


REPORT OF THE CHIEF LEGISLATIVE ANALYST

October 16, 2008

TO: Honorable Members of the Transportation Committee

FROM: Gerry F. Miller 
Chief Legislative Analyst

Council File No: 06-1841
Assignment No: 08-10-1919

Status Report on the Parking Cash-Out Program

SUMMARY:

On February 12, 2008, the Transportation Committee instructed the Office of the Chief Legislative Analyst to report on the financial and legal impacts of requiring businesses to provide proof of compliance with the cash-out law as a condition to renew their business tax licenses. As requested by the Chair, and in consultation with the City Attorney, we have prepared the following status report.

Since 1992, California has mandated a Parking Cash-Out program, which requires that employers with over 50 employees, in an air basin designated non-attainment area, who provide subsidized parking for their employees, offer a cash allowance in lieu of a parking space. The California Air Resources Board (ARB) is the agency responsible for implementing and regulating the program. However, existing law does not currently require the ARB to enforce or monitor the program. Further, the law does not contain reporting requirements for employers, making it difficult for ARB to assess compliance.

In addition to the Parking-Cash out Law, Section 132F of the Internal Revenue Code provides employers with the opportunity to establish a Transportation Fringe Benefit otherwise known as the Pre Tax Dollar Commuter Account for employees. Under the statute, employees interested in patronizing alternative modes of transportation can request their employers to reserve a specific amount of their salary for such a purpose. These funds are tax free to employees who utilize this benefit.

This Office, with the assistance of the Office of the City Attorney, are in the process of analyzing various financial and legal impacts to the City should the Parking Cash-Out Program be implemented.

Financial Impacts

Since its report on March 28, 2007, the Office of Finance, has released an Employee Count / Leased Parking Summary which has tabulated the number of employers, with different ranges of employees, who provide leased parking. It can be concluded from the report that, of the 6,508 employers who have responded and provide leased parking, the parking cash-out program will impact an estimated 333 employers within the City of Los Angeles. It can be deduced from this information that a sizeable amount of staff and resources would be necessary to ensure employers' compliance with the law.

The most cost-efficient method for the City to monitor these programs and other legal mandates for employers would be to require employers to submit a plan defining goals and progress in reducing traffic

OCT 17 2008

TRANSPORTATION

congestion in the City. This could be accomplished by adding to the city's current Transportation Demand Management Ordinance (TDMO) a menu of options that employers can choose from to decide how they will promote alternative modes of transportation. The City's currently enforced TDMO does not include the parking cash-out program. This is primarily due to the fact that the expected resource intensity for enforcement of the program exceeds the City's current capacity.

Thus, this Office recommends that the City Council instruct the City Attorney to prepare and present changes to the City's TDMO that would require certain categories of employers to submit transportation plans and define the parameters of those plans (including parking cash-out), and would set forth penalties for non-compliance. In addition, this Office recommends that the City Council instruct the City Administrative Officer (CAO), in consultation with the Office of Finance (OOF) to report back on the fiscal impact to the City's general fund that will be incurred pursuant to the prospective changes to the TDMO.

Legal Impacts

Under the City's TDMO, no incentives are offered to employers to encourage the alleviation of traffic congestion. The TDMO however, does contain requirements that are targeted towards developers. Prior to the issuance of a building permit, the owner/applicant must agree to maintain the following trip reduction measures:

- An owner of any development in excess of 25,000 square feet of floor area, shall provide a bulletin board, display case, or kiosk, displaying alternative and convenient transportation information (public transit routes, promotional info for ridesharing, bicycle routes), in a location visible to the greatest number of employees;
- Owners of a development in excess of 50,000 square feet of floor area, shall provide the above, in addition to a designated parking area for employee carpools, bicycle parking, and a minimum vertical clearance of 7 feet and 2 inches for all parking spaces by vanpool vehicles;
- For developers using an excess of 100,000 square feet, the owner shall comply with all of the above, and include bus stop improvements.

Including, the parking cash-out requirement to the City's current TDMO could contribute to a change in travel behavior by encouraging the use of alternatives to single-occupant vehicles such as public transit, cycling, walking, carpooling/vanpooling, and changes in work schedule that move trips out of the peak period or eliminate them altogether (as in the case in telecommuting or compressed work weeks).

Under existing law, the Air Resources Board (ARB), a division of the California Environmental Protection Agency (CEPA), is authorized to enforce the Parking Cash-out Program. In order for the City to obtain legal authorization to enforce the Parking Cash-Out law, in the absence of execution from the ARB, an amendment to Section 43845 of the California Health and Safety Code is required.

Additionally, local policymakers must work with members of the South Coast Air Quality Management District (SCAQMD) to complement and not contradict regulatory mandates, including the parking cash-out law which the AQMD does not actively enforce.

Thus, this Office recommends that a resolution be prepared to sponsor and or support legislation to amend state law to authorize municipalities to require businesses to show proof of compliance with the parking cash-out law and the pre tax dollar commuter account law.

BACKGROUND

On May 16, 1987, the City of Los Angeles enacted a Transportation Demand Management Ordinance (TDMO) that required an approved plan for, and the implementation of, employee ridesharing and trip reduction incentive measures. The Ordinance required all employers with 700 or more employees, to comply. The City had to ensure that enough staff and resources were available for DOT to carry out the following enforcement measures: 1) review the initial plans and check for their timely submission 2) review and recommend modifications on yearly plan overviews submitted by employers within 30 days of the original plan, 3) craft recommendations that can feasibly be implemented by employers. In addition, the Ordinance required more staff to establish the ridesharing task force: one representative from DOT, City Planning Department, Community Redevelopment Agency, the South Coast Air Quality Management District, Commuter Transportation Services, the County's Transportation Commission, and the Southern California Association of Governments.

Subsequently, on May 13, 1994 the South Coast Air Quality Management District (SCAQMD) adopted Regulation XV which also required those employers with 250 or more employees to implement a similar emissions reduction program related to employee commutes, including the option to establish a cash-out program as one way of satisfying compliance. The introduction of the state's Regulation XV supplanted the City's authority, and thus resulted in the repeal of many of the self-implementing programs in the original TDMO.

Succeeding Regulation XV, was Rule 2202, adopted by the SCAQMD in 1995. This replaced the emissions reduction requirements for employers with a menu of options to reduce mobile source emissions generated from employee commutes, to comply with federal and state Clean Air Act requirements. The SCAQMD does not monitor or enforce the cash-out law. Information on firms subject to Rule 2202 is collected through the Employee Trip Reduction Plans and employer work sites are periodically inspected by SCAQMD staff to identify any violations. SCAQMD does not otherwise actively enforce the cash-out law or seek out violations; administration/enforcement falls under the scope of the ARB.

No data has been collected on the Pre Tax Dollar Commuter Account outlined in Section 132f of the Internal Revenue Code, since the mandate is designed to be self-reported and the direct responsibility of the employer. Since the law does not require funding for program monitoring, no statewide data has been collected on the program to date.

CONCLUSION

This Office will continue to work with the Office of the City Attorney, and the Office of Finance to move forward in the implementation of the parking cash-out program in the City of Los Angeles.

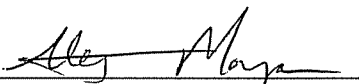
RECOMMENDATIONS

That the City Council:

1. Request the City Attorney to prepare and present changes to the City's Transportation Demand Management Ordinance that would require certain categories of employers to submit transportation plans and define the parameters of those plans (including parking cash-out), and would set forth penalties for non-compliance.
2. Instruct the City Administrative Officer, in consultation with the Office of Finance to report back on the fiscal impact to the City's general fund that will be incurred pursuant to the prospective changes to the Transportation Demand Management Ordinance.
3. Request the Office of the Chief Legislative Analyst to prepare a resolution to sponsor and/or support legislation to amend state law to authorize municipalities to require businesses to show proof of compliance with the parking cash-out law and the pre tax dollar commuter account law.

FISCAL IMPACT STATEMENT

There is no impact to the General Fund resulting from approval of these recommendations. However, subsequent actions may result in impacts to the General Fund.


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Analyst