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DEPARTMENT OF
PUBLIC WORKS

CITY OF SACRAMENTO
CALIFORNIA

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TRANSPORTATION DIVISION

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April 24, 1990

Budget & Finance/
Transportation & Community Development Committee
Sacramento California

Honorable Members in Session:

SUBJECT: EMPLOYER TRANSPORTATION SYSTEMS MANAGEMENT (TSM) PROGRAM STAFFING
AND FUNDING UPDATE

SUMMARY

This report includes an updated analysis of the City's staffing and funding requirements necessary to administer Chapter 77 of the City Code (Employer Transportation Systems Management Ordinance). Funding options for Chapter 77 are re-examined including an analysis of an anticipated revenue shortfall. It is recommended that the Budget & Finance and Transportation & Community Development Committee (B&F/T&CD) approve this report and refer it to the full City Council for action. Further, it is recommended that City Council adopt the attached resolution directing staff to work with the Sacramento Metropolitan Air Quality Management District (Air Quality District) to develop an agreement authorizing the City to act as the Air Quality District's agent in implementing the TSM program.

BACKGROUND INFORMATION

On December 13, 1988, City Council adopted Chapter 77 of the City Code that requires major employers (100 or more employees) to file a Transportation Management Plan (TMP) with the City of Sacramento. Administration of this TSM program requires staffing and funding, and an analysis of these requirements was presented to the B&F/T&CD in April, 1989. That analysis considered the following:

- a. The number of employers required to comply with the TSM Ordinance,
- b. Assigned duties of staff who administer the program and an estimate of time needed to perform those duties, and
- c. Alternatives for financing the program.

A. EMPLOYER TSM PROGRAM STAFFING REQUIREMENTS

The City TSM staff's primary responsibilities and duties for the Employer TSM Program include the following:

1. Review - The initial TMP submittal and the subsequent annual reports are reviewed to insure compliance with the Employer TSM Ordinance. The work includes identification and notification of major employers, development and review of each TMP and annual submittal, computer filing, and issuance of Transportation Management Certificates (TMCs).
2. Education and Marketing - This work includes the development of education materials for employers and developers regarding the objectives of the City's TSM Program. Materials include handbooks, brochures, flyers, notification information, public service announcements, and other materials pertinent to the TSM Program. In addition, City TSM staff conducts educational workshops on various subjects including employer-based difficulties such as instructions on filing a TMP application and hiring an Employee Transportation Coordinator. The workshops provide an educational forum for outside agencies and for providing information regarding tax benefits, beneficial legislation, and other subjects.
3. Annual Status Evaluation - Annual monitoring of the employer TSM program consists of an evaluation of the initial TMP and subsequent annual reports in conjunction with appropriate on-site inspections at the worksite.

Through these three activities, City TSM staff can assist major employers and their employees to commit to a program that will maximize their effort towards meeting the 35 percent alternative mode goal.

B. MAJOR EMPLOYER ESTIMATES IN THE CITY OF SACRAMENTO

Determining the number of major employers in the City of Sacramento was important in developing the necessary staffing requirements and establishing a fee structure to administer the Employer TSM Program. For the April, 1989 staffing analysis, Public Works staff used an estimate of 190 major employers in the City of Sacramento as the basis for the evaluation. As of January 20, 1990, staff refined the preliminary analysis and determined that the overall number of employers who will have to comply was correctly identified. However, the size of employers based on number of employees has been refined and is shown in the following table:

<u>AGENCIES</u>	<u>EMPLOYERS WITH</u> <u>100-249 EMPLOYEES</u>	<u>EMPLOYERS WITH 250</u> <u>OR MORE EMPLOYEES</u>
	April '89/Jan.'90	April '89/Jan.'90
Private	61 / 37	46 / 60
State	32 / 18	37 / 62
Federal	- / -	3 / 3
County	- / -	1 / 1
City	- / -	1 / 1
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TOTAL MAJOR EMPLOYERS	93 / 55	88 / 127

C. COMPLIANCE BY OTHER GOVERNMENTAL AGENCIES (STATE/FEDERAL)

Currently, State and Federal agency compliance with the provisions of the TSM Ordinance extends only as far as submitting a TMP. All State agencies have demurred at paying the associated fee, citing Government Code Section 6103 as support for their refusal to pay the fees when submitting their TMP. Section 6103 states in part:

"Neither the state nor any county, city, district, or other political subdivision...shall pay or deposit any fee for the filing of any documents or paper [or] for the performance of any official service...[T]his section [shall] not apply...where it is specifically provided otherwise."

In an opinion from the City Attorney's office:

...the City's TSM Ordinance constitutes a 'local air pollution control ordinance.' Thus, if this Ordinance is more stringent than any applicable state air pollution control statute, rule, or regulation, then all affected state agencies and, by inference, all local agencies, must comply with the Ordinance. In fact, the only state program which is comparable to the City's TSM program is set forth in Executive Order D-73-88 issued by the Governor on September 3, 1988. This program requires state agencies to implement a state employee management program designed to result in a 10 percent reduction in the number of commute trips by state employees during peak commute periods in congested urban areas. Since the TSM program seeks a 35% reduction in commute trips, it is on its face 'more stringent' than the comparable state program. Therefore, under the provisions of Government Code Section 11017, state and local agencies are required to comply with the substantive provision of the City's Ordinance.

In our case, ... the City could argue that where a local jurisdiction adopts an air pollution control program more stringent than any comparable state program, the Legislature has granted to that jurisdiction the specific and unconditioned authority to compel state agency compliance with the program. Exemption of such agencies from the obligation to pay administrative fees would undermine the local jurisdiction's ability to carry out the program and would thus frustrate the Legislature's intent.

This is a strong argument, however it lacks judicial support. ...In order to uphold the City's authority to compel local and state agency payment of fees, a court would have to move beyond existing precedent and base its decision on the policy considerations involved.

State agency payment of fees might be achieved more easily if the TSM program was implemented under the auspices of the Sacramento Metropolitan Air Quality Management District (SMAQMD). ...The City/SMAQMD could argue that the 6103 exemption is removed because the SMAQMD is specifically authorized to engage in cost recovery under Health and Safety Code Section 41080. That section provides: '[T]he District (SMAQMD) may adopt a schedule of fees, levied on permitted and other sources of air pollution, subject to regulation by the ...district, to recover its costs of implementing [any programs authorized under the legislation]....' Since SMAQMD regulation of complex or indirect sources of air pollution through the reduction or mitigation of increases in motor vehicle use in Sacramento is specifically contemplated by the Legislature, the SMAQMD is clearly authorized to charge fees to recover the cost of implementing programs such as the City's TSM program.

Recent legislation mandates that the SMAQMD (Air Quality District) establish transportation control measures to reduce motor vehicle emissions. The Air Quality District is currently in the formative stages of developing a comprehensive district-wide Commute Alternative Rule (CAR) to fulfill its mandate. It is not expected that the Air Quality District will be able to implement their proposed rule for one to two years. The Air Quality District has expressed interest in possibly adopting the City's TSM ordinance as an interim measure for the City's incorporated area until their Commute Alternative Rule is implemented. By so doing, the City could implement its existing TSM program and collect fees under the legislative authority of the Air Quality District.

On the basis of advice from the City Attorney's office, the City will process State and Federal agency TMPs without the associated fees. However, a Transportation Management Certificate (TMC) will not be issued to either State or Federal agencies until the issues regarding the associated fees are resolved.

Although there is an expected reduction in TSM program revenues, there is no expected reduction in TSM staff hours required to review and monitor TMPs. In the April, 1989 TSM staffing requirements report, the amount of staff hours required for performing the TSM functions and duties were estimated to be 5,890 staff hours (3.3 FTE). After reviewing over 35 TMPs, TSM staff have determined that, for most TMPs, the original April, 1989 staff hour requirement estimates were accurate. However, it was estimated that only 50 percent of the initial TMPs submitted would need to be returned for revision and then resubmitted. As of March 21, 1990, over 90 percent of those TMPs reviewed have been returned for revision. Adjusting for this extra review process adds approximately 790 staff hours to the total annual staff hours required to perform the TSM functions, or 6,680 staff hours (3.8 FTE). Current TSM Staff consists of a TSM Coordinator, 2 TSM Program Assistants (3.0 FTE), and a Typist Clerk (1.0 FTE).

FINANCIAL DATA

A total of 69 State and Federal government agencies were identified as major employers within the City of Sacramento and were considered a part of the revenue base for setting up the TSM Program budget. The estimated financial impact if State and Federal agencies do not pay fees will be a decrease of approximately \$109,396 to the TSM Program for the first year and a potential decrease of approximately \$27,226 in the second year and \$30,146 in the third year based upon assumptions made at the time the preliminary April 18, 1989 budget was approved. This shortfall represents about 49 percent of the budgeted TSM revenues for the first year with a 40 percent and 43 percent TSM revenue shortfall for years 2 and 3 respectively.

<u>YEAR</u>	<u>REVENUES ESTIMATED IN APRIL, 1989</u>	<u>REVENUES W/O STATE AND FEDERAL FEES</u>	<u>PROJECTED DEFICIT</u>
1990	222,110	112,714	109,396
1991	67,170	39,944	27,226
1992	70,090	39,944	30,146

FEE STRUCTURE FOR THE EMPLOYER TSM PROGRAM

Based upon the initial April 18, 1989, TSM staff report, with 190 major employers in the City of Sacramento, an annual Employer TSM Program budget of \$218,500 would be required for year 1, \$217,500 for year 2, and \$213,500 for year 3 to fund City staff time, start-up costs, and operating costs.

In the April, 1989 report, two options were analyzed for a possible fee structure for the Employer TSM program. In the first option, it was assumed that the full costs of program administration would be recovered through fees. In the second (adopted) option, it was assumed that part of the cost of the program administration would be subsidized through other funding sources. These alternatives were evaluated again for possible application at this time:

1. Full Cost Recovery

- a. **All Major Employers Charged an Average Cost--**
To have full cost recovery would mean an average annual fee for each major employer of approximately \$1150 for year 1, \$1090 for year 2, and \$1016 for year 3.
- b. **All Major Employers Sharing/Pro-rating Costs--**
To have full cost recovery for year 1, pro-rating on the basis of employer size would translate to an annual fee of approximately \$1533 for major employers with 250 or more employees and \$776 for employers with 100-249 employees. Major employers with 100-249 employees would be charged 50 percent lower fees than major employers with 250 or more employees.

Option 1.a. would require yearly fees from all Major Employers in excess of \$1,000. Staff does not support this option, given the past Council direction to charge renewal fees that are lower than the initial submittal fee. With respect to option 1.b., TSM staff have now reviewed over 35 Transportation Management Plans (TMPs) and have determined that the staff time necessary to review TMPs is impacted most by the number of worksites, types of TSM measures, and adherence to the TMP format. Staff review time of TMPs is not significantly impacted by the number of employees of a major employer.

2. Subsidized Fees

- a. **Funding - Other Sources--**
Under this option, the City of Sacramento would fund the cost of the Employer TSM program which would be \$218,500 for year 1, \$217,500 for year 2, and \$213,500 for year 3. If no fees were charged, the supplemental funding would have to come from an appropriate City-wide source such as the General Fund. To charge no fees now for the submission of TMPs would render the issue of State and Federal non-compliance moot, but may necessitate the refunding of all TMP fees paid by private major employers.
- b. **Partial Cost Recovery - Current Program--**
The County of Sacramento's TSM program requires a fee of \$1169 for the review of an initial plan report for year 1 and \$292 for each year thereafter for the annual reports. The City decided to limit fees to the same level as the current County fees, with supplementary funding source for the TSM program to be identified after the first year. However, with State and Federal agencies declining to pay their TMP fees, a supplementary funding source may be required this year as well.

POLICY CONSIDERATIONS

To effectively resolve the anticipated TSM program revenue shortfall, the following policy options should be considered:

1. Compel State and Federal agencies to comply with the substantive provisions of Chapter 77 of the City Code but concede that the City lacks authority to collect fees from these agencies to pay the administrative costs of processing and monitoring the TMPs. This would require the City to fund these costs out of the General Fund or another appropriate funding source.
2. Bring an action for declaratory relief seeking a judgment upholding the City's authority to collect fees from State and local agencies. Under this option the City would continue to process State and local agency TMPs and would apprise these agencies as to whether or not their plans were responsive to the requirements of the TSM program. However, the City would not issue Transportation Management Certificates (TMCs) until the fee issue is resolved in court.
3. Enter into an agreement with the Air Quality District whereby the Air Quality District adopts the City's TSM Ordinance as an interim Commute Alternative Rule applicable within the City of Sacramento and authorizes the City to act as the Air Quality District's agent in implementing the TSM program. State, Federal, and local agencies are currently paying fees imposed by other Air Quality District within the State.

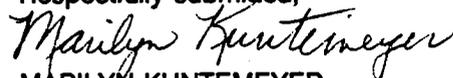
MBE/WBE

This report has no effect upon the City's MBE/WBE efforts.

RECOMMENDATION

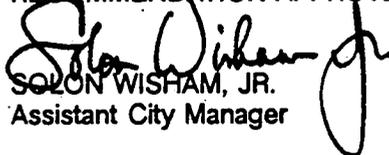
Staff recommends that fees charged for the Employer TSM program remain as they are. Further, staff recommends that the City Council adopt the attached resolution directing staff to work with the Air Quality District to develop an agreement authorizing the City to act as the Air Quality District's agent in implementing the TSM program.

Respectfully submitted,



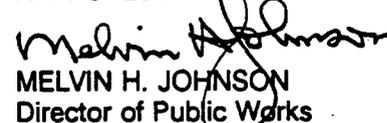
MARILYN KUNTEMEYER
Supervising Engineer

RECOMMENDATION APPROVED:



SOLON WISHAM, JR.
Assistant City Manager

APPROVED:



MELVIN H. JOHNSON
Director of Public Works

Contact Persons:

JOHN PRESLEIGH, Associate Engineer
LARRY ROBINSON, TSM Coordinator
449-5307

April 24, 1990
All Districts

MK:LR:sm
CA7-108.S

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

RESOLUTION AUTHORIZING PUBLIC WORKS STAFF TO DEVELOP AN AGREEMENT WITH THE AIR QUALITY MANAGEMENT DISTRICT TO AUTHORIZE THE CITY TO ACT AS THE AIR QUALITY DISTRICT'S AGENT IN IMPLEMENTING THE CITY'S TRANSPORTATION SYSTEMS MANAGEMENT PROGRAM (CHAPTER 77 OF THE CITY CODE).

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

That the Public Works staff be authorized to develop an agreement with the Sacramento Metropolitan Air Quality Management District providing for the City's authority to act as the Air Quality District's agent in implementing the City's Transportation Systems Management Program (Chapter 77 of the City Code).

MAYOR

ATTEST:

CITY CLERK

CA7-108.S
04.09.90

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____