after adoption of the Program; and

WHEREAS, the Program will also require employers to provide an annual registration update and information needed to evaluate the Program, if requested by MTC and the Air District; and

WHEREAS, the Air District will manage compliance with, and enforcement of, the Ordinance, attached hereto as Attachment A, and assist MTC with Program evaluation; and

WHEREAS, MTC will manage employer outreach activities related to the Program through the 511 Regional Rideshare Program and assist the Air District with Program evaluation; and

WHEREAS, the Air District has approved the Program and Ordinance; now, therefore, be it

RESOLVED, that MTC adopts the Program and ratifies the Air District's adoption of the Ordinance; and, be it further

RESOLVED, that MTC will manage employer outreach activities through the 511 Regional Rideshare Program, and assist the Air District with Program evaluation and in preparing a report on the Program to the State Legislature as required by SB 1339.

METROPOLITAN TRANSPORTATION COMMISSION

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Amy Rein Worth, Chair

This resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in Oakland, California on March 26, 2014.

**REGULATION 14**  
**MOBILE SOURCE EMISSIONS REDUCTION MEASURES**  
**RULE 1**  
**BAY AREA COMMUTER BENEFITS PROGRAM**  
**(To Be Presented for Approval by the BAAQMD on March 19, 2014)**

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**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.