

ORDINANCE NO. 22-09 N.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND ADDING
CHAPTER 9.62 OF THE CITY OF RICHMOND MUNICIPAL CODE INSTITUTING A
COMMUTER BENEFIT PROGRAM**

WHEREAS, the City of Richmond is committed to protecting the public health, safety, and the environment. Air pollution is one of the major public health threats in Richmond and contributes to asthma and other respiratory diseases. Encouraging commuters to use public transit, vanpools plus other alternatives such as carpools, biking, telecommuting and alternative work schedules to reach their place of employment will reduce air pollution from private cars; and

WHEREAS, existing Federal Tax law, Internal Revenue Code section 132(f) 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; and

WHEREAS, U.S. House Resolution 1424 amended IRS Regulation 132(f) to allow a new pre-tax benefit for bicycle commuters up to a maximum of \$20 per month for the purchase of bicycle accessories, maintenance, and storage; HR 1424 requires minor clarification which could occur upon the anticipated passage of House Resolution 863 (Multimodal Commuter Credit); and

WHEREAS, the City Manager's Office in coordination with 511 Contra Costa can assist employers in offering commuter information and incentive programs to encourage the use of public transit, carpool, vanpool, walking, biking, telecommuting and alternative work week schedules; and

WHEREAS, Richmond's General Plan calls for programs and laws to encourage employers to enable more employees to use public transit and other alternative commute modes; and

WHEREAS, a commuter benefit program will help the City achieve its goal to reduce CO2 emissions within the City of Richmond to 2000 levels by 2010, 1990 levels by 2020 and 80% below 1990 levels by 2050; and

WHEREAS, this proposed Ordinance will preserve and enhance the environment within the City of Richmond and is exempt from the requirements of the California Environmental Quality Act ("CEQA"), as amended, pursuant to Guideline 15307 and Guideline 15308 of the CEQA Guidelines; now therefore

**THE CITY COUNCIL OF THE CITY OF RICHMOND DOES ORDAIN AS
FOLLOWS:**

SECTION 1

Chapter 9.62 entitled "**COMMUTER BENEFIT PROGRAM**" is hereby added to the City of Richmond Municipal Code to read as follows:

CHAPTER 9.62

Sections:

9.62.010	Definitions
9.62.020	Worksite Registration
9.62.030	Commuter Benefit Program
9.62.040	Administration and Enforcement

9.62.010 **Definitions**

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

- (1) "City" shall mean the City of Richmond.
- (2) "Covered Employee" shall mean any person who:
 - a. Performs an average of at least ten (10) hours of work per week for compensation over a ninety-day period within the geographic boundaries of Richmond for the same employer; 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.
- (3) “Covered Employer” shall mean an employer for which an average of ten (10) or more persons per week performs 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 Richmond, shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity.
 - (4) “Employer” shall mean any person, 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 or an employee. “Employer” shall not include any governmental entity.
 - (5) “Transit Expense” shall mean any pass, token, fare card, voucher, or similar item entitling a person to transportation on public transit, including but not limited to, travel by ferry, bus, light rail or train by AC Transit, BART, AMTRACK, Caltrain, or other regional public transit provider.
 - (6) “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 that has a seating capacity of at least 6 adults (not including the driver), and at least 80% of the mileage use of which can reasonably be expected to be:
 - a. for the purpose of transporting employees in connection with travel between their residences and their place of employment; and
 - b. 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).

9.62.020 Worksite Registration

No later than one-hundred twenty (120) days after the effective date of this Ordinance, all Covered Employers shall register the worksite with the City and the 511 Contra Costa Commute Alternative Network. Registration of the worksite will entitle the employer and employees to all benefits of the 511 Contra Costa program including the Guaranteed Ride Home Program. Registered worksites shall participate in a semi-annual Commute Survey administered by the City of Richmond with the assistance of the 511 Contra Costa Commute Alternative Network program.

9.62.030 Commuter Benefit Program

No later than one-hundred twenty (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 Internal Revenue Code section 132(f), allowing employees to elect to exclude from taxable wages and compensation, employee commuting costs incurred for transit passes or vanpool charges or bicycle commuting (but not for parking), up to maximum level allowed by federal tax law, which is presently two hundred and thirty dollars per month (\$230) for transit and qualified vanpools, and, upon passage of HR 863 or other relevant legislation, twenty dollars per month (\$20) for bicycles; or
- (2) Employer Paid Benefit: A program whereby the employer supplies a transit pass or reimbursement for equivalent vanpool charges at least equal in value to the purchase of the appropriate benefit which shall not exceed the cost of an adult monthly AC Transit regular

pass, which is presently seventy (\$70) dollars, for the public transit system requested by each employee or to reimburse qualified vanpool charges; or

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

9.62.040 Administration and Enforcement

- (1) In coordination with 511 Contra Costa, the City Manager or his or her designee shall maintain an education and advice program to assist employers with meeting the requirements of the Transit Benefit Program.
- (2) Before taking any enforcement action against a Covered Employer for failing to offer at least one transportation benefit program to Covered Employers as required by this Chapter, the City shall issue a written notice to that Covered Employer requiring submission of proof of compliance within 90 days.
- (3) In addition to any other remedies that may be available, the City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter, including without limitation, civil penalties in an amount not exceeding \$200.00 for the first violation, \$400.00 for the second violation, and \$600.00 for each subsequent violation in any given year.

SECTION 3

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Richmond hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 4

The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

SECTION 5

This ordinance shall become effective 30 days after its final passage and adoption.

First introduced at a regular meeting of the City Council of the City of Richmond held on July 7, 2009, and finally passed and adopted at a regular meeting held on July 21, 2009, by the following vote:

AYES: Councilmembers Bates, Butt, Ritterman, Rogers, Viramontes, Vice Mayor Lopez, and Mayor McLaughlin.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
City Attorney

State of California }
County of Contra Costa } ss.
City of Richmond }

I certify that the foregoing is a true copy of Ordinance No. 22-09 N.S., finally passed and adopted by the Council of the City of Richmond at a regular meeting on July 21, 2009.