

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON amending a commute trip reduction plan (CTR), implementing measures required by chapter 70.94 RCW, providing for appeals and penalties, and amending the chapter entitled "Commute Trip Reduction Plan."

WHEREAS, motor vehicle traffic is a major source of emissions that pollute the air, and

WHEREAS, 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 Des Moines, 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 commute trip reduction (CTR) task force guidelines, requires the city of Des Moines 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 as part of the Washington State Growth Management Act (RCW 36.70A.070[6e]), and

WHEREAS, adoption of this ordinance will promote the public, health, safety, and general welfare within the city of Des Moines and the region, and

WHEREAS, the importance of increasing individual citizens' awareness of air quality, energy consumption, and traffic congestion and the contribution individual actions can make toward addressing these issues is recognized by the city of Des Moines; and

WHEREAS, this ordinance is consistent with the commute trip reduction (CTR) Task Force Guidelines; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES DO ORDAIN AS FOLLOWS:

Sec. 1. Definitions.

(1) Use of words and phrases. As used in this ordinance, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(2) "Affected employee" means a full-time employee who begins 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 ordinance, shareholders, principles, and associates in a corporation, partners (general or limited) in a partnership, and participants in a joint venture are considered employees.

(3) "Affected employer" means a public or private employer that for twelve continuous months employs one hundred (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.

(4) "Alternative mode" means a 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.

(5) "Alternative work schedules" means programs such as compressed work weeks that eliminate work trips for affected employees.

(6) "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 are based.

(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 of Des Moines' plan as set forth in this ordinance to regulate and administer the commute trip reduction (CTR) programs of affected employers within its jurisdiction.

(9) "CTR program" means an employer's strategies to reduce affected employees' single-occupant vehicle (SOV) use and vehicle miles traveled (VMT) per employee.

(10) "CTR zone" means an area, such as a census tract or combination of census tracts, within the city of Des Moines 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 single-occupant vehicle (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 biweekly arrangements, the most typical being four ten-hour days per week, or working 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 trip.

(13) "Employee" means a person who receives financial or other remuneration in exchange for work provided to an employer, including owners or partners of the employer.

(14) "Employer" means a person whether public, non-profit, or private, that employs workers.

(15) "Flex-time" means 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 ordinance and is working collaboratively with Des Moines to continue its existing commute trip reduction (CTR) program or is developing and implementing program modifications likely to result in improvements to its commute trip reduction (CTR) program.

~~((17))~~ (18) "Implementation" means active pursuit by an employer of the commute trip reduction (CTR) goals of RCW 70.94.521 through 70.94.551, as presently constituted or as may be subsequently amended, and this ordinance as evidenced by appointment of a transportation coordinator, distribution of information to employees regarding alternatives to

single-occupant vehicle (SOV) commuting, and commencement of other measures according to their commute trip reduction (CTR) program and schedule.

~~((18))~~ (19) "Mode" means the type of transportation used by employees, such as single-occupant motor vehicle, rideshare vehicle (carpool or vanpool), transit, ferry, bicycle, and walking.

~~((19))~~ (20) "Peak period" means the hours from 6:00 a.m. to 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.

~~((20))~~ (21) "Peak period trip" means an 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.

~~((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 single-occupant vehicle (SOV)s divided by the number of affected employees working during that period.

~~((22))~~ (23) "Single-occupant vehicle (SOV)" means a motor vehicle occupied by one (1) employee for commute purposes, including a motorcycle.

~~((23))~~ (24) "Single-occupant vehicle (SOV) trips" means trips made by affected employees in single-occupant vehicle (SOV)s.

~~((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 streets 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 commute trip reduction (CTR) program requirements granted to an employer by the city based on unique conditions that apply to the employer or employment site.

~~((29))~~ (30) "Week" means a seven-day calendar period, starting on Monday and continuing through Sunday.

~~((30))~~ (31) "Weekday" means a day of the week except Saturday or Sunday.

Sec. 2. Commute trip reduction goals. The commute trip reduction goals for employers affected by this ordinance are to achieve the following reductions in vehicle miles traveled per employee as well as in the proportion of single-occupant vehicle trips from the 1992 base year value of the city of Des Moines' commute trip reduction (CTR) zone:

- (1) Fifteen percent (15%) by January 1, 1995;
- (2) Twenty~~((five percent 25%))~~ percent (20) by January 1, 1997;
- (3) Thirty~~((five percent (35%))~~) percent (30) by January 1, 1999.
- (4) Thirty-five percent (35) by January 1, 2005.

Sec. 3. Designation of commute trip reduction (CTR) zone and base year values.

(1) Employers in the city of Des Moines fall within the South King County Commute Trip Reduction Zone as established by the Puget Sound Regional Council.

(2) The base year value of this zone for proportion of single-occupant vehicle (SOV) trips is eighty-five percent (85%). The base year value for vehicle miles traveled (VMT) per employee is set at 9.3 miles. Commute trip reduction goals for major employers are calculated from these values or site-based values established by a survey for the employment site, whichever is chosen by the employer. Therefore, the affected employers in the city of Des Moines shall establish a program designed to:

(a) Reduce the vehicle miles traveled per employee from the base year value established ~~((for the commute trip reduction zone))~~ above at least 15 percent by January 1, 1995; ~~((25))~~ 20 percent by January 1, 1997; ~~((and 35))~~ 25 percent by January 1, 1999; and 35 percent by January 1, 2005, and

(b) Reduce the proportion of single-occupant vehicle trips from the base year value established ~~((for the commute trip reduction zone))~~ above at least 15 percent by January 1, 1995; ~~((25))~~ 20 percent by January 1, 1997; ~~((and 35))~~ 25 percent by January 1, 1999; and 35 percent by January 1, 2005.

Sec. 4. Des Moines commute trip reduction (CTR) plan. The city of Des Moines commute trip reduction (CTR) plan set forth in Attachment "A" is wholly incorporated in this ordinance by reference. This plan may be amended by motion of the city council.

Sec 5. Responsible agency. The city of Des Moines planning department is responsible for implementing this ordinance, the commute trip reduction (CTR) plan, and the city's commute trip reduction (CTR) program for its own employees. The planning director has the authority to issue such rules and administrative procedures as are necessary to implement this ordinance.

Sec. 6. Applicability. The provisions of this ordinance shall apply to an affected employer at a single worksite within the city of Des Moines. Employees are counted at their primary worksite only. The following classifications of employees are excluded from the counts of employees: 1) seasonal agricultural employees, including seasonal employees of processors of agricultural products, and 2) employees of construction worksites when the expected duration of the construction is less than two (2) years.

(1) Notification of applicability.

(a) Known affected employers located in the city of Des Moines shall receive formal written notification by certified mail that they are subject to this ordinance within thirty (30) days after passage of this ordinance.

(b) Affected employers that, for whatever reason, do not receive notice within thirty (30) days of passage of the ordinance must identify themselves to the city within one hundred and eighty (180) days of the passage of the ordinance. Once they identify themselves, such employers are granted one hundred and fifty (150) days within which to develop and submit a commute trip reduction (CTR) program.

(c) Any existing employer of seventy-five (75) or more persons who obtains a business license in the city of Des Moines, subsequent to the passage of this ordinance, is required to complete an Employer Assessment Form as prepared by the planning director. The Employer Assessment Form provides a way to determine whether or not an employer is deemed affected or non-affected in accordance with the provisions of this ordinance.

(2) New affected employers. Employers that meet the definition of "affected employer" in this ordinance shall identify themselves to the city within one hundred eighty (180) days of either moving into the city of Des Moines or growing in employment at a worksite to one hundred (100) or more affected employees. Once they identify themselves, such employers are granted one hundred and fifty (150) days to develop and submit a commute trip reduction (CTR) program.

New affected employers have two (2) years to meet the first commute trip reduction (CTR) goal of a fifteen percent (15%) reduction from the base year values identified in Section 3 of this ordinance; four (4) years to meet the second goal of a twenty percent (20%)~~((twenty-five percent (25%)))~~ reduction; and six (6) years to meet the third goal of a twenty-five percent (25%)~~((thirty-five percent (35%)))~~ reduction; and twelve (12) years to meet the fourth goal of a 35 percent reduction from the time they begin their program.

(3) Change in status as an affected employer. Any of the following changes in an employer's status shall change the employer's commute trip reduction (CTR) program requirements:

(a) If an affected employer can document that it faces an extraordinary circumstance that will change its status as an affected employer, it can apply for a waiver under section 10(1).

(b) 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 that substantiates it is no longer an affected employer.

(c) 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 is treated as a new affected employer, and is subject to the same program requirements as other new affected employers.

Sec. 7. Requirements for employers. An affected employer is required to make a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, to develop and implement a commute trip reduction (CTR) program that will encourage its employees to reduce vehicle miles traveled (VMT) per employee and single-occupant vehicle (SOV) commute trips. The employer shall submit a description of its program to the city of Des Moines and provide an annual progress report to the city of Des Moines on employee commuting and progress toward meeting the single occupant vehicle (SOV) goals. The commute trip reduction (CTR) program shall include the mandatory elements described below, including submittal of a commute trip reduction (CTR) program description and annual progress report. Transportation management associations may submit commute trip reduction (CTR) program descriptions and annual reports on behalf of employers; however, each employer shall remain accountable for the success of its program.

(1) Description of employer's commute trip reduction (CTR) program. The commute trip reduction (CTR) program description presents the strategies to be undertaken by an employer to achieve the commute trip reduction (CTR) goals for each goal year. Employers are encouraged to consider innovative strategies and combine program elements in a manner that will best suit their location, site characteristics, business type, and employees' commuting needs. Employers are further encouraged to cooperate with each other and to form or use transportation management organizations in developing and implementing commute trip reduction (CTR) programs.

Each affected employer shall submit a description of its commute trip reduction (CTR) program to the city on an official form available from the planning department. At a minimum, the employer's description shall include:

(a) 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;

(b) Number of employees affected by the commute trip reduction (CTR) program;

(c) Documentation of compliance with the mandatory commute trip reduction (CTR) program elements (as described in subsection (2) of this section);

(d) Description of the additional elements included in the commute trip reduction (CTR) program, and

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

(2) Mandatory program elements. Each employer's commute trip reduction (CTR) program shall include the following mandatory elements:

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

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

(c) Annual progress report. The commute trip reduction (CTR) program shall include an annual review of employee commuting and ~~((of))~~ progress and good faith efforts toward meeting the single-occupant vehicle (SOV) reduction goals. Affected employers shall file a progress report annually with the city. The report shall conform to the format specified by the planning director, consistent with the CTR Task Force Guidelines. The report shall describe each of the commute trip reduction (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 commute trip reduction (CTR) programs. Within the report, the employer should evaluate the effectiveness of the commute trip reduction (CTR) program and, if necessary,

propose modifications to achieve the commute trip reduction (CTR) goals. Survey information or approved alternative information approved by the planning director is required in the second, fourth, sixth and twelfth years after implementation begins((the 1995, 1997, and 1999 reports)).

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

Sec. 8. Record keeping. Affected employers shall maintain all records required by the planning director for the duration of this ordinance. Affected employers shall include a list of the records they will keep as a part of the commute trip reduction (CTR) program they submit to the city of Des Moines for approval. Employers will maintain all records listed in their program for a minimum of twenty-four (24) months.

Sec. 9. Schedule and process for commute trip reduction (CTR) reports, program review, and implementation.

(1) CTR program. Not more than six months after the adoption of this ordinance, or within six (6) months after an employer becomes subject to the provision of this ordinance, the employer shall develop a commute trip reduction (CTR) program and shall submit to the city a description of that program for review.

(2) CTR annual reporting date. Employers are required to submit an annual commute trip reduction (CTR) report to the city beginning with the first annual reporting date assigned during the initial program submittal. The annual reporting date shall be no less than twelve (12) months from the day the initial program description is submitted. Subsequent years' reports are due on the same date each year.

(3) Content of annual report. The annual progress report shall describe each of the commute trip reduction (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 commute trip reduction (CTR) programs. Survey information or approved alternative information ~~((approved by the planning director))~~ shall be provided with reports every other year as determined by the planning director ~~((in the 1995, 1997, and 1999 reports))~~.

(4) Program review. The city shall provide the employer with written notification indicating whether a commute trip reduction (CTR) program was approved or deemed unacceptable.

(a) Initial program descriptions are deemed acceptable if (I) all required information on the program description form is provided; and, (II) the program description includes the following information:

(i) Name, location, and telephone number of the Employee Transportation Coordinator for each worksite;

(ii) Plan for and documentation of regular distribution of information to employees about the employer's commute trip reduction (CTR) program at the worksite, including alternatives to driving alone to work;

(iii) Plan for and implementation of at least one additional measure designed to achieve the applicable goal.

(b) Annual reports are 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 shall also contain a review of employee commuting and report of progress toward meeting single-occupant vehicle (SOV) goals.

~~(c) Beginning in 1995, the programs described in the annual reports are deemed acceptable if either the single-occupant vehicle (SOV) trip or the vehicle miles traveled (VMT) per employee goals have been met. If neither goal has been met, the employer shall propose modifications designed to make progress toward the applicable goal in the coming year. If the revised program is not approved, the city shall propose modifications to the program and direct the employer to revise its program within thirty (30) days to incorporate those modifications or modifications which the jurisdiction determines to be equivalent.)~~

(i) if an employer makes a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, and meets either or both the applicable single occupant vehicle (SOV) or vehicle miles traveled (VMT) goal, the employer has satisfied the objectives of the commute trip reduction (CTR) plan and will not be required to modify its commute trip reduction (CTR) program.

(ii). if an employer makes a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, but has not met or is not likely to meet the applicable single occupant vehicle (SOV) or vehicle miles traveled (VMT) goal, the city of Des Moines shall work collaboratively with the employer to make modifications to its commute trip reduction (CTR) program. After agreeing on modifications, the employer shall submit a revised commute trip reduction (CTR) program description to the city of Des Moines for approval within 30 days of reaching an agreement.

(iii) if an employer fails to make a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, and fails to meet either the applicable single occupant vehicle (SOV) or vehicle miles traveled (VMT) reduction goal, the city of Des Moines shall work collaboratively with the employer to identify modifications to the commute trip reduction (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 commute trip reduction (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 of Des Moines 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 of Des Moines within ten working days of the conference.

(5) Implementation of employer's commute trip reduction (CTR) program. The employer shall implement the approved commute trip reduction (CTR) program not more than one hundred eighty (180) days after the program was first submitted to the city unless extensions allow for late implementation. Implementation of programs that have been modified based on non-attainment of commute trip reduction (CTR) goals shall occur within thirty (30) days following city approval of such modifications.

Sec. 10. Requests for ~~((waivers))~~exemptions -Modifications of commute trip reduction (CTR) requirements.

(1) ~~((Waivers))~~ Exemptions. An affected employer may request the city to grant a ~~((waiver))~~ exemption from commute trip reduction (CTR) program requirements for a particular worksite. ~~((A waiver may be granted 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 single-occupant vehicle (SOV) trips and vehicle miles traveled (VMT) per employee. Requests for waivers applying to the initial program submittal are due within three (3) months after the employer has been notified that it is subject to this ordinance and thereafter requests can be made at any time.))~~ The employer must demonstrate that it would experience undue hardship in complying with the requirements of the ordinance as a result of the characteristics of its business, its work force, or its location(s). An exemption may be granted if and only if the affected employer demonstrates that it faces extraordinary circumstances, such as bankruptcy, and is unable to implement any measures that could reduce the proportion of single occupant vehicle (SOV) trips and vehicle miles traveled (VMT) per employee. Exemptions may be granted by the city of Des Moines 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 commute trip reduction (CTR) program. Requests must be made in writing. The city shall review annually all employers receiving ~~((waivers))~~ exemptions, and shall determine whether the ~~((waiver))~~ exemption will continue to be in effect during the following program year.

(2) Employee adjustment/Goal modification. An affected employer may request an affected employee adjustment and/or a modification of program goals. Grounds for granting modification are limited to the following:

(a) ~~((An affected employer can demonstrate it requires:~~

~~(i) Significant numbers of its employees to use the vehicles they drive to work during the work day 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; and/or~~

~~(ii) Some employees work variable shifts during the year, so that these employees sometimes begin their shift within the 6:00 a.m. to 9:00 a.m. time period and other times begin their shifts outside that time period. (Exception: 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 commute trip reduction (CTR) program measurement, as they form enough of a consistent pool to maintain ridesharing arrangements.))~~ Affected Employee Adjustment - Specific employees or groups of employees who are required to drive alone to work as a condition of employment may be exempted from a worksites' commute trip reduction (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 of Des Moines will use criteria set forth in the Commute Trip Reduction (CTR) Task Force Guidelines and this ordinance to assess the validity of employee exemptions requests.

If the employer provides documentation indicating how many employees meet 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 single-occupant vehicle (SOV) trips and vehicle miles traveled (VMT) per employee used to determine the employer's progress toward program goals.

(b) An affected employer demonstrates that its worksite is contiguous with a commute trip reduction (CTR) zone boundary and that the worksite conditions affecting alternative commute options are similar to those for employers in the adjoining commute trip reduction (CTR) zone. Under this condition, the employer's worksite may be subject to the same goals for vehicle miles traveled (VMT) per employee and proportion of single-occupant vehicle (SOV) trips as employers in the adjoining commute trip reduction (CTR) zone.

(c) Employers may only request a modification based on conditions 1 and 2 above within three (3) months after being notified that they are subject to this ordinance.

(d) 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.

(e) Relocation of a worksite to another commute trip reduction (CTR) zone. Requests for goal modification based on this condition may be made at any time.

(f) An affected employer may request that the city of Des Moines modify its commute trip reduction (CTR) program goals. Such requests shall be filed in writing at 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 employer must also demonstrate that it has implemented all the elements contained in its approved commute trip reduction (CTR) program at the worksite. The city of Des Moines will review and grant or deny requests for goal modifications in accordance with procedures and criteria identified in the Commute Trip Reduction (CTR) Task Force Guidelines and this ordinance. An employer may not request a modification of the applicable goals until one year after the city's approval of its initial program description.

All requests for modification of commute trip reduction (CTR) program goals must be made in writing by certified mail or delivery, return receipt.

(3) Modification of commute trip reduction (CTR) program elements. If an employer wants to change a particular aspect of its commute trip reduction (CTR) program during the period of time between annual reporting dates, the employer must contact the city.

(4) Extensions. An employer may request additional time to submit a commute trip reduction (CTR) program or commute trip reduction (CTR) annual progress report, or to implement or modify a program. Such requests are made in writing prior to the due date anytime a program submission is going to be more than one week late. Extensions not to exceed ninety (90) days are considered for reasonable causes. Employers are limited to a total of ninety (90) allowed extension days per year. Extensions shall not exempt an employer from any responsibility in meeting program goals. Extensions granted due to delays or difficulties with any program element(s) are not cause for discontinuing or failing to implement other program elements. An employer's annual reporting date is not adjusted permanently as a result of these extensions. An employer's annual reporting date may be extended at the discretion of the planning director.

Sec. 11. Credit for transportation demand management efforts.

(1) Credit for programs implemented prior to the base year. Employers with successful transportation demand management (TDM) programs implemented prior to the 1992 base year may apply to the city for program credit.

(a) Employers whose vehicle miles traveled (VMT) per employee and proportion of single-occupant vehicle (SOV) trips are already equal to or less than 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.

(b) Employers applying for the program credit in their initial 1993 program description shall be considered to have met the 1995 commute trip reduction (CTR) goals if their vehicle miles traveled (VMT) per employee and proportion of single-occupant vehicle (SOV) trips are equivalent to a twelve percent (12%) or greater reduction from the base year zone values. This three percentage point credit applies only to the 1995 commute trip reduction (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 ordinance. 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 credit shall include results from a survey of employees, or equivalent information that establishes the applicant's vehicle miles traveled (VMT) per employee and proportion of single-occupant vehicle (SOV) trips. The survey or equivalent information shall conform to all applicable standards established in the director's rules for implementation of this ordinance.

(2) Credit for alternative work schedules, telecommuting, bicycling, and walking by affected employees.

(a) The city shall 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 single-occupant vehicle (SOV) trips and vehicle miles traveled (VMT) per employee.

(b) This type of credit is applied when calculating the single-occupant vehicle (SOV) and vehicle miles traveled (VMT) rates of affected employers.

Sec. 12. Employer peer review group.

(1) Purpose and appointment of members. The city may appoint member(s) from affected employers to regional or subregional employer peer review groups created through interlocal agreement with other jurisdictions. The specific functions of the peer review group shall be determined by interlocal agreement.

(2) Limitations of peer review group. A peer review group shall be advisory in nature. The city is not bound by any comments or recommendations of a peer review group.

Sec. 13. Appeals of administrative decisions.

(1) Employers may file a written appeal of final administrative decisions regarding the following actions:

(a) Rejection of an employer's proposed program;

(b) Denial of an employer's request for a waiver or modification of any of the requirements under this ordinance or a modification of the employer's program;

(c) Denial of credits requested under section 11.

(2) An appeal must be filed with the city within twenty (20) days of such final decision.

(3) Appeals are heard by the hearing examiner as appeals of administrative decisions in accordance with the hearing examiner code.

Sec. 14. Enforcement.

(1) Compliance. For purposes of this section, compliance means submitting required reports and documentation at prescribed times and fully implementing all provisions in an accepted commute trip reduction (CTR) program.

(2) Violations. It is a civil infraction to:

(a) Fail to implement an approved commute trip reduction (CTR) program unless the program elements that are carried out can be shown through quantifiable evidence to meet or exceed vehicle miles traveled (VMT) and single-occupant vehicle (SOV) goals as specified in this ordinance. Failure to implement a commute trip reduction (CTR) program includes but is not limited to:

(i) Failure of an affected employer to submit a complete commute trip reduction (CTR) program within the deadlines specified in section 9 of this ordinance;

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

(iii) Submission of fraudulent data;

(b) Fail to modify a commute trip reduction (CTR) program found to be unacceptable by the city under section 9(4) of this ordinance.

(c) Fail to make a good faith effort, as defined in RCW 70.94.534(4) and this ordinance.

(3) Penalties.

(a) Each day of failure by an employer to (I) implement a commute trip reduction program; or, (II) modify an unacceptable commute trip reduction program shall constitute a separate violation.

(b) A person convicted of a violation of a provision of this section is guilty of a Class 2 civil infraction.

(4) An employer is not liable for civil penalties if failure to implement an element of a commute trip reduction (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. Unionized employers are presumed to act in good faith compliance if they: (a) propose to a recognized union any provision of the employer's commute trip reduction (CTR) program that is subject to bargaining as defined by the National Labor Relations Act or any statute of the State of Washington; and (b) advise the union of the existence of the statute and the mandates of the commute trip reduction (CTR) program approved by the city of Des Moines and advise the union that the proposal being made is necessary for compliance with state law (RCW 70.94.531).

(5) No affected employer with an approved commute trip reduction (CTR) program may be held liable for failure to reach the applicable single occupant vehicle (SOV) or vehicle miles traveled (VMT) reduction goals.

Sec. 15. Codification. Sections 1 through 14 of this ordinance shall be codified as a new chapter in Title 16 DMMC, entitled "Commute Trip Reduction Plan."

Sec. 16. Severability - Construction. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. Further, in the event that provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance shall be deemed to control.

Sec. 17. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the city council of the city of Des Moines this 28th day of January, 1993 and signed in authentication thereof this ~~((28th day of January, 1993))~~ _____.

MAYOR

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: February 10, 1993