

ORDINANCE NO. 349

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE,
WASHINGTON, ADOPTING THE CITY'S COMMUTE TRIP REDUCTION PLAN AS
REQUIRED BY CHAPTER 70.94.527 RCW**

WHEREAS, the City of University Place recognizes the importance of increasing citizens' awareness of air quality, energy consumption, and traffic congestion and the contribution individual actions can make toward addressing these issues; and

WHEREAS, under state law set forth in Chapter 70.94.521-551 RCW, the City of University Place is required to develop and implement a commute trip reduction plan and program to reduce single-occupant vehicle commute trips and reduce vehicle miles traveled; and

WHEREAS, this ordinance is consistent with the goals and policies set forth in the City's Comprehensive Plan to increase the use public transit; and

WHEREAS this ordinance is consistent with CTR Task Force guidelines, the ordinances of other jurisdictions within Pierce County, and the requirements of the City's Code;

**NOW THEREFORE. THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE,
WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

Section 1. Findings

The Council adopts the findings by the State Legislature at Chapter 70.94.521 RCW, and in particular the City makes the following findings:

1. Motor vehicle traffic is a major source of emissions that pollute the air, cause significant harm to public health, and degrade the quality of the environment in the City of University Place;
2. Increasing automotive traffic is aggravating traffic congestion in the City of University Place;
3. Increasing traffic congestion imposes significant costs on City businesses, governmental agencies, and individuals in terms of lost working hours and delays in the delivery of goods and services;
4. Reducing the number of commute trips to work made via single-occupant vehicles is an effective way of reducing automobile-related air pollution, traffic congestion, and energy use;
5. Major employers have significant opportunities to encourage and facilitate reducing single-occupant vehicle commuting by employees;
6. This ordinance is consistent with the goals and policies set forth in the City's Comprehensive Plan to increase the use public transit.

Section 2. Definitions

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

A. "*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 for at least twelve continuous months. Seasonal agricultural employees, including seasonal employees of processors of agricultural products, are excluded from the count of affected employees.

B. "*Affected Employer*" means an employer that 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 for at least twelve continuous months. Construction worksites, when the expected duration of the construction is less than two years, are excluded from this definition. (Also see definition of employer.)

C. "*Alternative Mode*" means any means 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 on which goals for vehicle miles traveled (VMT) per employee and proportion of single-occupant vehicle (SOV) trips shall be based.

F. "*Carpool*" means a motor vehicle occupied by two (2) to six (6) people traveling together for their commute trip that results in the reduction of a minimum of one motor vehicle commute trip.

G. "*City*" means the City of University Place.

H. "*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.

I. "*CTR Plan*" means the City's plan, as set forth in this ordinance to regulate and administer the commute trip reduction (CTR) programs of affected employers within its jurisdiction.

J. "*CTR Program*" means an employer's strategies to reduce affected employees' SOV use and VMT per employee.

K. "*CTR Zone*" means an area, such as a census tract or combination of census tracts, within Pierce County 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.

L. "*Commuter Matching Service*" means a system that assists in matching commuters for the purpose of commuting together.

M. "*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.

N. "*Custom Bus/Buspool*" means a commuter bus service arranged specifically to transport employees to work.

O. "*Dominant Mode*" means the mode of travel used for the greatest distance of a commute trip.

P. "*Employee*" means anyone who receives financial or other remuneration in exchange for work provided to an employer, including owners or partners of the employer.

Q. "*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.

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

S. "*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.

T. "*Full-Time Employee*" means a person, other than an independent contractor, scheduled to be employed on a continuous basis for 52 weeks for an average of at least 35 hours per week.

U. "*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 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.

V. "*Implementation*" means active pursuit by an employer of the CTR goals of RCW 70.94.521-551 and this ordinance 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 its approved CTR program and schedule.

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

X. "*Notice*" means written communication delivered via the United States Postal Service with receipt deemed accepted three days following the day on which the notice was deposited with the Postal Service unless the third day falls on a weekend or legal holiday in which case the notice is deemed accepted the day after the weekend or legal holiday.

Y. "*Peak Period*" means the hours from 6:00 a.m. to 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.

Z. "*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.

AA. "*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 potential trips taken by affected employees working during that period.

BB. "*Single-Occupant Vehicle (SOV)*" means a motor vehicle occupied by one (1) employee for commute purposes, including a motorcycle.

CC. "*Single-Occupant Vehicle (SOV) Trips*" means commute trips made by affected employees in SOVs.

DD. "*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.

EE. "*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.

FF. "Transit" means a multiple-occupant vehicle operated on a for-hire, shared-ride basis, including bus, ferry, rail, shared-ride taxi, shuttle bus, or vanpool. A transit trip counts as zero (0) vehicle trips.

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

HH. "Transportation Management Organization (TMO)" means a group of employers or an association representing a group of employers in a defined geographic area. A TMO may represent employers within specific city limits or may have a sphere of influence that extends beyond city limits.

II. "Vanpool" means a vehicle occupied by from seven (7) to fifteen (15) people traveling together for their commute trip that results in the reduction of a minimum of one motor vehicle trip. A vanpool trip counts as zero (0) vehicle trips.

JJ. "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.

KK. "Week" means a seven-day calendar period starting on Monday and continuing through Sunday.

LL. "Weekday" means any day of the week except Saturday or Sunday.

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

Section 3. Designation of CTR zones and base year values

All affected employers are located in the CTR Zone known as the "Rural Pierce County CTR Zone" as shown in Attachment A. The base year value of this zone for the proportion of SOV trips shall be 90% in accordance with the CTR Plan for Pierce County. The base year value for VMT per employee shall be set at 7.7 miles in accordance with the CTR plan for Pierce County. The base year values shall be reduced by the amounts and dates specified in the CTR Goals listed in Section 4 of this ordinance for all affected employers within this zone.

Section 4. Commute Trip Reduction Goals

Employers affected by this ordinance are to achieve the following reductions from "base year values" in VMT per employee as well as in the proportion of SOV rate as determined by the base year values for the Rural Pierce County CTR Zone, or through a base year survey conducted at the worksite.

- A. 15% after two years
- B. 20% after four years
- C. 25% after six years
- D. 35% after twelve years

Section 5. Responsible City Official

The City's Public Works Director, acting in consultation with the City's Administrative Services Director, shall be responsible for implementing this ordinance and the CTR plan. The Public Works Director shall have the authority to issue such rules and administrative procedures as are necessary to implement the provisions of this ordinance. The Administrative Services Director is hereby designated the City's internal transportation coordinator.

Section 6. Applicability

The provisions of this ordinance shall apply to any affected employer at any single worksite within the corporate limits of the City of University Place.

Section 7. Determination of Affected Employer Status

A. Employer Notification

1. In addition to the City's established public notification for adoption of an ordinance, a notice of availability of a summary of this ordinance, a notice of the requirements and criteria for affected employers to comply with the ordinance, and subsequent revisions shall be published at least once in the City's official newspaper not more than 30 days after passage of this ordinance or revisions.
2. Known affected employers located in the City are to receive written notification that they are subject to this ordinance. Such notice shall be addressed to the company's chief executive officer, senior official, or CTR manager at the worksite. Such notification shall be at least 180 days prior to the due date for submittal of their CTR program.
3. Affected employers that, for whatever reason, do not receive notice within 30 days of passage of the ordinance and are either notified or identify themselves to the City within 180 days of the passage of the ordinance will be granted an extension to assure up to 180 days within which to develop and submit a CTR program.
4. Affected Employers that have not been identified or do not identify themselves within 180 days of the passage of the ordinance and do not submit a CTR program within 180 days from the passage of the ordinance are in violation of this ordinance.

B. New Affected Employers

Employers that meet the definition of "affected employer" in this ordinance must identify themselves to the City within 180 days of either moving into the boundaries of the City of University Place or growing in employment at a worksite to one hundred (100) or more affected employees. Such employers shall be given 180 days to develop and submit a CTR program. Employers that do not identify themselves within 180 days are in violation of this ordinance.

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 employer initially designated as an affected employer no longer employs one hundred (100) or more affected employees and expects not to employ one hundred (100) or more affected employees for the next twelve (12) months, that employer is no longer an affected employer. It is the responsibility of the employer to notify the City that it is no longer an affected employer.
2. If the same employer returns to the level of one hundred (100) or more affected employees within the same twelve (12) months, that employer will be considered an affected employer for the entire 12 months and will be subject to the same program requirements as other affected employers.
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 program requirements as other new affected employers.

Section 8. Requirements for Employers

A. Good Faith Effort

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 CTR program that will encourage its employees to reduce VMT per employee and SOV commute trips.

B. CTR Program Description

The employer shall submit a description of its program to the City. At a minimum, the employer's description must include: 1) general description of the employment site location, transportation characteristics, and surrounding services, including 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 C of this section); 4) description of the additional elements included in the CTR program (as described in subsection C of this section); and 5) schedule of implementation, assignment of responsibilities, and commitment to provide appropriate resources.

The CTR program description presents the strategies to be undertaken by an employer to achieve the commute trip reduction 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 CTR programs.

C. CTR 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. The objective is to have an effective transportation coordinator presence at each worksite; an affected employer with multiple sites may have one transportation coordinator for all sites.

2. Information Distribution

Information about alternatives to SOV commuting shall be provided to employees at least once a year. Each employer's program description and annual report must report the information to be distributed and the method of distribution.

3. Annual Progress Report

The CTR program must include an annual review of employee commuting and progress and good faith efforts toward meeting the SOV reduction goals. Affected employers shall file an annual progress report with the City in accordance with the format established by the City and consistent with the CTR Task Force Guidelines. The 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. Within the report, the employer should evaluate the

effectiveness of the CTR program and, if necessary, propose modifications to achieve the CTR goals. Survey information or approved alternative information must be provided in the reports submitted in the second, fourth, sixth, eighth, tenth, and twelfth years after implementation begins. The employer should contact the City for the format of the report.

4. Additional Program Elements

In addition to the specific program elements described above, the employer's CTR program shall include additional elements as needed to meet CTR goals. Elements may include, but are not limited to, one or more of the following:

- a. Provision of preferential parking or reduced parking charges, or both, for high-occupancy vehicles;
- b. Instituting or increasing parking charges for SOVs;
- c. Provision of commuter ride matching services to facilitate employee ride-sharing for commute trips;
- d. Provision of subsidies for transit fares;
- e. Provision of vans for vanpools;
- f. Provision of subsidies for carpools or vanpools;
- g. Permitting the use of the employer's vehicles for carpooling or vanpooling;
- h. Permitting flexible work schedules to facilitate employees' use of transit, carpools, or vanpools;
- i. Cooperation with transportation providers to provide additional regular or express service to the worksite;
- j. Construction of special loading and unloading facilities for transit, carpool, and vanpool users;
- k. Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;
- l. Provision of a program of parking incentives such as a rebate for employees who do not use the parking facilities;
- m. Establishment of a program to permit employees to work part- or full-time at home or at an alternative worksite closer to their homes;
- n. Establishment of a program of alternative work schedules, such as a compressed work week which reduces commuting; and
- o. Implementation of other measures designed to facilitate the use of high-occupancy vehicles, such as on-site day care facilities and emergency taxi services.

Section 9. Record Keeping

Affected employers shall include a list of the records they will keep as part of the CTR program they submit to the City for approval. Employers will maintain all records listed in their CTR program for a minimum of 24 months. The City and the employer shall agree on the record keeping requirements as part of the accepted CTR program.

Section 10. Schedule and Process for CTR Reports

A. CTR Program

Not more than 180 days after the adoption of this ordinance, or within six months after an employer qualifies under the provisions of this ordinance, the employer shall develop a CTR program and shall submit to the City a description of that program for review.

B. Document Review

The City shall provide the employer with written notification if a CTR program is deemed unacceptable. The notification must give cause for any rejection. If the employer receives no written

notification of extension of the review period of its CTR program or comment on the CTR program or annual report within 90 days of submission, the employer's program or annual report is deemed accepted. The City may extend the review period up to 90 days. The implementation date for the employer's CTR program will be extended an equivalent number of days.

C. CTR Annual Progress Reports

Upon review of an employer's initial CTR program, the City shall establish the employer's annual reporting date, which shall not be less than 12 months from the day the program is submitted. Each year on the employer's reporting date, the employer shall submit to the City its annual CTR report.

D. 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 via written notice at least 30 days before the due date for which the extension is being requested. Extensions not to exceed 90 days shall be considered for reasonable causes. The City shall grant or deny the employer's extension request by written notice within 10 working days of its receipt of the extension request. If there is no response issued to the employer, an extension is automatically granted for 30 days. Extensions shall not exempt an employer from any responsibility in meeting program goals. Extensions granted due to delays or difficulties with any program element(s) shall not be cause for discontinuing or failing to implement other program elements. An employer's 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 Public Works Director.

E. Implementation of Employer's CTR Program

Unless extensions are granted, the employer shall implement its approved CTR program not more than 180 days after the program was first submitted to the City. Implementation of the approved program modifications shall begin within 30 days of the final decision or 180 days from submission of the CTR program or CTR annual report, whichever is greater.

Section 11. Modification of CTR Program Elements

Any affected employer may submit a request to the City for modification of CTR program elements, other than the mandatory elements specified in this ordinance, including record keeping requirements. Such request may be granted if one of the following conditions exist:

A. The employer can demonstrate it would be unable to comply with the CTR program elements for reasons beyond the control of the employer, or

B. The employer can demonstrate that compliance with the program elements would constitute an undue hardship. This may include evidence from employee surveys administered at the worksite: first, in the base year, showing that the employer's own base year values of VMT per employee and SOV rates were higher than the CTR zone average; and/or secondly, in the goal measurement year(s), showing that the employer has achieved reductions from its own base values that are comparable to the reduction goals established for the employer's CTR zone.

Section 12. Program Modification Criteria

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 an employer meets either or both goals, 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 ordinance, but has not met or is not likely to meet the applicable SOV or VMT 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 ordinance, 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.

Section 13. Exemptions and Goal Modifications

A. Worksite Exemptions

An affected employer may request the City to grant an exemption from all CTR program requirements or penalties for a particular worksite. The employer must demonstrate that it would experience undue hardship in complying with the requirements of the ordinance as a result of the characteristics of its business, its work force, or its location(s). An exemption may be granted if and only if the affected employer demonstrates that it faces extraordinary circumstances, such as bankruptcy, and is unable to implement any measures that could reduce the proportion of 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.

B. 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.

C. Modification of CTR Program Goals

1. An affected employer may request that the City modify its CTR program goals. Such requests shall be filed in writing at least 60 days prior to the date the worksite is required to submit its program description or annual report. The goal modification request must clearly explain why the worksite is unable to achieve the applicable goal. The worksite must also demonstrate that it has implemented all of the elements contained in its approved CTR program.
2. The City will review and grant or deny requests for goal modifications in accordance with procedures and criteria identified in the CTR Task Force Guidelines.

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

Section 14. Credit For Transportation Demand Management Efforts

A. Leadership Certificate

As public recognition for their efforts, employers with VMT per employee and proportion of SOV trips lower than the zone average will receive a Commute Trip Reduction Certificate of Leadership from the City.

B. Credit For Programs Implemented Prior to the Base Year

Employers with successful TDM programs implemented prior to the base year may be eligible to apply for program exemption credit, which exempts them from most program requirements. Affected employers wishing to receive credit for the results of existing TDM efforts may do so by applying to the City within 90 days of the adoption of this ordinance. Application shall include data from a survey of employees or equivalent to establish the applicant's VMT per employee and proportion of SOV trips. The survey or equivalent data shall conform to all applicable standards established in the CTR Task Force Guidelines. The employer shall be considered to have met the first measurement goals if their VMT per employee and proportion of SOV trips are equivalent to a 12 percent or greater reduction from the final base year CTR zone values. This three percentage point credit applies only to the first measurement goals.

C. Program Exemption Credit

Affected employers may apply for program exemption credit for the results of past or current TDM efforts by applying to the City within 90 days of adoption of the applicable CTR ordinance, or as part of any annual report. Application shall include 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 CTR Task Force Guidelines.

Employers that apply for credit and whose VMT per employee and proportion of SOV trips are equal to or less than goals for one or more future goal years, and commit in writing to continue their current level of effort, shall be exempt from the requirements of the ordinance except for the requirements to report performance in the measurement years (Section 8 of this ordinance). If any of these reports indicate the employer does not satisfy the next applicable goal(s), the employer shall immediately become subject to all requirements of the CTR ordinance.

Section 15. Enforcement

A. Compliance

For purposes of this section, compliance shall mean submitting all required reports and documentation at the prescribed times and fully implementing in good faith all provisions in an approved CTR program.

B. Violations

The following constitute violations if the deadlines established in this ordinance are not met:

1. Failure to develop and/or submit on time a complete CTR program, including:
 - a. Employers notified or that have identified themselves to the City within 180 days of the ordinance being adopted and that do not submit a CTR program within 180 days from the notification or self-identification;

- b. Employers not identified or self-identified within 180 days of the ordinance being adopted and that do not submit or implement a CTR program within 180 days from the adoption of the ordinance;

2. 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 ordinance;

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

4. Failure to revise a CTR program as defined in Chapter 70.94.534(4) RCW and this ordinance.

C. Penalties

1. Any violation of any provision of this ordinance, or failure to comply with any of the requirements of this ordinance, shall be a civil violation subject to a civil penalty of \$250 for each violation, provided that no affected employer with an approved CTR program shall be subject to any penalty or be held liable for failure to attain the applicable SOV or VMT goals if they have made a good faith effort as defined in Chapter 70.94.534(4) RCW and this ordinance. Each day that a violation continues shall constitute a separate violation.

2. An affected employer shall not be liable for civil penalties if failure to implement an element of a CTR program was the result of an inability to reach agreement with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith. Unionized employers 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 (Chapter 70.94.531 RCW).

D. Appeals

An affected employee may appeal final administrative decisions made by the City in the implementation and application of the provisions of this ordinance for such employer. Such appeals must be filed with the City Clerk's Office within 20 days of receipt of the decision being appealed. Appeals will be heard by the City's Hearing Examiner in accordance with Chapter 2.20 UPMC. Determinations made by the Hearing Examiner in the review of such appeals shall be based on consistency with RCW 70.94.521-551.

Section 16. Severability

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 by a court of competent jurisdiction shall not be affected.

Section 17. Publication and Effective Date

A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City. This Ordinance shall be effective five (5) days after its publication.

PASSED BY THE CITY COUNCIL ON AUGUST 12, 2002.

Ken J. Guassi (MPT)
Jean Brooks, Mayor

ATTEST:

Catrina Craig
Catrina Craig, City Clerk

APPROVED AS TO FORM:

Timothy X. Sullivan
Timothy X. Sullivan, City Attorney

Published: August 14, 2002
Effective Date: August 19, 2002