

ORDINANCE NUMBER O-17349 (NEW SERIES)

ADOPTED ON SEPTEMBER 26, 1989

AN ORDINANCE AMENDING THE SAN DIEGO MUNICIPAL CODE BY ADDING THERETO A NEW ARTICLE 1, DIVISION 1 TO CHAPTER VII, RELATING TO TRANSPORTATION DEMAND MANAGEMENT.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter VII, Article 1, of the San Diego Municipal Code be and the same is hereby amended by adding thereto, a new Article 1 and a new Division 1 to read as follows:

DIVISION 1

TRANSPORTATION DEMAND MANAGEMENT PROGRAM

SEC. 71.0101 PURPOSE AND INTENT

This Division implements the first program component of the City's comprehensive Program for Transportation Demand Management. This first component specifies employer, building owner, and developer requirements for vehicle trip reductions and contributions to support Federal and State-mandated clean air standards through Transportation Demand Management. This Program component will reduce traffic congestion and improve air quality by reducing the number of employees who drive alone in motor vehicles to work sites during peak periods.

RECEIVED
CITY CLERK'S OFFICE

89 NOV 15 PM 3:47

SAN DIEGO, CALIF.

19

SEC. 71.0102 DEFINITIONS

- A. "Building Owner" shall mean the owner of a single or multi-tenant office, commercial, scientific research, mixed-use or industrially zoned building or buildings exceeding 25,000 square feet of gross floor area.
- B. "Developer" shall mean a person engaged in the development of land for or the construction of commercial, scientific research, mixed use or industrially-zoned buildings exceeding 25,000 square feet of gross floor area.
- C. "EDAR" or "Employee Drive Alone Rate" shall mean the percentage resulting from calculating the number of employees who are scheduled to report to the work site and who drive alone to the work site during the peak period divided by the total number of employees who are scheduled to report to that work site during the peak period.
- D. "Employee" shall mean a full-time or part-time person employed by an employer, or any consultant or independent contractor hired by the employer and who reports to the work site.

- E. "Employer" shall mean a sole proprietor, partnership, corporation, unincorporated association, joint venture, or other business entity that employs employees. There are two categories of employers for purposes of this Division:
1. "Intermediate Employers" with between 15 and 49 employees per work site; and
 2. "Large Employers" with 50 or more employees per work site.
- F. "Implementation Date" shall mean January 1, 1990.
- G. "Peak Period" shall be 6:30 a.m. to 8:30 a.m. weekdays for the first 36 months subsequent to the implementation date. After January 1, 1993, the peak period shall be 6:00 a.m. to 9:00 a.m. weekdays.
- H. "Technical Requirements" shall mean the comprehensive set of rules, procedures and policies for the implementation and operation of the Transportation Demand Management Program as approved and adopted in a Council Policy, including such amendments as may be necessary.

- I. "Transportation Demand Management" or "TDM" shall mean a comprehensive set of strategies designed to influence travel behavior with respect to mode, time, frequency, route and distance.
- J. "Transportation Management Association" or "TMA" shall mean a private organization which assumes a role of facilitating Transportation Demand Management actions by employers, building owners and developers and which has a written work program, a board of directors, and a funding and staffing plan.
- K. "Transportation Demand Management Plan" shall mean a written transportation demand management plan which outlines schedules, steps, programs, work site incentives, amenities, monitoring, evaluation and includes corrective actions that will be implemented by an employer to reach the EDAR targets.
- L. "Work Site" shall mean a land area, building or set of contiguous buildings or portions thereof in the City of San Diego under the ownership or control of a

single employer, building owner, or developer. A work site shall also mean land, buildings, or portions thereof, under common ownership or control which may be separated by a public or private street.

SEC. 71.0103 PHASING

This Division shall be implemented in phases as follows:

- A. Intermediate Employer - Phasing for Intermediate Employers shall be effective two years and six months from the Implementation Date.
- B. Large Employer - Phasing for Large Employers shall be effective six months from the Implementation Date.
- C. Building Owner - Phasing for Building Owners shall be effective six months from the Implementation Date.
- D. Developer - Phasing for Developers shall be effective on the Implementation Date for Developers applying for discretionary permits after the Implementation Date.

SEC. 71.0104 EMPLOYER REQUIREMENTS

Sections 71.0105 through 71.0109 establish requirements for Employers.

The requirements in Sections 71.0105 through 71.0109 are effective upon the Implementation Date pursuant to the phasing described in Section 71.0103, above.

SEC. 71.0105 WORK SITE REQUIREMENTS

Employers failing to meet these requirements shall be subject to enforcement provisions set forth in Section 71.0122:

- A. Each Employer shall establish a new-hire orientation program for its Employees to encourage use of Transportation Demand Management strategies to reduce the EDAR, based on the guidelines established in the Technical Requirements.
- B. Each Employer shall establish a Transportation Demand Management information center for its Employees at each Work Site, based on guidelines established in the Technical Requirements.

SEC. 71.0106 PERFORMANCE REQUIREMENTS

- A. Each Employer shall utilize Transportation Demand Management strategies as set forth in the Technical Requirements to achieve the EDAR targets prescribed below:

Corrected 11/14/89

MAXIMUM EMPLOYEE DRIVE ALONE RATE:

<u>Time From Date That Employer Phasing in Section 71.0103 Applies</u>	<u>EDAR Target</u>
0 - 12 months	No Target
13 - 24 months	85%
25 - 36 months	75%
37 - 48 months	65%
49 - 60 months	60%
61 months and after	55%

B. A Transportation Management Association may be granted authority by an Employer to prepare and/or execute an Employer's EDAR report or Transportation Demand Management Plan within the Transportation Management Association's geographical area. If a group of Employers in a Transportation Management Association, on average, collectively meet the EDAR target, Employers within that Transportation Management Association do not need to individually meet their EDAR target.

C. Each Employer shall designate a transportation coordinator for each Work Site to serve as a point of contact between the Transportation Demand Management Administrator (as defined in Section 71.0123) and the Employer.

Corrected 11/14/89

SEC. 71.0107 EDAR REPORTING REQUIREMENTS

Employers shall comply with the following EDAR reporting requirements:

- A. For each Work Site, the Employer shall file an annual EDAR report in accordance with the Technical Requirements.
- B. Employers may elect to file a consolidated EDAR report for all of their Work Sites, provided the report represents and describes each Work Site separately.

SEC. 71.0108 TRANSPORTATION DEMAND MANAGEMENT PLAN REQUIREMENTS

If an Employer fails to reach its EDAR targets for two successive years, the Employer shall develop, file, and implement a Transportation Demand Management Plan in accordance with the Technical Requirements.

- A. The Transportation Demand Management Plan shall be submitted to the Administrator within 90 days from receipt of a notice that the Employer's EDAR report indicates failure to achieve the EDAR target.
- B. Transportation Demand Management Plans shall be implemented within 30 days of approval by the Administrator. Rejected Transportation Demand Management Plans must be revised within 30 days of notice of rejection.

Corrected 11/14/89

- C. EDAR reports following a submittal of a Transportation Demand Management Plan shall be filed in accordance with the Employer's initial EDAR reporting date.
- D. An Employer may, at its election, consolidate the Transportation Demand Management Plans required for its various Work Sites into one consolidated plan.

SEC. 71.0109 TRANSPORTATION DEMAND MANAGEMENT COMPLIANCE

The Transportation Demand Management compliance standards for Employers are as follows:

An Employer who, having filed a Transportation Demand Management Plan pursuant to Section 71.0108, fails to reach its EDAR targets for two successive years shall amend its Transportation Demand Management Plan in accordance with the Technical Requirements. These amended plans shall be designed to meet the Employer's EDAR target by the next reporting period.

SEC. 71.0120 BUILDING OWNER AND DEVELOPER REQUIREMENTS

- A. Building Owners, upon 90 days written notice by the Administrator, shall provide: 1) the business name, mailing

address and local contact for all tenants; and, 2) an inventory of all on-site parking spaces and Transportation Demand Management facilities, including bicycle lockers, showers, bulletin boards, food service facilities, transit sales offices and day care facilities.

- B. Upon request by the Administrator, the Building Owner shall provide access rights to a portion of its building for the purpose of distribution of Transportation Demand Management promotional materials.
- C. Developers applying for a discretionary permit shall submit a plan including facilities, services and parking management and meet the requirements as set forth in the Technical Requirements.
- D. Participants failing to meet these requirements shall be in violation and subject to the provisions of Section 71.0122.

71.0121 TRANSPORTATION DEMAND MANAGEMENT CREDITS

Transportation Demand Management credits may be earned by an Employer who takes certain Transportation Demand Management actions. Methods

of achieving and applying credits shall be as described in the Technical Requirements.

71.0122 ENFORCEMENT

- A. An Employer who, inadvertently or improperly but in good faith, fails to file an EDAR report when due, or who fails to meet Work Site requirements, shall be subject to: 1) an additional administrative fee of 100 percent of the regular fee per month as established in Section 71.0123(B); or 2) one dollar per Employee per month, whichever is greater. This additional administrative fee shall be assessed from the date the EDAR report is due and continue to be assessed until such time as the EDAR report is received or the Work Site requirements are met.
- B. An Employer who, inadvertently or improperly but in good faith, fails to file a Transportation Demand Management plan when due shall be subject to an administrative fee of \$20 per Employee per month. This fee shall be assessed until such time as the Transportation Demand Management plan is filed.

- C. A Building Owner who, inadvertently or improperly but in good faith, fails to comply with the requirements of this Division shall be subject to an administrative fee of \$0.10 per square foot of gross floor area.
- D. If the Employer has willfully failed to comply with Sections 71.0105 or 71.0107, or fails to develop, file or implement a plan or amendment thereto as required in Sections 71.0108 and 71.0109 of this Division, or fails to comply with a written decision of the Administrator or of the Appeals Board (as defined in Section 71.0130), the Employer shall be sanctioned in accordance with this Section and be guilty of a misdemeanor.

SEC. 71.0123 TRANSPORTATION DEMAND MANAGEMENT ADMINISTRATOR - DUTIES AND POWERS

Under the direction of the City Manager the Transportation Demand Management Administrator shall have the following powers and duties:

- A. To grant such variances from the provisions of this Division as will not be contrary to its intent or the public health, safety and general welfare when, due to special conditions or exceptional

Corrected 11/14/89

characteristics of the Building Owner or Developer's building or of the nature of the Employer's business, strict and literal interpretation and enforcement of the provisions of this Division would result in unusual difficulties or unnecessary hardship or be inconsistent with the general purpose of the City's overall Transportation Demand Management program.

- B. To work with the City Manager and City Auditor to develop the appropriate level of fees necessary to accomplish full cost recovery for the administration and processing of permits under this Division. Fees will be established by the City Manager independently for the first year of the program. For subsequent years, the Administrator shall present the proposed fees to the Appeals Board for review prior to implementation.
- C. To grant a temporary extension for Employers, Transportation Management Associations, Building Owners and Developers for the delayed filing of any document due under this Division.

D. In granting any variance described above, the Administrator may impose such conditions as deemed necessary to protect the public health, safety and general welfare.

**SEC. 71.0130 TRANSPORTATION DEMAND MANAGEMENT
APPEALS BOARD**

A. Creation of Membership

There is hereby created an Appeals Board which shall consist of seven members, who shall serve without compensation. The members shall be appointed by the Mayor and confirmed by the Council. The members shall serve two-year terms and each member shall serve until the member's successor is duly appointed and qualified. The members shall be appointed in such a manner that the terms of not more than five members shall expire in any year. The expiration date shall be March 1. The Board shall annually, on or after April 15, select from among its members a chairperson. The membership shall be balanced among affected businesses, property interests, and community representatives with the majority of the membership representative of business.

Corrected 11/14/89

B. Meetings

1. The Board shall meet regularly once a quarter, or more often if necessary, for the transaction of its business. It shall establish its own rules and procedures necessary or convenient for the conduct of its business.
2. Four members of the Appeals Board shall constitute a quorum. The affirmative vote of not fewer than four members shall be necessary for any action by the Appeals Board.
3. In the event an Employer, Transportation Management Association, Building Owner or Developer has an appeal pending within the City of San Diego and any other jurisdictions with a similar Transportation Demand Management program within the San Diego Air Pollution Control District (APCD), the Board is authorized to conduct a joint appeal hearing with that jurisdiction's appeal board.

C. Power and Duties

The Board shall:

1. Hear and determine appeals from the rulings, decisions and determinations of the Administrator; and
2. Review and comment on the Administrator's proposed fees prior to their implementation (with the exception of first year fees).

SEC. 71.0131 VARIANCE OR OTHER PERMITS GRANTED BY THE ADMINISTRATOR

A. Application - Form and Contents

Applications for a Transportation Demand Management variance, extension or other exemption or exclusion from this Transportation Demand Management Division may be made by the Employer, Transportation Management Association, Building Owner or Developer affected. Application shall be filed with the Administrator. The application shall state fully the circumstances and conditions relied upon as grounds for the application and shall be accompanied by adequate information and business address(es) of the Work Site(s) or building(s) involved.

Corrected 11/14/89

B. Hearing Before the Administrator -
Procedure

1. In all cases the Administrator shall set a date for public hearing and give notice of time, place and purpose of such hearing in accordance with the procedures set forth in San Diego Municipal Code section 101.0220.
2. Upon the date of the hearing, the Administrator shall hear the application unless cause is found on that date to continue the matter. If a date and time certain for the continued hearing is announced in the open meeting, no further notice need be given.

C. Decision of the Administrator

1. The Administrator may grant a variance or extension from the Transportation Demand Management Division (San Diego Municipal Code Chapter 7, Article 5, Division 1) when it appears from the facts contained in the application, from information obtained by the

Administrator and from the evidence presented at the public hearing, that the following findings can be reached:

- a. A good faith effort has been made by the applicant.
 - b. Applicant has established that, notwithstanding its good faith efforts, applicant is unable to achieve its EDAR targets.
 - c. The granting of the variance or extension will be in conformity with the general purpose of this Division.
2. In granting a variance or extension, the Administrator may impose conditions as deemed necessary and desirable to protect the public health, safety and general welfare, and may impose a time limit not to exceed 36 months during which the variance or extension will be effective.
3. The written decision of the Administrator, which shall include findings of fact, shall be filed in

the office of the Administrator. A copy of the decision shall be mailed to the applicant.

4. When the decision of the Administrator is not appealed as provided for in Section 71.0150, the decision shall be final upon expiration of the specified appeal period.

D. Amendment of Variance or Permits

1. The Administrator may grant an amendment to a variance which has been granted if, after considering the facts presented on the application at the hearing, the findings set forth in Paragraph C of this Section are reached.
2. An application for a variance, an amendment to a variance, or an extension shall be in writing, and shall be filed by the Employer, Transportation Management Association, Building Owner, or Developer affected. The application shall be filed with the Administrator who may require a public hearing if

it is determined that a hearing is in the public interest.

SEC. 71.0150 APPEAL TO THE APPEALS BOARD OF AN ADMINISTRATOR'S DECISION

A. Filing of Appeals

1. An appeal from any noticed decision of the Administrator may be taken to the Appeals Board by:
 - a. The applicant;
 - b. Any governmental body or agency;
 - c. Any affected citizen located within the City.
2. Appeals shall be filed within ten days of the decision of the Administrator.

B. Appeal Procedure

1. Appeals shall be in writing, shall be filed in duplicate in the office of the Administrator upon forms provided, and shall specify wherein there was an error in the decision of the Administrator.
2. An appeal filed with the Administrator within the time specified in Paragraph A of this Section automatically stays proceedings in the matter.

3. Upon the filing of an appeal, the Administrator shall set the matter for public hearing before the Appeals Board and shall give notice of time, date and purpose of such hearing in accordance with San Diego Municipal Code section 101.0220.
4. The Administrator shall transmit to the Appeals Board a copy of the decision in the case along with findings, minutes of the hearing and all other evidence, maps, papers and exhibits used by the Administrator in making the decision.
5. Upon the date set for the hearing, the Appeals Board shall hear the appeal unless, for cause, the Appeals Board shall on that date continue the matter. If a date and time certain for the continued hearing is announced in the open meeting, no further notice need be given.

C. Decision of the Appeals Board

1. After conducting a public hearing on an appeal, the Appeals Board may affirm, reverse, or modify in whole

or in part the decision of the Administrator, subject to the same limitations imposed upon the Administrator by Paragraph C of Section 71.0131. The resolution of decision shall contain a finding of facts showing wherein the proposed variance or extension meets or fails to meet the requirements of Paragraph C of Section 71.0131.

2. The resolution of decision shall be filed with the City Clerk and the Administrator and a copy shall be mailed to the applicant.
3. The decision of the Appeals Board shall be final.

SEC. 71.0160 ANNUAL REVIEW

The City Council shall annually conduct a noticed public hearing to review the provisions of this Program.

The annual review shall occur within 60 days of the anniversary date of the adoption of this Division.

The City Manager shall prepare a report for the Council on the program which addresses the following issues:

Corrected 11/14/89

- A. What is the cost of administering this Division, to the City and to the Employer, Building Owner and Developer categories?
- B. What are the benefits resulting from the current level of participation?
- C. Are there/what are the public sector incentives offered to encourage participation?
- D. Are the benefits worth the cost of administration?
- E. Are the program cost recovery mechanisms at the City, Region and State duplicative?
- F. Should the scope of participation be expanded or reduced in order to improve effectiveness?
- G. Do the Technical Requirements provide information necessary for administration of any requirements which commence in the coming year?
- H. Is the administration of the program and similar local programs resulting in duplication of efforts, and would the establishment of a regional fully-integrated program and administration improve service or costs?

Corrected 11/14/89

The Manager's Report shall be made available to the public at the time of publication of the Notice of Hearing.

SEC. 71.0161

This ordinance shall terminate and be of no further force and effect three years following the effective date of this ordinance.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By



John K. Riess
Deputy City Attorney

JKR:pev
08/08/89
08/22/89 COR. COPY
08/24/89 COR. COPY
09/11/89 COR. COPY
09/12/89 REV.1
11/14/89 COR. COPY
Or. Dept: E&D
O-90-33
Form=o.none

52

SEP 26 1989

Passed and adopted by the Council of The City of San Diego on.....
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gloria McColl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Wes Pratt	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ed Struiksma	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
J. Bruce Henderson	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Filner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Maureen O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By *Jana M. Martin*, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

SEP 11 1989

SEP 26 1989

....., and on

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By *Jana Martin*, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number 0-17349 Adopted SEP 26 1989