

Chapter 7.06
COMMUTE TRIP REDUCTION
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7.06.010 Definitions.

For the purpose of this chapter, the following definitions shall apply in the interpretation and enforcement of this chapter:

(1) "Affected employee" means a full-time employee who is scheduled to begin his or her regular workday at a single worksite between six a.m. and nine a.m. (inclusive) on two or more weekdays per week for at least twelve continuous months. For the purposes of this chapter, shareholders, principals and associates in a corporation, partners (general or limited) in a partnership and participants in a joint venture are to be considered employees.

(2) "Affected employer" means a public or private employer that, for twelve continuous months, employs one hundred or more full-time employees at a single worksite who are scheduled to begin their regular workday between six a.m. and nine a.m. (inclusive) on two or more weekdays. The individual employees may vary during the year. Construction worksites, when the expected duration of the construction is less than two years, are excluded from this definition.

(3) "Alternative commute mode" means any type of commute transportation other than that in which the single-occupant motor vehicle is the dominant mode, including telecommuting and compressed workweeks if they result in reducing commute trips.

- (4) "Alternative work schedules" mean programs such as compressed workweeks that eliminate work trips for affected employees.
- (5) "Base year" means the period from January 1, 1992, through December 31, 1992, on which goals for vehicle miles traveled (VMT) per employee and proportion of single-occupant vehicle (SOV) trips shall be based.
- (6) "City" means the city of Kirkland.
- (7) "Commute trips" means trips made from a worker's home to a worksite with a regularly scheduled arrival time of six a.m. to nine a.m. (inclusive) on weekdays.
- (8) "CTR plan" means the city's plan as set forth in this chapter to regulate and administer the CTR programs of affected employers within its jurisdiction.
- (9) "CTR program" means an employer's strategies to reduce affected employees' SOV use and VMT per employee.
- (10) "CTR zone" means an area, such as a census tract or combination of census tracts, within Kirkland characterized by similar employment density, population density, level of transit service, parking availability, access to high-occupancy vehicle facilities, and other factors that are determined to affect the level of SOV commuting.
- (11) "Compressed workweek" means an alternative work schedule, in accordance with employer policy, that regularly allows a full-time employee to eliminate at least one workday every two weeks by working longer hours during the remaining days, resulting in fewer commute trips by the employee. This definition is primarily intended to include weekly and biweekly arrangements, the most typical being four ten-hour days or eighty hours in nine days, but may also include other arrangements. Compressed workweeks are understood to be an ongoing arrangement.
- (12) "Dominant mode" means the mode of travel used for the greatest distance of a commute trip.
- (13) "Employee" means any person who receives financial or other remuneration in exchange for work provided to an employer, including owners or partners of the employer, provided however, an independent contractor shall not constitute an employee.
- (14) "Employer" means a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district or other individual or entity, whether public, nonprofit, or private, that employs workers.
- (15) "Flex-time" is an employer policy allowing individual employees some flexibility in choosing the time, but not the number, of their working hours to facilitate the use of alternative modes.
- (16) "Full-time employee" means a person other than an independent contractor, scheduled to be employed on a continuous basis for fifty-two weeks per year for an average of at least thirty-five hours per week.
- (17) "Good faith effort" means that an employer has met the minimum requirements identified in RCW 70.94.531 and this chapter and is working collaboratively with the city to continue its existing CTR program or is developing and implementing program

modifications likely to result in improvements to its CTR program over an agreed-upon length of time.

(18) "Implementation" means active pursuit by an employer of the CTR goals of RCW 70.94.521 through 70.94.551 and this chapter as evidenced by appointment of a transportation coordinator, distribution of information to employees regarding alternatives to SOV commuting, and commencement of other measures according to their CTR program and schedule.

(19) "Mode" means the type of transportation used by employees, such as single-occupant motor vehicle, rideshare vehicle (carpool, vanpool), transit, ferry, bicycle and walking.

(20) "Peak period" means the hours from six a.m. to nine a.m. (inclusive), Monday through Friday, except legal holidays.

(21) "Peak period trip" means any employee trip that delivers the employee to begin his or her regular workday between six a.m. and nine a.m. (inclusive), Monday through Friday, except legal holidays.

(22) "Proportion of single-occupant vehicle trips" or "SOV rate" means the number of commute trips over a set period made by affected employees in SOVs divided by the number of affected employees working during that period.

(23) "Single-occupant vehicle (SOV)" means a motor vehicle occupied by one employee for commute purposes, including a motorcycle.

(24) "Single-occupant vehicle (SOV) trips" means trips made by affected employees in SOVs.

(25) "Single worksite" means a building or group of buildings on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-way occupied by one or more affected employers.

(26) "Telecommuting" means the use of telephones, computers, or other similar technology to permit an employee to work from home, eliminating a commute trip, or to work from a work place closer to home, reducing the distance traveled in a commute trip by at least half.

(27) "Transportation management association (TMA)" means a group of employers or an association representing a group of employers in a defined geographic area. A TMA may represent employers within specific city limits, or may have a sphere of influence that extends beyond city limits.

(28) "Vehicle miles traveled (VMT) per employee" means the sum of the individual vehicle commute trip lengths in miles made by affected employees over a set period divided by the number of affected employees during that period.

(29) "Waiver" means an exemption from CTR program requirements granted to an employer by the city based on unique conditions that apply to the employer or employment site. A waiver may be partial or total exemption from CTR program requirements.

(30) "Week" means a seven-day calendar period, starting on Monday and continuing through Sunday.

(31) "Weekday" means any day of the week except Saturday or Sunday. (Ord. 3694 § 1, 1999: Ord. 3352 § 1 (part), 1993)

7.06.020 Commute trip reduction goals.

Affected employers which have been participating in the CTR program since its inception are to achieve the following reductions in vehicle miles traveled per employee as well as in the proportion of single-occupant vehicles from the 1992 base year value of Kirkland's CTR zone or from the worksite's own base year values:

(a) Fifteen percent by January 1, 1995;

(b) Twenty percent by January 1, 1997;

(c) Twenty-five percent by January 1, 1999;

(d) Thirty-five percent by January 1, 2005. (Ord. 3694 § 2, 1999: Ord. 3352 § 1 (part), 1993)

7.06.030 Designation of CTR zone and base year values.

(a) Employers in the city fall within the East King County CTR zone designated by the boundaries shown on Map 7.06.030 attached to the ordinance codified in this chapter and incorporated by reference herein.

(b) The base year value of this zone for proportion of SOV trips shall be eighty-five percent or the worksite's own base year values. The base year value for vehicle miles traveled (VMT) per employee shall be set at 9.3 miles. Commute trip reduction goals for major employers shall be calculated from these values. Therefore, affected employers in the city of Kirkland shall establish programs designed to result in SOV rates of not more than 72 percent in 1995 or by the first goal measurement, 68 percent in 1997 or the second goal measurement, 64 percent in 1999 or by the third goal measurement and 55 percent in 2005 or by the fourth goal measurement. In addition, the programs shall be designed to result in VMT per employee of not more than 7.9 miles in 1995 or by the first goal measurement, 7.4 miles in 1997 or by the second goal measurement, 7.0 miles in 1999 or by the third goal measurement, and 6.0 miles in 2005 or by the fourth goal measurement. (Ord. 3694 § 3, 1999: Ord. 3352 § 1 (part), 1993)

7.06.040 City of Kirkland CTR plan.

The city council hereby approves and adopts the 1999 city of Kirkland CTR plan in the form in which it is on file in the city clerk's office. This plan may be amended by further action of the city council. (Ord. 3694 § 4, 1999: Ord. 3352 § 1 (part), 1993)

7.06.050 Responsible agency.

The city public works department shall be responsible for implementing this chapter, the CTR plan and the city's CTR program for its own employees. The city public works director shall have the authority to issue such rules and administrative procedures and delegate authority to other city departments as may be necessary to implement this chapter. (Ord. 3694 § 5, 1999: Ord. 3352 § 1 (part), 1993)

7.06.060 Applicability.

The provisions of this chapter shall apply to any affected employer at any single worksite within the corporate limits of the city. Employees will only be counted at their primary worksite. The following classifications of employees are excluded from the counts of employees: (1) seasonal agricultural employees, including seasonal employees of processors of agricultural products; and (2) employees of construction worksites when the expected duration of the construction is less than two years.

(a) Notification of Applicability.

(1) In addition to Kirkland's established public notification for adoption of an ordinance, a notice of availability of a summary of this chapter, a notice of the requirements and criteria for affected employers to comply with this chapter, and subsequent revisions shall be published at least once in a newspaper of general circulation in Kirkland within thirty days after adoption of this chapter or revisions.

(2) Within thirty days after adoption of this chapter, the city public works director will issue to known affected employers located in Kirkland a formal written notification by certified mail that they are subject to this chapter.

(3) Affected employers that do not receive notice within thirty days of adoption of this chapter must identify themselves to the city public works director within one hundred eighty days of the adoption of this chapter. Upon identifying themselves within said one hundred eighty-day period, such employers will be granted one hundred fifty days from the date of self-identification within which to develop and submit a CTR program.

(4) Any existing employer of seventy-five or more persons who obtains a business license in the city, subsequent to adoption of this chapter, will be required to complete an employer assessment form. The employer assessment form will be used to assist the city public works director to determine whether or not an employer will be deemed affected or non-affected in accordance with the provisions of this chapter.

(b) New Affected Employers. Employers that fall within definition of "affected employer" must identify themselves to the city public works director within one hundred eighty days of either moving into the boundaries of Kirkland or growing in employment at a worksite to one hundred or more affected employees. Once they identify themselves, such employers shall submit a complete baseline survey within ninety days and they shall be granted a total of one hundred fifty days to develop and submit a CTR program. A new affected employer may use its baseline survey as a baseline measurement for commute trip reduction goals only if the survey response rate was at least seventy percent.

New affected employers shall have two years to meet the first CTR goal of a fifteen percent reduction from the base year values identified in Section 7.06.030 of this chapter; four years to meet the second goal of a twenty percent reduction; six years to meet the third goal of a twenty-five percent reduction; and twelve years to meet the fourth goal of a thirty-five percent reduction from the time they begin their program.

(c) Change in Status as an Affected Employer. Any of the following changes in an employer's status will change the employer's CTR program requirements:

(1) If an affected employer can document that it faces an extraordinary circumstance that will change its status as an affected employer, it may apply for a full or partial exemption from CTR program requirements pursuant to Section 7.06.100 of this chapter.

(2) If an employer initially designated as an affected employer no longer employs one hundred or more affected employees and has not employed one hundred or more affected employees for the past twelve months, that employer is no longer an affected employer. It is the responsibility of the employer to provide documentation to the city public works director that it is no longer an affected employer. The city public works director shall review such documentation to determine whether the employer is no longer an affected employer.

(3) If the same employer returns to the level of one hundred or more affected employees twelve or more months after its change in status to an "unaffected" employer, that employer shall be treated as a new affected employer, and will be subject to the same CTR program requirements as other new affected employers. (Ord. 3694 § 6, 1999; Ord. 3352 § 1 (part), 1993)

7.06.070 Requirements for employers.

An affected employer is required to make a good faith effort, as defined in RCW 70.94.534(2) and this chapter, to develop and implement a CTR program that will encourage its employees to reduce VMT per employee and SOV commute trips. The CTR program must include the mandatory elements described below, including submittal of a CTR program description and annual progress report. Transportation management associations may submit CTR program descriptions and annual reports on behalf of employers; however, each affected employer shall remain accountable for the compliance of its CTR program.

(a) Description of Employer's CTR Program. Each affected employer is required to submit a description of its CTR program to the city on an official form available from the public works department. At a minimum, the employer's description must include:

(1) General description of each employment site location within the city limits, including transportation characteristics, surrounding services, and unique conditions experienced by the employer or its employees;

(2) Number of employees affected by the CTR program;

(3) Documentation of compliance with the mandatory CTR program elements (as described in subsection (b) of this section);

(4) Description of the additional elements included in the CTR program; and

(5) Schedule of implementation, assignment of responsibilities, and commitment to provide appropriate resources to carry out the CTR program.

(b) Mandatory Program Elements. Each employer's CTR program shall include the following mandatory elements:

(1) Transportation Coordinator. The employer shall designate a transportation coordinator to administer the CTR program. The coordinator's and/or designee's name, location, and telephone number must be displayed prominently at each affected worksite. The coordinator shall oversee all elements of the employer's CTR program and act as liaison between the employer and the city. An affected employer with multiple sites may have one transportation coordinator for all sites.

(2) Information Distribution. The employer shall provide information about alternatives to SOV commuting to employees at least once a year. This shall consist of, at a

minimum, a summary of the employer's program, including the transportation coordinator's name and phone number. Employers must also provide a summary of their program to all new employees at the time of hire. Each employer's program description and annual report must describe what information is to be distributed by the employer and the method of distribution.

(3) Annual Progress Report. The employer's CTR program must include an annual review of employee commuting and of progress toward meeting the SOV reduction goals. Affected employers shall file a progress report annually with the city. The employer shall contact the city's public works department for the format of the report. Survey information or alternative information approved by the public works director shall be provided in the reports submitted in the second, fourth, sixth, eighth, tenth and twelfth years after program implementation begins.

(4) Additional Program Elements. In addition to the specific program elements described above, the employer's CTR program shall include a set of measures designed to meet CTR goals, as described in the city's administrative procedures.

Affected employers shall be required to select at least two measures from the following List A and at least one measure from the following List B:

CTR Program Measures List A:

1. Promotional events;
2. Transportation fairs;
3. Commuter information center;
4. Ridematching services;
5. Bicycle training program;
6. Preferential parking for carpools and vanpools;
7. Guaranteed ride home program;
8. Compressed workweek;
9. Alternative work schedules;
10. Telecommuting programs.

CTR Program Measures List B:

1. Secure bicycle parking facilities, lockers, changing areas, and showers;
2. Pedestrian facilities or improvements;
3. Signage for residential parking zone;
4. Reduction of SOV parking supply;
5. Discounted HOV parking price;

6. Increase or institution of SOV parking price;
7. Transportation allowance/voucher;
8. Transportation subsidy or discount;
9. Rideshare bonuses;
10. Carpool subsidy;
11. Carpool fuel incentives;
12. Vanpool sponsorship and subsidies;
13. Fleetpool;
14. Vanpool program;
15. On-site childcare services;
16. Shuttle services;
17. Alternative measures approved by the city public works director designed to facilitate the use of high-occupancy vehicles.

Specific details and additional instructions for implementation of program measures shall be described in the city's administrative procedures. (Ord. 3694 § 7, 1999: Ord. 3352 § 1 (part), 1993)

7.06.080 Record keeping.

Affected employers shall maintain all records required by the city public works director. (Ord. 3694 § 8, 1999: Ord. 3352 § 1 (part), 1993)

7.06.090 Schedule and process for CTR reports, program review and implementation.

(a) CTR Program. Not more than six months after the adoption of this chapter, or within six months after an employer becomes subject to the provisions of this chapter, the employer shall develop a CTR program and shall submit to the city public works director a description of that program for review.

(b) CTR Annual Reporting Date. Employers will be required to submit an annual CTR report to the city public works director beginning with the first annual reporting date assigned during the initial program submittal. The annual reporting date shall be assigned by the city public works director and be no less than twelve months from the day the initial program description is submitted. Subsequent years' reports will be due on the same date each year.

(c) Content of Annual Report. The annual progress report shall describe each of the CTR measures that were in effect for the previous year, the results of any commuter surveys undertaken during the year, and the number of employees participating in CTR programs. Survey information or alternative information approved by the city public works director must be provided in the reports submitted in the second, fourth, sixth, eighth, tenth and twelfth years after program implementation begins.

(d) Program Review. The city public works director shall notify the employer in writing indicating whether a CTR program was approved or deemed unacceptable.

(1) Initial program descriptions will be deemed acceptable if: (i) all required information on the program description form is provided, and (ii) the program description includes the following information:

(A) Name, location and telephone number of the employee transportation coordinator for each worksite;

(B) The employer's plan for documenting regular distribution of information to employees about the employer's CTR program at the worksite, including alternatives to driving alone to work; and

(C) The employer's plan for implementation of additional measures designed to achieve the applicable goal. The employer must describe with particularity all implementation measures.

(2) Annual reports will be deemed acceptable if the annual report form is complete and contains information about implementation of the prior year's program elements and proposed new program elements and implementation schedule. Annual reports must also contain a review of employee commuting and report of progress toward meeting SOV goals.

(3) The following criteria for achieving goals for VMT per employee and proportion of SOV trips shall be applied in determining requirements for employer CTR program modifications:

(A) If employer makes a good faith effort, as defined in RCW 70.94.534(2) and this chapter, and meets either or both the applicable SOV or VMT goal, the employer has satisfied the objectives of the CTR plan and will not be required to modify its CTR program.

(B) If an employer makes a good faith effort, as defined in RCW 70.94.534(2) and this chapter, but has not met or is not likely to meet the applicable SOV or VMT reduction goal, the city shall work collaboratively with the employer to make modifications to its CTR program. After agreeing on modifications, the employer shall submit a revised CTR program description to the city for approval within thirty days of reaching agreement.

(C) If an employer fails to make a good faith effort, as defined in RCW 70.94.534(2) and this chapter, and fails to meet the applicable SOV or VMT reduction goal, the city shall work collaboratively with the employer to identify modifications to the CTR program and shall direct the employer to revise its program within thirty days to incorporate the modifications. In response to the recommended modifications, the employer shall submit a revised CTR program description, including the requested modifications or equivalent measures, within thirty days of receiving written notice to revise its program. The city shall review the revisions and notify the employer of acceptance or rejection of the revised program. If a revised program is not accepted, the city will send written notice to that effect to the employer within thirty days, and if necessary, to require the employer to attend a conference with program review staff for the purpose of reaching a consensus on the required program. A final decision on the required program will be issued in writing by the city within ten working days of the conference.

(e) Implementation of Employer's CTR Program. The employer shall implement the approved CTR program not more than one hundred eighty days after the program was first submitted to the city unless the city public works director grants an extension allowing late implementation. Implementation of programs that have been modified based on nonattainment of CTR goals must occur within thirty days following city approval of such modifications. (Ord. 3694 § 9, 1999; Ord. 3352 § 1 (part), 1993)

7.06.100 Requests for exemptions/ modification of CTR requirements.

(a) Exemptions.

(1) Worksite Exemptions. An affected employer may submit a request to the city to grant an exemption from all CTR program requirements or penalties for a particular worksite. The employer must demonstrate that it would experience undue hardship in complying with the requirements of this chapter as a result of the characteristics of its business, its workforce or its location(s). An exemption may be granted if and only if the affected employer demonstrates that it faces extraordinary circumstances, such as bankruptcy, and is unable to implement any measures that could reduce the proportion of SOV trips and VMT per employee. Exemptions may be granted by the city at any time based on written notice provided by the affected employer. The notice should clearly explain the conditions for which the affected employer is seeking an exemption from the requirements of the CTR program. The city shall review annually all employers receiving exemptions and shall determine whether the exemption will be in effect during the following program year.

(2) Employee Exemptions. Specific employees or groups of employees who are required to drive alone to work as a condition of employment may be exempted from a worksite's CTR program. Exemptions may also be granted for employees who work variable shifts throughout the year and who do not rotate as a group to identical shifts. The city will use the criteria identified in the CTR task force guidelines to assess the validity of employee exemption requests. The city shall review annually all employee exemption requests, and shall determine whether the exemption will be in effect during the following program year.

(b) Goal Modification. An affected employer may request that the city modify its CTR program goals. Such requests shall be filed in writing at least sixty days prior to the date the worksite is required to submit its program description and annual report. The goal modification request must clearly explain why the worksite is unable to achieve the applicable goal. The worksite must also demonstrate that it has implemented all of the elements contained in its approved CTR program. The city will review and grant or deny requests for goal modification in accordance with procedures and criteria identified in the CTR task force guidelines. An employer may not request a modification of the applicable goals until one year after the city approval of its initial program description or annual report.

(c) Request Procedure. All requests for modification of CTR program goals must be made in writing to the city public works director by certified mail or delivery, return receipt.

(d) Modification of CTR Program Elements. If an employer wants to change a particular element of its CTR program during the period of time between annual reporting dates, the employer must make a written request for modification to the city public works director. The city public works director shall review and notify the employer in writing whether the request is approved or denied.

(e) Extensions. An employer may request additional time to submit a CTR program or CTR annual progress report, or to implement or modify a program. Such requests shall be made in writing to the city public works director before the due date for which the extension is being requested. Requests for extensions must be made prior to the due date anytime a program submission is going to be more than one week late. Extensions not to exceed ninety days shall be considered for reasonable causes. Employers will be limited to a total of ninety allowed extension days per year. Extensions shall not exempt an employer from any responsibility for meeting program goals. Extensions granted due to delays or difficulties with any program elements shall not be cause for discontinuing or failing to implement other program elements. An employer's annual reporting date shall not be adjusted permanently as a result of these extensions. An employer's annual reporting date may be extended at the discretion of the city public works director. (Ord. 3694 § 10, 1999; Ord. 3352 § 1 (part), 1993)

7.06.110 Credit for transportation demand management efforts.

(a) Credit for Programs Implemented Prior to the Base Year. Employers with successful TDM programs implemented prior to the 1992 base year may apply to the city for program credit.

(1) Employers whose VMT per employee and proportion of SOV trips satisfy the goals for one or more future goal years, and who commit in writing to continue their current level of effort, shall be exempt from the following year's annual report.

(2) Employers applying for the program credit in their initial 1993 program description shall be considered to have met the 1995 CTR goals if their VMT per employee and proportion of SOV trips are equivalent to a twelve percent or greater reduction from the base year zone values. This three percentage point credit applies only to the 1995 CTR goals.

For the initial year, employer requests for program credit are due within three months after notification that the employer is subject to this chapter. Requests for program credit must be received by the employer's assigned reporting dates in 1995 and 1997 for succeeding years.

Application for a program credit shall include an initial program description, written commitment on an official report form to maintain program elements, and results from a survey of employees, or equivalent information that establishes the applicant's VMT per employee and proportion of SOV trips. The survey or equivalent information shall conform to all applicable standards established in the Director's Rules for implementation of this chapter.

(b) Credit for Alternative Work Schedules, Telecommuting, Bicycling and Walking, by Affected Employees. When calculating the SOV and VMT rates of affected employers, the city will count commute trips eliminated through alternative work schedules, telecommuting options, bicycling and walking as 1.2 vehicle trips eliminated. This assumption applies to both the proportion of SOV trips and VMT per employee. (Ord. 3352 § 1 (part), 1993)

7.06.120 Employer peer review group.

(a) Purpose and Appointment of Representatives. The city public works director shall appoint representative(s) from affected employers to regional or subregional employer peer review groups as may be created through interlocal agreement with other jurisdictions. The specific functions of the peer review group shall be determined by the interlocal agreement.

(b) Limitations of Peer Review Group. Any peer review group shall be advisory in nature. The city shall not be bound by any comments or recommendations of any peer review group. (Ord. 3694 § 11, 1999; Ord. 3352 § 1 (part), 1993)

7.06.130 Appeals of administrative decisions.

(a) Appeal of Final Decisions. Employers may file a written appeal to the city's hearing examiner of the city's final decisions regarding the following actions:

- (1) Rejection of an employer's proposed program;
- (2) Denial of an employer's request for a waiver or modification of any of the requirements under this chapter or a modification of the employer's program;
- (3) Denial of credits requested under Section 7.06.110 of this chapter.

(b) Appeals filed under this section must be filed with the city within twenty days after the employer receives notice of a final decision. Timely appeals shall be heard by the city's hearing examiner. Determinations on appeals shall be based on whether the decision being appealed was consistent with the state law. (Ord. 3352 § 1 (part), 1993)

7.06.140 Enforcement.

(a) Compliance. For purposes of this section, compliance shall mean submitting required reports and documentation at prescribed times and fully implementing all provisions in an accepted CTR program.

(b) Violations. Violation of a provision of this chapter is a civil infraction for which a monetary penalty may be imposed under this chapter. The following actions shall constitute a violation of this ordinance:

(1) Failure to implement an approved CTR program, unless the program elements that are carried out can be shown through quantifiable evidence to meet or exceed VMT and SOV goals as specified in this chapter. Failure to implement a CTR program includes but is not limited to any of the following:

(A) Failure of any affected employer to submit a complete CTR program within the deadlines specified in Section 7.06.090 of this chapter;

(B) Failure to submit required documentation for annual reports;

(C) Submission of fraudulent data.

(2) Failure to modify a CTR program found to be unacceptable by the city under Section 7.06.090 of this chapter.

(3) Failure to perform any activity required by this chapter relating to implementation of or required modification to a CTR program.

(4) Failure to make a good faith effort, as defined in RCW 70.94.534(2) and this chapter.

(c) Penalties.

(1) No affected employer with an approved CTR program which has made a good faith effort may be held liable for failure to reach the applicable SOV or VMT goal.

(2) Each day of failure by an employer to (a) implement a commute trip reduction program, or (b) modify an unacceptable commute trip reduction program, or (c) fail to perform any activity required by this chapter relating to implementation of or required modification to a CTR program shall constitute a separate violation and shall be considered a civil infraction. The penalty for a violation shall be two hundred fifty dollars per day.

(3) An employer shall not be liable for civil penalties if failure to implement an element of a CTR program was the result of an inability to reach agreement with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith. Employers having unionized employees shall be presumed to act in good faith compliance if they: (a) propose to a recognized union any provision of the employer's CTR program that is subject to bargaining as defined by the National Labor Relations Act; and (b) advise the union of the existence of the statute and the mandates of the CTR program approved by the city and advise the union that the proposal being made is necessary for compliance with state law (RCW 70.94.531).

(4) Payment of a monetary penalty pursuant to this chapter does not relieve an affected employer of the duty to comply with the activities required by this chapter.

(5) Nothing in this chapter limits the right of the city to pursue other civil or equitable remedies it may have to obtain compliance with the activities required by this chapter.

(6) A notice of violation and imposition of monetary penalties represents a determination that a civil infraction has been committed. The determination is final unless appealed as provided in this chapter.

(7) A notice of violation and imposition of monetary penalties shall be served on the affected employer, either personally or by mailing a copy of the notice by certified mail, postage prepaid, return receipt requested to the affected employer at his/her last known address. The person who effected personal service or service by mail shall make proof of service at the time of service by a written declaration under penalty of perjury declaring the time and date and the manner in which service was made.

(d) Appeals of Penalties.

(1) An affected employer to whom a notice of violation and imposition of monetary penalties is directed may appeal the notice including the determination that a violation exists or may appeal the amount of any monetary penalty imposed to the city hearing examiner.

(2) An affected employer may appeal a notice of violation by filing a written notice of appeal with the department of public works within seven calendar days from the date of service of the notice of violation and imposition of monetary penalties.

(3) The monetary penalty for a continuing violation does not accrue during the pendency of the appeal; however, the hearing examiner may impose a daily monetary penalty from the date of service of the notice of civil infraction if he finds that the appeal is frivolous or intended solely to delay compliance.

(4) The hearing before the hearing examiner shall be conducted as follows:

(A) The office of the hearing examiner shall give notice of the hearing before the hearing examiner to the appellant at least seventeen calendar days before such hearing.

(B) The hearing examiner shall conduct a hearing on the appeal pursuant to the rules of procedure as provided by the Administrative Procedure Act, Chapter 34.05 RCW. The city and the appellant may participate as parties in the hearing and each may call witnesses. The city shall have the burden of proof by a preponderance of the evidence that a violation has occurred.

(5) The hearing examiner shall determine whether the city has proved by a preponderance of the evidence that a violation has occurred and shall affirm, vacate, suspend or modify the amount of any monetary penalty imposed by the notice of civil violation with or without written conditions.

(6) The hearing examiner shall consider the following in making his/her determination:

(a) Whether the intent of the appeal was to delay compliance; or

(b) Whether the appeal is frivolous; or

(c) Whether the appellant exercised reasonable and timely effort to comply with applicable requirements; or

(d) Any other relevant factors.

(7) The hearing examiner shall mail a copy of his decision to the appellant by certified mail, postage prepaid, return receipt requested.

(8) The decision of the hearing examiner may be reviewed for illegal, corrupt or arbitrary or capricious action in King County superior court. The petition for review must be filed within thirty calendar days of the final decision of the hearing examiner.

(9) The collection of the monetary penalty shall be as follows:

(a) The monetary penalty constitutes a personal obligation of the person to whom the civil infraction is directed. Any monetary penalty assessed must be paid to the city clerk within seven calendar days from the date of service of notice of violation and imposition of monetary penalties or, if an appeal was filed pursuant to this chapter, within seven calendar days of the hearing examiner's decision.

(b) The city attorney, on behalf of the city, is authorized to collect the monetary penalty by use of appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate accrual of additional per diem monetary penalties so long as the violation continues.

(c) In the event of failure to appear at a hearing provided herein, the hearing examiner shall assess the monetary penalty prescribed and a penalty of twenty-five dollars.

(d) In the event of a conflict between this chapter and any other city ordinance providing for a civil penalty, this chapter shall control.

(10) A person who willfully fails to pay a monetary penalty as required by provisions of this chapter may be found in civil contempt of court after notice and hearing. (Ord. 3694 § 12, 1999; Ord. 3352 § 1 (part), 1993)