

ORDINANCE NO. 4138

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TRANSPORTATION DEMAND MANAGEMENT, REPEALING AND REENACTING CHAPTER 7.06 OF THE KIRKLAND MUNICIPAL CODE RELATING TO COMMUTE TRIP REDUCTION, ADOPTING THE CITY OF KIRKLAND COMMUTE TRIP REDUCTION (CTR) PLAN AND IMPLEMENTING MEASURES AS REQUIRED BY RCW 70.94.527.

WHEREAS, State law and policy requires the City of Kirkland to develop and implement a plan to reduce single occupant vehicle commute trips; and

WHEREAS, a number of legislative and administrative changes to the commute trip reduction (CTR) program have taken place recently; and

WHEREAS, many of these changes require corresponding changes to the City's CTR chapter; and

WHEREAS, the City seeks to make its CTR chapter consistent with State law and the guidelines established by the CTR task force; and

WHEREAS, the Commute Trip Reduction Efficiency Act of 2006 requires the City to amend its CTR Plan and Chapter 7.06 of the Kirkland Municipal Code consistent with RCW 70.94.527; and

WHEREAS, the City recognizes the importance of increasing citizen awareness of air quality, energy consumption, and traffic congestion and the contribution individual actions can make toward addressing these issues.

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Chapter 7.06 of the Kirkland Municipal Code is hereby repealed and reenacted to read as follows:

Chapter 7.06  
COMMUTE TRIP REDUCTION

**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 twelve-month period which commences when a major employer is determined by the City to be participating within the CTR program. The City uses this twelve-month period as the basis upon which it develops CTR goals.

(6) "Base year survey" or "baseline measurement" means the survey, during the base year, of employees at a major employer worksite to determine the drive-alone rate and vehicle miles traveled per employee at the worksite. The City uses this measurement to develop CTR goals for the major employer. The baseline measurement must be implemented in a manner that meets the requirements specified by the City.

(7) "Carpool" means a motor vehicle, including a motorcycle, occupied by two to six people of at least 16 years of age traveling together for their commute trip, resulting in the reduction of a minimum of one motor vehicle commute trip.

(8) "City" means the city of Kirkland.

(9) "Commute trips" means trips made from a worker's home to a worksite (inclusive) on weekdays.

(10) "CTR" is the abbreviation of Commute Trip Reduction.

(11) "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.

(12) "CTR program" means an employer's strategies to reduce affected employees' drive alone vehicle use and VMT per employee.

(13) "Commute trip vehicle miles traveled per employee" means the sum of the individual vehicle commute trip lengths in miles over a set period divided by the number of full-time employees during that period.

(14) "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.

(15) "Custom bus/buspool" means a commuter bus service arranged specifically to transport employees to work.

(16) "Dominant mode" means the mode of travel used for the greatest distance of a commute trip.

(17) "Drive Alone" means a motor vehicle occupied by one (1) employee for commute purposes, including a motorcycle.

(18) "Drive Alone Trips" means commute trips made by employees in single occupant vehicles.

(19) "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.

(20) "Employee Transportation Coordinator (ETC)" means a person who is designated as responsible for the development, implementation, and monitoring of an employer's CTR program.

(21) "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.

(22) "Exemption" means a waiver from any or all CTR program requirements granted to an employer by the City based on unique conditions that apply to the employer or employment site.

(23) "Flex-time" is an employer policy allowing individual employees some flexibility in choosing the time, but not the number, of their working hours.

(24) "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.

(25) "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.

(26) "Implementation" means active pursuit by an employer of the CTR goals of RCW 70.94.521 through 70.94.555 and this chapter as evidenced by appointment of a transportation coordinator, distribution of information to employees regarding alternatives to drive alone commuting, and commencement of other measures according to their CTR program and schedule.

(27) "A major employer" means a private or public employer, including state agencies, that employs one hundred or more full-time employees at a single worksite who are scheduled to begin their regular work day between six a.m. and nine a.m. on weekdays for at least twelve continuous months.

(28) "Major employer worksite" or "affected employer worksite" or "worksite" means the physical location occupied by a major employer, as determined by the local jurisdiction.

(29) "Major employment installation" means a military base or federal reservation, excluding tribal reservations, or other locations as designated by the City, at which there are one hundred or more affected employees.

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

(31) "Notice" means written communication delivered via the United States Postal Service with receipt deemed accepted three days following the day on

which the notice was deposited with the Postal Service unless the third day falls on a weekend or legal holiday in which case the notice is deemed accepted the day after the weekend or legal holiday.

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

(33) "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.

(34) "Proportion of drive alone vehicle trips" or "drive alone rate" means the number of commute trips over a set period made by affected employees in drive alone vehicles divided by the number of affected employees working during that period.

(35) "Public Works Director" means the direct of the Public Works Department or his/her designee.

(36) "Ride Matching Service" means a system which assists in matching commuters for the purpose commuting together.

(37) "Telecommuting" or "teleworking" 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.

(38) "Transit" means a multiple-occupant vehicle operated on a for-hire, shared-ride basis, including bus, passenger ferry, rail, shared-ride taxi, shuttle bus, or vanpool.

(39) "Transportation Demand Management (TDM)" means a broad range of strategies that are primarily intended to reduce and reshape demand on the transportation system.

(40) "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.

(41) "Vanpool" means a vehicle occupied by from five (5) to fifteen (15) people traveling together for their commute trip, resulting in the reduction of a minimum of one motor vehicle trip.

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

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

(44) "Weekday" means any day of the week except Saturday or Sunday.

(45) "Writing," "Written," or "In Writing" means original signed and dated documents. Facsimile (fax) transmissions are a temporary notice of action that must be followed by the original signed and dated document via mail or delivery.

#### **7.06.020 City of Kirkland CTR Plan.**

The City Council hereby approves and adopts the August 2008 City of Kirkland CTR plan. This Plan may be amended by further action of the City Council.

The goals established for the jurisdiction and affected employers in the City's Commute Trip Reduction Plan set forth in Attachment A are incorporated herein by reference. The City staff is directed to make any corrections for typographical errors, include any graphical materials for information, and complete the Commute Trip Reduction Plan.

**7.06.030 Commute Trip Reduction Goals.**

a. The City's goals for reductions in the proportions of drive-alone commute trips and vehicle miles traveled per employee by affected employers in the City's jurisdiction, major employment installations, and other areas designated by the City are hereby established by the City's CTR Plan incorporated by Section 7.06.020 above. These goals establish the desired level of performance for the CTR program in its entirety in the City.

b. The City will set the individual worksite goals for affected employers based on how the worksite can contribute to the City's overall goal established in the CTR Plan. The goals will appear as a component of the affected employer's approved implementation plan outlined in Section 7.06.110 below.

**7.06.040 CTR Goals for Affected Employers.**

a. The drive-alone and VMT goals for affected employers in the City are set forth in the CTR Plan adopted in Section 7.06.020 above.

b. If the goals for an affected employer or newly affected employer are not listed in the CTR Plan, they shall be established by the City at a level designed to achieve the City's overall goals and other areas as designated by the City.

c. The City shall provide written notification of the goals for each affected employer worksite by providing the information when the City reviews the employer's proposed program and incorporating the goals into the program approval issued by the City.

**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.

**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 (2) years.

(a) Notification of Applicability.

(1) In addition to the City'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 the City within thirty (30) days after adoption of this chapter or revisions.

(2) Within thirty (30) days after adoption of this chapter, the City Public Works Director will issue to known affected employers located in the City a formal written notification by certified mail that they are subject to this chapter.

(3) Affected employers that do not receive notice within thirty (30) days of adoption of this chapter must identify themselves to the City Public Works Director within ninety (90) days of the adoption of this chapter. Upon identifying themselves within said ninety-day period, such employers will be granted ninety (90) days from the date of self-identification within which to develop and submit a CTR program.

(4) Affected employers that have not been identified or do not identify themselves within ninety (90) days of the passage of this chapter and do not perform a baseline measurement consistent with the measurement requirements specified by the City within ninety (90) days from the passage of this chapter are in violation of this chapter.

(5) If an affected employer has already performed a baseline measurement, or an alternative acceptable to the City, previously under this chapter, the employer is not required to perform another baseline measurement.

(6) Any existing employer of seventy-five (75) 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 ninety (90) days of either moving into the boundaries of the City or growing in employment at a worksite to one hundred (100) or more affected employees. Once they identify themselves, such employers shall submit a complete baseline survey within ninety (90) days and they shall be granted a total of ninety days to develop and submit a CTR program. Employers who do not identify themselves within ninety (90) days are in violation of this chapter.

(1) Newly affected employers identified as such shall be given ninety (90) days to perform a mandatory baseline measurement consistent with the measurement requirements specified by the City. Employers who do not perform a baseline measurement within ninety (90) days of receiving written notification that they are subject to this chapter are in violation of this chapter.

(2) Not more than ninety (90) days after receiving written notification of the results of the baseline measurement, the newly affected employer shall develop and submit a CTR Program to the City. The program will be developed in consultation with the City to be consistent with the goals of the CTR Plan adopted in Section 7.06.020. The program shall be implemented not more

than ninety (90) days after approval by the City. Employers who do not implement an approved CTR Program according to this schedule are in violation of this chapter and subject to the penalties outlined in Section 7.06.120.

(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 7.06.130 of this chapter.

(2) If an employer initially designated as an affected employer no longer employs one hundred (100) or more affected employees and expects not to employ one hundred (100) or more affected employees for the next twelve (12) months, that employer is placed on a 12-month watch and is subject to the same program requirements as other affected employers. At the end of the 12-month watch, if they no longer employ one hundred (100) affected employees, they are 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 burden of proof lies with the 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 (100) or more affected employees twelve (12) 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.

### **7.06.070 Requirements for Employers – RCW 70.94.531**

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 drive alone commute trips. The CTR program must include the mandatory elements described below, including submittal of a CTR program description and regular progress report. Transportation Management Associations may submit CTR program descriptions and biennial 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;

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

(6) A statement of organizational commitment to provide appropriate resources to the program to meet the employer's established goals.

(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 drive alone 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. The summary of the employer's CTR Program shall also be submitted to the City with the employer's program description and regular report.

Affected employers shall be required to implement the following:

1. Promotional events;
2. Commuter information center;
3. Preferential parking for high-occupancy vehicles, carpools and vanpools; and
4. Provide secure covered bicycle parking facilities.

(c) 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. Elements may include, but are not limited to, one or more of the following:

1. Reduced parking charges for high-occupancy vehicles;
2. Instituting or increasing parking charges for drive alone commuters;
3. Provision of commuter ride matching services to facilitate employee ridesharing for commute trips;
4. Provision of subsidies for rail, transit, or vanpool fares and/or transit passes;
5. Provision of vans or buses for employee ridesharing;
6. Provision of subsidies for carpools, walking, bicycling, teleworking, or compressed schedules;
7. Provision of incentives for employees who do not drive alone to work;
8. Permitting the use of the employer's vehicles for carpooling or vanpooling;
9. Permitting flexible work schedules to facilitate employees' use of transit, carpools, or vanpools;

10. Cooperation with transportation providers to provide additional regular or express service to the worksite;



11. Construction of special loading and unloading facilities for transit, carpool, and vanpool users;
12. Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;
13. Provision of a program of parking incentives such as a rebate for employees who do not use the parking facilities;
14. Establishment of a program to permit employees to work part- or full-time at home or at an alternative worksite closer to their homes which reduces commute trips;
15. Establishment of a program of alternative work schedules, such as a compressed work week, which reduces commute trips;
16. Implementation of other measures designed to facilitate the use of high-occupancy vehicles, such as on-site day care facilities, emergency taxi services, or guaranteed ride home programs;
17. Charging employees for parking, and/or the elimination of free parking; and
18. Other measures that the employer believes will reduce the number and length of commute trips made to the site.

**7.06.080 CTR Program Report and Description.**

- a. Affected employers shall review their program and file a regular progress report with the City in accordance with the format provided by the City.
- b. The CTR Program Report and Description outlines the strategies to be undertaken by an employer to achieve the commute trip reduction goals for the reporting period. Employers are encouraged to consider innovative strategies and combine program elements in a manner that will best suit their location, site characteristics, business type, and employees' commuting needs. Employers are further encouraged to cooperate with each other to implement program elements.
- c. At a minimum, the employer's CTR Program Report and Description must include:
  1. A general description of the employment site location, transportation characteristics, employee parking availability, on-site amenities, and surrounding services;
  2. The number of employees affected by the CTR program and the total number of employees at the site;
  3. Documentation on compliance with the mandatory CTR program elements (as described in *Section 7.06.070*);
  4. Description of any additional elements included in the employer's CTR program (as described in *Section 7.06.070*); and
  5. A statement of organizational commitment to provide appropriate resources to the program to meet the employer's established goals.

### **7.06.090 Biennial Measure of Employee Commute Behavior.**

In addition to the baseline measurement, employers shall conduct a mandatory program evaluation as a means of determining worksite progress toward meeting CTR goals. As part of the program evaluation, the employer shall distribute and collect Commute Trip Reduction Program Employee Questionnaires (surveys) at least once every two (2) years, and strive to achieve at least a 70% response rate from employees at the worksite.

### **7.06.100 Record keeping.**

Affected employers shall maintain a copy of their approved CTR Program Description and Report, their CTR Program Employee Questionnaire results, and all supporting documentation for the descriptions and assertions made in any CTR report to the City for a minimum of forty-eight (48) months. The City and the employer shall agree on the record keeping requirements as part of the accepted CTR program.

### **7.06.110 Schedule and process for CTR program review and implementation.**

a. Document Review. The City shall provide the employer with written notification if a CTR program is deemed unacceptable. The notification must give cause for any rejection. If the employer receives no written notification of extension of the review period of its CTR program or comment on the CTR program or annual report within ninety (90) days of submission, the employer's program or annual report is deemed accepted. The City may extend the review period up to ninety (90) days. The implementation date for the employer's CTR program will be extended an equivalent number of days.

b. Scheduling. Upon review of an employer's initial CTR program, the City shall establish the employer's regular reporting date. This report will be provided in a form provided by the City consistent with Section 7.06.080 above.

c. Modification of CTR Program Elements. Any affected employer may submit a request to the City for modification of CTR requirements. Such request may be granted if one of the following conditions exist:

1. The employer can demonstrate it would be unable to comply with the CTR program elements for reasons beyond the control of the employer, or
2. The employer can demonstrate that compliance with the program elements would constitute an undue hardship.

The City may ask the employer to substitute a program element of similar trip reduction potential rather than grant the employer's request. Requests to modify the CTR requirement shall be filed in writing at least sixty (60) days prior to the employer's regular reporting date. All requests for modification of CTR program must be made in writing to the City Public Works Director by certified mail or delivery, return receipt.

d. Extensions. An employer may request additional time to submit a CTR Program Description and Report, or to implement or modify a program. Such

requests shall be via written notice at least thirty (30) days before the due date for which the extension is being requested. Extensions not to exceed ninety (90) days shall be considered for reasonable causes. The City shall grant or deny the employer's extension request by written notice within ten (10) working days of its receipt of the extension request. If there is no response issued to the employer, an extension is automatically granted for thirty (30) days. Extensions shall not exempt an employer from any responsibility in meeting program goals. Extensions granted due to delays or difficulties with any program element(s) shall not be cause for discontinuing or failing to implement other program elements. An employer's regular reporting date shall not be adjusted permanently as a result of these extensions. An employer's regular reporting date may be extended at the discretion of the City.

e. Implementation of Employer's CTR Program. Unless extensions are granted, the employer shall implement its approved CTR program, including approved program modifications, not more than ninety (90) days after receiving written notice from the City that the program has been approved or with the expiration of the program review period without receiving notice from the City.

#### **7.06.120 Enforcement.**

(a) Compliance. For purposes of this section, compliance shall mean:

1. Fully implementing in good faith all mandatory program elements as well as provisions in the approved CTR Program Description and Report;
2. Providing a complete CTR Program Description and Report on the regular reporting date; and
3. Distributing and collecting the CTR Program Employee Questionnaire during the scheduled survey time period.

(b) Program Modification Criteria. The following criteria for achieving goals for VMT per employee and proportion of drive alone trips shall be applied in determining requirements for employer CTR program modifications:

1. If an employer meets either or both goals, the employer has satisfied the objectives of the CTR plan and will not be required to improve its CTR program;
2. If an employer makes a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, but has not met the applicable drive alone or VMT goal, no additional modifications are required.
3. 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 drive alone or VMT reduction goal, the City shall direct the employer to revise its program within thirty (30) days to come into compliance with the measures defined by RCW 70.94.534(2), including specific recommended program modifications. In response to the recommended modifications, the employer shall submit a revised CTR Program Description and Report, including the requested modifications or equivalent measures, within thirty (30) days of receiving written notice to revise its program.

4. 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 (30) days and, if necessary, 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 (10) working days of the conference.

(c) Modification of CTR Program Goals.

1. An affected employer may request that the City modify its CTR program goals. Such requests shall be filed in writing at least sixty (60) days prior to the date the worksite is required to submit its program description or 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.

2. The City will review and grant or deny requests for goal modifications in accordance with procedures and criteria identified in the CTR Board Guidelines.

3. An employer may not request a modification of the applicable goals until one year after the City approval of its initial program description or biennial report.

(d) 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 chapter:

1. Failure to self identify as an affected employer;
2. Failure to perform a baseline measurement, including:
  - a. Employers notified or that have identified themselves to the City within ninety (90) days of the chapter being adopted and that do not perform a baseline measurement consistent with the requirements specified by the City within ninety (90) days from the notification or self-identification;
  - b. Employers not identified or self-identified within ninety (90) days of the chapter being adopted and that do not perform a baseline measurement consistent with the requirements specified by the City within ninety (90) days from the adoption of the ordinance;
3. Failure to develop and/or submit on time a complete CTR program;
4. 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 drive alone goals as specified in this chapter;
5. Submission of false or fraudulent data in response to survey requirements;
6. Failure to make a good faith effort, as defined in RCW 70.94.534 and this chapter; or
7. Failure to revise a CTR program as defined in RCW 70.94.534(4) and this chapter.

(e) 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 drive alone 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 (\$250.00) per day.

(3) An affected 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.

#### **7.06.130 Worksite Exemptions.**

An affected employer may request 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 the ordinance as a result of the characteristics of its business, its work force, 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 drive alone 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 grant or deny the

request within thirty (30) days of receipt of the request. The City shall review annually all employers receiving exemptions, and shall determine whether the exemption will be in effect during the following program year.

#### **7.06.140 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 Board Administrative Guidelines to assess the validity of employee exemption requests. The City shall grant or deny the request within thirty (30) days of receipt of the request. The City shall review annually all employee exemption requests, and shall determine whether the exemption will be in effect during the following program year.

#### **7.06.150 Appeals**

An affected employer may request an appeal 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 (7) 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 or she 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 (17) 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 (7) 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 (7) 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 (\$25.00).

(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.

Section 2. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

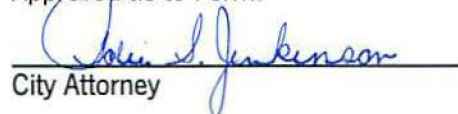
Signed in authentication thereof this 6th day of January, 2009.

  
MAYOR

Attest:

  
City Clerk

Approved as to Form:

  
City Attorney

PUBLICATION SUMMARY  
OF ORDINANCE NO. 4138

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TRANSPORTATION DEMAND MANAGEMENT, REPEALING AND REENACTING CHAPTER 7.06 OF THE KIRKLAND MUNICIPAL CODE RELATING TO COMMUTE TRIP REDUCTION, ADOPTING THE CITY OF KIRKLAND COMMUTE TRIP REDUCTION (CTR) PLAN AND IMPLEMENTING MEASURES AS REQUIRED BY RCW 70.94.527.


SECTION 1. Repeals and reenacts Kirkland Municipal Code Chapter 7.06 related to commute trip reduction and adopts the City of Kirkland Commute Trip Reduction plan.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 6th day of January, 2009.

I certify that the foregoing is a summary of Ordinance 4138 approved by the Kirkland City Council for summary publication.

  
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City Clerk