

CITY OF FIFE, WASHINGTON

ORDINANCE NO. 1844

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON, AMENDING SECTIONS 17.19.020, 17.19.035, 17.19.040, 17.19.050, 17.19.060, 17.19.070, 17.19.090, 17.19.100, 17.19.110, and 17.19.120 REGARDING COMMUTE TRIP REDUCTION**

WHEREAS, RCW 70.94.527, (Commute Trip Reduction Efficiency Act "ACT") requires certain counties and cities including the City of Fife to develop ordinances, plans and programs to reduce Vehicle Miles Traveled (VMT) and drive alone commute trips, and thereby reduce vehicle-related air pollution, traffic congestion and energy use, and

WHEREAS, the City's commute trip reduction program is set forth in FMC Chapter 17.19; and

WHEREAS, for years the City has contracted with the City of Tacoma in which the City of Tacoma assumed certain obligations of the City of Fife under the Act and FMC 17.19; and

WHEREAS, because of the long standing contractual relationship with Tacoma, FMC 17.19 includes specific references to obligations assumed by the City of Tacoma; and

WHEREAS, the latest agreement with the City of Tacoma for commute trip reduction program services for Fife has expired and the City of Tacoma has indicated that it will no longer be providing commute trip reduction program services outside of its downtown area; and

WHEREAS, it is necessary to amend FMC 17.19 to remove the specific references to the City of Tacoma and allow the City of Fife to contract with other agencies for commute trip reduction program services; now, therefore

THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. A new definition is hereby added to section 17.19.020 of the Fife Municipal Code to read as follows:

"Contracting Agency" means an entity that enters into a contact with the city of Fife to assume obligations of the city of Fife under the Commute Trip Reduction Efficiency Act and this Chapter, in accordance with this Chapter.

Section 2. Section 17.19.035 of the Fife Municipal Code is hereby amended to read as follows:

**17.19.035 Commute trip reduction goals.**

A. The city of Fife's goals for reductions in the proportions of drive-alone commute trips and vehicle miles traveled per employee by affected employers in Fife's jurisdiction, major employment installations, and other areas designated by the city of Fife are hereby established by Fife's CTR plan incorporated by FMC 17.19.030. These goals establish the desired level of performance for the CTR program in its entirety in the city of Fife.

B. The Contracting Agency will set the individual worksite goals for affected employers based on how the worksite can contribute to the city of Fife's overall goal established in the CTR plan. The goals will appear as a component of the affected employer's approved implementation plan outlined in FMC 17.19.070.

Section 3. Section 17.19.040 of the Fife Municipal Code is hereby amended to read as follows:

**17.19.040 Responsible agency.**

The city of Fife shall endeavor to enter into agreements with other jurisdictions, local transit agencies, transportation management associations or other private or nonprofit providers of transportation services, or regional transportation planning organizations to meet the requirements of the Act and this Chapter. Any such agreement shall outline the Contracting Agency's responsibilities consistent with this Chapter. . If the city of Fife does not enter into such an agreement, then the obligations of the Contracting Agency under this Chapter shall be assumed by the city of Fife. The city of Fife will be responsible for developing and implementing a city of Fife CTR program and other elements as specified in the CTR ordinance and plan.

Section 4. Section 17.19.050 of the Fife Municipal Code is hereby amended to read as follows:

**17.19.050 Applicability.**

A. Affected Employer. The provisions of this chapter shall apply to any affected employer at any single worksite within the limits of the city of Fife.

B. 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 100 or more affected employees and expects not to employ 100 or more affected employees for the next 12 months, that employer is no longer an affected employer. It is the responsibility of the employer to notify the Contracting Agency that it is no longer an affected employer. The burden of proof lies with the employer.

2. If the same employer returns to the level of 100 or more affected employees within the same 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 100 or more affected employees 12 or more months after its change in status to an “unaffected” employer, that employer shall be treated as a newly affected employer and will be subject to the same program requirements as other newly affected employers.

#### C. Newly Affected Employers.

1. Employers meeting the definition of “affected employer” in this chapter must identify themselves to the Contracting Agency within 90 days of either moving into the boundaries outlined in the CTR plan adopted in FMC 17.19.030 or growing in employment at a worksite to 100 or more affected employees. Employers who do not identify themselves within 90 days are in violation of this chapter.

2. Newly affected employers identified as such shall be given 90 days to perform a baseline measurement consistent with the measurement requirements specified by the Contracting Agency. Employers who do not perform a baseline measurement within 90 days of receiving written notification that they are subject to this chapter are in violation of this chapter.

3. Not more than 90 days after receiving written notification of the results of the baseline measurement, the newly affected employer shall develop and submit a CTR program to the Contracting Agency. The program will be developed in consultation with the Contracting Agency to be consistent with the goals of the CTR plan adopted in FMC 17.19.030. The program shall be implemented not more than 90 days after approval by the Contracting Agency. Employers who do not implement an approved CTR program according to this schedule are in violation of this chapter and subject to the penalties outlined in FMC 17.19.120.

Section 5. Section 17.19.060 of the Fife Municipal Code is hereby amended to read as follows:

#### **17.19.060 Notification of applicability.**

A. In addition to the city of Fife’s established public notification for adoption of an ordinance, a notice of availability of a summary of this chapter, a notice of the requirements and criteria for affected employers to comply with this chapter, and

subsequent revisions shall be published at least once in the city of Fife's official newspaper not more than 30 days after passage of the ordinance codified in this chapter or revisions.

B. Affected employers located in the city of Fife 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, CTR program manager, or registered agent at the worksite. Such notification shall provide 90 days for the affected employer to perform a baseline measurement consistent with the measurement requirements specified by the Contracting Agency.

C. Affected employers that, for whatever reason, do not receive notice within 30 days of passage of the ordinance codified in this chapter and are either notified or identify themselves to the Contracting Agency within 90 days of the passage of the ordinance codified in this chapter will be granted an extension to assure up to 90 days within which to perform a baseline measurement consistent with the measurement requirements specified by the Contracting Agency.

D. Affected employers that have not been identified or do not identify themselves within 90 days of the passage of the ordinance codified in this chapter and do not perform a baseline measurement consistent with the measurement requirements specified by the Contracting Agency within 90 days from the passage of the ordinance codified in this chapter are in violation of this chapter.

E. If an affected employer has already performed a baseline measurement, or an alternative acceptable to the Contracting Agency, under previous iterations of this chapter, the employer is not required to perform another baseline measurement.

Section 6. Section 17.19.070 of the Fife Municipal Code is hereby amended to read as follows:

**17.19.070 Requirements for employers.**

A. Commute Trip Reduction Goals for Affected Employers.

1. The drive-alone and VMT goals for affected employers in the city of Fife are hereby established as set forth in the CTR plan incorporated by reference.

2. If the goals for an affected employer or newly affected employer are not listed in the CTR plan, they shall be established by the Contracting Agency at a level designed to achieve the city of Fife's overall goals for the jurisdiction and other areas as designated by the city of Fife. The Contracting Agency will set the individual worksite goals for affected employers based on how the worksite can contribute to Fife's overall goal established in the CTR plan. The goals will appear as a component of the affected employer's approved implementation plan. The Contracting Agency shall provide written notification of the goals for each

affected employer worksite by providing the information when the Contracting Agency reviews the employer's proposed program and incorporating the goals into the program approval issued by the Contracting Agency.

B. An affected employer is required to make a good faith effort, as defined in RCW 70.94.534(2) and this chapter, to develop and implement a CTR program that will encourage its employees to reduce VMT per employee and drive-alone commute trips. The CTR program must include the mandatory elements as described below.

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

1. Employee Transportation Coordinator (ETC). The employer shall designate an employee transportation coordinator (ETC) to administer the CTR program. The ETC and/or designee's name, location, and telephone number must be prominently displayed physically or electronically at each affected worksite. The ETC shall oversee all elements of the employer's CTR program and act as liaison between the employer and the Contracting Agency. The objective is to have an effective transportation coordinator presence at each worksite; an affected employer with multiple sites may have one ETC for all sites.

2. Information Distribution. Information about alternatives to drive-alone commuting as well as a summary of the employer's CTR program shall be provided to employees at least once a year and to new employees at the time of hire. The summary of the employer's CTR program shall also be submitted to the Contracting Agency with the employer's program description and regular report.

D. 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:

1. Provision of preferential parking for high-occupancy vehicles;
2. Reduced parking charges for high-occupancy vehicles;
3. Instituting or increasing parking charges for drive-alone commuters;
4. Provision of commuter ride-matching services to facilitate employee ridesharing for commute trips;

5. Provision of subsidies for rail, transit, or vanpool fares and/or transit passes;
6. Provision of vans or buses for employee ridesharing;
7. Provision of subsidies for carpools, walking, bicycling, teleworking, or compressed schedules;
8. Provision of incentives for employees that do not drive alone to work;
9. Permitting the use of the employer's vehicles for carpooling or vanpooling;
10. Permitting flexible work schedules to facilitate employees' use of transit, carpools, or vanpools;
11. Cooperation with transportation providers to provide additional regular or express service to the worksite;
12. Construction of special loading and unloading facilities for transit, carpool, and vanpool users;
13. Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;
14. Provision of a program of parking incentives such as a rebate for employees who do not use the parking facilities;
15. Establishment of a program to permit employees to work part- or full-time at home or at an alternative worksite closer to their homes which reduces commute trips;
16. Establishment of a program of alternative work schedules, such as a compressed work week, which reduces commute trips;
17. Implementation of other measures designed to facilitate the use of high-occupancy vehicles, such as on-site day care facilities, emergency taxi services, or guaranteed ride home programs;
18. Charging employees for parking, and/or the elimination of free parking; and
19. Other measures that the employer believes will reduce the number and length of commute trips made to the site.

E. CTR Program Report and Description. Affected employers shall review their program and file a regular progress report with the Contracting Agency in

accordance with the format provided by the Contracting Agency. The CTR program report and description outlines the strategies to be undertaken by an employer to achieve the commute trip reduction goals for the reporting period. 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 to implement program elements. At a minimum, the employer's CTR program report and description must include:

1. A general description of the employment site location, transportation characteristics, employee parking availability, on-site amenities, and surrounding services;
2. The number of employees affected by the CTR program and the total number of employees at the site;
3. Documentation on compliance with the mandatory CTR program elements described in this section;
4. Description of any additional elements included in the employer's CTR program as described in this section; and
5. A statement of organizational commitment to provide appropriate resources to the program to meet the employer's established goals.

F. Biennial Measure of Employee Commute Behavior. In addition to the baseline measurement, employers shall conduct a program evaluation as a means of determining worksite progress toward meeting CTR goals. As part of the program evaluation, the employer shall distribute and collect commute trip reduction program employee questionnaires (surveys) at least once every two years, and strive to achieve at least a 70 percent response rate from employees at the worksite.

G. Record Keeping. Affected employers shall maintain a copy of their approved CTR program description and report, their CTR program employee questionnaire results, and all supporting documentation for the descriptions and assertions made in any CTR report to the Contracting Agency for a minimum of 48 months. The Contracting Agency and the employer shall agree on the record keeping requirements as part of the accepted CTR program.

Section 7. Section 17.19.090 of the Fife Municipal Code is hereby amended to read as follows:

**17.19.090 Schedule and process for CTR program description and report.**

A. Document Review. The Contracting Agency 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 Contracting Agency 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.

B. Upon review of an employer's initial CTR program, the Contracting Agency shall establish the employer's regular reporting date. This report will be provided in a form provided by the Contracting Agency consistent with FMC 17.19.070(E).

Section 8. Section 17.19.100 of the Fife Municipal Code is hereby amended to read as follows:

**17.19.100 Goal modifications, extensions, and exemptions.**

A. Modification of CTR Program Elements. Any affected employer may submit a request to the Contracting Agency for modification of CTR requirements. Such request 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. The Contracting Agency may ask the employer to substitute a program element of similar trip reduction potential rather than grant the employer's request.

B. Extensions. An employer may request additional time to submit a CTR program description and 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 Contracting Agency 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 regular reporting date shall not be adjusted permanently as a result of these extensions. An employer's annual reporting date may be extended at the discretion of the Contracting Agency.

C. Program Modification Criteria. The following criteria for achieving goals for VMT per employee and proportion of drive-alone trips shall be applied in determining requirements for employer CTR program modifications:

1. If an employer meets either or both goals, the employer has satisfied the objectives of the CTR plan and will not be required to improve 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 the applicable drive-alone or VMT goal, no additional modifications are required.

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 drive-alone or VMT reduction goal, the Contracting Agency shall direct the employer to revise its program within 30 days to come into compliance with the measures defined by RCW 70.94.534(2), including specific recommended program modifications. In response to the recommended modifications, the employer shall submit a revised CTR program description and report, including the requested modifications or equivalent measures, within 30 days of receiving written notice to revise its program. The Contracting Agency shall review the revisions and notify the employer of acceptance or rejection of the revised program. If a revised program is not accepted, the Contracting Agency 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 Contracting Agency within 10 working days of the conference.

D. Worksite Exemptions. An affected employer may request the Contracting Agency 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 drive-alone trips and VMT per employee. Exemptions may be granted by the Contracting Agency 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 Contracting Agency shall grant or deny the request within 30 days of receipt of the request. The Contracting Agency shall review annually all employers receiving exemptions, and shall determine whether the exemption will be in effect during the following program year.

E. 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 Contracting Agency will use the criteria identified in the CTR board administrative guidelines to assess the validity of employee exemption requests. The Contracting Agency shall grant or deny the request within 30 days of receipt of the request. The Contracting Agency shall review annually all employee exemption requests, and shall determine whether the exemption will be in effect during the following program year.

F. Modification of CTR Program Goals.

1. An affected employer may request that the Contracting Agency 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 Contracting Agency will review and grant or deny requests for goal modifications in accordance with procedures and criteria identified in the CTR board guidelines.

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

Section 9. Section 17.19.110 of the Fife Municipal Code is hereby amended to read as follows:

**17.19.110 Implementation of employer's CTR program.**

Unless extensions are granted, the employer shall implement its approved CTR program, including approved program modifications, not more than 90 days after receiving written notice from the Contracting Agency that the program has been

approved or with the expiration of the program review period without receiving notice from the Contracting Agency.

Section 10. Section 17.19.120 of the Fife Municipal Code is hereby amended to read as follows:

**17.19.120 Enforcement.**

A. Compliance. For purposes of this section, “compliance” shall mean:

1. Fully implementing in good faith all mandatory program elements as well as provisions in the approved CTR program description and report;
2. Providing a complete CTR program description and report on the regular reporting date; and
3. Distributing and collecting the CTR program employee questionnaire during the scheduled survey time period.

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

1. Failure to self-identify as an affected employer;
2. Failure to perform a baseline measurement, including:
  - a. Employers notified or that have identified themselves to the Contracting Agency within 90 days of the ordinance being adopted and that do not perform a baseline measurement consistent with the requirements specified by the Contracting Agency within 90 days from the notification or self-identification;
  - b. Employers not identified or self-identified within 90 days of the ordinance codified in this chapter being adopted and that do not perform a baseline measurement consistent with the requirements specified by the Contracting Agency within 90 days from the adoption of the ordinance codified in this chapter;
3. Failure to develop and/or submit on time a complete CTR program;
4. 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 drive-alone goals as specified in this chapter;
5. Submission of false or fraudulent data in response to survey requirements;
6. Failure to make a good faith effort, as defined in RCW 70.94.534 and this chapter; or

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

C. Penalties.

1. Civil Infraction. Any affected employer violating any provision of this chapter shall be deemed to have committed a civil infraction, and shall be subject to civil penalties pursuant to Chapter 7.80 RCW.

2. Written Notice. Whenever the Contracting Agency, through the planning and development services department director or his/her designated representative, makes a determination that an affected employer is in violation of this chapter, the city of Fife shall issue a written notice and order and send it certified mail or registered mail, return receipt requested, to the affected employer. The notice and order shall contain:

a. The name and address of the affected employer.

b. A statement that the city of Fife has found the affected employer to be in violation of this chapter with a brief and concise description of the conditions found to be in violation.

c. A statement of the corrective action required to be taken. If the city of Fife has determined that corrective action is required, the order shall require that all corrective action be completed by a date stated in the notice.

d. A statement specifying the amount of any civil penalty assessed on account of the violation.

e. A statement advising that the order shall become final unless, no later than 10 days after the notice and order are served, any person aggrieved by the order requests in writing an appeal before the city of Fife hearing examiner.

3. Penalty Amount. The penalty for violation shall be \$250.00 per day.

4. Penalty Accrual. Penalties will begin to accrue following the official date of notice from the city of Fife. In the event that an affected employer appeals the imposition of penalties, the penalties will not accrue during the appeals process. Should the hearing examiner decide in favor of the appellant, all or a portion of the monetary penalties will be dismissed.

5. Union Negotiations. An employer shall not be liable for civil penalties if failure to implement an element of a CTR program was the result of an inability to reach agreement with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith. Unionized employers shall be presumed to act in good faith compliance if they:

a. Propose to a recognized union any provisions 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 Contracting Agency and advise the union that the proposal being made is necessary for compliance with state law (RCW 70.94.531).

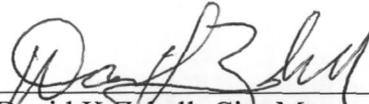
6. No affected employer with an approved CTR program may be held liable for failure to reach the applicable SOV or VMT goals.

Section 11. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

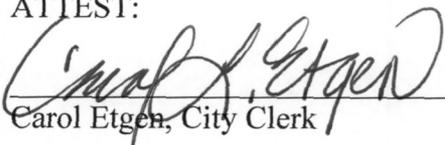
Section 12. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced on the 10<sup>th</sup> day of September, 2013.

Passed by the City Council on the 24<sup>th</sup> day of September, 2013.

  
David K Zabell, City Manager

ATTEST:

  
Carol Etgen, City Clerk

APPROVED AS TO FORM:

  
Loren D. Combs, City Attorney

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