

CITY OF MUKILTEO  
MUKILTEO, WASHINGTON

ORDINANCE NO. 1394

AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON, RELATING TO TRANSPORTATION; AMENDING CHAPTER 10.24 MMC – COMMUTE TRIP REDUCTION TO UPDATE MUKILTEO’S COMMUTE TRIP REDUCTION REGULATIONS; AMENDING CHAPTER 2.38 MMC – HEARING EXAMINER TO GRANT AUTHORIZATION TO HEAR APPEALS RELATING TO COMMUTE TRIP REDUCTION; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, Chapter 70.94 RCW requires the City to adopt a Commute Trip Reduction ordinance and plan and the City of Mukilteo wishes to update its Commute Trip Reduction (CTR) Plan; and

WHEREAS, the current CTR Plan is governed by Chapter 10.24 MMC; and

WHEREAS, the City of Mukilteo worked in collaboration with Snohomish County, cities in Snohomish County and Community Transit to prepare a new CTR Plan; and

WHEREAS, the City’s new CTR Plan will allow for easier administration of required commute trip reduction activities by affected employers while providing enhanced reporting of compliance with Chapter 10.24 MMC; and

WHEREAS, Chapter 10.24 MMC must be amended to be consistent with the City’s updated CTR Plan and with Chapter 70.94 RCW; and

WHEREAS, the City has in the past streamlined various appeal procedures through the use of a Hearing Examiner; and

WHEREAS, it is the City’s desire to further streamline appeal procedures by granting the Hearing Examiner authority to hear appeals governed by Chapter 10.24 MMC.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MUKILTEO, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Chapter 10.24 MMC. Chapter 10.24 MMC – Commute Trip Reduction, shall be amended to read as shown in Exhibit A in order to be consistent with the City’s Commute Trip Reduction Plan as shown in Exhibit B.

Section 2. MMC 2.38.030 - Amended. Section 2.38.030 of the Mukilteo Municipal Code is hereby amended by amending subsection (A) as follows:

**2.38.030 Powers.**

A. The hearing examiner shall approve, approve with conditions, or deny:

1. All such land use applications or appeals where the hearing examiner is identified as the permit authority in

Chapter 17.13, Land Use and Development Review Procedures.

2. Adult entertainment licensing and operation appeals, Chapter 5.06.
3. Public hearings for the abatement of unauthorized, abandoned and junk vehicles, Chapter 9.47.
4. Commute trip reduction appeals, Chapter 10.24.
5. Appeals of notices of civil violations and declarations of dangerous animals as provided for pursuant to Title 6, Animals, unless an animal control hearing examiner has been appointed by the mayor and confirmed by a majority of the members of the city council pursuant to Section 2.38.040.

Section 2. Findings of Fact and Conclusions. In support of the amendments approved in Section 1 of this ordinance, the Mukilteo City Council adopts the Findings of Fact and Conclusions attached hereto as Exhibits C and incorporated herein by reference as if set forth in full.

Section 3. Severability. If any section, subsection, clause, sentence, or phrase of this ordinance should be held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 4. Authority to make necessary corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 5. Conflict. In the event that there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 6. Effective Date. The ordinance shall take effect and be in full force five (5) days after publication of the attached Summary which is hereby approved.

PASSED by the City Council and APPROVED by the Mayor this XX day of XXX, 20XX.

APPROVED:

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MAYOR, JENNIFER GREGERSON

ATTEST/AUTHENTICATED:

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CITY CLERK, JANET KEEFE

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

By: \_\_\_\_\_  
ANGELA SUMMERFIELD

FILED WITH THE CITY CLERK:	XX-XX-XX
APPROVED BY THE CITY COUNCIL:	XX-XX-XX
PUBLISHED:	XX-XX-XX
EFFECTIVE:	XX-XX-XX
ORDINANCE NO. <b>1394</b>	

**SUMMARY OF ORDINANCE NO. 1394**  
of the City of Mukilteo, Washington

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On XXX, 20XX, the City Council of the City of Mukilteo, Washington, approved Ordinance No. 1394, the main point of which may be summarized by its title as follows:

AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON, RELATING TO TRANSPORTATION; AMENDING CHAPTER 10.24 MMC – COMMUTE TRIP REDUCTION TO UPDATE MUKILTEO’S COMMUTE TRIP REDUCTION REGULATIONS; AMENDING CHAPTER 2.38 MMC – HEARING EXAMINER TO GRANT AUTHORIZATION TO HEAR APPEALS RELATING TO COMMUTE TRIP REDUCTION; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

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The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their meeting of XXX, 2016.

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City Clerk, Janet Keefe

**EXHIBIT A**  
Chapter 10.24  
**COMMUTE TRIP REDUCTION**

**Sections:**

10.24.010	Title.
10.24.020	Jurisdiction.
10.24.030	Purpose.
10.24.040	Administration.
10.24.050	Definitions.
10.24.060	City's CTR plan.
10.24.070	Responsible city agency.
10.24.080	Applicability—Timeline for compliance.
10.24.090	Requirements for employers.
10.24.100	Record keeping.
10.24.110	Schedule and process for CTR reports.
10.24.120	Enforcement.
10.24.130	Exemptions and goal modifications.
10.24.140	Appeals.

**10.24.010 Title.**

The ordinance codified in this chapter shall be known as the “commute trip reduction ordinance of the city of Mukilteo.”

**10.24.020 Jurisdiction.**

The requirements set forth in this chapter shall apply to all major employers at any single worksite within the incorporated area.

**10.24.030 Purpose.**

To comply with statewide Commute Trip Reduction Law of 1991 (RCW 70.94.521 through 70.94.555; Chapter 202, Laws of 1991) as amended in 2006 by the Commute Trip Reduction Efficiency Act. The commute trip reduction ordinance shall not be used as a substitute for reviews of projects under other city requirements for compliance with the State Environmental Policy Act (SEPA).

**10.24.040 Administration.**

The Mayor or designee shall have the duty and responsibility to administer the provisions of this chapter with the authority to promulgate rules and regulations to implement and administer this chapter.

**10.24.050 Definitions.**

“Affected employee” means a full-time employee who begins their regular work day at a major employer worksite between six a.m. and nine a.m. (inclusive) on two or more weekdays for at least twelve continuous months. For the purpose of defining affected employees the following apply:

- A. A full-time employee is a person other than an independent contractor, scheduled to be employed on a continuous basis for fifty-two weeks for an average of at least thirty-five hours per week.
- B. The employee will only be counted at his or her primary worksite.
- C. Seasonal agricultural employees, including seasonal employees of processors of agricultural products, are excluded from the count of affected employees.

“Affected urban growth area” means:

- A. An urban growth area, designated pursuant to RCW 36.70A.110, whose boundaries contain a state highway segment exceeding the one hundred person hours of delay threshold calculated by the Washington State Department of Transportation, and any contiguous urban growth areas; and
- B. An urban growth area, designated pursuant to RCW 36.70A.110, containing a jurisdiction with a population over seventy thousand that adopted a commute trip reduction ordinance before the year 2000, and any contiguous urban growth areas; or
- C. An urban growth area identified by the Washington State Department of Transportation as listed in WAC 468-63-020(2)(b).

“Alternative mode” means any means of commute transportation other than that in which the drive-alone motor vehicle is the dominant mode, including teleworking and compressed work weeks if they result in reducing commute trips.

“Alternative work schedules” means work schedules which allow employees to work their required hours outside of the traditional Monday through Friday eight a.m. to five p.m. schedule. Programs such as compressed work weeks that eliminate work days for affected employees are an example.

“Baseline data collection” means the collection of employee trip data at a major worksite to determine the non-drive alone trips and greenhouse gas emissions per employee at the worksite. The jurisdiction uses these measurements to develop commute trip reduction targets for the major employer. The baseline measurements must be implemented in a manner that meets the requirements and timeframe specified by the city.

“Carpool” means a motor vehicle occupied by at least two people traveling together for their commute trip that results in the reduction of a minimum of one motor vehicle commute trip.

“City” means the city of Mukilteo.

“Commute trip” means trips made from a worker’s home to a worksite during the peak time of six a.m. to nine a.m. (inclusive) on weekdays.

“Commuter matching service” means a system that assists in matching commuters for the purpose of commuting together, such as RideshareOnline.com.

“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.

“CTR law” means a law passed in 1991 (Chapter 202, Laws of 1991), amended in 2006 and codified in RCW 70.94.521 through 70.94.551 requiring each county containing an urban growth area, designated pursuant to RCW 36.70A.110, and each city within an urban growth area with a state highway segment exceeding the one hundred person hours of delay threshold calculated by the department of transportation, as well as those counties and cities located in any contiguous urban growth areas. Counties and cities within the designation above shall adopt a commute trip reduction plan and ordinance for major employers in the affected urban growth area.

“CTR plan” means the city of Mukilteo’s plan and ordinance to regulate and administer the CTR programs of major employers within its jurisdiction.

“CTR program” means an employer’s strategies to increase affected employees’ non-drive alone trips and reduce greenhouse gas emissions.

“Employer” means a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district, or other individual or entity, whether public, nonprofit, or private, that employs workers.

“ETC” means employer transportation coordinator as required pursuant to RCW 70.94.531(3).

“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.

“Full-time employee” means a person, other than an independent contractor, scheduled to be employed on a continuous basis for fifty-two weeks for an average of at least thirty-five hours per week on two or more weekdays per week.

“Goals” means the established criteria for measuring effectiveness of employer programs as outlined in the city of Mukilteo’ CTR plan.

“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.

“Implementation” means active pursuit by an employer of the CTR goals of RCW 70.94.521 through 70.94.555, this chapter and the CTR plan as evidenced by appointment of a transportation coordinator, distribution of information to employees regarding alternatives for non-drive alone commuting, and commencement of other measures according to its approved CTR program and schedule.

“Major employer” means a private or public employer, including state agencies, that employs one hundred or more full-time affected employees at a single worksite who begin their regular workday between six a.m. and nine a.m. on at least two weekdays each week for at least twelve continuous months.

“Major worksite” or “worksite” means a building or group of buildings that are on physically contiguous parcels of land or on parcels of land separated solely by private or public roadways or rights-of-way, and at which there are one hundred or more full-time affected employees.

“Mode” means the means of transportation used by employees, such as drive-alone motor vehicle, rideshare vehicle (carpool, vanpool), transit, ferry, bicycle, walking, compressed work schedule and teleworking.

“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.

“Single-occupant vehicle (SOV)” means a motor vehicle occupied by one employee for commute purposes, including a motorcycle. If there are other passengers occupying the motor vehicles, but the ages of these passengers are under sixteen, the motor vehicle is still considered a single-occupant vehicle for measurement purposes.

“Target” means a quantifiable or measurable value that is expressed as a desired level of performance, against which actual achievement can be compared in order to assess progress, such as increase in non-drive alone trips and reduction of greenhouse gas emissions.

“Teleworking” means the use of telephones, computers, or other similar technology to permit an employee to work anywhere at any time, 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.

“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.

“Vanpool” means a vehicle occupied by from five to fifteen people traveling together for their commute trip that results in the reduction of a minimum of one motor vehicle trip.

“Voluntary worksite” means the physical location occupied by an employer that is voluntarily implementing a CTR program.

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

“Weekday” means any day of the week except Saturday or Sunday.

“Writing,” “written,” or in “writing” means original written signed and dated documents delivered via the United States Postal Service.

**10.24.060 City’s CTR plan.**

The city's CTR plan, as approved and adopted in 2016, set forth in the ordinance codified in this chapter as Exhibit B, is adopted wholly and incorporated herein by reference.

**10.24.070 Responsible city agency.**

The city is responsible for implementing this chapter, the CTR plan, and the city CTR program should be identified together with any authority necessary to carry out such responsibilities such as rule making or certain administrative decisions.

**10.24.080 Applicability—Timeline for compliance.**

The provisions of this chapter shall apply to any major employer or voluntary worksite within the corporate limits of the city.

A. In addition to city's established public notification for adoption of an ordinance, a notice of availability of a summary of the ordinance codified in this chapter, a notice of the requirements and criteria for major employers to comply with said ordinance, and subsequent revisions shall be published at least once in city official newspaper not more than thirty days after passage of said ordinance or revisions.

B. Major employers located in the city are to receive written notification that they are subject to this chapter. Such notice shall be addressed to the company's chief executive officer, senior official, or CTR manager at the worksite. The major employer shall perform baseline data collection within ninety days of notification. After the results of the baseline data are provided to the major employer, the major employer shall submit a CTR program to the city within ninety days.

C. Major employers that, for whatever reason, do not receive notice within thirty days of passage of the ordinance codified in this chapter and are either notified or identify themselves to the city within ninety days of the passage of said ordinance shall perform baseline data collection within ninety days of notification or the major employer shall submit a CTR program within ninety days of receipt of the baseline data results.

D. New Major Employers. Employers that meet the definition of "major employer" in this chapter must identify themselves to the city within ninety days of either moving into the boundaries of city or growing in employment at a worksite to one hundred or more affected employees. Such employers shall complete baseline data collection within ninety days of identification as a major employer and shall submit a CTR program within ninety days of the baseline data results. The CTR program will be developed in consultation with the city and implemented not more than ninety days after the program's approval. Employers who do not implement an approved CTR program according to this section are in violation of this chapter.

E. Change in Status as a Major 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 a major employer no longer employs one hundred or more affected employees and expects not to employ one hundred or more affected employees for the next twelve months, that employer is no

longer a major employer. It is the responsibility of the employer to notify city that it is no longer a major employer.

2. If the same employer returns to the level of one hundred or more affected employees within the same twelve months, that employer will be considered a major employer for the entire twelve months and will be subject to the same program requirements as other major employers.

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 a “voluntary” employer, that employer shall be treated as a new major employer and will be subject to the same program requirements as other new major employers.

#### **10.24.090 Requirements for employers.**

A major 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 increase non-drive alone commute trips. The employer shall submit a description of its program to the city and provide quarterly progress reports to the city on employee commuting and progress toward meeting the goals and targets. The CTR program must include the mandatory elements as described below.

A. CTR Program Description Requirements. The CTR program description presents the strategies to be undertaken by an employer to achieve the program goals and targets stated in the city’s CTR plan. 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.

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 B of this section); (4) description of the additional elements included in the CTR program (as described in subsection B of this section); and (5) schedule of implementation, assignment of responsibilities, and commitment to provide appropriate resources.

B. Mandatory Program Elements. Each employer’s CTR program shall include the following mandatory elements:

1. Transportation Coordinator. The employer shall designate an employee transportation coordinator (ETC) to administer the CTR program. The coordinator and/or designee’s name, location, and contact information must be displayed prominently at each major worksite. The coordinator shall oversee all elements of the employer’s CTR program and act as liaison between the employer and city. The objective is to have an effective transportation coordinator

presence at each worksite; a major employer with multiple sites may have one transportation coordinator for all sites.

2. Information Distribution. Information about alternatives to drive-alone commuting shall be provided to employees at least twice a year. One of the items distributed must be a description of the employer's worksite program. The employer's program description and quarterly report must identify the information to be distributed and the method of distribution.

3. Quarterly Progress Report. The CTR program must include a quarterly review of employee commuting and progress and good faith efforts toward meeting the goals and targets as outlined in the CTR plan. Major employers shall file a quarterly progress report with the city in accordance with the format established by this chapter and consistent with the CTR board guidelines\*. The report shall describe each of the CTR measures that were in effect for the previous quarter, and the number of employees participating in the CTR program. Within the report, the employer should evaluate the effectiveness of the CTR program and, if necessary, propose modifications to achieve the worksite's CTR targets. The format of the report shall be provided by the city. The employer should contact the city for the format of the report. \*CTR Guidelines can be found at [www.wsdot.wa.gov/transit/CTR/law.htm](http://www.wsdot.wa.gov/transit/CTR/law.htm)

4. Trip Data Measurement. Employers shall conduct a quarterly program data evaluation as a means of determining worksite progress toward meeting CTR targets.

5. Annual Worksite Promotion of Employer CTR Program. Major employers will hold at least one annual transportation fair or equivalent promotion which is available to all employees at each major worksite.

6. ETC Training. ETCs will be required to attend an ETC basic training session within six months of appointment.

7. Employer Notification. Employers will be required to notify the city or designee when there are proposed changes to their CTR program, changes in ETC or contact information, and/or changes in number of employees at the worksite.

8. ETC Networking/Advanced Training. ETCs will be required to attend at least six hours of networking or advanced training per year. Training and networking sessions may include marketing CTR programs to employees, trip planning, ridesharing, joint promotions and networking meetings.

9. 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 and targets. 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 single occupant vehicles;
- 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. Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;
- k. Provision of a program of parking incentives such as a rebate for employees who do not use the parking facilities;
- l. Establishment of a program to permit employees to work part- or full-time at home or at an alternative worksite closer to their homes;
- m. Establishment of a program of alternative work schedules, such as a compressed work week which reduces commuting; and
- n. Implementation of other measures designed to facilitate the use of high-occupancy vehicles, such as on-site daycare facilities and emergency taxi services.

**10.24.100 Record keeping.**

Major 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 forty-eight months. The city and the employer shall agree on the record keeping requirements as part of the accepted CTR program.

**10.24.110 Schedule and process for CTR reports.**

- A. CTR Program. Not more than ninety days after the adoption of the ordinance codified in this chapter, or within ninety days after an employer qualifies under the provisions of this chapter, the employer will be given ninety days to complete baseline

data collection, and an additional ninety days to submit a CTR program once the baseline data results are given to the employer. The CTR program will be developed in consultation with the city and implemented not more than ninety days after the program's approval by the city. Employers who do not implement an approved CTR program according to this section are in violation of this chapter.

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. The employer shall have thirty days to resubmit a modified program. If the employer receives no written notification of extension of the review period of its CTR program or comments on the CTR program or quarterly report within ninety days of submission, the employer's program or quarterly report is deemed accepted. The city may extend the review period up to ninety days. The implementation date for the employer's CTR program will be extended an equivalent number of days.

C. CTR Quarterly Progress Reports. Upon approval of an employer's initial CTR program, the employer shall submit quarterly reports on the dates requested from the city, no less than ninety days after program approval.

D. Modification of CTR Program Elements. Any major employer may submit a request to the city to modify a CTR program element, other than the mandatory elements specified in this chapter, including record keeping requirements. Such requests may be granted if one of the following conditions exist:

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

E. Extensions. An employer may request additional time to submit a CTR program or CTR report, or to implement or modify a program. Such requests shall be via written notice at least ten working days before the due date for which the extension is being requested. Extensions not to exceed ninety days shall be considered for reasonable causes. The city shall grant or deny the employer's extension request by written notice within ten working days of its receipt of the extension request. If there is no response issued to the employer, an extension is automatically granted for thirty days. Extensions shall not exempt an employer from any responsibility in meeting program goals and targets. 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 reporting date shall not be adjusted permanently as a result of these extensions. An employer's reporting date may be extended at the discretion of the city.

F. Implementation of Employer's CTR Program. The employer shall implement its approved CTR program not more than ninety days after the program was first submitted to the city. Implementation of the approved program modifications shall begin within thirty days of the final decision or ninety days from submission of the CTR program or CTR quarterly report, whichever is greater.

**10.24.120 Enforcement.**

A. Compliance. For purposes of this section, compliance shall mean fully implementing in good faith all provisions in an approved CTR program.

B. Program Modification Criteria. The following criteria for achieving targets for non-drive alone trips and greenhouse gas emissions per employee shall be applied to determine requirements for employer CTR program modifications:

1. If an employer makes a good faith effort, as defined in RCW 70.94.534(2) and this chapter, and meets either or both targets, the employer has satisfied the objectives of the CTR plan and will not be required to modify its CTR program.
2. 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 targets, 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 thirty days of reaching agreement.
3. If an employer fails to make a good faith effort as defined in RCW 70.94.534(2) and this chapter, and fails to meet the applicable targets, 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 thirty 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 thirty 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 thirty days and, if necessary, require the employer to attend a conference with program review staff for the purpose of reaching a consensus on the required program. A final decision on the required program will be issued in writing by the city within ten working days of the conference.

C. Violations. The following constitute violations if the deadlines established in this chapter are not met:

1. Failure to self-identify as a major employer within the timeframes indicated in the *Applicability—Timeline for compliance* section above;
2. Failure to perform a baseline data collection including:
  - a. Employers notified or that have identified themselves to the city within ninety days of the ordinance codified in this chapter being adopted and that do not perform baseline data collection consistent with the requirements specified by the city within ninety days from the notification or self-identification;

- b. Employers not identified or self-identified within ninety days of the ordinance codified in this chapter being adopted and that do not perform baseline data collection consistent with the requirements specified by the city within ninety days from the adoption of the ordinance codified by this chapter;
  - c. A new major employer that does not perform baseline data collection consistent with the requirements specified by the city within ninety days of identification as a major employer;
3. 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 the goals and targets as specified in this chapter;
  4. Submission of false or fraudulent data in response to data collection requirements;
  5. Failure to make a good faith effort, as defined in RCW 70.94.534(2); or
  6. Failure to revise a CTR program as defined in RCW 70.94.534(4).

D. Penalties.

1. No major employer with an approved CTR program which has made a good faith effort may be held liable for failure to reach the applicable goals and targets;
2. Each day of failure to implement the program shall constitute a separate violation, subject to penalties as described in Chapter 7.80 RCW. The maximum penalty shall be equal to the state of Washington Class I civil infraction of two hundred fifty dollars per day per violation, as described in RCW 7.80.120(1)(a), or whichever is greater.
3. A major 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 city and advise the union that the proposal being made is necessary for compliance with state law (RCW 70.94.531).

**10.24.130 Exemptions and target modifications.**

A. **Worksite Exemptions.** A major 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 this chapter as a result of the characteristics of its business, its work force, or its locations. An exemption may be granted if and only if the major employer demonstrates that it faces extraordinary circumstances, such as bankruptcy, and is unable to implement any measures of the approved CTR plan. Exemptions may be granted by the city at any time based on written notice provided by the major employer. The notice should clearly explain the conditions for which the major 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 board 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. \*CTR Guidelines can be found at [www.wsdot.wa.gov/transit/CTR/law.htm](http://www.wsdot.wa.gov/transit/CTR/law.htm)

C. **Modification of CTR Program Targets.** A major employer may request that the city modify its CTR program targets. Such requests shall be filed in writing prior to the date the worksite is required to submit its program description or quarterly report. The target modification request must clearly explain why the worksite is unable to achieve the applicable target. 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 target modifications in accordance with procedures and criteria identified in the CTR board guidelines. An employer may not request a modification of the applicable targets until one year after the city approval of its initial program description or report.

#### **10.24.140 Appeals.**

Any major employer may appeal to the hearing examiner the administrative decisions regarding exemptions, modification of targets, modification of CTR program elements, and determinations concerning failure to implement a CTR program. The appeal must be filed with the city clerk not later than the tenth day following the date of the administrative decision, accompanied by the appropriate appeal fee. The appeal must be in writing and state in a clear and concise manner the specific exceptions and objections to the administrative decision. The decision on the appeal shall constitute a final decision appealable to the city council.

## EXHIBIT B