ORDINANCE 3694

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TRANSPORTATION DEMAND MANAGEMENT, AND AMENDING CHAPTER 7.06 OF THE KIRKLAND MUNICIPAL CODE RELATING TO COMMUTE TRIP REDUCTION.

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 take place recently; and

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

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

WHEREAS, the City recognizes the importance of increasing individual citizen's 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. Section 7.06.010 of the Kirkland Municipal Code is hereby amended to read as follows:

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 work day 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 work day between six a.m. and nine a.m. (inclusive) on two or more weekdays. The individual employees may vary during the year. Construction worksites, when the expected duration of the construction is less than two years, are excluded from this definition.

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

(4) "Alternative work schedules" mean programs such as compressed workweeks that eliminate work trips for affected employees.
(5) "Base year" means the period from January 1, 1992, through December 31, 1992, on which goals for vehicle miles traveled (VMT) per employee and proportion of single-occupant vehicle (SOV) trips shall be based.
(6) "City" means the City of Kirkland.
(7) "Commute trips" means trips made from a worker's home to a worksite with a regularly scheduled arrival time of 6:00 a.m. to 9:00 a.m. (inclusive) on weekdays.
(8) "CTR plan" means the City's plan as set forth in this chapter to regulate and administer the CTR programs of affected employers within its jurisdiction.
(9) "CTR program" means an employer's strategies to reduce affected employees' SOV use and VMT per employee.
(10) "CTR zone" means an area, such as a census tract or combination of census tracts, within Kirkland characterized by similar employment density, population density, level of transit service, parking availability, access to high-occupancy vehicle facilities, and other factors that are determined to affect the level of SOV commuting.
(11) "Compressed 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 ten-hour days or eighty hours in nine days, but may also include other arrangements. Compressed work weeks are understood to be an ongoing arrangement.
(12) "Dominant mode" means the mode of travel used for the greatest distance of a commute trip.
(13) "Employee" means any person who receives financial or other remuneration in exchange for work provided to an employer, including owners or partners of the employer, provided however, an independent contractor shall not constitute an employee.
(14) "Employer" means a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district or other individual or entity, whether public, non-profit, or private, that employs workers.
(15) "Flex-time" is an employer policy allowing individual employees some flexibility in choosing the time, but not the number, of their working hours to facilitate the use of alternative modes.
(16) "Full-time employee" means a person other than an independent contractor, scheduled to be employed on a continuous basis for fifty-two weeks per year for an average of at least thirty-five hours per week.
(17) "Good faith effort" means that an employer has met the minimum requirements identified in RCW 70.94.531 and this Chapter and is working collaboratively with the City to continue its existing CTR program or is developing and implementing program modifications likely to result in improvements to its CTR program over an agreed upon length of time.
~~(17)~~ (18) "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.

~~(18)~~ (19) "Mode" means the type of transportation used by employees, such as single-occupant motor vehicle, rideshare vehicle (carpool, vanpool), transit, ferry, bicycle and walking.
~~(19)~~ (20) "Peak period" means the hours from six a.m. to nine a.m. (inclusive), Monday through Friday, except legal holidays.
~~(20)~~ (21) "Peak period trip" means any employee trip that delivers the employee to begin his or her regular workday between six a.m. and nine a.m. (inclusive), Monday through Friday, except legal holidays.
~~(21)~~ (22) "Proportion of single-occupant vehicle trips" or "SOV rate" means the number of commute trips over a set period made by affected employees in SOVs divided by the number of affected employees working during that period.
~~(22)~~ (23) "Single-occupant vehicle (SOV)" means a motor vehicle occupied by one employee for commute purposes, including a motorcycle.
~~(23)~~ (24) "Single-occupant vehicle (SOV) trips" means trips made by affected employees in SOVs.
~~(24)~~ (25) "Single Worksite" means a building or group of buildings on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-way occupied by one or more affected employers.
~~(25)~~ (26) "Telecommuting" means the use of telephones, computers, or other similar technology to permit an employee to work from home, eliminating a commute trip, or to work from a work place closer to home, reducing the distance traveled in a commute trip by at least half.
~~(26)~~ (27) "Transportation management association (TMA)" means a group of employers or an association representing a group of employers in a defined geographic area. A TMA may represent employers within specific city limits, or may have a sphere of influence that extends beyond city limits.
~~(27)~~ (28) "Vehicle miles traveled (VMT) per employee" means the sum of the individual vehicle commute trip lengths in miles made by affected employees over a set period divided by the number of affected employees during that period.
~~(28)~~ (29) "Waiver" means an exemption from CTR program requirements granted to an employer by the city based on unique conditions that apply to the employer or employment site. A waiver may be partial or total exemption from CTR program requirements.
~~(29)~~ (30) "Week" means a seven-day calendar period, starting on Monday and continuing through Sunday.
~~(30)~~ (31) "Weekday" means any day of the week except Saturday or Sunday.

Section 2. Section 7.06.020 of the Kirkland Municipal Code is hereby amended to read as follows:

7.06.020 Commute trip reduction goals.
Affected employers which have been participating in the CTR Program since its inception ~~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 or from the worksite's own base year values:
(a) Fifteen percent by January 1, 1995;
(b) ~~Twenty-five~~ Twenty percent by January 1, 1997;
(c) ~~Thirty-five~~ Twenty-five percent by January 1, 1999;
(d) Thirty-five percent by January 1, 2005.

Section 3. Section 7.06.030 of the Kirkland Municipal Code is hereby amended to read as follows:

7.06.030 Designation of CTR zone and base year values.

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

(b) The base year value of this zone for proportion of SOV trips shall be eighty-five percent or the worksite's own base year values. The base year value for vehicle miles traveled (VMT) per employee shall be set at 9.3 miles. Commute trip reduction goals for major employers shall be calculated from these values. Therefore, affected employers in the City of Kirkland shall establish programs designed to result in SOV rates of not more than 72~~.3~~ percent in 1995 or by the first goal measurement, ~~63.8~~ 68 percent in 1997 or by the second goal measurement, ~~and 55.3~~ 64 percent in 1999 or by the third goal measurement and 55 percent in 2005 or by the fourth goal measurement. ~~and~~ In addition, the programs shall be designed to result in VMT per employee of not more than 7.9 miles in 1995 or by the first goal measurement, ~~6.9~~ 7.4 miles in 1997 or by the second goal measurement, ~~and 6.0~~ 7.0 miles in 1999 or by the third goal measurement, and 6.0 miles in 2005 or by the fourth goal measurement.

Section 4. Section 7.06.040 of the Kirkland Municipal Code is hereby amended to read as follows:

7.06.040 City of Kirkland CTR plan.

~~The 1992 City of Kirkland CTR Plan set forth in Attachment 7.06.040 attached to the ordinance codified in this chapter is incorporated herein by reference.~~ The City Council hereby approves and adopts the 1999 City of Kirkland CTR plan in the form in which it is on file in the city clerk's office. This Plan may be amended by further action of the City Council.

Section 5. Section 7.06.050 of the Kirkland Municipal Code is hereby amended to read as follows:

7.06.50 Responsible agency.

The city ~~planning~~ 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 ~~planning~~ 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.

Section 6. Section 7.06.060 of the Kirkland Municipal Code is hereby amended to read as follows:

7.06.060 Applicability.

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

(a) Notification of Applicability.

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

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

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

(4) Any existing employer of seventy-five or more persons who obtains a business license in the city, subsequent to adoption of this chapter, will be required to complete an employer assessment form. The employer assessment form will be used to assist the city ~~planning~~ 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 ~~Planning~~ Public Works Director within one hundred eighty days of either moving into the boundaries of Kirkland or growing in employment at a worksite to one hundred or more affected employees. Once they identify themselves, such employers shall submit a complete baseline survey within ninety days and they shall be granted a total of one hundred fifty days to develop and submit a CTR program. A new affected employer may use its baseline survey as a baseline measurement for commute trip reduction goals only if the survey response rate was at least seventy percent.

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

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

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

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

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

Section 7. Section 7.06.070 of the Kirkland Municipal Code is hereby amended to read as follows:

7.06.070 Requirements for employers.

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

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

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

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

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

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

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

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

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

(2) Information Distribution. The employer shall provide information about alternatives to SOV commuting to employees at least once a year. This shall consist of, at a minimum, a summary of the employer's program, including the transportation coordinator's name and phone number. Employers must also provide a summary of their program to all new employees at the time of hire. Each employer's program description and annual report must describe what information is to be distributed by the employer and the method of distribution.

(3) Annual Progress Report. The employer's CTR program must include an annual review of employee commuting and of progress toward meeting the SOV reduction goals. Affected employers shall file a progress report annually with the city. The employer shall contact the city's ~~planning~~

public works department for the format of the report. Survey information or alternative information approved by the ~~planning~~ public works director shall be provided in the reports submitted in the second, fourth, sixth, eighth, tenth and twelfth years after program implementation begins. ~~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~~ public works director designed to facilitate the use of high-occupancy vehicles.

Specific details and additional instructions for implementation of program measures shall be described in the city's administrative procedures.

Section 8. Section 7.06.080 of the Kirkland Municipal Code is hereby amended to read as follows:

7.06.080 Record keeping.

Affected employers shall maintain all records required by the city ~~planning~~ public works director.

Section 9. Section 7.06.090 of the Kirkland Municipal Code is hereby amended to read as follows:

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~~ public works director a description of that program for review.

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

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

(1) Initial program descriptions will be deemed acceptable if: (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) The following criteria for achieving goals for VMT per employee and proportion of SOV trips shall be applied in determining requirements for employer CTR program modifications:

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

(B) If an employer makes a good faith effort, as defined in RCW 70.94.534(2) and this Chapter, but has not met or is not likely to meet the applicable SOV or VMT reduction goal, the City shall work collaboratively with the employer to make modifications to its CTR program. After agreeing on modifications, the employer shall submit a revised CTR program description to the City for approval within 30 days of reaching agreement.

(C) If an employer fails to make a good faith effort, as defined in RCW 70.94.534(2) and this Chapter, and fails to meet the applicable SOV or VMT reduction goal, the City shall work collaboratively with the employer to identify modifications to the CTR program and shall direct the employer to revise its program within 30 days to incorporate the modifications. In response to the recommended modifications, the employer shall submit a revised CTR program description, including the requested modifications or equivalent measures, within 30 days of receiving written notice to revise its program. The City shall review the revisions and notify the employer of acceptance or rejection of the revised program. If a revised program is not accepted, the City will send written notice to that effect to the employer within 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 10 working days of the conference.

~~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 thirty 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 one hundred eighty days after the program was first submitted to the city unless the city ~~planning~~ public works director grants an extension allowing late implementation. Implementation of programs that have been modified based on nonattainment of CTR goals must occur within thirty days following city approval of such modifications.

Section 10. Section 7.06.100 of the Kirkland Municipal Code is hereby amended to read as follows:

7.06.100 Requests for ~~waivers~~ exemptions/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.~~

(a) Exemptions.

(1) Worksite exemptions. An affected employer may submit a request to the City to grant an exemption from all CTR program requirements or penalties for a particular worksite. The employer must demonstrate that it would experience

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

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

(b) Goal Modification. An affected employer may request that the City modify its CTR program goals. Such requests shall be filed in writing a least 60 days prior to the date the worksite is required to submit its program description and annual report. The goal modification request must clearly explain why the worksite is unable to achieve the applicable goal. The worksite must also demonstrate that it has implemented all of the elements contained in its approved CTR program. The city will review and grant or deny requests for goal modifications in accordance with procedures and criteria identified in the CTR Task Force Guidelines. An employer may not request a modification of the applicable goals until one year after the City approval of its initial program description or annual report.

~~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 six a.m. to nine 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) Request Procedure. All requests for modification of CTR program goals must be made in writing to the city ~~planning~~ public works director by certified mail or delivery, return receipt.

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

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

Section 11. Section 7.06.120 of the Kirkland Municipal Code is hereby amended to read as follows:

7.06.120 Employer peer review group.

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

(b) Limitations of Peer Review Group. Any peer review group shall be advisory in nature. The City shall not be bound by any comments or recommendations of any peer review group.

Section 12. Section 7.06.140 of the Kirkland Municipal Code is hereby amended to read as follows:

7.06.140 Enforcement.

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

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

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

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

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

(C) Submission of fraudulent data.

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

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

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

(c) Penalties.

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

~~(1)~~ (2) Each day of failure by an employer to (a) implement a commute trip reduction program, or (b) modify an unacceptable commute trip reduction program, or (c) fail to perform any activity required by this chapter relating to implementation of or required modification to a CTR program shall constitute a separate violation and shall be considered a civil infraction. The penalty for a violation shall be two hundred fifty dollars per day.

~~(2)~~ (3) An employer shall not be liable for civil penalties if failure to implement an element of a CTR program was the result of an inability to reach agreement with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith. Employers having unionized employees shall be presumed to act in good faith compliance if they: (a) propose to a recognized union any provision of the employer's CTR program that is subject to bargaining as defined by the National Labor Relations Act; and (b) advise the union of the existence of the statute and the mandates of the CTR program approved by the city and advise the union that the proposal being made is necessary for compliance with state law (RCW 70.94.531).

~~(3)~~ (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.

~~(4)~~ (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.

~~(5)~~ (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.

~~(6)~~ (7) A notice of violation and imposition of monetary penalties shall be served on the affected employer, either personally or by mailing a copy of the notice by certified mail, postage prepaid, return receipt requested to the affected employer at his/her last known address. The person who effected personal service or service by mail shall make proof of service at the time of

service by a written declaration under penalty of perjury declaring the time and date and the manner in which service was made.

(d) Appeals of Penalties.

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

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

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

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

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

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

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

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

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

(b) Whether the appeal is frivolous; or

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

(d) Any other relevant factors.

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

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

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

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

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

(c) In the event of failure to appear at a hearing provided herein, the hearing examiner shall assess the monetary penalty prescribed and a penalty of twenty-five dollars.
(d) In the event of a conflict between this chapter and any other city ordinance providing for a civil penalty, this chapter shall control.
(10) A person who willfully fails to pay a monetary penalty as required by provisions of this chapter may be found in civil contempt of court after notice and hearing.

Section 13. 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 14. 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 1.08.107, 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 15th day of June, 1999.

Signed in authentication thereof this 15th day of June, 1999.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

ord\CTR

PUBLICATION SUMMARY
OF ORDINANCE NO. 3694

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TRANSPORTATION DEMAND MANAGEMENT, AND AMENDING CHAPTER 7.06 OF THE KIRKLAND MUNICIPAL CODE RELATING TO COMMUTE TRIP REDUCTION.

SECTION 1. Adds a definition of "good faith effort" to Section 7.06.010 of the Kirkland Municipal Code relating to the commute trip reduction ("CTR") program.

SECTION 2. Amends Section 7.06.020 of the Kirkland Municipal Code which relates to CTR goals.

SECTION 3. Amends Section 7.06.030 of the Kirkland Municipal Code relating to designation of CTR zones and base year values.

SECTION 4. Amends Section 7.06.040 of the Kirkland Municipal Code relating to the City of Kirkland's CTR Plan.

SECTION 5. Amends Section 7.06.050 of the Kirkland Municipal Code relating to the responsible agency.

SECTION 6. Amends Section 7.06.060 of the Kirkland Municipal Code relating to applicability of the CTR Program.

SECTION 7. Amends Section 7.06.070 of the Kirkland Municipal Code relating to CTR requirements for employers.

SECTION 8. Amends Section 7.06.080 of the Kirkland Municipal Code relating to record keeping.

SECTION 9. Amends Section 7.06.090 of the Kirkland Municipal Code relating to schedule and process for CTR reports, program review and implementation.

SECTION 10. Amends Section 7.06.100 of the Kirkland Municipal Code relating to requests for exemptions/modifications of CTR requirements.

SECTION 11. Amends Section 7.06.120 of the Kirkland Municipal Code relating to employer peer review groups.

SECTION 12. Amends Section 7.06.140 of the Kirkland Municipal Code relating to enforcement of CTR program requirements.

SECTION 13. Provides a severability clause for the ordinance.

SECTION 14. 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 15th day of June, 1999.

I certify that the foregoing is a summary of Ordinance 3694 approved by the Kirkland City Council for summary publication.

City Clerk
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