

ORDINANCE NO. 3352

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TRANSPORTATION DEMAND MANAGEMENT, ADOPTING A COMMUTE TRIP REDUCTION ("CTR") PLAN, IMPLEMENTING MEASURES REQUIRED BY CHAPTER 70.94 RCW, AND ADDING A NEW CHAPTER 7.06 TO THE KIRKLAND MUNICIPAL CODE.

WHEREAS, motor vehicle traffic is a major source of emissions that pollute the air, and air pollution causes significant harm to public health and degrades the quality of the environment; and

WHEREAS, increasing motor vehicle traffic aggravates traffic congestion in the City of Kirkland; and

WHEREAS, traffic congestion imposes significant cost on City business, government, and individuals in terms of lost working hours and delays in the delivery of goods and services as well as making the City a less desirable place to live, work, visit, and do business; and

WHEREAS, capital and environmental costs of fully accommodating the existing and projected motor vehicle traffic on roads and highways are prohibitive while decreasing the demand for vehicle trips is significantly less costly and is at least as effective in reducing traffic congestion and its impacts as constructing new transportation facilities; and

WHEREAS, employers have significant opportunities to encourage and facilitate the reduction of single-occupant vehicle commuting by employees; and

WHEREAS, State policy, as set forth in RCW 70.94.521-551 and the CTR Task Force Guidelines, requires the City of Kirkland to develop and implement a plan to reduce single-occupant vehicle commute trips; and

WHEREAS, the plan must require affected employers to implement programs to reduce vehicle miles traveled per employee and the number of single-occupant vehicles used for commuting purposes by their employees; and

WHEREAS, a transportation demand management element such as this ordinance is required pursuant to RCW 36.70A.070(6)(e), the Washington State Growth Management Act; and

WHEREAS, adoption of this ordinance will promote the public health, safety, and general welfare within the City of Kirkland and the region; and

WHEREAS, this ordinance is consistent with the CTR Task Force Guidelines;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKLAND AS FOLLOWS:

Section 1 There is hereby added to the Kirkland Municipal Code a new Chapter 7.06, entitled Commute Trip Reduction, with the following sections:

7.06.010 Definitions

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

- A. **"Affected Employee"** means a full-time employee who is scheduled to begin his or her regular work day at a single worksite between 6:00 a.m. and 9:00 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.
- B. **"Affected Employer"** means a public or private employer that, for twelve continuous months, employs 100 or more full-time employees at a single worksite who are scheduled to begin their regular work day between 6:00 a.m. and 9:00 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.
- C. **"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 work weeks if they result in reducing commute trips.
- D. **"Alternative Work Schedules"** mean programs such as compressed work weeks that eliminate work trips for affected employees.
- E. **"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.
- F. **"City"** means the City of Kirkland.
- G. **"Commute Trips"** mean trips made from a worker's home to a worksite with a regularly scheduled arrival time of 6:00 a.m. to 9:00 a.m. (inclusive) on weekdays.
- H. **"CTR Plan"** means the City of Kirkland's plan as set forth in this Chapter to regulate and administer the CTR programs of affected employers within its jurisdiction.
- I. **"CTR Program"** means an employer's strategies to reduce affected employees' SOV use and VMT per employee.
- J. **"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.

- K. "**Compressed Work Week**" means an alternative work schedule, in accordance with employer policy, that regularly allows a full-time employee to eliminate at least one work day 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 bi-weekly arrangements, the most typical being four 10-hour days or 80 hours in nine days, but may also include other arrangements. Compressed work weeks are understood to be an ongoing arrangement.
- L. "**Dominant Mode**" means the mode of travel used for the greatest distance of a commute trip.
- M. "**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.
- N. "**Employer**" means a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district or other individual or entity, whether public, non-profit, or private, that employs workers.
- O. "**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.
- P. "**Full-Time Employee**" means a person other than an independent contractor, scheduled to be employed on a continuous basis for 52 weeks per year for an average of at least 35 hours per week.
- Q. "**Implementation**" means active pursuit by an employer of the CTR goals of RCW 70.94.521-551 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.
- R. "**Mode**" means the type of transportation used by employees, such as single-occupant motor vehicle, rideshare vehicle (carpool, vanpool), transit, ferry, bicycle, and walking.
- S. "**Peak Period**" means the hours from 6:00 a.m. to 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.
- T. "**Peak Period Trip**" means any employee trip that delivers the employee to begin his or her regular workday between 6:00 a.m. and 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.

- U. **"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.
- V. **"Single-Occupant Vehicle (SOV)"** means a motor vehicle occupied by one (1) employee for commute purposes, including a motorcycle.
- W. **"Single-Occupant Vehicle (SOV) Trips"** means trips made by affected employees in SOVs.
- X. **"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.
- Y. **"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.
- Z. **"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.
- AA. **"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.
- BB. **"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.
- CC. **"Week"** means a seven day calendar period, starting on Monday and continuing through Sunday.
- DD. **"Weekday"** means any day of the week except Saturday or Sunday.

7.06.020 Commute Trip Reduction Goals

The commute trip reduction goals for employers affected by this Chapter 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:

- A. 15 percent by January 1, 1995

- B. 25 percent by January 1, 1997
- C. 35 percent by January 1, 1999

7.06.030 Designation of CTR Zone and Base Year Values

Employers in the City of Kirkland fall within the East King County CTR zone designated by the boundaries shown on map 7.06.030 attached hereto and incorporated by reference herein.

The base year value of this zone for proportion of SOV trips shall be 85 percent. 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 72.3 percent in 1995, 63.8 percent in 1997, and 55.3 percent in 1999 and VMT per employee of not more than 7.9 miles in 1995, 6.9 miles in 1997, and 6.0 miles in 1999.

7.06.040 City of Kirkland CTR Plan

The 1992 City of Kirkland CTR Plan set forth in Attachment 7.06.040 is incorporated herein by reference. This Plan may be amended by further action of the City Council.

7.06.050 Responsible Agency

The City of Kirkland Planning Department shall be responsible for implementing this Chapter, the CTR Plan and the City's CTR program for its own employees. The City Planning 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 of Kirkland. 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 30 days after adoption of this Chapter or revisions.

2. Within 30 days after adoption of this Chapter, the City Planning 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 30 days of adoption of this Chapter must identify themselves to the City Planning Director within 180 days of the adoption of this Chapter. Upon identifying themselves within said 180 day period, such employers will be granted 150 days from the date of self-identification within which to develop and submit a CTR program.
4. Any existing employer of 75 or more persons who obtains a business license in the City of Kirkland, 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 Planning Director to determine whether or not an employer will be deemed affected or non-affected in accordance with the provisions of this ordinance.

- B. New Affected Employers** Employers that fall within definition of "affected employer" must identify themselves to the City Planning Director within 180 days of either moving into the boundaries of Kirkland or growing in employment at a worksite to one hundred (100) or more affected employees. Once they identify themselves, such employers shall be granted 150 days to develop and submit a CTR program.

New affected employers shall have two years to meet the first CTR goal of a 15 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 25 percent reduction; and six years to meet the third goal of a 35 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 waiver 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 (100) or more affected employees and has not employed one hundred (100) or more affected employees for the past twelve (12) months, that employer is no longer an affected employer. It is the responsibility of the employer to provide documentation to the City Planning Director that it is no longer an affected employer. The City

Planning 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

An affected employer is required 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 Planning 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 of Kirkland. 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 Planning Department for the format of the report. Survey information or alternative information approved by the Planning Director shall be required in the 1995, 1997 and 1999 reports.
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 work week
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 Planning 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.

7.06.080 Record Keeping

Affected employers shall maintain all records required by the City Planning Director.

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 Planning 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 Planning Director beginning with the first annual reporting date assigned during the initial program submittal. The annual reporting date shall be assigned by the City Planning Director and be no less than 12 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 Planning Director must be provided in the 1995, 1997, and 1999 reports.
- D. **Program Review** The City Planning 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: 1) all required information on the program description form is provided, and, 2) 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. Beginning in 1995, the programs described in the annual reports will be deemed acceptable if either the SOV trip or the VMT per employee goals have been met. If neither goal has been met, the employer must propose modifications designed to make progress toward the applicable goal in the coming year. If the revised program is not approved, the City Planning Director shall propose modifications to the program and direct the employer to revise its program within 30 days to incorporate those modifications or modifications which the jurisdiction determines to be equivalent.
- E. Implementation of Employer's CTR Program** The employer shall implement the approved CTR program not more than 180 days after the program was first submitted to the City unless the City Planning Director grants an extension allowing late implementation. Implementation of programs that have been modified based on non-attainment of CTR goals must occur within 30 days following City approval of such modifications.

7.06.100 Requests for Waivers/ Modification of CTR Requirements

- A. Waivers** An affected employer may request the City to grant a waiver from CTR program requirements for a particular worksite. The City Planning Director may grant a waiver only if the affected employer demonstrates that it faces an extraordinary circumstance as a result of the characteristics of its business, its work force, or its location(s) and is unable to implement measures that could reduce the proportion of SOV trips and VMT per employee. Requests for waivers applying to the initial program submittal are due within three months after the employer has been notified that it is subject to this Chapter and thereafter requests can be made at any time. Requests must be made in writing by certified mail or delivery, return receipt. The waiver shall be effective for up to one year and shall thereafter expire unless otherwise renewed.
- B. Goal Modification** Any affected employer may request a modification of program goals. Grounds for granting modification are limited to the following:

1. An affected employer may demonstrate it requires:
 - a) significant numbers of its employees to use the vehicles they drive to work during the work hours for work purposes, that no reasonable alternative commute mode exists for these employees, and that the vehicles cannot reasonably be used for carpools or vanpools; or
 - b) some employees to work variable shifts during the year, so that these employees sometimes begin their shifts within the 6:00 a.m. to 9:00 a.m. time period and other times begin their shifts outside that time period; provided however, if there are a significant number of employees who work an identical shift rotation, those employees would be expected to be part of the employer's CTR program measurement, as they form enough of a consistent pool to maintain ridesharing arrangements.

If the employer provides documentation identifying the number of employees meeting either of these conditions, the applicable goals will not be changed, but the employees who fall into these categories will not be included in the calculations of proportion of SOV trips and VMT per employee used to determine the employer's progress toward program goals.

2. An affected employer demonstrates that its worksite is contiguous with a CTR zone boundary and that the worksite conditions affecting alternative commute options are similar to those for employers in the adjoining CTR zone. Under this condition, the employer's worksite may be made subject to the same goals for VMT per employee and proportion of SOV trips as employers in the adjoining CTR zone.

Employers may only request a modification based on conditions B.1 and B.2 above within three months after being notified that they are subject to this Chapter.

3. Unanticipated conditions, such as unavailability of alternative commute modes due to factors related to the worksite, an employer's work force, or characteristics of the business that are beyond the employer's control. A request for goal modification based on this condition must be made by the employer's assigned reporting dates in 1995 and 1997.
 4. Relocation of a worksite to another CTR zone. Requests for goal modification based on this condition may be made at any time.
- C. All requests for modification of CTR program goals must be made in writing to the City Planning 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 Planning Director. The City Planning 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 Planning 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 90 days shall be considered for reasonable causes. Employers will be limited to a total of 90 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 Planning Director.

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 12 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.

7.06.120 Employer Peer Review Group

- A. Purpose and Appointment of Representatives** The City Planning 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.

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 (20) 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.

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 Ordinance. 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.

C. Penalties

1. 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 \$250 per day.
2. 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 of Kirkland and advise the union that the proposal being made is necessary for compliance with state law (RCW 70.94.531).
3. 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.
4. 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.

5. 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.
6. 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 Planning and Community Development 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 (30) 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 (\$25) 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.

Section 2. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.


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.

PASSED by majority vote of the Kirkland City Council in regular, open meeting this 19th day of January, 1993.



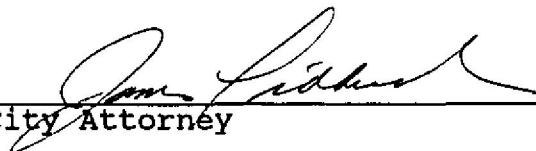
MAYOR

ATTEST:



City Clerk

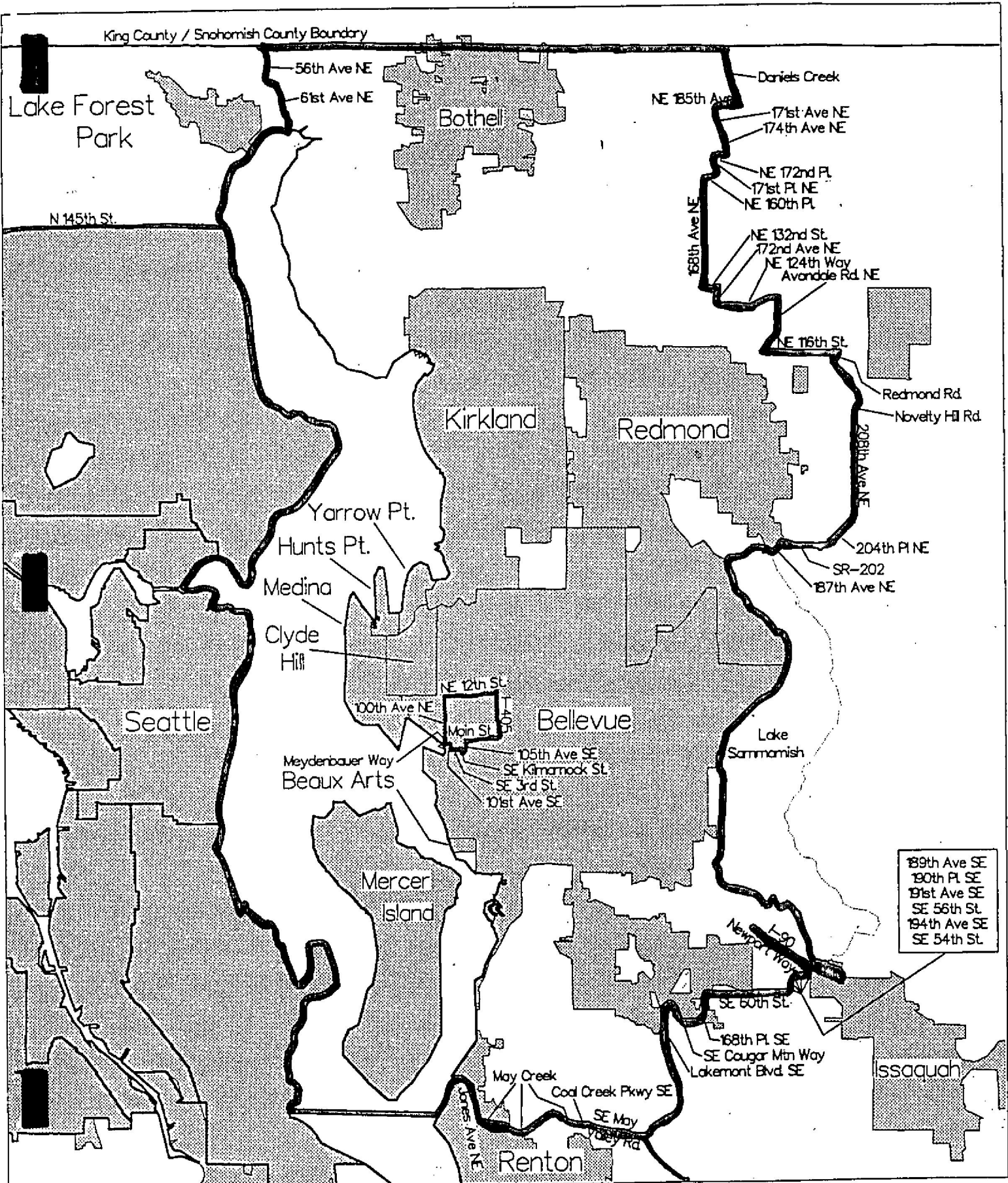
APPROVED AS TO FORM:



City Attorney

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EAST KING COUNTY



**ATTACHMENT 7.06.040
CITY OF KIRKLAND COMMUTE TRIP REDUCTION PLAN**

This plan is produced in conformance with the requirements of the state Commute Trip Reduction law (RCW 70.94.521-551) and guidelines. It describes how the City intends to fulfill the requirements of the law. It also includes policies for implementing CTR requirements for major employers located in Kirkland as well as the CTR program for the City's own employees. This plan is intended as a companion document to Ordinance No. _____.

OVERVIEW

A. Objective of the Plan

The City of Kirkland Commute Trip Reduction plan has the following objectives:

1. Reduce automobile-generated air and water pollution, relieve traffic congestion, reduce energy consumption, and reduce air pollution-related health problems.
2. Reduce peak period motor vehicle trips and the number of vehicle miles traveled associated with commute trips.
3. Make optimal use of existing and future transportation systems in order to minimize costs and preserve business opportunities in King County and the region.
4. Treat affected employers in a fair and reasonable manner.
5. Establish a plan consistent with the guidelines established by the state Commute Trip Reduction Task Force and the commute trip reduction plans of counties and cities with which Kirkland has common borders or mutual transportation and growth issues.

The primary purpose of Kirkland's CTR plan is to provide an overview of the procedures Kirkland intends to use to comply with the CTR law. More detailed administrative procedures for implementing Ordinance No. _____ will be issued by the Planning Director in January, 1993.

B. Administration of the CTR Law

The City of Kirkland has contracted with the Municipality of Metropolitan Seattle for a number of tasks related to administration of the CTR law. This will include notification of major employers, review of CTR program descriptions and annual reports, recommendations to the City regarding enforcement actions and appeals, technical assistance to employers, and training for employers on how to comply with the law and develop a program for their worksites.

The City's contract with Metro will ensure consistency and fairness in administration of the law since most other King County jurisdictions will also be using Metro as their designated agent to perform the same tasks.

PROVISIONS RELATING TO MAJOR EMPLOYERS

A. Establishment of CTR Goals for Major Employers

As defined in Section 7.06.020 of the attached ordinance and pursuant to RCW 70.94.527 (4), the City is establishing the following goals for major employers in Kirkland:

1. Reduce the vehicle miles traveled per employee from the base year value established for the commute trip reduction zone at least 15 percent by January 1, 1995; 25 percent by January 1, 1997; and 35 percent by January 1, 1999.
2. Reduce the proportion of single-occupant vehicle trips from the base year value established for the commute trip reduction zone at least 15 percent by January 1, 1995; 25 percent by January 1, 1997; and 35 percent by January 1, 1999.

B. Establishment of Commute Trip Reduction Zone and Base Year Values

As defined in Section 7.06.030 of the attached ordinance, Kirkland is in the East King County CTR zone. The exact boundaries of this zone are depicted on map 7.06.030.

This zone designation was recommended by a subcommittee of the Puget Sound Regional Council (PSRC), with participation by employer representatives as well as local jurisdiction staff.

The base year value for proportion of SOV trips for Kirkland's CTR zone is established at 85 percent. The base year value for vehicle miles traveled (VMT) per employee is established at 9.3 miles. Commute trip reduction goals for major employers will be calculated from these values.

These base year values were recommended by the Zones Subcommittee of the PSRC using 1980 U.S. census data projected forward to 1992. The State CTR Task Force has determined that modeled values for VMT per employee and SOV rate are adequate indicators of the characteristics specified in the CTR Law such as employment density, population density, level of transit service, parking availability, and access to high occupancy vehicle facilities.

The State CTR Task Force may re-examine the use of 1990 U.S. Census data if it becomes available in 1993. Local jurisdictions may review CTR zone base year values and goals for consistency with the updated information.

C. Requirements for Major Private and Public Sector Employers

Requirements for major employers are established in the attached CTR ordinance, codified as Chapter 7.06 KMC. The City plans to use business license procedures and Employment Security quarterly reports to track affected employers.

D. Appeals Process

As already described in Section 7.06.130 of the attached CTR ordinance, employers affected by the CTR law may appeal administrative decisions regarding rejection of an employer's proposed program, denial of an employer's request for a waiver or modification of CTR requirements, and denial of credit.

The City of Kirkland's Hearing Examiner will serve as the City's appeals board for appeals of final decisions. The City also intends to participate in a subregional Employer Peer Review Group, which would review preliminary staff recommendations on certain types of administrative issues. Detailed procedures for requesting appeals, including conditions, criteria, and timelines will be issued by the Planning Director as a companion to the CTR ordinance and this plan.

Affected employers may appeal penalties pursuant to RCW 7.80.100.

CITY OBLIGATIONS

A. CTR Program for City Employees

As of January, 1993, the City of Kirkland employs a total of 262 full-time employees and 22 part-time employees at 7 different worksites.

The City has implemented a voluntary employee transportation management program since 1989. The City's program includes a transportation subsidy for HOV participants, a guaranteed ride home program, bicycle racks, shower facilities, transportation coordinator, annual promotional events, flex-time, and telecommuting.

The City is committed to continuing its current employee transportation management program and modify the existing program to meet CTR law requirements.

B. Review of Local Parking Policies and Ordinances

The Commute Trip Reduction law mandates that each affected jurisdiction's CTR plan "include...a review of local parking policies and ordinances as they relate to employers and major worksites and any revisions necessary to comply with commute trip reduction goals and guidelines."

The City intends to conduct its parking policy review in 1993. City staff will participate in any King County workshops on parking policy which are currently being planned for 1993 or early 1994. Staff will strive to be consistent with both the CTR Guidelines recommendations and other East King County jurisdictions in establishing a framework for parking policy changes.

C. Consistency of the CTR Ordinance with Other City Plans and Policies

The City has implemented transportation demand management requirements for employers and developers through permitting of new facilities under the State Environmental Policy Act. The City shall make existing transportation demand management efforts compatible with the

requirements of RCW 70.94.521.551 and the CTR guidelines. The City shall review existing and proposed transportation demand management requirements that are based on the State Environmental Policy Act and make them compatible with the Commute Trip Reduction Law where feasible. Other plans and policies such as the City's Comprehensive Plan and Zoning Code shall be reviewed for compatibility.

D. Annual Report to State CTR Task Force

Each year on July 1, beginning in 1994 through 2,000, the City will report to the State CTR Task Force on the progress in attaining the applicable CTR goals in the City's designated CTR zone pursuant to RCW 70.94.527 (8). This report will highlight any problems encountered by the City in achieving the goals.

CTRPLAN.APR/JD:cw

PUBLICATION SUMMARY OF ORDINANCE NO. 3352

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TRANSPORTATION DEMAND MANAGEMENT, ADOPTING A COMMUTE TRIP REDUCTION ("CTR") PLAN, IMPLEMENTING MEASURES REQUIRED BY CHAPTER 70.94 RCW, AND ADDING A NEW CHAPTER 7.06 TO THE KIRKLAND MUNICIPAL CODE.

SECTION 1. Creates a new Chapter 7.06 relating to transportation demand management by adopting a commute trip reduction plan and implementing measures to carry out the provisions of Chapter 70.94 RCW. Specific sections provide the following:

Section 7.06.010. Sets forth definitions to apply in the interpretation and enforcement of the Chapter.

Section 7.06.020. Includes provisions establishing commute trip reduction goals for employers affected by the commute trip reduction ordinance.

Section 7.06.030. Includes provisions designating the East King County CTR zone as the applicable CTR zone for affected employers in the City of Kirkland and establishing base year values.

Section 7.06.040. Incorporates the 1992 City of Kirkland CTR plan.

Section 7.06.050. Includes provisions designating City of Kirkland Planning Department as the responsible agency for implementing the CTR ordinance.

Section 7.06.060. Includes provisions establishing criteria for determining whether an employer is subject to the CTR ordinance, how an affected employer is to be notified it is so affected, provisions requiring affected employers to respond to notification, and provisions concerning changes in status of an affected employer.

Section 7.06.070. Includes provisions establishing requirements an employer subject to the ordinance must satisfy, such as development and implementation of a CTR program, including requirements for designation of a transportation coordinator, distribution of commute trip reduction information to employees, annual progress reports, and other program elements.

Section 7.06.080. Requires affected employers to maintain records required by the City of Kirkland Planning Director.

Section 7.06.090. Includes provisions establishing schedules and processes for employers' CTR annual reports, contents of annual reports, program review by the City Planning Director and schedule for implementation of an approved CTR program.

Section 7.06.100. Includes provisions relating to employer requests for waivers from CTR program requirements, modification of program goals and program elements, and extensions of time for submission of a CTR program or annual progress report or to implement or modify a program.

Section 7.06.110. Includes provisions relating to credit for programs implemented by employers prior to the base year and credit for alternative work schedules, telecommuting, bicycling, and walking.

Section 7.06.120. Includes provisions for employer peer review groups.

Section 7.06.130. Includes provisions for appeals of administrative decisions.


Section 7.06.140. Includes provisions relating to enforcement of the CTR ordinance, penalties for violations, and appeals of penalties.

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 regular meeting on the 19th day of January, 1993.

I certify that the foregoing is a summary of Ordinance 3352 approved by the Kirkland City Council for summary publication.



city Clerk