DC Mayor Bowser Issues Long-Delayed Regulations to Implement the District's First-in-the-Nation Transportation Benefits Equity Ordinance

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The District's Transportation Benefits Equity Act of 2020—passed unanimously by DC Council on April 7. 2020 (for the second time, as is required), signed by Mayor Bowser on April 27, and finally transmitted to Congress on May 12, officially became law on June 24, 2020 (as shown here: http://lims.dccouncil.us/Legislation/B23-0148?FromSearchResults=true). It is finally being enforced due to regulations the Bowser administration issued on November 12, 2021, which became binding 30 days later, well over a year after legislative enactment. Public Law 23-113 requires, after regulatory implementation, many District employers that have been and choose to continue to subsidize employee car parking to offer what has been termed a parking cash-out option—forego the parking, and the employer will pay for employees' alternative commute through what is called a Clean-air Transportation Fringe (which the law and the regulations call benefits that are Federally tax exempt—such as to cover transit, vanpool, and bicycle commute expenses), plus additional taxable cash, such that the total benefit received will equal the market value of the parking. A few alternative compliance paths, none necessarily cheaper nor easier than cash out, are also allowed.

The law, which the Bowser administration endorsed when it was before DC Council but then blew past its requirement to issue regulations within 90 days, explicitly requires regulations to be issued prior to implementation, which made the delay particularly frustrating. The good news is that the regulations lay out compliance expectations and enforcement procedures that now make the law a reality.

The Law and its Regulations are a Big Deal that Other Cities May Want to Emulate

Employer car parking subsidies are a giant causal factor in employees driving to work, which is why parking has been referred to a "a fertility drug for cars," by UCLA Professor Donald Shoup, author of "The High Cost of Free Parking." Dr. Andrea Hamre and Dr. Ralph Buehler from Virginia Tech analyzed data on employer commute benefit offerings and employee mode choice in the Washington, D.C. region (see: https://www.nctr.usf.edu/wp-content/uploads/2014/07/JPT17.2_Hamre.pdf). It showed a powerful and hardly surprising relationship between free commute parking and driving to work—employees are much more likely to commute by car if employers pay for their parking, and employers offered alternative commute subsidies with no parking benefits are much more likely not to drive. Specifically, the predicted probability for driving to work in the region (with control variables defaulting to mean values) is, according to this study, 96.6% if only car parking benefits are offered and 25.6% if transit, bicycle, and walking benefits (but no car parking benefits) are offered. While it is possible that some other factors may be related to employer benefits decisions and employee commute choices moving in the same direction (toward or away from drive-alone commuting), it isn't obvious what they may be, plus the model does try to minimize this possibility, and so at least most of the differences found in commuter mode choices are very likely a result of the benefits that employees are offered. Parking cash out would largely reverse the distortion that free workplace parking creates as well as its negative societal impacts in DC.

The parking cash-out concept was developed by Dr. Shoup (http://shoup.bol.ucla.edu/Parking%20Cash%20Out%20Report.pdf) as a politically plausible approach to mitigate the negative externalities associated with employer-subsidized commute parking that is strongly encouraged by the Federal tax code. While taking away the Federal tax subsidies for such a benefit would entail a very minor change in the language of the tax code, many employees have come to expect this benefit, and thus attempting to legislate the elimination of its tax-favorable status would be politically unpopular. Instead, Dr. Shoup designed a reasonable compromise – keeping the existing tax-favorable parking benefit but making its tax favorability newly contingent upon an offer to employees to pocket the value of the parking benefit if they agree to forego it and not drive alone to work. Dr. Shoup envisioned this change occurring with the Federal tax code, but state tax codes generally mirror the Federal language (applying only to state taxes, of course), and so, not surprisingly, the first enactment of a version of this policy came at the state level (in California).

California's cash-out law (https://ww2.arb.ca.gov/sites/default/files/2020-05/CA_Parking_Cash-Out_Program_An_Informational_Guide_For_Employers_2009.pdf), enacted in 1992, has limited applicability, as discussed in depth below in the comparison between its provisions and those of DC's newly enacted law. In brief, the California law applies only in nonattainment areas for any state air quality standard, for employers with 50 or more employees, if the employer does not own the parking, where the employer's parking lease enables costs for parking no longer used due to the change in benefits to be recovered, and if related out-of-pocket savings for the employers can be calculated. The minimum cash-out value is set based on savings of out-of-pocket costs, rather than the generally higher market value of the parking, which subletting such parking would normally yield, and which is the basis of the required benefit level in the District's law.

Studies of the impacts of the California law are sparse, but they suggest that exempt (or non-compliant) employers dwarf employers offering cash out. Indeed, the official California Legislative Analyst's Office (LAO) assessment of the impacts of its law (https://lao.ca.gov/2002/parking/031802_cash_or_parking.pdf), published in 2002, "estimate[d] that about 290,000 free parking spaces would be subject to California's parking cash-out law. This constitutes only about 3 percent of an estimated 11 million free parking spaces provided by employers statewide."

More recent analysis suggests that the actual percentage might be higher, at least in parts of California where the law would apply. A 2018 commute survey by the San Diego Association of Governments (SANDAG) covering San Diego and Riverside Counties found that 15.0% of employers at worksites with 50 or more employees (a threshold trigger for the California cash-out law) received "cash or other incentives for not driving alone," as compared to only from 1.0 to 8.2 percent at sites with fewer employees (see Figure 32 here: https://www.sandag.org/uploads/publicationid/publicationid_4549_24879.PDF). The survey question was not precisely about cash out, and some respondents might have interpreted the question to apply if they were offered a transit benefit even if a parking benefit wasn't also offered (and, hence, wouldn't be cash out). Nevertheless, the positive response rate does give some indication that the 2002 estimate of the California law applying to only 3% of parking is probably low, even if some of the large employers are offering cash out without being mandated to do so.

As discussed more below, DC's cash-out law covers a much higher portion of employers than does California's law, but it also (unfortunately) includes an employer-owned parking exemption that is similar to but a bit narrower than California's law, which the California LAO assessment estimates would apply to 84% of parking spaces that would otherwise be covered. Leased parking is clearly much more prevalent in the District than statewide in California, although figures for the former are not readily available.

One other state, Rhode Island, enacted an even "lighter" version of the California mandate – employers with 50 or more employees located in high-capacity transit corridors that choose to incur out-of-pocket costs to subsidize car parking are required to offer their employees an option of a tax-free transit subsidy instead (which, by Federal law, is capped at actual employee transit costs).

Washington, DC, appears to be the first city to have seriously considered, let alone to have enacted, a parking cash-out requirement (more appealingly called "transportation benefits equity" in the DC law). This being only the first occurrence is somewhat surprising since such a requirement seems to have a uniquely strong political appeal in cities. Cities have been out front in pursuing aggressive measures to mitigate carbon emissions (https://www.c40.org/) and to promote Vision Zero initiatives (https://visionzeronetwork.org/). Allowing employers to subsidize commuters through free workplace parking only if they drive to work leads to increased carbon pollution and more traffic deaths.

In theory the politics for transportation benefits equity should be very favorable in cities, even beyond just the desire of city residents and elected leaders to reduce carbon pollution and traffic fatalities. Market prices for parking are frequently high, making a cash-out option particularly appealing, especially for city residents who don't own cars, and a high cash-out values mean commuters would be very handsomely rewarded for finding other ways to work. City employers that subsidize commuters only if they drive to work advantage their suburban and exurban employees over their city-resident employees, as the latter are more likely to forego or be willing to forego the benefit (in part because they own fewer cars), and it is only city residents who get to vote for city council representatives and mayor.

In the District, congratulations goes especially to Councilman Charles Allen, the original sponsor of the DC bill, whose moral voice in favor of universal commuter equity often succeeded at deflecting opposition and poison-pill substitute language. Environment Committee Chairwoman Mary Cheh, an original co-author of the bill, and Council Chairman Phil Mendelson also deserve credit for skillfully navigating the bill to unanimous passage, despite organized opposition from the DC Chamber of Commerce, some major parking operators, and a few large DC institutional employers (hospitals and universities). The Coalition for Smarter Growth was relentless and masterful in its advocacy and brought in important allies along the way.

<u>What was Won in DC that Wasn't in the California (or Rhode Island) Law</u>

The very first win was in the underlying law that this bill amended. Specifically, Title III, Subtitle A, of the Sustainable DC Omnibus Amendment Act of 2014 (http://lims.dccouncil.us/Download/30722/B20-0573-SignedAct.pdf) required something very complementary to parking cash out. The Federal tax code allows employees to pay for their transit commute expenses using pre-tax wages, just as is the case with employee contributions to their own healthcare premiums. That means that the money coming out of paychecks for such purposes is never subjected to taxation in any form (i.e., income taxes or wage taxes), unlike with the rest of employee wages. The only catch is that employers need to make adjustments to their payroll systems to enable this. Employers have an incentive to do this as they save the 6.2% Social Security wage tax that they would otherwise be required to pay, along with other smaller taxes, and there is no financial downside for them. But there may be some administrative things they would need to do to make this happen, and so the District made this requirement apply only to employers with 20 or more employees.

Other jurisdictions also require employers to offer pre-tax transit, including New York City, San Francisco, Seattle, and the State of New Jersey. A pre-tax transit requirement is both good transportation benefits policy and a natural companion to cash out as the former would offer tax savings to transit-commuting employees not receiving employer parking or transit subsidies (or whose related subsidies are below their transit commute expenses), while cash out applies when parking subsidies are offered.

DC's Transportation Benefits Equity Act of 2020 doesn't change the 20-employee threshold of the underlying law requiring pre-tax transit, which compares to the 50-employee threshold for the California and Rhode Island cash-out laws. Since DC's underlying law and accompanying regulations already had some associated reporting requirements (http://www.smartertransportation.org/wp-content/uploads/2019/10/DC-Transit-Benefit-Ordinance-Rules_Aug2019.pdf), the campaign argued that whatever administrative burden there was on employers resulted primarily from reporting requirements associated with the underlying law, and no employers that were not subjected to the underlying law would be newly subjected to cash out and related administrative requirements. The Coalition for Smarter Growth never attempted to change this aspect of the underlying law as it seemed to be too big a political lift. Significantly, though, the underlying law (Section 303) does allow the mayor, through rulemaking, to extend requirements to smaller employers, but no one is publicly advocating for that now.

An important policy aspect of DC's law was its clear decoupling of the cash-out requirement from individual/business tax obligations, and instead relying on direct non-tax-related enforcement provisions. By contrast, California's law, as originally enacted, had particularly weak enforcement provisions, including not allowing cities to aid in enforcement. Pre-existing Federal tax law, which was ultimately changed in 1998, discouraged California from enforcing its law, as it effectively penalized employees who were offered cash out and didn't accept it by making the previously tax-exempt parking benefit subject to taxation. Unlike with other cities, Congress prohibits the District from taxing the wages of non-resident commuters. Thus, even if the District chose to make parking benefits offered without a cash-out option subject to wage taxes, that would only apply to its own residents, or about 28% of employees in DC (https://en.wikipedia.org/wiki/Transportation_in_Washington,_D.C.). Seven states have no state income tax, and others have very low state income taxes, and thus relying on triggering non-existent or very low state tax obligations as a means to enforce cash out would not be effective in DC, nor would it be in some states. By placing non-compliance fees or penalties on employers, which choose what benefits to offer, and decoupling it from tax burdens (many of which are also not applied to the District's vast non-profit sector), DC's law is entirely decoupled from the tax code, breaking an important barrier to making transportation benefits equity a reality. This also had the political advantage of placing the bill within the jurisdiction of the

District Council Committee on Transportation and the Environment, instead of its Committee on Business and Economic Development, which based on committee membership composition very likely led to more favorable consideration.

California's law was, when enacted, ambiguous as applied to pre-existing retail and office leases that include bundled parking, a common situation, while the District's law is clear. Specifically, California's statutory language was unclear as to whether a pre-1993 lease with bundled parking could be renewed (perhaps many times) without triggering the cash-out requirement. The law did kick in for sure upon "the expiration of that lease" which probably means that this exemption is, at this date, non-existent or very rare, but it nevertheless substantially delayed implementation. The District's law, by contrast, is clear – when the lease is up for renewal or expires, whichever comes first, transportation benefits equity is required. Lease renewal gives the employer an opportunity to change lease terms, such as to include fewer or no bundled parking spaces in exchange for reduced rent, enabling the employer to save parking subsidy costs resulting from employees choosing to be cashed out.

Even leases for office and retail space that are coupled with parking that is separately priced often charge employers significantly less than market rates for such parking as a leasing inducement. California law invites the continuation of this distortion (defining "'[p]arking subsidy' [to] mean…the difference between the out-of-pocket amount paid by an employer on a regular basis in order to secure the availability of an employee parking space not owned by the employer and the price, if any, charged to an employee for use of that space"). Rhode Island does much the same. The District's law, by contrast, requires the transportation benefits equity amount for non-parkers to be based on the market value of the parking regardless of what out-of-pocket cost savings potential (or lack thereof) an employer may assert.

The District's approach is also consistent with how the Internal Revenue Service (IRS) values parking for the purpose of ascertaining whether the value of the benefit exceeds the $270 per month threshold for tax year 2021, amounts above which are subject to Federal wage taxes (see: https://www.irs.gov/pub/irs-pdf/p15b.pdf). The IRS rules specify: "The value of employer-provided parking is determined based on the amount an individual would have to pay for the parking in an arm's-length transaction; the existence of the employment relationship is disregarded, as is any subjective valuation of the benefit by the employee." (See: https://www.irs.gov/government-entities/federal-state-local-governments/qualified-parking-fringe-benefit). DC's law and implementing regulations align with this approach by specifying how an "an arm's length translation" value is to be calculated and establishes a $175 default market value if, after following the District's regulations, such a value still cannot be calculated.

<u>The District's Law Includes a Number of Decent Additional Compliance Options</u>

As discussed below, employers can always "self exempt" from the law by ceasing subsidizing employee car parking. But a number of employer interests weighed in to say they wanted additional compliance options, and so a number were added. Specifically, options were created for employers not wanting to make programmatic changes, preferring to meet a commuter mode share performance standard rather than adhering to any other commuter program design rules, and desiring to direct incentive funds to lower employee healthcare premium contributions over providing additional taxable income.

The law allows employers to simply pay a Clean Air Compliance fee of $100 per month for each employee offered a parking benefit in lieu of otherwise changing the benefit, with the revenues going to a District fund supporting transportation demand management (TDM). It isn't anticipated that many employers would choose this option because it would very likely cost them significantly less to offer a cash-out option and they'd also be giving their employees something that they want instead of just paying the government to "buy out" of the commuter benefits equity requirement.

The law allows employers to, in lieu of the cash-out requirement, meet an aggressive commute mode split performance standard. To select this compliance path, employers would need to create a TDM plan, or amend their preexisting one, and achieve or speedily move toward achieving an employee drive-alone mode split of 25% or less. The regulations task the District Department of Transportation (DDOT) with establishing rules for such plans "in a format [subsequently] provided by DDOT" and has the authority to accept or reject the plans. (When rejecting a plan, DDOT is required to offer guidance to employers on how to make the plan acceptable.) For employers not yet meeting the 25% mode split goal at the time that they choose this compliance path, the plans must require that they "reduce by at least 10% from the previous year the number of commuter trips employees of the covered employer made by car" until the standard is met. Within 90 days of plan approval, the regulations require employers to provide DDOT evidence of implementation. After implementing the plan, employers are required to report at least annually on their mode splits; if their reports show failure to meet their TDM plan goals, they would then have 180 days to get into compliance after which they would immediately need to cease subsidizing car parking, offer parking cash out, or choose another allowable compliance path.

The original impetus for providing the TDM plan option was to avert an owned parking exemption being included in the legislation, as a few large employers with significant amounts of owned parking highlighted their preexisting TDM plans as evidence that they are already "doing the right thing." Even though adding this compliance path didn't succeed at keeping out the owned parking exemption, it nonetheless represents a reasonable alternative. That is, it is extremely unlikely that employers could meet the performance standard while at the same time subsidizing more than perhaps one or two parking spaces without providing equivalently-valued non-parking benefits.

Related to the creation of a new TDM plan as a compliance option was consideration of legacy TDM plans previously required of some large employers. In such instances, the new requirements under the Act don't kick in until the first expiration of such plans, similar to how the law works with leased parking. The law additionally requires that preexisting TDM plans be amended at least within five years, even if they would otherwise still be in effect.

There was a good policy reason to offer some special dispensation for employers with preexisting TDM plans. Such plans were approved through a zoning process that are not impacted by the Transportation Benefits Equity Act of 2020 regulations. The approval process for the plans often required substantial community consultation and ultimately signoff by many parties. To the degree that any policy changes would be required to fulfill the mandates of the Act, they could require changes to preexisting TDM plans. The word "could" is operative, as the language in these plans is typically broad and permissive and would allow parking cash out. In theory, though, a plan might include restrictions on employers imposing parking charges in the hopes that it would curtail spillover into neighborhood on-street spaces (which would be bad policy, but would not be unheard of, as spillover is more appropriately and effectively controlled through on-street parking regulations and pricing), and so it didn't on its face seem unreasonable to allow a bit of extra time to amend the plans to comply with new requirements. But, and while our search was hardly exhaustive, we didn't find any plan language that would have conflicted with the cash-out requirement and thus thought that extra time for engaging in the zoning process should only have been provided where an actual conflict was asserted by the employer and verified by the District. In any case, the exemption for preexisting TDM plans ends in five years, at the latest, which isn't terrible.

For employees accepting a Clean-air Transportation Fringe benefit covering their commute costs that is below the market value of the parking they forfeited, the new law would, as noted earlier, require employers to provide additional taxable cash, such that the total benefit received will equal the market value of the parking. In lieu of providing taxable cash, though, the law allows employers to instead increase by an equivalent amount their contribution to employee healthcare premiums (which are not taxable) while the employee required contribution amount would be reduced commensurately. This allowance would have no tax consequences since the reduced contributions from employee wages to their healthcare premiums would for all practical purposes be converted to increased taxable wages.

The law exempts employers providing remote parking (defined as being beyond one-half mile of the worksite) from its requirements. While it would have been preferable if parking had to be even less desirable (e.g., one mile or more away) to trigger an exemption, even parking one-half mile away is likely sufficiently inconvenient for most employees to spur consideration of alternatives. Employers may also continue to offer off-site transit parking—for which Federal law provides the same favorable tax treatment as it does for on-site parking and for employer-subsidized transit (even if both transit subsidies and transit parking are provided to the same employees)—without triggering any of the requirements of DC's new law.

As noted earlier, all employers with more than 20 employees already had reporting requirements associated with the District's preexisting law requiring payroll accommodations for employees to use their own wages, pre-tax, to pay for their transit commutes. Including both previous and new reporting requirements, employers must report on the number of their employees, how many are offered and also use a parking benefit, how many are offered and use a Clean-air Transportation Fringe Benefit, whether/which alternative compliance methods are being followed, and whether/which exemptions an employer might be claiming (including a justification for such claims). The mayor, in turn, is required to provide aggregate summaries of the statistics, including related to non-compliance with any aspects of the law, including reporting requirements. If there is not full compliance, the mayor is required to outline how it will be achieved, including through the imposition and collection of civil fines and penalties as the law allows. Reporting is very important as it will enable an evaluation of the impacts of the law and compliance strategies and could, if needed, guide potential future tweaks in regulations or the law.

<u>What Changes to DC's Law Would Make it a Better Model</u>

Permanent Exemptions Mean Permanent Inequities

The small employer exemption made sense from a reporting standpoint (and, as noted above, DC law provides the government the authority to further narrow this), but generally speaking, exemptions are harmful to the law's policy objectives, since public benefits are conferred only from changing how things are done (as Dr. Hamre's analysis shows), and exempt employers change nothing that is at the root of the problem—the distortionary commuter parking benefits they offer their employees. The best policy, though, may still include a few exemptions (e.g., employees who are required to have a car to fulfill their job responsibilities, which is only reasonable). Finite delays in compliance deadlines were considered to be of relatively minor concern to the campaign.

Owned Parking Exemption

The biggest loss by far was in the political decision that was made (opposed by the Coalition for Smarter Growth) to mostly exempt owned parking. (Employees offered free or below market price use of owned parking spaces that were or will be sold to another owner after the date of enactment are required to be offered cash out.) This decision did make passage somewhat easier, as the most effective voices in opposition to the legislation had been from large institutional employers with at least some owned parking. In certain cases, such employers offered commuter benefits policies that, while not as equitable as the bill would require, were generally not terrible either (e.g., entailing some parking charges and some commute benefits for non-drivers in the best cases). But the exemption applies to the vast majority of owned parking, including in cases where employer benefits are very inequitable. There really is no good policy argument for a blanket owned parking exemption. Employers that own their own parking typically retain very substantial control over such parking including to sublet it to recapture the market value of parking that their employees "cash out of."

Legislative Language Created Unnecessary Ambiguity for Walking and Carpooling Commuters

Councilmembers understood the legislation to provide the parking cash-out benefit regardless of the alternative commute mode chosen, but a late drafting error (caused by trying to streamline legislative language) that was not caught on time ended up limiting the mandatory applicability of the law for walkers and carpoolers (but also providing most impacted employees a work-around to restore their own cash-out benefits).

So here's the issue – parking cash out is only required when employees accept a "Clean-air Transportation Fringe benefit" (a required offer); then, if the accepted benefit falls short of the market value of the parking, employees get the rest in taxable cash. The law defines Clean-air Transportation Fringe benefit to include only non-car-parking benefits that the Federal tax code allows to be provided in a tax-exempt manner, and while that includes transit, vanpool, and bicycle commuter benefits, it excludes providing benefits to walkers and carpoolers. Although employers could choose to offer cash-out to walkers and carpoolers, the law doesn't require it. If employers choose not to, though, then an almost-always walker or carpooler may ask for (and in the plain language of the law would be entitled to receive) even a tiny "triggering mode" subsidy, say to take the bus to work one day each month. They don't even have to use the mode, but rather only include it in their annual estimate as a reflection of their intent. Only in the case where there isn't a plausible bus option (say, someone lives two blocks from work, and accessing a bus would actually entail more walking than just walking to work) would this not work. More carefully worded legislation would not have required acceptance of a Clean-air

Transportation Fringe benefit, but instead just the declining of a parking benefit, to trigger a taxable cash entitlement that would ensure employees receive the market value of parking benefits not taken.

Temporary Exemption for Preexisting Campus Plans Could Have Been a Bit Narrower

As is the case for employers with pre-existing approved TDM plans, universities with approved campus plans also averted any new compliance requirements until the first expiration of such plans. But unlike the requirement in the law that TDM plans be amended at least within five years, even if they would otherwise still be in effect, no such “five year” requirement applies to approved campus plans, which could last longer (e.g., the Georgetown plan was in force from 2010 to 2020 and an on-line search failed to reveal if it was revised prior to the April 7, 2020 applicability date of the new law). This really only impacted one employer – Georgetown University – that has both owned and leased parking serving its main campus (since campuses/sites with only owned parking were already exempt). While the same rationale applies for offering some special dispensation to employers with preexisting campus plans as with preexisting TDM plans (i.e., to allow revised plans sufficient time to work their way through the zoning public involvement and approval processes), the former should have been subjected to the same five year maximum delay requirement as the latter. In the end, though, this generous treatment for preexisting campus plans, while hardly a good precedent, was offered to only one employer.

As noted above, the enactment of delays in compliance deadlines makes for better policy than permanent exemptions. In addition to the delays that were enacted (e.g., for bundled-lease parking), the campaign had offered some additional possibilities as substitutes for the owned parking exemption, but that compromise didn’t happen. The most substantive were to phase in the cash-out requirement so as not to apply for employees who had previously been eligible for a parking benefit but declined the benefit for perhaps an additional year; to delay the requirement altogether for a year or two with owned parking; and to exempt employers if the requirement would conflict with union contracts calling for free parking until contract expiration.

<u>Many Questions to Answer</u>

Direct Questions of a General Nature

First things first – unanimous DC Council passage suggests that the win was a lot easier than it really was. In reality, though, a bill wasn’t even introduced until 2017, after a couple of years of working to get it introduced, and from there it took three years, lots of campaigning, and a number of changes to the bill to enable passage to happen.

Just because advocates have been thinking about the distortions of parking subsidies for a long time, doesn’t mean that others, including members of council, have also. Many basic questions were asked and concerns were raised that needed a patient response. Here are some examples of concerns and responses:

1. *Why not make parking cash-out optional?*

It has been optional--there's no law against it anywhere. The District, like other cities and states, provides a tax subsidy to employers and employees for commuter benefits, and it's only right that when government provides such tax subsidies, they should support the public good rather than the opposite (and distortionary parking-only commute benefits have multiple negative externalities).

2. What about employees who have a compelling reason to drive? Would a parking cash-out requirement somehow demonize them?

Parking cash out does not block anyone from driving to work, and those who feel that they need to drive may continue doing so. Incentivizing non-driving is not the same as demonizing drivers. That message needed to be repeated many times over.

3. Wouldn't this cost employers money?

Parking cash out would, if (and this is a big "if") employers choose to keep their parking benefits exactly as they are, add costs to employers. The added costs are not from employees who had used the parking but then took advantage of newly offered cash out (as the cash in such instances could be paid for by subletting the parking that is no longer used), but rather from those who had declined a parking benefit prior to cash out having been offered and then taking the cash (where cash then taken cannot be offset by subletting parking). Advocates have sometimes brushed off this reality and they should not. Critically, though, employers have many reasonable compliance options to ensure that their costs won't go up (e.g., requiring parkers to pay for a small portion of their parking costs, such as with pre-tax wages). Business interests have sometimes brushed that off, but advocates shouldn't let them. If parking cash out costs businesses money, it is only because businesses have chosen a compliance path with added costs.

Questions about Different Scenarios

The diversity of employer parking benefits/offers prior to changing the law meant the campaign had to figure out implications for many, many different situations. Interesting scenarios were brought to fore, such as these three: (1) some large employers both own and lease parking and the ordinance treats the provision of owned and leased parking differently; (2) some employers make a value judgement as to which of their employees need the parking the most (e.g., related to challenges walking or individual family responsibilities); (3) employers with a limited number of parking spaces may offer them based on longevity or rank, until those spaces are all taken.

The campaign explained how such scenarios would play out under the law. For the three cases above, the law would apply as follows, respectively: (1) the type of parking offered to the individual employee would govern the requirements; (2) the employer would need to be explicit as to who is being offered the parking and anyone offered the parking would need to be provided a cash-out alternative regardless of the employer's original assessment of parking need (i.e., if an employee chose the cash out, the employer couldn't then rescind the parking offer under the theory that the employee didn't need it after all); and (3) employees whose longevity or rank entitles them to parking would also entitle them to cash out.

As just illustrated, regardless of the benefits scenario, the truth was not avoided – sometimes employers would need to do something differently, a power they fully retained under the ordinance, if they wanted to avoid additional costs from cash out. It was anticipated that many employers would reconsider the specifics of their benefit offerings because of the cash-out requirement, such as by reassessing the fairness of their "parking or nothing" benefit. The employers always had choices that would enable them to avoid having to offer cash out or for cash out costing them more than they were already spending (e.g., by charging employees who park just a little bit, it would provide employers the money they need to cash out their employees who were earlier offered, but declined, a parking benefit).

Confusing Compliance Flexibilities and Added Options with New Mandates

Added options, despite largely being helpful and beneficial as discussed earlier, were at times perceived as new requirements. While each new compliance option came with its own rules, employers only needed to follow the rules for the single compliance option that they chose (or to follow no rules if they decided to drop subsidized parking benefits altogether). One employer's preferred compliance approach was sometimes another employer's most objectionable. Outside groups and staff, sometimes reading draft bill language too quickly, didn't always see the word "or" that separated the various compliance options. The campaign had to repeatedly issue reminders that compliance options were added over time to address concerns that were raised, and that option means option.

New Questions about Telework and the Law

Since the heavy lifting for passage occurred prior to the District's COVID outbreak, the question of how the legislation would apply with telework did not come up. No doubt, though, it will be raised in other cities that try to enact their own ordinances. The impacts depend upon specific circumstances. If offices shut down and employees work from home, then parking would not be offered and thus cash out would not be required. Regarding hybrid work situations (part time telework and part time in person), the cash-out benefit would in general need to take the form of the parking benefit (although an employer could offer employees a choice between monthly and daily cash out). If the employee is offered a monthly parking pass and/or a specific reserved space that is not available to others even when he or she is teleworking, then the full value of the monthly benefit must be offered to the employee regardless of whether he or she sometimes teleworks. If, by contrast, the employee is only reimbursed for daily parking expenses when commuting, then cash out would only have to be paid on commute days. Given this, employers may see it as financially advantageous to convert monthly parking benefits to daily benefits.

Zoning Laws at Cross Purposes

Earlier success in reducing minimum parking requirements in DC mostly mitigated an important argument against cash out that some but not all other cities might face – zoning laws, written prior to consideration of a cash-out requirement, force builders/landlords to provide more parking than might be needed after cash out. Without also changing the zoning laws, some fear that employers might be required to pay twice – first to provide parking and then for cash-out payments to employees that may have the effect of some required parking going unused. This was a big issue in California, and related provisions to the cash-out law addressed this by requiring that minimum parking requirements be relaxed where cash out was mandated.

A bill that changes both commute benefits and zoning requirements likely would require consideration by more than one legislative committee, potentially jeopardizing passage if attempted. Dealing with zoning at the same time as commuter benefits may not be necessary. What zoning requirements for parking do is push down the market value of parking by making housing and commercial construction more expensive in order to cross-subsidize parking that would not otherwise pay for itself in the marketplace. It is bad public policy to hinder real estate affordability, housing most especially, to subsidize driving and parking, but it would be an overstatement to say that it creates an unworkable situation that precludes a cash-out mandate. The cash-out benefit value is still pegged to market price, which is hardly insubstantial throughout the District even where zoning has pushed up parking supply. And market value can be recovered for newly unused spaces due to cash out through subletting such spaces. In the long term, cash out encourages repurposing some parking for other purposes and helps create market conditions for future real estate construction that would curtail parking oversupply and encourage some developers to seek zoning variances for having to build parking.

<u>Varying Perceptions of Equity: The Elephant in the Room</u>

Equity, both generally and as related to race, came up repeatedly in meetings, but it didn’t necessarily play out as anticipated. Rather than focusing on modal equity, as the campaign had hoped, councilmembers and staff instead, at least initially, homed in on the inequity of the then-current typical benefit offerings. If parking is primarily just a perk for high-wage lawyers then equity wouldn’t be in play at all, so the argument went.

While the data are not great, there is a fair amount of anecdotal support for the notion that employer parking benefit offers are concentrated among high-status, high-wage workers. The campaign acknowledged this reality, but also noted that, even among the subset of workers offered parking benefits, those not in a position to accept them (because their households are car-free or car “lite”) were more likely to be lower-income minorities than those who can and do accept them.

The law could have reached more deeply into employer offerings, such as by newly requiring equity of offerings across employers’ employee populations, but that would have placed more of a limitation on employer choice at the same time that employers were complaining about being burdened by other government-imposed requirements (especially after passage of DC’s far-reaching parental leave law) and councilmembers seemed very responsive to those complaints about adding burden. In the end, councilmembers were more sensitive to the vocal concerns of employers that were pushing for as few limitations as possible than they were desirous of making benefits more equitable overall (beyond modal equity).

(Regarding racial equity specifically, DC Council passed the Racial Equity Achieves Results (REACH) Emergency Amendment Act in Nov. 2020 only a few months after passing the transportation benefits equity ordinance. The REACH Act requires, among other things, the creation of an Office of Racial Equity in the DC government to promote such equity across the government and within the city, and also requires Council to provide a Racial Equity Impact Assessment for specific legislation, which did not apply retroactively here.)

Extending benefits to commuters who walk would appear to be equity-enhancing, but walking and cycling to work was sometimes seen as a privilege for those with sufficient income to live in a well-located home, rather than something that poorer people sometimes do out of necessity. Both are true to some degree, but the more common perception seemed to be of the former. It is the case that the highest walk-to-work rates in the District are for residents in relatively wealthy Ward 2. Certainly, offering walking commuters benefits provides modal equity (which, as noted above, DC's law does if commuters also take at least one transit trip per month to work), and is also equity-enhancing to low-income individuals who do walk to work (regardless of how many wealthy people also do the same).

The biggest equity benefit of cash out, though, turned out to be for low-income bus riders, which is a dominant commute mode of residents from DC's poorest area, Ward 8. The equity benefit is two-fold. First, Metrobus fares (and especially for weekly passes) have been kept very low compared to Metrorail fares because users of the former are, on average, of very low income. Low fares mean a big difference in value between free parking and subsidized bus commutes, and thus a big cash-out payment for bus riders would be offered (on top of the fare subsidy). Second, bus travel can be particularly slow in some parts of the city, and that can be attributed directly to all the car commuters clogging roads, especially in popular bus corridors such as on K Street, 16th Street, and Georgia Avenue, NW. An argument that sometimes resonated was that, without transportation benefits equity, employers are "paying" car drivers with free parking (some of whom might otherwise not drive) to block the bus while not compensating bus riders for their delay.

Since transportation commute benefits, like wages and vacation leave, are sometimes thought of as matters of competitive compensation that the government has mostly stayed out of, there was some reluctance to interfere with such private sector offerings, equity concerns notwithstanding. But the campaign argued that because commuter benefits are tax free (as are health benefits), including free of city taxes, they're special benefits that we all at least partially pay for, unlike wages. Further, as noted above, there are clear negative externalities associated with commute car travel, including some such as blocked buses that have equity implications. The tax favorability of parking benefits plus the equity implications of free parking justify modest government interventions, as included in the legislation, to influence commute benefit offerings.

The campaign also noted other exceptions to the general rule of non-interference in wage and benefit offerings that are reflected in District and sometimes Federal laws, and equity concerns (sometimes related to externalities as is the case with commuter benefits) have been an important part of why such policy exceptions have been made. The most prominent exceptions have been for requirements for minimum wages (so employees can afford to live), paid parental leave (to curtail discrimination against female employees thought to be of childbearing age), and paid sick leave (so that under-the-weather employees don't feel compelled to come to work and infect their colleagues and others with whom they must interact). The campaign successfully secured this "exception status" but it seemed harder to do than in the other cases (although paid parental leave did not come easily to the District either).

Turning Campaign Challenges into Opportunities

The Business Community

The campaign expected and prepared for business community push back by developing fact sheets specifically for this community and also by finding businesses that would voice support for the bill. This was no easy task (with quiet support being easier to come by) and the Coalition for Smarter Growth had, due to heroic outreach efforts, some notable successes especially in wards where it was most needed politically. The “first stop” for support was to progressive architectural firms whose representatives appreciated the importance of the legislation and its positive impact on city design, and were able to speak knowledgeably about them when meeting councilmembers and staff. Additionally, diverse local small business owners joining meetings with councilmembers really made a difference.

Not all local business supporters were even in total compliance with what the new requirements would be, but they aspired to improve and were willing to help support enactment. One progressive local financial institution needing to make some changes to comply even provided the campaign complete information on its benefit offerings and commute mode shares to in turn enable the campaign to develop and make public a spreadsheet tool. The tool calculated and displayed business costs and commuter benefits levels of various implementation approaches that were at the discretion of the business to adopt based upon its own priorities (e.g., no increased benefits expense to the business or no reduction in benefits to any commuters). The spreadsheet was designed to allow other employers to plug in their own numbers and see their own results reflective of prioritizing different outcomes.

Local politics played out a lot more than traditional national political divisions. The Chamber of Commerce didn’t seem to be that influential or engaged. In contrast, large DC institutional employers were very engaged. Most had already taken some or many measures to both accommodate and control parking demand and they expressed concern that “a one size fits all” policy would upend things, without really providing any commensurate benefits. The bulk of the alternative compliance options and compromises discussed above were a result of responding to these concerned and engaged institutional players.

Engaging Natural Allies

The campaign sought “obvious” allies, and such allies provided enthusiastic support. Beyond their direct support, the inclusion of environmental and bicycling interest groups, especially the DC Chapter of the Sierra Club and the Washington Area Bicyclist Association, helped propel the message that commuter benefits equity is an environmental and climate leadership issue and it is important to DC’s well organized bicycling community. Like the Coalition for Smarter Growth, these organizations have less staff and more to do than is reasonable, with big and important agendas of their own. Since bandwidth was sometimes limited, requests on time were kept to the essentials (although there was much that was “essential”!). These groups did come through in a big way despite their own challenges.

Overcoming “the Stall”

There were three distinct times when the effort stalled in a major way, and each required at least one “out of the box” intervention. Stalling is a “natural occurrence” in the legislative process, and the challenge is to make stalling more difficult than movement. This is usually hard to do, but it is not impossible, and it is often necessary. This article is deliberately non-specific in some instances here because there were sometimes resistant members or staff who eventually came around, and they deserve more credit for the latter than criticism for the former. The issue is raised here only to point out that even when initial support may not have been there, this nonetheless wasn't allowed to be a showstopper.

The first challenge was getting an official bill written and, relatedly, securing a hearing for Council consideration. Councilman Allen was enthusiastically on board at the beginning. It was sometimes challenging for him and the campaign to secure the support of others on Council. It wasn't his nature to be a "bulldozer" with his colleagues (and from a standpoint of maintaining long-term collegial relationships as a councilmember, it was probably wise, too). Sometimes, though, it felt like a bulldozer was needed (mostly to get the bill considered on the Council docket at various points in the process). When it seemed necessary, the campaign directly and publicly confronted members of Council who were stalling and/or who needed to act affirmatively to get the process rolling. I personally played the role of "bad cop" in a few notable instances, and probably didn't win permanent friends as a result. But by publicly confronting councilmembers for blocking progress (when they were), after other alternatives had been thoroughly exhausted, it sometimes resulted in unblocking.

In one instance in particular, a member of Council on the key committee was, at best, being noncommittal on a vote and this lasted for many, many months. As is common in legislative settings, votes are not held until passage is assured, since losses can be seen as embarrassing. Thus, this councilmember's lack of a commitment here (along with one other member) translated into a stalled process. Finally, after many private appeals, the member was confronted by the campaign using a microphone during a question and answer session at a large regional event and again not that long later at a public event in which the member had a booth (where campaign petitioning across from the member's booth inspired many signers to then approach the councilmember directly and ask about the bill). The pressure finally brought the councilmember to the table and allowed a few concerns to be worked out.

The last stall was "regulatory purgatory," where a 90-day legislative requirement for rulemaking turned into a wait of well over a year. An opportunity to overcome this arose when Council had a hearing on the mayor's nominee to head DDOT, Everett Lott, who had been serving as acting director. There, I testified that Council's vote on the nominee should be delayed until DDOT complies with the law and issues the benefits equity regulations. I followed up with Councilmember Pinto and the staff of Councilmember Cheh, who in turn followed up with the nominee, which led to the release of the regulations.