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Accessed November 8, 2013 at <http://library.municode.com/index.aspx?clientId=16322>

Sec. 23A-1. Findings.

- (a) Traffic counts and engineering evaluations indicate that traffic congestion on regional streets and highways has risen, particularly during peak periods, and is projected to increase.
- (b) Federal and state air quality standards have been and continue to be exceeded in the region.
- (c) Increases in traffic cause increased air pollution and noise, fuel waste, vehicle wear, time losses and inconvenience and thus negatively affect the quality of life and the economic health of the community.
- (d) An ordinance which addresses employee commute behavior is necessary because:
 - (1) Over three-quarters of the employees reporting to work in the region drive alone to work;
 - (2) Nearly two-thirds of the employees reporting to work in the region commute during the peak periods;
 - (3) Over 84,000 employees report to work in the region, of which approximately two-thirds work for companies that employ twenty or more employees;
 - (4) Single occupant vehicles represent the least effective use of transportation infrastructure.
- (e) The use of alternative work hours and alternatives to single occupant vehicle travel, especially at peak periods, will reduce traffic congestion, parking demand and related air pollution, noise, fuel use,

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vehicle wear, time loss and inconvenience, thus making the region a desirable and healthful place to live, work, visit and do business.

- (f) Transportation demand management (TDM) programs conducted by employers, in cooperation with transportation management organizations, are a reasonable, flexible and effective way of increasing employee use of commute alternatives thereby reducing the number of peak period single-occupant commuter trips.
- (g) To ensure that employer TDM programs reduce the number of peak period commuter trips and single-occupant vehicles, it is necessary to require all employers who employ or will likely employ twenty or more daytime employees at a worksite to achieve and maintain certain employee participation and vehicle occupancy rates.
- (h) To avoid more stringent federal or state regulations in the future, the agencies desire to meet the regional objectives of this chapter by the completion of the fifth annual commuter survey. Should the regional objectives established by this chapter not be met, the agencies may impose an annual in-lieu fee on employers who fail to achieve the employer participation rate and/or average vehicle occupancy rate (hereinafter AVR) objectives required pursuant to [section 23A-4\(b\)](#) of this chapter, in an amount sufficient to defray the cost of achieving the required regional commuter reductions for which the employer is responsible.
- (i) The ability of the county and the city of Santa Barbara (the agencies) to reduce and manage traffic level and flow depends on what steps the other agency takes. The agencies have therefore determined that a joint, coordinated program of traffic reduction is necessary and in their mutual interest and that the adoption of substantively identical TDM ordinances, regulations and procedures will promote improved public health, safety and welfare.
- (j) This joint, coordinated system of transportation demand management will be improved, and its goals better realized, by the additional voluntary participation of the school districts, Santa Barbara City College, and the University of California at Santa Barbara.
- (k) The agencies have set forth the following goals and policies used in seeking to achieve acceptable traffic flow.
 - (1) County of Santa Barbara:
 - (A) Air quality supplement to the land use element, policy C: "Increase the attractiveness of bicycling, walking, transit and ridesharing."... "Encourage enrollment of employees in carpool/vanpool programs by major employers."
 - (B) Land use element (Santa Barbara area, Transportation/Circulation): "Work and schedule changes shall be encouraged to reduce peak period congestion." ... "Employers shall be encouraged to implement employee carpooling and vanpooling."
 - (C) Land use element (Goleta Area, environment): "Present air quality should not be degraded."
 - (D) Interim policies for Goleta, section 3.5(2): "the county should make a commitment at this time to begin preparation of a TSM program for Goleta that would apply to existing employers as well as future commercial, industrial, and government development."
 - (E) Interim policies for Goleta, section 7.5(1): the traffic mitigation measure recommended in section 3.5 of this report ... would have a positive effect in reducing the pollutants contributing to the ozone problem on the South Coast."
 - (F) In addition, the County of Santa Barbara recently adopted an air quality attainment plan which identifies a number of measures that will be implemented to reduce air pollution from transportation sources as required by section 110(a)(2)(B) of the Federal Clean Air Act. Among these measures to be developed and implemented is an ordinance which requires employers to develop and implement programs designed to reduce the use of single-occupant commute trips by their employees.

- (2) City of Santa Barbara:

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- (A) Coastal plan, Policy 11.11: "The City shall encourage ride-sharing and carpooling as a means of minimizing traffic demands in the waterfront [by] assigning reserved parking spaces to carpoolers in premium parking areas."
- (B) Circulation element, goals and policies: "All future transportation programs shall be geared toward providing a coordinated, congestion-free ... convenient ... circulation system for the movement of people and goods. To accomplish this overall goal and avoid additional congestion of streets caused by increases in traffic, emphasis shall be placed on alternative transportation modes ... To encourage, and where appropriate require the use of alternative transportation modes ... through every means available..."
- (C) Circulation element, Section 1.3: "The upper limit of the level of service "C" range ... is defined as the maximum acceptable operating conditions during peak hours at signalized intersections."
- (D) Circulation element, Section 1.3-1: "To achieve or maintain the level of service desired City-wide ... [the City shall] ... Investigate the possibility of adopting an ordinance which mandates transportation systems management in new developments."
- (E) Circulation element, Section 2.1: "The City shall ... ensure that ... developments provide for the implementation of programs to encourage the use of alternative modes of transportation."
- (F) Circulation element, Section 2.5: "The City shall develop comprehensive parking management plans for areas of the City where there are existing or anticipated parking problems, or where there is a need to control parking and/or travel."
- (G) Circulation element, Section 3.3: "The City shall encourage the coordination of public and private transportation modes in a coordinated and efficient transportation system."
- (H) Circulation element, Section 3.4: "The City shall encourage an aggressive ride sharing program and other mechanisms to reduce dependence on single-occupant automobiles as a primary transportation mode."
- (I) Circulation element, Section 3.4-2: "The City shall pursue the establishment of van/car pool priority parking as well as actively promote the advantages and cost savings of van/car pooling as a means to encourage van/car pooling among commuters."
- (J) Circulation element, Section 3.4-3: "The advantages of adjustable and flexible work hours should be promoted as a means of encouraging alternative transportation."
- (K) Circulation element, Section 3.5: "The City shall work cooperatively with other agencies to increase the use of alternative transportation modes."
- (L) 1988-90 Council Goal C: "Reduce peak hour traffic and achieve free flowing traffic circulation throughout the City."
- (M) 1988-90 Council Goal C.2: Impose "mandatory trip reduction quotas for travel during the peak periods by employees of private and public entities."
- (N) In addition, the city of Santa Barbara recently adopted a resolution of commitment, with respect to the air quality attainment plan, to develop and implement an ordinance which requires employers in the city of Santa Barbara to develop and implement programs designed to reduce the number of single occupant commute trips by their employees.

(Ord. No. 3922)

Sec. 23A-2. Regional objectives.

The agencies seek to establish, fund and support a jointly administered regional program to:

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- (a) Reduce traffic congestion, air pollution and parking demand and improve the quality of life by regulating the percentage of commuters in the region who drive alone to or from work during the peak periods;
- (b) Facilitate the adoption and implementation of employer-sponsored TDM programs which encourage the use of commute alternatives and alternative work hours;
- (c) Over a five-year period, attain a regional basic participation rate which is fifteen points higher than the baseline measurement, as amended; and
- (d) Over a five year period, attain a regional average vehicle occupancy rate (AVR) which is at least six percent higher than the baseline measurement, as amended.

(Ord. No. 3922; Ord. No. 4125, § 1)

Sec. 23A-3. Definitions.

- (a) Administrator. The individual employed to carry out the provisions of this chapter and the employer guidelines on the behalf of the agencies.
- (b) Affected Employer. During the first twelve months following the effective date of this chapter, affected employer means each employer with fifty or more employees at a worksite that is subject to the requirements of this chapter, as described in the employer guidelines. Following this initial twelve month period, the affected employer definition applies to employers of twenty or more employees.
- (c) Agencies. The city of Santa Barbara and the County of Santa Barbara, separately and together.
- (d) Alternative Work Hours. Any employee work period which begins or ends outside of a peak period.
- (e) Average Vehicle Occupancy Rate or AVR. The number of daytime employee commute trips to and from a worksite Monday through Friday of a surveyed week, divided by the number of vehicles driven to or from the same worksite by daytime employees during the same period.
- (f) Baseline or Baseline Survey. The first commuter survey conducted pursuant to the requirements of this chapter and the employer guidelines, or the results thereof.
- (g) Basic Participation Rate or BPR. The number of commute trips to and from a particular worksite during a surveyed week by daytime employees using any commute alternative or alternative work hours, divided by the total number of daytime employee commute trips to and from the same worksite during the same period.
- (h) Bus or Transit. Any vehicle with seating for at least sixteen passengers which is operated on a free ride or for-hire, multiple-occupant, shared-ride basis.
- (i) Carpool. A motor vehicle, including a taxi, occupied by two or more employees who commute together.
- (j) City. The city of Santa Barbara.
- (k) Commute or Commute Trip. A home-to-worksite or worksite-to-home trip regularly made by an employee, including telecommuting.
- (l) Commute Alternative(s). Any means of commuting, other than in a single occupant vehicle, including but not limited to, commuting by carpool, vanpool or bus, or by bicycle, walking, telecommuting or other nonvehicular travel. It is the intent of this chapter to give credit for telecommuting, compressed workweeks and any other work arrangements which reduce the number of commuter vehicle-trips during the peak congestion periods that would otherwise be made without such arrangements.
- (m) Commuter Survey. Any survey employers are required, under this chapter, to conduct among their employees for the purpose of measuring the commute behavior of employees.
- (n) Day. A calendar day.

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- (o) Daytime Employee. An employee who customarily reports to the worksite between 5:00 A.M. and noon.
- (p) Employee. Any person who is compensated through an employer's payroll, including any person who renders services on a part-time or seasonal basis, or as further defined in the employer guidelines.
- (q) Employer. Any person, private entity or public agency, whether or not operated for profit, including the agencies, which owns, operates or controls a fixed or established place of business or operations within the region and operates or controls a worksite at which one or more persons are employed. The term employer does not include construction contractors and subcontractors with no fixed or established place of business in the region.
- (r) Employer Guidelines. The most recent publication(s) prepared by the agencies and/or the administrator to assist employers in developing and implementing TDM programs.
- (s) Employer Participation Rate or EPR. The sum of the basic participation rate and any trip reduction credit ($BPR + TRC = EPR$).
- (t) Employer Submittal(s). Any report, document or data, including but not limited to any baseline or annual commuter survey and any TDM plan or annual plan update, which an employer is required to file with the administrator pursuant to this chapter, the employer guidelines or any resolution, rule or requirement issued pursuant thereto.
- (u) Employer Transportation Coordinator. The individual assigned principal responsibility for implementing the employer's TDM plan and ensuring that the employer is at all times in compliance with the requirements of this chapter and the employer guidelines.
- (v) High Occupancy Vehicles. Cars, vans and buses by which three or more employees commute together.
- (w) In-Lieu Fee. A fee charged to employers that fail to satisfy their participation rate or AVR objectives under this chapter pursuant to [section 23A-9](#). The amount of the in-lieu fee would be determined by calculating the average cost, per employee, of a successful employer TDM program, and multiplying that amount by the number of employees by which the employer failed to achieve its participation rate and/or AVR objectives.
- (x) New Affected Employer. During the first twelve months following the effective date of this chapter, new affected employer means each employer, which, for the first time, employs fifty or more employees at a worksite and therefore becomes subject to the requirements of this chapter as described in the employer guidelines. Following this initial twelve-month period, the new affected employer definition applies to employers of twenty or more employees.
- (y) Nonvehicular Travel. Telecommuting, bicycling, and walking, or any other method of commuting which does not require the use of an automobile or other motor vehicle.
- (z) Peak Period(s). The periods from 7:15 A.M. to 8:45 A.M. and from 3:59 P.M. to 5:59 P.M., Monday through Friday, legal holidays excepted.
- (aa) Region or Regional. The city of Santa Barbara and the Santa Barbara and Goleta planning areas as defined in the comprehensive plan of the County of Santa Barbara.
- (bb) Regional Authority. The department or agency established by the agencies to carry out the provisions of this chapter and the employer guidelines on the behalf of the agencies.
- (cc) Regional Average Vehicle Occupancy Rate. The average vehicle occupancy rate among all daytime employees within the region.
- (dd) Regional Basic Participation Rate. The basic participation rate among all daytime employees within the region.
- (ee) Single-Occupant Vehicle. Any motor vehicle, including any automobile, motorcycle or other motorized two-wheeled vehicle, occupied by no more than one employee.

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- (ff) Surveyed Week. Any period of seven consecutive days which begins and ends during the period which the administrator determines shall be used by an employer for the purpose of conducting a baseline or annual commuter survey.
- (gg) Telecommute. Any means by which an employee satisfies her or his employment obligations for an entire work period without physically travelling to and from the worksite.
- (hh) Transportation Management Organization or TMO. Any organization, entity or association which is comprised of two or more employers and performs or assists its member employers in performing some or all of the requirements of this chapter.
- (ii) Trip Reduction Credit or TRC. The ratio consisting of the number of commute trips to or from a particular worksite during a surveyed week by daytime employees using nonvehicular travel or high occupancy vehicles divided by the total number of daytime employee commute trips reporting to or from the worksite during the same period, multiplied by .25.
- (jj) Work Period. The period which begins when an employee customarily reports to the worksite and ends when the employee customarily ceases to work and departs from the worksite until returning or reporting to the worksite at least eight hours later to recommence work.
- (kk) Worksite or Affected Worksite. A single business location or multiple locations, owned or operated by the same employer, separated by less than one-quarter mile.

(Ord. No. 3922; Ord. No. 4125, § 2)

Sec. 23A-4. Administration.

- (a) The agencies shall jointly establish and fund a regional authority with responsibility for implementing and administering this ordinance on their behalf.
- (b) The regional authority shall appoint an administrator to carry out all provisions of this chapter, including:
 - (1) Assisting employers in satisfying the requirements of this chapter;
 - (2) Carrying out the duties and responsibilities required to be performed under this chapter;
 - (3) Maintaining and updating the employer guidelines for joint approval by the agencies to provide up-to-date instructions, standard submittal formats, and other information necessary for employers to comply with the requirements of this chapter.
- (c) In addition to performing the responsibilities set forth elsewhere in this chapter, the regional authority shall, on behalf of the agencies, assist employers in complying with the provisions of this chapter by:
 - (1) Preparing and distributing to employers, or preparing, making available to, and notifying employers of, documents and other materials which describe, discuss, promote and/or summarize commute alternatives and alternative work hours and methods by which employers can implement them;
 - (2) Coordinating and facilitating the exchange of information among employer transportation coordinators; and
 - (3) Promoting commute alternatives and alternative work hours.
- (d) Annual Report. Each year, within sixty days of the completion of the annual commuter survey, the administrator shall prepare and present to the agencies a status report on the activities undertaken during the preceding year by the administrator and the progress toward attainment of regional and employer objectives. The report shall also set forth recommendations of the administrator or the regional authority regarding changes needed, if any, to this chapter or the employer guidelines to improve the effectiveness or administration of programs under this chapter. In addition, each report shall, at a minimum, provide information regarding the cost to employers of complying with this chapter; the number and nature of enforcement actions taken during the previous year; and the

number, nature and disposition of appeals filed by employers. In addition, the report shall discuss information gained through the annual commuter survey which relates to the ability of individual employers to satisfy their AVR or participation rate objectives under this chapter. Such information shall include the impacts of employee childcare needs and the adequacy of critical services and infrastructure such as public transit, rideshare matching services, childcare facilities, area bike paths, and the like.

- (e) Five-Year Comprehensive Ordinance Review. Within sixty days of the completion of the fifth annual commuter survey required under this chapter, and prior to the imposition of any in-lieu fees or mandatory employer AVR requirements, the agencies shall prepare and conduct an overall evaluation of the regional TDM program established under this chapter. This evaluation shall assess the effectiveness of the program in satisfying the objectives of this chapter and shall include recommendations regarding needed amendments.

(Ord. No. 3922)

Sec. 23A-5. Employer responsibilities.

- (a) Information Dissemination and Commuter Survey Requirements. Each employer shall comply with the information dissemination and commuter survey requirements of this chapter and the employer guidelines. Each employer required to conduct a commuter survey under this chapter shall obtain a completed commuter survey from each of its employees in the region that accurately represents employee travel and work characteristics.
- (b) Employer Requirements. Each affected employer and each new affected employer shall satisfy the following employer requirements at all affected worksites:
 - (1) EPR. By the completion of the employer's third annual commuter survey, achieve and thereafter maintain an employer participation rate (EPR) which is not less than sixty-five percent;
 - (2) AVR. If the regional AVR objective is not achieved by the completion of the fifth annual commuter survey required under this chapter as a result of efforts made by employers to satisfy their participation rate objective, then the following additional requirement will be established for affected employers:
 - (A) Within an additional two years, affected employers shall achieve a ten percent increase over baseline AVR,
 - (B) Each employer shall thereafter maintain such AVR;
 - (3) The failure of an employer to achieve the employer requirements set forth in this subsection shall not be deemed a violation of this chapter.
- (c) Employer Transportation Coordinator. This subsection shall apply to all affected employers during their first year under this chapter, and will continue to apply to all affected employers and new affected employers until acceptable progress, as defined in the employer guidelines, is attained and maintained. Each affected employer and each new affected employer shall appoint and retain an employer transportation coordinator (hereinafter referred to as the "coordinator") no less than thirty days prior to executing its baseline commuter survey. The employer shall provide the administrator with the full name, title, business address and telephone number of the employer's coordinator, and shall notify the administrator of any change thereto within thirty days of such change.
- (d) Employer Submittals; Implementation of TDM Plans. All employer submittals shall be required to satisfy the requirements of this chapter and the employer guidelines.
 - (1) Baseline Commuter Survey.
 - (A) Each employer shall, within ninety days of notice from the administrator, conduct and file a baseline commuter survey in accordance with the employer guidelines,

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- (B) The administrator shall tabulate, calculate and return commuter survey results to each employer;
- (2) TDM Plans; Filing and Implementation.
- (A) Not more than ninety days following return of the tabulated baseline commuter surveys from the administrator, each affected employer and each new affected employer shall develop, prepare and file with the administrator an accurate and complete written TDM plan to be implemented at all affected worksites,
 - (i) Employers may elect to prepare a single plan for all affected worksites or individual plans for individual worksites,
 - (ii) Employers with multiple affected worksites that elect to prepare a single plan for all such worksites shall be required to identify in its TDM plan programs, measures and policies affecting its TDM program that differ from worksite to worksite,
 - (B) The TDM plan shall at a minimum state the following:
 - (i) Any practicable combination of employer programs, as described in the employer guidelines, sufficient to achieve and/or maintain the EPR and employer AVR objectives specified in [section 23A-4\(b\)](#) of this chapter,
 - (ii) Any reasonable combination of information dissemination and marketing measures designed to promote the use by the employer's employees of commute alternatives and alternative work hours, and
 - (iii) All other information or documentation specified in the employer guidelines,
 - (C) Not later than the first work day following the filing by an employer of a TDM plan, and continuing thereafter without cessation, the employer shall implement and carry out all provisions of the TDM plan. When the employer files a required resubmittal or the administrator requires the employer to cease implementing any portion of the TDM plan, the employer shall not be required to continue carrying out those portions, if any, of the original TDM plan which conflict with or are made unnecessary by any provisions of the resubmittal or requirement of the administrator;
- (3) Annual Commuter Surveys.
- (A) Affected Employers and New Affected Employers. Not more than thirty days after each anniversary of the filing of its baseline commuter survey, each affected employer and new affected employer shall conduct a new commuter survey (hereinafter referred to as the "annual commuter survey") and submit the executed surveys to the agencies for processing in accordance with the employer guidelines.
 - (B) Other Employers. Not more than thirty days after the third, fifth and seventh anniversaries of the first baseline commuter survey conducted under this chapter and at other times as determined by the administrator, each employer shall conduct an annual commuter survey and submit the executed surveys to the agencies for processing in accordance with the employer guidelines;
- (4) Annual Plan Update; Filing and Implementation. This subsection shall apply to all affected employers and new affected employers until acceptable progress, as defined in the employer guidelines, is attained and maintained.
- (A) Not more than ninety days following return of the tabulated annual commuter surveys from the administrator, each affected employer required to file a TDM plan shall develop, prepare and file with the administrator an accurate and complete written annual plan update to be implemented at all affected worksites. The annual plan update shall be prepared in accordance with the employer guidelines.
 - (B) Not later than the first work day following the date when the annual plan update is required to be filed and continuing thereafter without cessation, the employer shall commence

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implementing and carrying out all provisions of the update, including any and all provisions of the TDM plan and previously filed annual plan update to the extent that they do not conflict with and are not made unnecessary by the most recently filed annual plan update.

- (5) Employer Agreements. Any employer may by agreement join with any other employer, person or entity for the purpose of performing all or any of the actions required by this chapter. Employers shall be jointly and severally responsible for all actions required and any penalties imposed pursuant to this chapter.

(Ord. No. 3922)

Sec. 23A-6. Rejected, resubmitted, and late employer submittals.

- (a) Rejection of Submittals. The administrator may reject and require the resubmission of an employer submittal which is incomplete, contains information that is false or inaccurate, has not been prepared in accordance with the provisions of this chapter or the employer guidelines, or which has been determined by the administrator to be inadequate to satisfy the objectives of this chapter, including all requirements adopted by the agencies pursuant to or in furtherance of the provisions of this chapter. For every rejection of a submittal required under this chapter, the administrator shall notify employers in writing within sixty days of the date upon which the document was required to have been submitted.
- (b) Inadequate Resubmittals. If an employer has been required to resubmit any submittal or to conduct a new commuter survey and the employer thereafter fails to do so in accordance with the provisions of this chapter, the employer guidelines, or any terms and conditions prescribed by the administrator, the administrator may in his or her discretion do one of the following:
 - (1) Require the employer to revise and resubmit the submittal in accordance with the terms and conditions the administrator reasonably determines are necessary; or
 - (2) Find that the employer's failure to revise the submittal or conduct a new commuter survey in accordance with the terms prescribed by the administrator, the requirements of this chapter, or the employer guidelines is without substantial justification and constitutes a violation of this chapter.
- (c) Processing Fees for Resubmittals. For each employer submittal which is filed because a previous submittal has been rejected and returned by the administrator, the administrator may impose a charge sufficient to defray the expense to the agencies of reviewing and processing the revised or new submittal. The amount of these charges shall be set by resolution of the agencies.
- (d) Late Submittals. For each employer submittal filed within thirty days after the required filing date and for which an extension has not been granted, or which has not been scheduled for determination, a charge determined by resolution of the agencies may be imposed to defray the expense to the agencies of reviewing and processing such submittals. Submittals filed more than thirty days after the required filing date shall be deemed in violation of this chapter.

(Ord. No. 3922)

Sec. 23A-7. Extensions.

- (a) A request for extension shall be made in writing and filed with the administrator according to the procedures described in the employer guidelines. Each request shall identify the reasons why the request for extension should be granted. The administrator may grant an extension:
 - (1) Up to, but not exceeding two calendar years in which to satisfy the EPR objective set forth in [section 23A-4\(b\)\(1\)](#) of this chapter;
 - (2) Up to but not exceeding ninety days for filing a TDM plan;

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- (3) Up to but not exceeding sixty days for filing a baseline or annual commuter survey or an annual plan update.
- (b) The administrator may impose such conditions as she or he determines are necessary to ensure compliance with any provisions of this chapter. Requests for extension shall be scheduled for decision by the administrator within fifteen days of filing such request, unless, prior to the expiration of the fifteen day period, the administrator notifies the employer in writing that the scheduled determination period has been extended. The administrator may impose a charge sufficient to defray the expense to the agencies of such determination, as well as any increased expense for tabulating or calculating a commuter survey for which an extension has been granted. The employer shall be notified in writing within sixty days of a decision of the administrator to grant or deny a request for extension and the basis for that decision. The decision of the administrator shall be final.

(Ord. No. 3922)

Sec. 23A-8. Notices of rejection, required action and violation—Hearings.

- (a) For each rejection of an employer submittal issued pursuant to this chapter and for each violation of this chapter, the administrator shall, within sixty days, give written notice to the affected employer.
- (b) Any employer provided a notice of rejection or violation shall have the right to an appeal hearing before the administrator. The request must be made in writing and received by the administrator within ten days of the date of the notice. The administrator shall conduct the hearing, at which both written and oral evidence may be presented, and shall decide whether a violation occurred, the appropriate penalty, and whether the rejection and/or required resubmittal were appropriate. The employer shall be notified in writing of the decision of the administrator within thirty days. The administrator shall exercise his or her discretion in making this decision.
 - (1) For a first violation within a twelve month period, the decision of the administrator shall be final. The administrator shall make written findings that the decision is based on substantial facts and testimony, and that such decision is consistent with the purpose and intent of this chapter.
 - (2) For a second or subsequent violation within a twelve month period, for a second or subsequent rejection of an employer submittal, and for any rejection of an employer's commuter survey, the employer shall have the right to appeal the decision of the administrator by requesting a hearing before the appeals board. The request for hearing before the board shall be in writing and shall be delivered to the administrator not later than ten days after the administrator notifies the employer of his or her decision. At the hearing, the board shall receive both written and oral evidence and shall have the authority to affirm, reverse or modify the decision of the administrator. The decision of the appeals board shall be final. The employer shall be notified in writing of the decision of the appeals board within thirty days.

(Ord. No. 3922)

Sec. 23A-9. Appeals board.

- (a) As used in this chapter, "appeals board" shall refer to a board consisting of three members appointed by the city council, three members appointed by the county board of supervisors, and one member whose appointment is approved by both the city council and the county board of supervisors. The members of the appeals board shall be appointed as follows:
 - (1) The city council shall approve by resolution the appointment of three members of the appeals board, at least two of whom shall represent affected employers, the employees of affected employers or organizations representing the same.
 - (2) The county board of supervisors shall approve by resolution the appointment of three members of the appeals board, at least two of whom shall represent affected employers, the employees of affected employers or organizations representing the same.

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- (3) The six persons appointed by the agencies shall meet and propose to the city council and county board of supervisors the name of a person to be appointed as the seventh member and chair of the appeals board.
 - (4) Neither of the agencies shall be represented on the appeals board as employer representatives.
 - (5) The city and county shall each approve by resolution or reject the proposed appointment of the seventh member and chair of the appeals board.
- (b) Following the appointment of the seventh member of the appeals board, the board shall meet as needed.
 - (c) Each appointee shall serve as a member of the appeals board for a period of two years from the date of his or her appointment. Vacancies shall be filled and new appointments made in the manner provided in subsection (a) of this section.
 - (d) Appeals. The appeals board shall hear and decide appeals as provided in this chapter in accordance with the requirements of this chapter and the employer guidelines, and make the following finding: That the action taken is consistent with the intent of this chapter, the employer guidelines and with [section 23A- 1\(b\)](#) of this chapter.
 - (e) Annual Reports. The appeals board may review and submit comments to the Administrator regarding the requirements of this chapter, including the goals and objectives set forth herein and other matters that bear relationship to or further the intent of this chapter.
 - (f) All hearings and meetings of the board shall be governed by the Brown Act (Government Code Section 54950 et seq.) and shall be conducted in accordance with the guidelines of the Fair Political Practices Commission. The board shall transcribe or record the hearings and other proceedings of the board. Each member of the board shall have the power to administer oaths and affirmations in any hearing or proceeding.
 - (g) The agencies shall jointly establish the compensation, if any, to be paid to members of the appeals board, and each agency shall provide one-half of the funds required to compensate board members and defray the operating costs of the board.
 - (h) Except as expressly authorized in this chapter, the appeals board shall have no authority to review, affirm, overrule or modify the actions of the administrator.

(Ord. No. 3922)

Sec. 23A-10. In-lieu fees.

If the regional participation rate and AVR objectives established in sections [23A- 1\(c\)](#) and (d) of this chapter are not satisfied upon completion of the five year comprehensive ordinance review required under [section 23A-3\(e\)](#) of this chapter, in-lieu fees may be adopted and this chapter and the employer guidelines amended accordingly.

(Ord. No. 3922)

Sec. 23A-11. Violations.

- (a) Except as provided in subsection (b) and (c) of this section, any failure by an employer to comply with any provision of this chapter shall constitute a violation.
- (b) The first rejection by the administrator of a baseline or annual commuter survey or a TDM plan or annual plan update shall not constitute a violation of this chapter.
- (c) The failure of an employer to achieve any employer objective shall not constitute a violation of this chapter.

(Ord. No. 3922)

Sec. 23A-12. Penalties and charges.

The following penalties shall apply to any violation of any provision of this chapter:

- (a) For the first violation within the preceding twelve calendar months, the administrator shall, within sixty days, issue a written notice of the fact of such violation. Failure to cure any violations within thirty days shall constitute an additional violation.
- (b) For a second and any subsequent violation within the preceding twelve calendar months, the administrator shall, within sixty days, notify the employer and impose a fine against the employer who committed the violation in an amount not to exceed five hundred dollars.
- (c) In determining the appropriate penalty, the administrator shall consider whether the employer knew of the violation at the time that it occurred and whether the employer took reasonable action to correct the violation upon notification of the violation.

(Ord. No. 3922)

Sec. 23A-13. Records.

With the exception of completed commuter surveys, each employer shall retain and maintain in good order the originals or legible copies of all documents created, gathered or used by the employer for the purpose of preparing any employer submittal. These documents shall be retained by the employer for a period of two years following the filing of the employer submittal to which the documents relate. Upon sixty days' notice by the administrator to the employer, the documents shall be made available to the administrator or the appropriate agency for their review, inspection and copying.

(Ord. No. 3922)

Sec. 23A-14. Notices.

- (a) For every submittal required under this chapter that is rejected by the administrator pursuant to [section 23A-7](#) of this chapter, the administrator shall notify the employer in writing within sixty days of the date upon which the document was required to have been submitted. Each required submittal for which an employer has not received a written notification from the administrator within sixty days of the date upon which the document was required to have been submitted shall be deemed adequate by the administrator.
- (b) For any written notice provided by the administrator pursuant to this chapter, the notice shall be deemed to have been given as of the date of mailing by the administrator if the notice is mailed (by first class mail, postage prepaid), or as of the date of actual receipt if the notice is delivered by hand. Any notice required to be filed with the administrator shall be deemed filed as of the date of actual receipt by the administrator.

(Ord. No. 3922)

Sec. 23A-15. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

(Ord. No. 3922)

Sec. 23A-16. Effective date.

This chapter shall take effect thirty days after the execution of a joint powers agreement between the city of Santa Barbara and the County of Santa Barbara for the administration of this chapter, and before the expiration of fifteen days after its passage it, or a summary of it, shall be published once, together with the names of the members of the board of supervisors voting for and against the same in the Santa Barbara News Press, a newspaper of general circulation published in the County of Santa Barbara.

(Ord. No. 3922)