

Ordinance Number 1604
(and amendments)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA MUNICIPAL CODE TO REQUIRE NEW AND EXISTING NON-RESIDENTIAL DEVELOPMENT PROJECTS TO ADOPT EMISSION REDUCTION PLANS AND PAY TRANSPORTATION IMPACT FEES TO REDUCE TRAFFIC CONGESTION AND IMPROVE AIR QUALITY IN THE CITY.

SECTION 1. Chapter 2B is added to Article IX of the Santa Monica Municipal Code to read as follows:

CHAPTER 2B - TRANSPORTATION MANAGEMENT

SECTION 9.16.010. **Findings.** The City Council finds and declares:

- (a) Expected growth in population and employment opportunities in the City will be accompanied by concomitant increases in traffic congestion.
- (b) Transportation and traffic studies project that future traffic levels on surface streets will be severe unless measures are taken to reduce commute hour traffic levels.
- (c) Air quality studies indicate that ozone and carbon monoxide concentrations exceed state and federal standards some days in the City.
- (d) Traffic along some major routes in the City has or is expected to reach Level of Service "F" during peak hours, indicating conditions where excessive delays develop repeatedly due to vehicles arriving at rates greater than capacity and where emergency vehicle travel is impeded.
- (e) New development and major additions to existing development by the year 2010 will have an adverse impact on the existing transportation systems by adding approximately 17,000 trips to the existing demand of over 20,000 p.m. peak hour trips from non-residential land uses.
- (f) The City's General Plan calls for formation of a plan to implement the transportation management policies of the Circulation Element, an uncongested traffic circulation system, energy conservation, and maintenance of noise and air quality levels within established standards.
- (g) The transportation system is impacted City-wide by the traffic and parking requirements of development.
- (h) Transportation Systems Management, Transportation Demand Management, and Transportation Facilities Development strategies can improve service and operations to increase mobility and the general efficiency of the system. These strategies encompass traffic operations, ridesharing, and bicycle improvements as well as transit planning and management of the system. These strategies enhance vehicle flow or shift demand on an existing transportation facility and can

be effective to mitigate negative effects of transportation, such as air quality, energy use, and noise levels.

(i) Reduction of congestion and the time of commute trips will improve the quality of life in the City and improve the quality and level of access for residents and employees and patrons of local businesses.

(j) Coordination of Transportation Systems Management, Transportation Demand Management, and Transportation Facility Development strategies with other cities and counties in the region and through regional agencies will assist in meeting the goals of this Chapter.

SECTION 9.16.020. **Purpose and Objectives.** The purpose and objectives of this Chapter are to establish an Emission Reduction Plan that will:

(a) Allow for any growth permitted by the land use plans of the City while minimizing peak-hour automobile commute trips from new and existing places of employment.

(b) Reduce traffic impacts within the community and region through a reduction in the number of vehicular trips and total vehicle miles traveled.

(c) Reduce the vehicular air pollutant emissions, energy usage, and ambient noise levels through a reduction in the number of vehicular trips, total vehicle miles traveled, and traffic congestion.

(d) Ensure City compliance with South Coast Air Quality Management District Rule 2202, and require employers both to meet Rule 2202 emission reduction targets and to achieve City traffic objectives.

(e) Achieve a commuter Average Vehicle Ridership of 1.50 or the equivalent in emission reductions within one (1) year for employers of 100 employees or more.

(f) Achieve City-wide commuter Average Vehicle Ridership of 1.50 or the equivalent in emission reductions within three (3) years.

(g) Maintain levels of service on streets and intersections during peak-hours at or below capacity for as long a period of time as feasible.

(h) Prevent levels of service on streets and intersections that have not reached Level of Service "E" during peak-hours from reaching that level.

(i) Improve levels of service on streets and intersections that have already reached Level of Service "E" during peak-hours.

(j) Minimize the percentage of employees traveling to and from work at the same time and during peak hour periods in single occupant vehicles.

(k) Assist in attainment of the requirements of the Federal Clean Air Act.

- (l) Implement several air quality control measures required of local governments by the 1991 Air Quality Management Plan adopted by the South Coast Air Quality Management District and subsequent updates.
- (m) Promote and increase work-related transit use, ridesharing, walking and bicycling to minimize parking needs and to protect critical intersections from severe overload.
- (n) Decrease the government cost of transportation and parking facility construction and improvements.
- (o) Maximize the use of commute modes other than the single-occupancy vehicle through Transportation Systems Management, Transportation Demand Management, and Transportation Facilities Development.

SECTION 9.16.030. **Definitions.** The following words and phrases shall have the following meanings when used in this Chapter:

Audit. A selective inspection by the City of an employer's activities related to the fulfillment of ongoing implementation and monitoring of an approved Emission Reduction Plan.

Average Vehicle Ridership (AVR). The total number of employees who report to or leave the worksite or another job-related activity during the peak periods divided by the number of vehicles driven by these employees over that five-day period. The AVR calculation requires that the five-day period must represent the five days during which the majority of employees are scheduled to arrive at the worksite. The hours and days chosen must be consecutive. The averaging period cannot contain a holiday and shall represent a normal situation so that a projection of the average vehicle ridership during the year is obtained.

An example of morning AVR using a weekly averaging period for an employer with 300 employees all reporting to work weekdays between 6:00 a.m. and 10:00 a.m. is:

Employees reporting to work:

Monday	300
Tuesday	300
Wednesday	300
Thursday	300
Friday	300
Total	1500

Number of vehicles driven to the worksite by these employees:

Monday	270
Tuesday	250
Wednesday	280

Thursday	265
Friday	262
Total	1327

In this example, AVR is arrived at by dividing the number of employees reporting to work between 6:00 a.m. and 10:00 a.m. during the week (1500) by the number of vehicles driven to the worksite between the same hours during the week (1327):

$$\frac{1500}{1327} = 1.13 \text{ AVR}$$

A similar calculation is required for obtaining the afternoon peak period AVR for commute trips to and from the worksite between 3:00 p.m. and 7:00 p.m..

AVR Target. The AVR that a Emission Reduction Plan is designed to achieve for a particular worksite. The AVR target for worksites in Santa Monica is 1.5 AVR.

AVR Verification Method. A method approved by the City's Transportation Management Coordinator for determining an employer's current AVR.

AVR Window. The period of time comprised of both hours and days used to calculate AVR (i.e., 6:00 a.m. -10:00 a.m. and 3:00 p.m. - 7:00 p.m.).

Carpool. A motor vehicle occupied by two (2) or more persons traveling together to and from the worksite for the majority (at least 51%) of the total commute.

Commute Trip. A home-to-work or work-to-home trip.

Compliance Inspection. An unannounced inspection by the City of an employer's activities related to the fulfillment of ongoing implementation and monitoring of an approved Emission Reduction Plan.

Compressed Work Week. This applies to employee(s) who, as an alternative to completing the basic work requirement in five, eight-hour workdays in one week are scheduled in a manner which reduces vehicle trips to the worksite. The recognized compressed work week schedules for purposes of Chapter 9.16 of the Municipal Code are thirty-six hours in three days (3/36), forty hours in four days (4/40), or eighty hours in nine days (9/80).

Consultant ETC. A person that meets the requirements of and that serves as an ETC at a single worksite for an employer other than the Consultant ETC's employer.

Developer. Any person responsible for development of a non-residential development project that will result in ten (10) or more peak period trips.

Disabled Employee. An individual with a physical or mental impairment which prevents the individual from complying with the employer's emission reduction plan.

Emission Reduction Plan (ERP). A plan intended to reduce emissions related to employee commutes and to meet a worksite specific emission reduction target for the subsequent year.

Emission Reduction Plan Appeals Board (ERP Appeals Board). The administrative review body for decisions of the City's Transportation Management Coordinator. The ERP Appeals Board shall consist of the Transportation Planning Manager, the Director of Planning and Community Development, and an at-large member appointed by the City Council. The Transportation Planning Manager and the Director of Planning and Community Development may designate an employee from his or her division or department as his or her representative.

Emission Reduction Target (ERT) The annual VOC, NOx, and CO emissions required to be reduced based on the number of employees per worksite and the employee emission reduction factor.

Employee. Any person employed by a person(s), firm, business, educational institution, nonprofit agency or corporation, government agency or other entity who reports to work at a single worksite for six months or more, excluding paid resident students working on a school campus. Temporary employees, part-time employees, field construction workers and independent contractors shall be treated as defined.

Employee Transportation Coordinator (ETC). The designated person, with appropriate training as approved by the City who is responsible for the development, implementation and monitoring of the Employee Trip Reduction Plan. The ETC must be at the worksite a minimum of fifteen hours per week or have a certified On-site Coordinator at the worksite a minimum of fifteen hours per week. All worksite-related information must be kept at the worksite. Employee Transportation Coordinators shall participate in City-sponsored workshops and information roundtables.

Employee Trip Reduction Plan (ETRP). A plan for implementation of strategies that are designed to reduce employee commute trips during the AVR windows.

Employer. Any public or private employer, including the City of Santa Monica, having a permanent place of business in the City and employing 10 or more employees.

Field Construction Worker: An employee who reports directly to work at a construction site outside the City of Santa Monica for the entire day, an average of at least six months out of the year. These employees will not be calculated in the AVR, but shall count as part of employee population when figuring the Employer Annual Impact Fee.

Holiday. Those days designated as National or State Holidays, or religious or other holidays in which more than 10% of the employee population observes by not reporting to work. These days shall not be included in the AVR survey week.

Independent Contractor. An employee who enters into a direct written contract or agreement with an employer to perform certain services and is not on the employer's payroll. These employees shall be treated as Temporary Employees.

Level of Service (LOS). A term to describe prevailing and projected traffic conditions on a roadway and is expressed by delay and the ratio of volume/capacity (V/C). Six levels of service are designated "A" through "F." "A" describes a free flowing condition and "F" describes forced traffic

flow conditions with severe capacity deficiencies and delays. This definition is based on the Highway Capacity Manual Transportation Research Board SR 209 (1985).

Low Income Employee. An individual whose salary is equal to or less than the current individual income level set in California Code of Regulations, Title 25, Section 6932, as lower income for the county in which the employer is based. Higher income employees may be considered to be "low-income" if the employee demonstrates that the plan disincentive would create a substantial economic burden.

Monitoring. The techniques used to assess progress towards complying with the transportation management plan.

Multi-Site Employer. Any employer which has more than one worksite within the City of Santa Monica, or more than one worksite in the South Coast Air Basin with one or more of those sites located in the City of Santa Monica.

Multi-Tenant Worksite. A structure, or group of structures, on one worksite where more than one employer conducts a business.

On-Site Coordinator: An employee who serves as on-site contact for employees at a worksite served by a Consultant ETC, or for an employer with more than one worksite located in the City of Santa Monica.

Parking Cash-Out. Assembly Bill 2109 that requires employers with fifty or more employees who lease their parking and subsidize all or part of that parking to implement a Parking Cash-Out Program. Employers who fall under the purview of parking cash-out must offer their employees the option to give up their parking spaces and receive a cash subsidy in an amount equal to the cost of the parking space. Employers who are subject to parking cash-out requirements must implement a parking cash-out plan. Employers who do not implement a parking cash-out plan will have their Emission Reduction Plans disapproved.

Part-Time Employee. Any employee who reports to a worksite on a part-time basis fewer than 32 hours per week, but more than 4 hours per week. These employees shall be included in the AVR calculations of the employer provided the employees report to or leave the worksite during the AVR window.

Peak Period. In the morning, the peak period includes the hours from 6:00 a.m. to 10:00 a.m. In the evening, the peak period includes the hours from 3:00 p.m. to 7:00 p.m..

Peak Period Trip. An employee's commute trip that begins or ends at the worksite or a work related trip within the peak period.

Pedestrian Oriented Use. A use which is intended to encourage walk-in customers and which generally does not limit the number of customers by requiring appointments or otherwise excluding the general public. Such uses may include, but not be limited to, neighborhood commercial uses, retail uses, cultural uses, restaurants, cafes, and banks.

Performance Target Zone. A geographic area that determines the employee emission reduction factor for a particular worksite. Santa Monica is located in Zone 2.

Preferential Parking. Parking spaces designated or assigned for carpool and vanpool vehicles carrying commute passengers on a regular basis and are provided at a reduced cost and/or in a location more convenient to a place of employment than parking spaces provided for single occupant vehicles.

Remote Sensing. An emissions reduction strategy in which gross-polluting vehicles are identified by exhaust gas analyzers. Remote sensors measure absorption changes in the infrared or ultraviolet light spectrum and correlates that change to exhaust emission levels. Emission reductions resulting from the subsequent repair of the identified vehicles can be used to meet commute emission reduction targets.

Ridesharing. Any mode of transportation other than a single occupancy vehicle that transports one or more persons to a worksite.

South Coast Air Quality Management District (SCAQMD). The air quality control agency that monitors and enforces air quality regulations in Los Angeles, Orange, Riverside, and San Bernardino Counties.

Telecommuting. Any employee(s) working at home, off-site, or at a telecommuting center for a full work day, eliminating the trip to work or reducing travel distance by more than 50%.

Temporary Employee. Any person employed by an employment service or a "leased" employee, that reports to a worksite other than the employment service's worksite, under a contractual arrangement with a temporary employer. Temporary employees are counted as employees of the employment service for purposes of calculating AVR. Temporary employees reporting to the worksite of a temporary employer for a consecutive period of more than six months shall count as an employee of the temporary employer and shall be calculated in the AVR. The temporary employee shall also be considered an employee when figuring the Employer Annual Impact Fee.

Temporary Employer. Any employer who "leases" an employee from an employment service, or who hires an independent contractor as defined.

Training Provider. A person, firm, business, educational institution, non-profit agency or corporation or other entity which meets requirements and is certified by the Executive Officer of the South Coast Air Quality Management District and the City of Santa Monica's Transportation Management Coordinator to provide training, as required by Chapter 9.16 of the Municipal Code, to Employee Transportation Coordinators (ETCs).

Transportation Demand Management ("TDM"). The implementation of strategies that will encourage individuals to either change their mode of travel to other than a single occupancy vehicle, reduce trip length, eliminate the trip altogether, or commute at other than peak periods.

Transportation Facility Development ("TFD"). Construction of major capital improvements to a highway or transit system or installation of operating equipment that includes new construction of the existing system or construction of a new system.

Transportation Management Association ("TMA"). A group formed so that employers, employees, and developers can collectively address community transportation related problems. Transportation Management Associations may be formed to implement TDM, TSM, and/or TFD strategies in employment clusters or at multi-tenant worksites. The primary function of a TMA is to pool resources to implement solutions to commuter-related congestion problems in conjunction with the City Transportation Coordinators. The City may identify employment clusters or multi-tenant worksites where an employer organization such as a TMA should be formed.

Transportation System Management ("TSM"). Strategies designed to improve traffic flow through modifications in, or coordination of, the operation of existing facilities.

Trip Reduction. The reduction in single occupant vehicle trips by private or public sector programs used during peak periods of commuting.

Vanpool. A van or similar motor vehicle in which 7 or more persons commute to and from the worksite.

Vehicle. A passenger car or truck used for commute purposes including any motorized two wheeled vehicle. Vehicles shall not include bicycles, transit vehicles, buses serving multiple worksites, or vehicles that stop only to load or unload passengers or materials at a worksite while on route to other worksites.

Work Place or Worksite. A building, part of a building, or grouping of buildings located within the City which are in actual physical contact or separated solely by a private or public roadway, and are owned or operated by the same employer. Employers may opt to treat more than one structure, building, or grouping of buildings as a single worksite even if they do not have the above characteristics if they are owned or leased by the same employer, and are wholly located within the City of Santa Monica. Structures that are located more than ½ mile away from each other must have a certified ETC or On-Site Coordinator at each site.

SECTION 9.16.040. **Applicability.** This Chapter shall apply to employers and developers as defined above. The City shall not be exempt from the requirements of this Chapter.

SECTION 9.16.050. **Transportation Fee.**

(a) Employer Annual Transportation Fee. There shall be an Employer Annual Transportation Fee. The purpose of the Employer Annual Transportation Fee is to pay for the costs of administration and enforcement of this Chapter.

(1) Employers of 50 or more employees filing Employee Trip Reduction Plans (ERPs) and employers of 10-49 employees filing Worksite Transportation Plans (WTPs) shall pay an annual transportation fee calculated using the following formula: Fee = (Number of Employees) x (Employee Cost Factor). The current Employee Cost Factor equals:

(a) Employee Cost Factor =

- _____ 1. \$7.00 per employee for employers with 50 or more employees.
2. \$9.00 per employees for employers with 10 - 49 employees.

The Employee Cost Factor shall from time to time be amended by resolution of the City Council.

(2) The Annual Transportation Fee for employers of fifty or more employees who choose to implement the Emission Reductions Options described in Section 9.16.070 (a) - (c) shall be established and from time to time amended by resolution of the City Council. The current fee is \$401.70 per worksite.

(b) For purposes of calculating an employer's annual transportation fee, the definition of employee shall include full-time, part-time, temporary, seasonal, at-home or in-field contractors of consultants working at a worksite for an average of six months or more.

(3) Employers shall be notified of the Employer Annual Transportation Fee when they receive notice to submit an ERP or WTP in accordance with Section 9.16.090. Employer Impact Transportation Fees shall be due and paid in full with the submittal of the Emission Reduction Plan. The City shall mail notice of payment required by this subsection at least 90 calendar days prior to the due date.

(4) Once the Employer Annual Transportation Fee required pursuant to this Section has been paid, there shall be no refunds.

(5) Employers of fifty employees or more who implement an Employee Trip Reduction Plan and demonstrate attainment of a 1.5 a.m. and p.m. AVR shall receive the following reductions in their Employer Annual Transportation Fees:

a. Attainment of a 1.50 a.m. and p.m. AVR for one year shall result in a 40% reduction of Employer Annual Transportation Fees.

b. Attainment of a 1.50 a.m. and p.m. AVR for two consecutive years shall result in a 50% reduction of Employer Annual Transportation Fees.

c. Attainment of a 1.50 a.m. and p.m. AVR for a period of three or more consecutive years shall result in a 60% reduction of Employer Annual Transportation Fees.

(5) Employers of fifty or more employees who join a TMA certified by the City shall receive a 25% reduction in the Annual Employer Transportation Fee. This reduction shall be in addition to any fee reduction the employer is awarded for attainment of a 1.5 a.m. and p.m. AVR. Fees charged by the TMA to employers for its operation and administrative costs shall be separate from the City's Employer Transportation Fee.

(b) Developer Impact Fee: The purpose of the developer impact fee is to defray the costs of providing transportation facilities and services associated with new commercial development.

(1) Developers who apply for building permits for new or expanded development projects in the City shall mitigate their resultant transportation by paying a one-time transportation impact fee.

The amount of the fee and manner of payment shall be established and from time to time amended by resolution of the City Council.

(2) Fees shall apply to developers who have not received certificates of occupancy as of the effective date of the resolution establishing the fees.

(3) Developers shall pay the required fee prior to issuance of a building permit. Developers who have already obtained building permits must pay the required fee prior to issuance of a certificate of occupancy.

(4) The following land uses are encouraged by the City because of their beneficial impacts and shall receive reductions from the Developer Impact Fee: supermarkets and pedestrian oriented uses on the ground floor of a multi-story building. Both the Impact Fee and the reduction shall be established by resolution.

(5) Refunds of the Developer Impact Fee shall be made upon filing of a request for refund within six (6) months of expiration of a building permit upon verification that construction of the improvements for which the permit was issued have not commenced and no extensions of the building have been granted. No interest shall be paid on any refunded fee.

SECTION 9.16.060. Deposit and Use of Fees.

(a) Employer Transportation Fees collected pursuant to Section 9.16.050(a) shall be deposited in an account separate from the General Fund and shall be allocated to TMP office administration and the development and operations of TMAs.

(b) Developer Impact Fees collected pursuant to Section 9.16.050(b) shall be deposited into an account separate from the General Fund and shall be allocated to the following uses:

- (1) Transportation Demand Management (TDM) improvements
- (2) Transportation System Management (TSM) improvements
- (3) Transportation Facility Development (TFD).
- (4) Public transit improvements.

SECTION 9.16.070. Contents of Emission Reduction Plans. Employers of 50 or more employees are required to submit to the City, within ninety days of notification, an Emission Reduction Plan designed to reduce emissions related to employee commute trips and to meet specific emissions reduction targets specified for the subsequent year. The annual Emission Reduction Target (ERT) shall be determined according to the following equation for VOC, NOx, and CO, based on employee emission reduction factors specified in paragraph (j) of this Section. Any employer who falls under the purview of Assembly Bill 2109 shall implement a Parking Cash-Out Program. Failure to do so will result in the disapproval of an employer's ERP.

[ERT (in lbs. per year)] =

[{employees} x {employee emission reduction factor}] - {vehicle trip emission credit}

Where:

Employee window = Average daily number of employees reporting to work in the window

Employee Emission Reduction Factor = Determined by the year of the plan submittal as defined in Paragraph (g) of this Section.

Vehicle Trip Emission Credits = Determined according to paragraph (g) of this Section

Each employer shall choose one or more of the following options to implement in their Emissions Reduction Plan:

- a. Old Vehicle Scrapping
- b. Remote Sensing
- c. Other Work-Related Trip Reductions
- d. Employee Trip Reduction Plan

(a) Old Vehicle Scrapping: In order to meet their emission reduction target, any employer of fifty or more employees may scrap old vehicles by purchasing Mobil Source Emission Reduction Credits (MSERCs) from an SCAQMD licensed Vehicle Scrapper/Broker, in accordance with SCAQMD Rule 1610.

(1) All Scrappers/Brokers must be licensed by the SCAQMD and adhere to SCAQMD Rule 1610 requirements.

(2) An annual plan indicating the amount of credits purchased and the amount of emissions reduced must be submitted to the City's Transportation Management Coordinator each year.

(3) MSERCs must be transferred to the City MSERC Account no later than 180 days after the approval of the ERP by the City's Transportation Management Coordinator.

(4) Employers choosing this option must do so for a minimum period of three years.

(b) Remote Sensing: Any employer of fifty or more employees may implement a Remote Sensing Program to earn credit towards their emission reduction target. Emission reductions obtained from the implementation of remote sensing shall be determined according to the following equation:

$$\begin{aligned} &[\text{emission reductions in lbs per year}] = \\ &[\{\text{pre-repair emission rate in lbs per mile}\} - \\ &\{\text{post-repair emission rate in lbs per mile}\}] \times [\text{miles traveled}] \end{aligned}$$

When:

Pre-Repair = Measured Emission rate prior to work

Post-Repair = Measured emission rate immediately following repair work.

Miles Traveled = Number of miles traveled following repair work until the next regularly scheduled California Inspection and Maintenance Smog Check.

(1) Vehicles used in the Remote Sensing Program may come from any source (i.e., employee vehicles, fleet vehicles, non-employee vehicles). Employers shall not require employees to repair their vehicles.

(2) An annual plan must be submitted to the City's Transportation Management Coordinator indicating:

a. The number of vehicles repaired.

b. The measured emission rates of each vehicle before repair.

c. The measured emission rates after repair.

d. The number of miles traveled for each vehicle following repair work until the next regularly scheduled California Inspection Maintenance Smog Check.

e. Calculations indicating the Emission Reduction Target has been met.

(c) Other Work-Related Trip Reductions: Employers of fifty or more employees may receive Vehicle Trip Reduction Credits (VTEC) towards meeting their Emission Reduction Targets from employee commute reductions that occur outside of the morning and evening peak windows. VTEC obtained from work-related trip reductions shall be determined according to the following equation:

$$\text{VTEC} = \frac{[\text{CTR}]}{[\text{CF}]} \times [\text{EF}]$$

Where:

CTR (Creditable Trip Reductions) = The daily average of one-way trip reductions that are real, surplus, and quantifiable. A round trip is considered to be two one-way trips.

CF (Conversion Factor) = 2.3 for non-peak trips

EF (Emission Factor) = Emission Factor in paragraph (g) of this Section.

(1) Employers must submit an annual report to the City's Transportation Management Coordinator indicating the number of commute-related non-peak trips reduced and the amount of emissions reduced.

(d) Employee Trip Reduction Plan. Employers of 50 or more employees who choose this option shall prepare, implement, and monitor Employee Trip Reduction Plans (ETRP) for transportation demand management, transportation system management, and transportation facility development

which will be reasonably likely to result in the attainment of a 1.50 a.m. and p.m. AVR within three years and continued achievement and maintenance of the AVR targets thereafter. The ETRP shall be in a form approved by the Transportation Management Coordinator. The ETRP shall undergo an intensive plan review by the City's Transportation Management Coordinator and Transportation Management Specialists.

(1) The Employee Trip Reduction Plan shall include strategies designed to encourage employees to rideshare during the morning and evening AVR windows.

(2) The Employee Trip Reduction Plan shall consist of a report that:

- a. Calculates and documents AVR levels for morning and evening peak periods.
- b. Lists plan incentives and a schedule for their implementation.
- c. Determines a marketing strategy for the plan year.
- d. Determines the use of worksite parking facilities to achieve rideshare and transit objectives (i.e., number of received spaces for carpools, vanpools, etc.).
- e. Lists the bicycle paths and routes within ½ mile of the worksite.
- f. Lists the public transit services within 1/4 mile of the worksite.
- g. Provides a general description of the type of business.
- h. Includes an Emergency Episode Plan and a daily air quality log.
- i. Includes a sample of the employee AVR survey, or other mechanism approved by the Transportation Management Coordinator. This survey must not be more than six months old. For employers with 250 or more employees, the survey must conform with SCAQMD requirements. The survey must be taken over five consecutive days during which the majority of employees are scheduled to arrive at or leave the worksite. The days chosen cannot contain a holiday and cannot occur during Rideshare Week or other "event" weeks (i.e., Bicycle Week, Walk to Work Week, Transit Week, etc.). This survey must have a minimum response rate of seventy-five percent of employees who report to or leave work between six a.m. and ten a.m., inclusive, and seventy-five percent of employees who report to or leave work between three p.m. and seven p.m., inclusive. Employers that achieve a 90% or better survey response rate for the a.m. or p.m. window may count the "no-survey responses" as "other" when calculating their AVR.
- j. Provides the name and proof of certification of the Employee Transportation Coordinator who is responsible for implementation and monitoring of the plan.
- k. Provides the name of the On-Site Coordinator (if different from the ETC) for each site who is responsible for implementation and monitoring of the plan.
- l. Identifies the objectives of the plan and provides an explanation of why the plan is likely to achieve the AVR target levels.

m. Includes a Parking Cash-Out Plan if required.

n. Includes a management commitment cover letter signed by the highest ranking official on site, or the executive responsible for allocating the resources necessary to implement the plan, which includes a description of efforts taken to involve employees in the development of commute alternative strategies, a statement that employees have been notified of plan provisions at least thirty days before plan submission date, and that all data is accurate to the best of the employer's knowledge.

(3) The Employee Trip Reduction Plan shall be updated every 12 months, with an annual report submitted on the anniversary date of the initial plan approval date. Annual Employee Trip Reduction Plan shall include the following:

a. AVR calculations and documentation for the plan year.

b. Lists plan incentives, changes to plan incentives, and a schedule for their implementation.

c. Determines a marketing strategy, indicating changes from the previous plan year.

d. Determines the use of worksite parking facilities to achieve rideshare and transit objectives (i.e., number of spaces for carpools and vanpools, etc.).

e. Lists the bicycle paths and routes within ½ mile of the worksite.

f. Lists public transit services within 1/4 mile of the worksite.

g. Provides a description of the general type of business.

h. Includes a sample of the employee survey for the plan year as described in paragraph (2) of this Section.

i. Provides the name and proof of certification of the Employee Transportation Coordinator who is responsible for the preparation, implementation and monitoring of the plan.

j. Provides the name of the On-Site Coordinator (if different from the ETC) for each site who is responsible for implementation and monitoring of the plan.

k. Identifies the objectives of the plan and provides an explanation of why the plan is likely to achieve the AVR target levels.

l. Includes a management commitment letter as defined in paragraph (2) of this Section.

m. Includes update and revisions to the Employee Trip Reduction Plan as the City's Transportation Management Coordinator deems appropriate, if the annual report indicates that the goals of the previously approved Employee Trip Reduction Plan have not been met.

(4) The procedure for calculating AVR at a worksite shall be as follows:

a. The AVR calculation shall be based on data obtained from an employee survey as defined in paragraph (2) of this Section.

b. AVR shall be calculated by dividing the number of employees who report to or leave the worksite by the number of vehicles arriving at or leaving the worksite during the peak periods. All employees who report to or leave the worksite that are not accounted for by the employee survey shall be calculated as one employee per vehicle arriving at or leaving the worksite. Employees walking, bicycling, telecommuting, using public transit, arriving at the worksite in a zero-emission vehicle, or on their day off under a recognized compressed work week schedule shall be counted as employees arriving at or leaving the worksite without vehicles. Motorcycles shall be counted as vehicles.

c. A child or student may be calculated in the AVR as an additional passenger in the carpool/vanpool if the child or student travels in the car/van to a worksite or school/childcare facility for the majority (at least 51%) of the total commute.

d. If two or more employees from different employers commutes in the same vehicle, each employer must account for a proportional share of the vehicle consistent with the number of employees that employer has in the vehicle.

e. Any employee dropped off at a worksite shall count as arriving in a carpool only if the driver of the carpool is continuing on to his/her worksite.

f. Any employee telecommuting at home, off-site, or at a telecommuting center for a full work day, eliminating the trip to work or reducing the total travel distance by at least 51% shall be calculated as if the employee arrived at the worksite in no vehicle.

g. Zero Emission Vehicles (electric vehicles) shall be calculated as zero vehicles arriving at the worksite.

(5) Employers must keep detailed records of the documents which verify the Average Vehicle Ridership calculation for a period of two years from plan approval date. Records which verify strategies in the Employee Trip Reduction Plan have been marketed and implemented shall be kept for a period of at least two years from plan approval date. Approved Employee Trip Reduction Plans must be kept at the worksite for a period of at least three years from plan approval date. For employers who implement their plans using a centralized rideshare service center, records and documents may be kept at a centralized location. Failure to maintain records, or falsification of records will be deemed a violation of this Chapter.

(e) **Minimum Requirements.** Employers implementing options (a), (b) or (c), as defined in this section must meet the following minimum plan requirements:

(1) Conduct an AVR survey in accordance with the requirements of Section 9.16.070 (g) in order to receive Commute Trip Reduction Credits (CTRCs) for employees who rideshare to and from the worksite.

a. Failure to survey employees shall result in a default AVR of 1.0.

b. Employers must choose either the a.m. window (6:00 a.m. to 10:00 a.m.) or the p.m. window (3:00 p.m. to 7:00 p.m.) In which the majority of employee trips occur for the survey.

(2) Marketing Plan. Employers shall include a marketing plan to educate employers about alternative commute options by making information available to employees.

b. Information shall be posted at the worksite, or distributed to each employee at the worksite.

(3) Information shall be updated annually.

(f) Extensions. In the event that an employer reasonably needs more time to submit an Emission Reduction Plan, a written request for extension may be filed with the City's Transportation Management Coordinator. All requests must be received by the City TMP Office no later than fifteen calendar days prior to plan due date. Such requests must be made in writing and shall state why such extension is requested, what progress has been made toward developing the ERP, and for what length of time the extension is sought. The City's Transportation Management Coordinator shall notify the employer in writing whether or not the extension has been granted within fifteen calendar days of receipt of a written request for extension.

(1) An employer may request an extension up to sixty days for the initial submittal of a plan.

(2) An employer may request an extension of up to thirty days to complete a revised plan.

(3) An employer may, upon receipt of a written objection to the terms of the proposed plan by an employee, employee representative or employee organization, request a single extension for thirty calendar days. A copy of the written objection must be attached to the request. Only one such request shall be granted by the City; no subsequent extension may be granted for this purpose.

(4) The City's Transportation Management Coordinator, at his or her discretion, may grant extensions beyond sixty days in the event of an extreme emergency. Each employer's request shall be reviewed on an individual basis.

(g) **Plan Revisions.** An approved Emission Reduction Plan may be revised between plan submittal dates by submitting a plan revision in writing to the City's Transportation Management Coordinator. Any changes to an approved plan which is in effect must be submitted in writing to the Transportation Management Coordinator. The revision shall not be effective until approved by the Transportation Management Coordinator in writing.

(1) If the Transportation Management Coordinator determines that the ERP marketing strategy is not being carried out to the fullest extent, the Transportation Management Coordinator may require the employer to submit quarterly marketing reports that include examples of the marketing strategies implemented for each quarter.

(2) If it is necessary for an employer to amend an ERP before the plan can be approved, the employer shall have fifteen days from the date of notice in which to submit amendments to the Transportation Management Coordinator. Employers failing to submit the amendments shall have their ERP disapproved.

(3) The Transportation Management Coordinator shall not approve any plan or plan revisions if the employer, an employee, an employee representative or organization requests, in writing, within ten calendar days of plan submittal, that the Transportation Management Coordinator delay such action for a period of time not to exceed the 90th calendar day after plan submittal. If the request is made by a party other than the employer, the party must concurrently submit written comments to the City's Transportation Management Coordinator and the employer setting forth the objection(s). Upon receiving such a request, the Transportation Management Coordinator shall maintain neutrality with respect to any negotiations regarding the ERP. Nothing in this paragraph shall be construed to affect the requirement to implement an approved ERP and comply with applicable deadlines.

(4) An Emission Reduction Plan shall be disapproved if any employee(s), employee representative, or employee organization submits information demonstrating that:

a. The plan includes strategies, such as parking charges; and

b. Such strategies would create a widespread substantial disproportionate impact on minorities, women, low-income or disabled employees. A plan shall not be disapproved pursuant to this subdivision if it includes provisions as are necessary to ensure reasonable opportunity for employees to commute by means other than a single-occupant vehicle and thereby avoid the disproportionate impact described above. The City's Transportation Management Coordinator shall provide the employer an opportunity to review and respond in writing to information submitted by an employee, employee representative or employee organization pursuant to this subdivision. The burden of proof that a plan should be disapproved pursuant to this subdivision rests with the employee, employee representative or employee organization submitting the information.

(5) If a final determination that an element of an approved ERP violates any provision of law issued by any agency or court with jurisdiction to make such determinations, then the employer shall, within forty-five calendar days, submit a proposed plan revision to the City's Transportation Management Coordinator which shall be designed to achieve an AVR equivalent to the previously approved plan.

(h) **Employee Transportation Coordinators:** Employers of fifty or more employees shall designate a certified Employee Transportation Coordinator (ETC) or an ETC and an On-Site Coordinator for each worksite included in the Emission Reduction Plan.

(1) An employer may elect to use a Consultant ETC or a TMO/TMA in lieu of an ETC provided the Consultant ETC or the TMO/TMA staff has received certified training and the site maintains an On-site Coordinator.

(2) If the absence of a certified ETC, Consultant ETC, or On-Site Coordinator exceeds eight consecutive weeks, a substitute ETC or On-Site Coordinator at the same level must be designated and trained. Notice of such a change must be submitted to the City's Transportation Management Coordinator with proof of training no later than 12 weeks after the beginning of the absence.

(3) ETCs are not required to attend yearly update training.

(4) On-Site Coordinators are not required to be certified provided the ETC or Consultant ETC is certified and writes and administers the Emission Reduction Plan.

(i) **Emission Reduction Factors:** The following emission factors shall be used in calculations pursuant to this rule.

(1) Employee Emission Reduction Factors. The following employee emission reduction factors (pounds per year per employee) shall be used in determining the Emission Reduction Target for the current plan year:

Emission Year	VOC	NOx	CO
			2000
			4.40
			3.80
			35.19
2001	4.10	3.39	32.83
2002	3.79	3.08	30.37
2003	3.38	3.08	28.01

(2) The following default emission factors (pounds per year per daily commute vehicle) may be used in determining vehicle trip emission credits:

Emission Year	VOC	NOx	CO
2000	13	11	103
2001	12	10	96
2002	11	9	89
2003	10	9	82

SECTION 9.16.080. Requirements For Employers of 10-49 Employees.

(a) All employers of 10 to 49 employees shall be required to attend a City-sponsored training seminar upon notification and submit a Worksite Plan (WTP) to the City in accordance with the procedures set forth in this Section. This plan shall include at a minimum:

- (1) Worksite location.
- (2) The name and title of the highest ranking official at the site.
- (3) The name and phone number of the designated On-Site Contact who has attended a City-sponsored training program and is responsible for the implementation of the WTP.
- (4) The number of employees at the site, and proof of employee population (i.e., payroll records, unemployment insurance records, or any records approved by the Transportation Management Coordinator).
- (5) Description of the type of business.
- (6) Description of any on-site amenities
- (7) Location of the kiosk or bulletin board and a description of the information displayed.
- (8) Lists the public transit services within 1/4 mile of the worksite.
- (9) Lists the bicycle paths and routes within 1/2 mile of the worksite.
- (10) Includes a management commitment letter signed by the highest ranking official at the site.

(b) Employers of 10-49 employees shall make, at a minimum, the following information available to each employee:

- (1) Carpooling/vanpooling information, including information about the services provided by the regional ridesharing agency and their phone number.
- (2) Transit schedules and token/pass purchase information.
- (3) Information on air pollution and options to driving to work alone.
- (4) Bicycle route and facility information, including regional/local bicycle maps, locations of nearest bicycle racks, or locker storage facilities, and bicycle safety information.
- (5) Information on walking to work, pedestrian safety and walking shoe information.
- (6) Make information available to new employees upon date of hire

(c) Employers of 10 to 49 employees shall submit a Worksite Plan within sixty days of notification by the City.

(d) Employers of 10 to 49 employees shall submit yearly updated Worksite Plans in accordance with this section. Employers who fail to submit an initial plan, revised plan, or updated plan when required, shall be in violation of this Chapter.

(e) After an employer submits the Worksite Plan, the City's Transportation Management Coordinator must either approve or disapprove the plan within sixty days.

_____(1) Notice of approval or disapproval shall be given by mail. If the Worksite Plan is disapproved, the reasons shall be given in writing to the employer.

(2) Any plan disapproved by the City's Transportation Management Coordinator must be revised by the employer and resubmitted to the City's Transportation Management Coordinator within thirty calendar days of notice of disapproval or the employer shall be deemed to be in violation of Chapter 9.16 of the Municipal Code. The City has sixty calendar days to review the resubmitted plan.

(3) Upon receipt of the second disapproval notice, and until such time as a revised plan is submitted to the City's Transportation Management Coordinator, the employer is in violation of Chapter 9.16 of the Municipal Code.

SECTION 9.16.090. Procedures for Submission of Emission Reduction Plans and Worksite Transportation Plans.

(a) All employers with fifty or more employees, located within the City of Santa Monica, and subject to this Chapter shall submit to the City, within 90 days of receipt of notice to implement, an emission reduction plan designed to reduce emissions related to employee commutes and to meet a worksite specific emission reduction target (ERT) specified pounds of emissions per employee for the subsequent year. This emission reduction program shall be in the form of an Emission Reduction Plan.

(b) Employers of fifty or more employees shall identify measures in their Emission Reduction Plan that will result in attainment of their emission reduction targets through one or all of the Emission Reduction Options specified in Section 9.16.070 within ninety days of notification by the City.

(c) Employers of 10-49 employees are required to submit Worksite Plans as defined in Section 9.16.080 within sixty days of notification by the City.

(d) Multi-site employers of 250 or more employees, with one or more sites located outside of the City of Santa Monica but within the South Coast Air Basin, have the option of filing a Rule 2202 plan with the SCAQMD, or filing an Emission Reduction Plan with the City of Santa Monica. Employers choosing to file a rule 2202 plan with the SCAQMD will be required to notify the City's Transportation Management Coordinator in writing no later than fifteen days prior to the plan due date.

(e) Upon the City Transportation Management Coordinator's approval of a written request, an employer may submit a single ERP or WTP encompassing all worksites subject to the requirements of this Chapter if the worksites are owned or leased by the same employer and located wholly within the City of Santa Monica.

- (f) All employer Emission Reduction Plans and Worksite Transportation Plans shall be consistent with any plans previously submitted by the developer of the property at which the worksite is located.
- (g) If an employer's (ERP) or WTP due date falls on a day City Hall is normally closed (i.e., weekend, holiday, 9/80 Friday off), the employer may submit the ERP or WTP on the first business day after the plan due date.
- (h) If an ERP or WTP is mailed to the City, the plan must be postmarked before the plan due date. If the plan is postmarked on or after the plan due date, the plan shall be considered late and the employer shall be considered to be in violation of this Chapter.
- (i) After an employer submits a plan, the City's Transportation Management Coordinator must either approve or disapprove the plan within ninety days for an ERP and within sixty days for a WTP.
- (1) Notice of approval or disapproval shall be given by mail. If the plan is disapproved, the reasons for disapproval shall be given in writing to the employer.
- (2) Once the plan is approved, the employer will have sixty days from the date of approval to implement all aspects of the plan.
- (3) Any plan disapproved by the City's Transportation Management Coordinator must be revised by the employer and resubmitted to the City's Transportation Management Coordinator within thirty calendar days of notice of disapproval or the employer shall be deemed in violation of Chapter 9.16 of the Municipal Code. The City has ninety calendar days to review the resubmitted plan.
- (4) Upon receipt of the second disapproval notice, and until such time as a revised plan is submitted to the City's Transportation Management Coordinator, the employer is in violation of Chapter 9.16 of the Municipal Code.
- (j) An approved ERP or WTP may be revised between plan submittal dates by submitting a plan revision in writing to the City's Transportation Management Coordinator. The revision shall not be effective until approved by the Transportation Management Coordinator.
- (k) Any employer who establishes a new worksite in the City of Santa Monica, or whose employee population increases to more than 10, will be required to submit a plan to the City of Santa Monica. Employers are required to contact the City's Transportation Management Coordinator within sixty days of establishing a new worksite, or increasing employee population. The notice shall be written, and include the employer's name, the business and mailing address, the number of employees reporting to the worksite and the name of the highest ranking official at the worksite. Upon receipt of the notice, the City shall mail a notification letter to the employer and ninety calendar days thereafter the employer shall submit a plan and shall be subject to all provisions of Chapter 9.16 of the Municipal Code.
- (l) Employers who relocate to another worksite located within the City of Santa Monica shall notify the City of the relocation within thirty days. The City shall notify the employer to submit an updated version of the Employee Profile and Worksite Analysis of the ERP or WTP.
- (m) Any employer who has submitted a plan pursuant to Chapter 9.16 of the Municipal Code and whose employee population falls to fewer than 10 employees for a six month period, calculated as a

monthly average, may submit a written request to the City's Transportation Management Coordinator to be exempt from Chapter 9.16 of the Municipal Code. The employer must submit documentation which demonstrates an employee population of less than 10 employees. Such demonstration could be made by payroll records or other appropriate documentation.

(n) No employer of 250 or more employees shall be responsible for complying with this Chapter until such time as the City and the SCAQMD execute an agreement which provides an exception to those employers from the requirements of filing a Rule 2202 plan with the SCAQMD. If at any time the City fails to meet its obligation under the executed agreement, employers of 250 or more employees in the City shall be released from this Chapter and shall be subject to compliance with the SCAQMD Rule 2202 requirements.

SECTION 9.16.100. Transportation Management Associations (TMA's).

(a) Transportation Management Associations are groups formed so that employers, employees, developers, and building owners can collectively address community and worksite transportation-related problems. Transportation Management Associations may be formed to implement TDM, TSM and/or TFD strategies in employment clusters or at multi-tenant worksites. The primary function of a TMA is to pool resources to implement solutions to commuter-related congestion problems in conjunction with the City Transportation Coordinators.

(b) The City will certify TMAs that submit a first year work plan that outlines the following:

(1) A mission statement which describes the reasons for the association's existence and the overriding goals of the TMA.

(2) Goals and objectives for the first year that target achievement of the mission statement. Specific activities and tasks shall be listed to show how the members will be served by the TMA and how the TMA will help meet the area and regional transportation and air quality goals.

(3) A plan for a baseline survey of commuters and employers in the area to establish existing commuter characteristics and attitudes of commuters toward traffic and the use of commute alternatives. The employer survey shall obtain a descriptive profile of existing programs and employer attitudes toward developing new programs.

(4) The services to be provided by the TMA to its members, including the commute alternatives to be provided and promoted, the advocacy and marketing activities planned, and the role of the TMA staff in providing the services.

(5) A marketing plan that creates an identity for the TMA and describes how the TMA's planned services will be marketed to member employers and their employees.

(6) A monitoring and evaluation plan which will be used to measure progress against goals and objectives, including results of the TMA's activities with each member. This plan will be used to provide annual reporting information to the City.

(7) A budget that details how the work of the TMA will be accomplished, including details of public and private financing and expenditures.

(c) The TMA must provide an annual report to the City to become re-certified yearly. The annual report shall include the same elements as the first year plan with the following exceptions:

(1) The mission statement shall be restated based on changes in the goals and objectives of the TMA, if any.

(2) The goals and objectives shall be updated to reflect progress and changes in the TMA services.

(3) The baseline survey need not be repeated, however, the annual report shall include follow-up monitoring and evaluation activities related to the baseline survey.

(4) The evaluation and results shall be discussed and used to describe the next year's planned activities.

SECTION 9.16.110. Developer Emission Reduction Plans.

Developers of non-residential projects which will result in ten (10) or more peak period trips once the development is completed shall submit an Emission Reduction Plan to the City for implementation of selected measures from Section 9.16.070 and required measures, as applicable, from Section 9.16.120, at their development site in accordance with the procedures set forth in Section 9.16.120.

SECTION 9.16.120. Procedures for Submission of Developer Plans.

(a) Developers of non-residential projects that will generate 10 or more p.m. peak period trips who apply for building permits for new or expanded development projects in the City shall be required to submit an Emission Reduction Plan meeting the requirements of this Chapter at the time of application for the project's first planning approval. The City's Transportation Management Coordinator shall approve or disapprove the plan within thirty (30) days of project approval by the Planning Division or the City Council, when a Planning Division approval is appealed. Notice of approval or disapproval shall be given by registered or certified mail. If the plan is disapproved, the reasons for disapproval shall be given in writing to the developer. Any plan disapproved by the City's Transportation Management Coordinator must be revised by the developer and resubmitted to the City's Transportation Management Coordinator within 30 days of the notice of disapproval.

(b) Developer Emission Reduction Plans shall include those items listed in Section 9.16.070(e) which relate to facility improvements that the developers may implement, plus any improvements as

required in paragraph (c) below. Examples of developer plan elements include preferential parking areas, bicycle storage lockers, showers and lockers, and transit bays.

(c) In addition to optional or otherwise required facility improvements, the following shall be required:

(1) Non-residential development of 25,000 square feet or more shall provide, to the satisfaction of the City, a bulletin board, display case, or kiosk, displaying transportation information located where the greatest number of employees are likely to see it. Information shall include, but is not limited to, the following:

- a. Current maps, routes and schedules for public transit routes serving the site.
- b. Telephone numbers for referrals on transportation information including numbers for the regional ridesharing agency and local transit operators.
- c. Ridesharing promotional material supplied by commuter-oriented organizations.
- d. Bicycle route and facility information, including regional/local bicycle maps and bicycle safety information.
- e. A list of facilities available for carpoolers, vanpoolers, bicyclists, transit riders, and pedestrians at the site.

(2) Non-residential development of 100,000 square feet or more shall comply with the requirements in Section 9.16.120(c)(1) above, and shall provide all of the following measures to the satisfaction of the City:

- a. A safe and convenient zone in which vanpool and carpool vehicles may deliver or board their passengers.
- b. Sidewalks or other designated pathways following direct and safe routes from the external pedestrian circulation system to each building in the development.
- c. If determined necessary by the City to mitigate the project impact, bus stop improvements must be provided. The City will consult with the local bus service providers in determining appropriate improvements. When locating bus stops and/or planning building entrances, entrances must be designed to provide safe and efficient access to nearby transit stations/stops.

(d) An approved emission reduction plan shall be required prior to issuance of a building permit.

(e) Developers shall not be required to update approved Emission Reduction Plans. However, compliance with such plans shall be accomplished by the requirement set forth in Section 9.16.080 that employer worksite plans be consistent with developer plans for the worksite, unless the Transportation Management Coordinator approves alternative plan components.

(f) A developer may amend an Emission Reduction Plan subsequent to approval of such plan by submitting a plan revision. A subsequent owner may amend a plan in the same manner. The

amended plan shall not be effective until approved by the City's Transportation Management Coordinator.

SECTION 9.16.130. **Enforcement.**

(a) Audits.

_____(1) City Audits. The City shall perform follow-up audits on a selective basis. Employers shall receive at least ten days notice of such an audit. An audit may include, but shall not be limited to, an on-site inspection and demonstration that an employer is performing the on-going monitoring required by this Chapter.

(2) Compliance Inspection. Any employer subject to this Chapter is subject to an unannounced compliance inspection. This inspection will require access to records that demonstrate implementation and monitoring of the employer's Emission Reduction Plan.

(b) Violations of this Chapter.

(1) No business license shall be renewed if an employer has not paid the fee required by this Chapter.

(2) Failure to submit an initial plan when due, annual report and update plan when due, or mandatory plan revisions when due, or failure to implement provisions of an approved plan as set forth in the plan implementation schedule, failure to keep records, falsification of records, failure to have a certified ETC or designated On-Site Coordinator on site if required, or failure to submit proper fees in accordance with Section 9.16.050 is a violation of this Chapter. Additionally, upon receipt of a second disapproval notice and until such time as a revised plan is approved by the City, the developer or employer shall be deemed in violation of this Chapter.

(3) If an employer chooses the Employee Trip Reduction Option and complies with all provisions of the approved plan but fails to meet the AVR targets, that is not a violation of this Chapter. However, the Transportation Management Coordinator shall retain the right to require the employer to provide additional incentives and marketing strategies in the Employee Trip Reduction Plan with the goal of increasing the employer's AVR.

(4) If an employer chooses any Emission Reduction Option (Excluding the Employee Trip Reduction Option), the employer must meet the required emission reduction targets for that plan year. Failure to do so will be considered a violation of this Chapter.

(5) Each day a developer or employer violates the provisions of this Chapter or the terms and conditions of any approved Emission Reduction Plan or A Worksite Transportation Plan shall constitute a separate violation.

(c) Enforcement Actions. In addition to any other remedy provided for by law, the City, or the South Coast Air Quality Management District when appropriate, may take the following actions for violation of this Chapter or of the terms and conditions of any approved Emission Reduction Plan or Worksite Transportation Plan:

- (1) Require the addition of elements to a work or development site plan submitted by an employer or developer.
- (2) Transfer authority for plan implementation from an employer or developer to the City.
- (3) Institute proceedings to revoke any approval of an ERP or WTP.
- (4) Revoke the business license held by any violator, following the procedures set forth in Section 9150.6 of the Municipal Code.
- (5) Impose an enforcement fee as provided for in Section 9.16.130 (d).
- (6) Request that the City Attorney take appropriate enforcement action. Referral by the City's Transportation Management Coordinator is not a condition precedent to any enforcement action by the City Attorney.
- (7) Notwithstanding any other provisions of this Chapter regarding penalties or fees for enforcement actions or for violations, for violators with 250 or more employees, the City, in addition to any other remedies under this Chapter, shall refer the matter to the South Coast Air Quality Management District for appropriate action under Article 3, Chapter 4, Part 4 of Division 26 of the Health and Safety Code.

(d) Enforcement Fees.

(1) An enforcement fee shall be paid to the City by each person who has violated the provisions of this Chapter or the terms and conditions of any Emission Reduction Plan. The purpose of this fee is to recover the costs of enforcement from any person who violates the provisions of this Chapter or any permit or approval.

(e) Fee Assessment Fee. Fees shall be assessed as follows:

(1) Employers who choose any Emission Reduction Option (excluding the Employee Trip Reduction Option) shall be fined Five Dollars (\$5.00) per employee per day for each violation during the plan year.

(2) Developers, employers of 10-49 employees and employers of fifty or more who choose the Employee Trip Reduction Option shall receive a Warning Notice for the first violation of the plan year and no fee shall be collected. For each additional violation in the plan year the employer shall receive a violation notice and the violation fee shall be Five Dollars (\$5.00) per employee per day.

(3) The City's Transportation Management Coordinator shall cause to be issued a notice imposing enforcement fees under this Section. The notice shall provide that the fee shall be due and payable within fifteen (15) days from the date of the notice. A penalty of ten percent (10%) per month shall be added to any fees that have not been paid when due.

(4) Any person upon whom fees have been imposed pursuant to this Section may appeal the action in accordance with the following procedure:

a. A notice of appeal shall be filed with the City's Transportation Management Coordinator within ten (10) days of the date of the notice.

b. At the time of filing the notice of appeal, the appellant shall deposit with the City Treasurer money in the amount of all fees due. If, as a result of the hearing, it is determined that the City is not entitled to all or a portion of the money, the City shall refund to the person all or a portion of the money deposited.

c. The Emission Reduction Plan Appeals Board ("ERP Appeals Board") shall hold a hearing on the appeal within forty-five (45) days of the date of filing of the appeal. The City shall give the appellant at least five (5) days notice of the time and place of the hearing. The ERP Appeals Board shall render a decision within fifteen (15) days of the date of the hearing. The purpose of the hearing shall be limited to whether or not the violation occurred.

d. The ERP Appeals Board shall uphold an appeal of an enforcement fee under this Section in only one of the following circumstances:

1. An error has been made in calculating the enforcement fee.

2. The person is found not to have been violating the provisions of this Chapter or the terms and conditions of the Emission Reduction Plan or the Worksite Transportation Plan.

e. The decision of the ERP Appeals Board shall be final except for judicial review and there shall be no appeal to the City Council.

f. Any notice issued pursuant to this Section shall set forth the appeal rights as provided for in this subsection.

g. Any notice of revocation issued pursuant to this Section shall be final upon the expiration of the appeal period if no appeal is timely filed or upon the decision of the ERP Appeals Board.

SECTION 9.16.140. **Administrative Appeals.**

(a) Disapproval of an Emission Reduction Plan or a Worksite Transportation Plan by the City's Transportation Management Coordinator, including a revision of such a plan, may be appealed to the Emission Reduction Plan Appeals Board.

(b) An appeal of an action by the City's Transportation Management Coordinator shall be filed with the City's Parking and Traffic Division within ten (10) consecutive calendar days following the date of action from which an appeal is taken. If no appeal is timely filed, the action by the City's Transportation Management Coordinator shall be final.

- (c) A hearing on an appeal shall be scheduled within sixty (60) days of the date of filing an appeal. Notice of an appeal hearing shall be mailed to the appellant not less than ten (10) consecutive calendar days prior to the hearing scheduled before the Emission Reduction Plan Appeals Board.
- (d) A written decision on an appeal shall be issued thirty (30) days from the date of hearing.
- (e) An action of the City's Transportation Management Coordinator that is appealed to the Emission Reduction Plan Appeals Board shall not become effective unless and until approved by the Emission Reduction Plan Appeals Board.
- (f) A decision of the ERP Appeals Board shall be final except for judicial review and there shall be no appeal to the City Council.

SECTION 2. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, are hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 3. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective after 30 days from its adoption.