

Ordinance No. 00197

[\(Council Minutes 99/03/01\)](#)

ORDINANCE NO. 197

AN ORDINANCE of the City Council of the City of Lakewood, Washington, Revising Chapter 12.24 of the Lakewood Municipal Code Relating to Commute Trip Reduction (CTR)

WHEREAS, Chapter 12.24 of the Lakewood Municipal Code was adopted on October 21, 1996, pursuant to CTR requirements incorporated into Revised Code of Washington (RCW) 70.94, the state Clean Air Act, and;

WHEREAS, on May 5, 1997, Substitute House Bill 1513 was signed into law, which added new language to and revised the original CTR law and resulted in amendments to RCW Chapter 70.94 effective July 28, 1997, and;

WHEREAS, the City's CTR requirements are no longer consistent with RCW Chapter 70.94, as amended, and;

WHEREAS, RCW 70.94.527(4) requires that local CTR ordinances be consistent with the state law and guidelines established by the state CTR Task Force;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 12.24 of the Lakewood Municipal Code is hereby amended to read as follows:

Chapter 12.24

Commute Trip Reduction

Sections:

12.24.010 Definitions

12.24.020 Commute Trip Reduction Goals

12.24.030 Designation of CTR Zone and Base Year Values

12.24.040 City Employee CTR Plan

12.24.050 Implementation Responsibility

12.24.060 Responsible City Department

12.24.070 Applicability

12.24.080 Notification of Applicability

- 12.24.090 New Affected Employers
- 12.24.100 Change in Status as An Affected Employer
- 12.24.110 Requirements for Employers
- 12.24.120 Record Keeping
- 12.24.130 Schedule and Process for CTR Reports, Program Review and Implementation
- 12.24.140 Exemptions and Goal Modifications
- 12.24.150 Credit for Transportation Demand Management (TDM) Efforts
- 12.24.160 Appeals of Final Decisions
- 12.24.170 Enforcement

- 12.24.010 Definitions

The following definitions shall apply to this Chapter:

A. Affected Employee - A full-time employee who is scheduled to begin his or her regular work day at a single worksite between 6:00 am and 9:00 am (inclusive) on two or more weekdays per week 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. For the purposes of this Chapter, principals and associates in a corporation, partners (general or limited) in a partnership and participants in a joint venture are to be considered employees.

B. Affected Employer - An employer that employs 100 or more full-time employees at a single worksite who are scheduled to begin their regular work day between 6:00 am and 9:00 am (inclusive) on two or more weekdays for at least twelve continuous months. Construction work sites, when the expected duration of the construction is less than two years, are excluded from this definition. (See also definition of "Employer.")

C. Alternative Mode - Any means of commute transportation other than that in which the single-occupant motor vehicle is the dominant mode, including teleworking and compressed work weeks if they result in reduced commute trips.

D. Alternative Work Schedules - Programs such as compressed work weeks that eliminate work trips for affected employees.

E. Base Year - The period on which goals for vehicle miles traveled (VMT) per employee and the proportion of single-occupant vehicle (SOV) trips shall be based.

F. Carpool - A motor vehicle occupied by two to six people 16+ years of age traveling together for their commute trip that results in a reduction of a minimum of one motor vehicle commute trip.

G. City - The City of Lakewood, including any persons, agencies, or entities providing services for and on behalf of the City in

connection herewith.

H. Commute Trips - 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 (Commute Trip Reduction) Plan - The City of Lakewood's plan and ordinance to regulate and administer the CTR programs of affected employers within its jurisdiction.

J. CTR (Commute Trip Reduction) Program - An employer's strategies to reduce affected employees' SOV use and VMT per employee.

K. CTR (Commute Trip Reduction) Task Force Guidelines - The model standards for local jurisdictions to use in the creation and administration of CTR plans and programs. The standards are guidelines to create consistency among local jurisdictions.

L. CTR (Commute Trip Reduction) Zone - An area, such as a census tract or combination of census tracts within Pierce County and/or the City of Lakewood, 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.

M. Commuter Matching Service - A system that assists in matching commuters for the purpose of commuting together.

N. Compressed Work Week - 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 80 hours in nine days, but may also include other arrangements.

O. Custom Bus/Buspool - A commuter bus service arranged specifically to transport employees to work.

P. Dominant Mode - The mode of travel used for the greatest distance of a commute trip.

Q. Employee - Anyone who receives financial or other remuneration in exchange for work provided to an employer, including owners or partners of the employer.

R. Employer - 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.

S. Exemption - 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.

- T. Flex-Time - An employer policy or a mutual agreement between employee and employer allowing individual employees some flexibility in choosing the time, but not the number, of their working hours in order to facilitate the use of alternative modes.
- U. Full-Time Employee - A person other than an independent contractor, scheduled to be employed on a continuous basis for 52 weeks per year for an average of at least 35 hours per week.
- V. Good Faith Effort - That an employer is meeting 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.
- W. Implementation - Active pursuit by an employer of the CTR goals of RCW 70.94.521-551 and this Chapter as evidenced by appointment of a transportation coordinator, distribution of information to employees regarding alternatives to SOV commuting, and commencement of other measures according to their CTR program and schedule.
- X. Mode - The means of transportation used by employees, such as SOVs, rideshare vehicle (carpool, vanpool), transit, ferry, bicycle, walking, compressed work schedules, and teleworking.
- Y. Notice - 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.
- Z. Peak Period - The hours from 6:00 a.m. to 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.
- AA. Peak Period Trip - 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.
- BB. Proportion of SOV (Single-Occupant Vehicle) Commute Trips or SOV Rate - 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.
- CC. Single-Occupant Vehicle (SOV) - A motor vehicle occupied by one (1) employee for commute purposes, including a motorcycle.
- DD. Single-Occupant Vehicle (SOV) Trips - Trips made by affected employees in SOVs.
- EE. Single Worksite - 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.
- FF. State - The Commute Trip Reduction Program of the Washington State Department of Transportation, its successor(s) and/or assign(s).

GG. Teleworking - 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.

HH. Transit - 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 vehicle trips.

II. Transportation Demand Management (TDM) - A broad range of strategies that are primarily intended to reduce and reshape demand on the transportation system.

JJ. Transportation Management Organization (TMO) - 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.

KK. Vanpool - A vehicle occupied by from seven to 15 people 16+ years of age 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 vehicle trips.

LL. Vehicle Miles Traveled (VMT) Per Employee - 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.

MM. Week - A seven-day calendar period, starting on Monday and continuing through Sunday.

NN. Weekday - Any day of the week except Saturday or Sunday.

OO. Writing, Written, or In Writing - Original signed and dated documents. Facsimilie (fax) transmissions are a temporary notice of action that must be followed by the original signed and dated document via mail or delivery.

12.24.020 Commute Trip Reduction Goals

The CTR goals for employers affected by this Chapter are to achieve the following reductions in vehicle miles traveled (VMT) per employee or in the proportion of single-occupant vehicle (SOV) commute trips from the base year value of Lakewood's CTR zone or the worksite's measured base year value:

A. 15 percent by January 1, 1995;

B. 20 percent by January 1, 1997;

C. 25 percent by January 1, 1999; and

D. 35 percent by January 1, 2005.

New employers that become subject to this Chapter after 1997 shall have two years from the date on which they become subject to this Chapter to achieve the 15 percent reduction goals, four years to achieve the 20 percent reduction goals, six years to achieve the 25 percent reduction goals, and 12 years to achieve the 35 percent reduction goals.

12.24.030 Designation of CTR Zone

Employers in Lakewood shall be placed into a given CTR zone that shares generally common values for employees' VMT and proportion of SOV trips.

12.24.040 City CTR Plan

The City of Lakewood's CTR plan for City employees, developed in accordance with the provisions of RCW 70.94.521-551 and the provisions of this Chapter shall be on file in the Office of the City Clerk, provided that the plan may be amended from time to time.

12.24.050 Implementation Responsibility

The City of Lakewood has a variety of responsibilities pursuant to the requirements of RCW 70.94.521-551 and this Chapter, including, but not limited to the following:

A. Adoption and implementation of CTR programs and plans for all major employers, consistent with RCW 70.94.527, and in cooperation with other major employers and other public agencies.

B. Provide for civil penalties for affected employers that fail to implement or modify a CTR program as required by this Chapter.

C. Coordinate with neighboring jurisdictions to ensure consistency in the development and interpretation of the CTR plan.

D. Implement a CTR program for the City of Lakewood employees.

E. Provide technical assistance to affected employers within the City of Lakewood to help them meet the requirements of this Chapter.

F. Review the CTR programs of affected employers within the City of Lakewood.

G. Review and revise the City of Lakewood CTR program as necessary.

H. Provide information on the adopted CTR plan, as well as annual reports and other information as required, to the State Commute Trip Reduction Task Force (RCW 70.94.537) via the State.

12.24.060 Responsible City Department

The City of Lakewood Engineering Department shall be responsible for implementing this Chapter, the CTR Plan, and the City's CTR program for its own employees. The City Engineer or designee shall have the authority to issue such rules and administrative procedures as are necessary to implement this Chapter.

12.24.070 Applicability

The provisions of this Chapter shall apply to any affected employer at any single worksite within the corporate limits of the City of Lakewood.

12.24.080 Notification of Applicability

A. In addition to the City'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's official newspaper not more than 30 days after the passage or revision of this Chapter.

B. Affected employers located in the City are to receive formal written notification that they are subject to this Chapter. Such notification shall be at least 180 days prior to the due date for submittal of their CTR program.

C. Affected employers that, for whatever reason, do not receive notice within 30 days of passage of the ordinance providing for this Chapter and are either notified or identify themselves to the City within 180 days of the passage of the ordinance providing for this Chapter will be granted an extension to assure up to 180 days from the passage of the ordinance providing for this Chapter within which to develop and submit a CTR program.

D. Affected employers that have not been identified or do not identify themselves within 180 days of the passage of the ordinance providing for this Chapter and do not submit a CTR program within 180 days from the passage of the ordinance providing for this Chapter are in violation of this ordinance.

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D. Affected employers that have not been identified or do not identify themselves within 180 days of the passage of the ordinance providing for this Chapter and do not submit a CTR program within 180 days from the passage of the ordinance providing for this Chapter are in violation of this ordinance.

12.24.090 New Affected Employers

A. Employers that meet the definition of the "affected employer" in this Chapter must identify themselves to the City within 180 days of either moving into the boundaries of the city 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.

B. Employers must conduct a baseline survey within one year of becoming an affected employer. Employers must survey all of their affected employees. Employers are required to achieve a 70 percent response rate. An employer's survey of employees shall utilize the State form or Pierce County approved equivalent data as set forth in the CTR Task Force Guidelines.

C. New affected employers shall have two years to meet the first CTR goal of a 15 percent reduction in proportion of SOV trips or VMT per person; four years to meet the second goal of a 20 percent reduction; six years to meet the third goal of a 25 percent reduction; and 12 years to meet the fourth goal of a 35 percent reduction, from the time they begin their programs.

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12.24.100 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:

A. If an employer initially designated as 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 City that it is no longer an affected employer.

B. 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.

C. 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.

12.24.110 Requirements for Employers

An affected employer is required to make a good faith effort, as defined in RCW 70.94.534(2) and this Chapter, to develop and implement a CTR program that will encourage its employees to reduce VMT per employee and SOV commute trips. The employer shall submit a description of its program to the City and provide an annual progress report to the City on employee commuting and progress toward meeting the SOV goals. The CTR program must include the mandatory elements described below.

A. CTR Program Description Requirements. The CTR program description presents the strategies to be undertaken by an employer to achieve the CTR goals for each goal year. Employers are encouraged to consider innovative strategies and combine program elements in a manner that will best suit their location, site characteristics, business type, and employees' commuting needs. Employers are further encouraged to cooperate with each other and to form or use transportation management organizations in developing and implementing their 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 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 of Lakewood. 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 this Chapter 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 noted 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 ridesharing 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 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 rebates 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 service.

12.24.120 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.

12.24.130 Schedule and Process for CTR Reports

A. CTR Program. Not more than 180 days after the adoption of the ordinance providing for this Chapter, or within six months after an employer qualifies under the provisions of this Chapter, 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. Surveying. Employers are required to survey their affected employees to measure progress toward CTR performance targets. Remaining survey years are 1999 and 2005. New affected employers shall survey on an alternative schedule consistent with Section 12.24.020 of this Chapter. An employer's survey of employees shall utilize the State form or Pierce County approved equivalent data as set forth in the CTR Task Force Guidelines.

E. 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 exists:

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. 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.

F. 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 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 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 direction of the City Engineer or designee.

G. 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.

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2. 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.

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12.24.140 Exemptions and Goal Modifications

A. Worksite Exemptions. An affected employer may request that the City 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 workforce, or its location(s). An exemption may be granted if and only if the affected employer demonstrates that it faces extraordinary circumstances, such as bankruptcy, and is unable to implement measures that could reduce the proportion of SOV trips or VMT per employee. Exemptions may be granted by the City at any time based on written notice provided by the affected employer. The notice shall 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 continue to 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 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.

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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.

12.24.150 Credit for Transportation Demand Management (TDM) 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.

1. 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 the ordinance providing for this Chapter. Applications 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.

2. 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 whose VMT per employee and proportion of SOV trips are equal to or less than goals for one or more future goal years and who commit in writing to continue their current level of effort shall be exempt from the requirements of the ordinance providing for this Chapter, except for the requirements to report performance in the measurement years (Section 12.24.090(B)(3) of this Chapter). 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 this Chapter.

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12.24.160 Appeals of Final Decisions

Employers may file a written appeal of the City's final decisions regarding the following actions:

A. Rejection of an employer's proposed program.

B. Denial of an employer's request for a waiver or modification of any of the requirements under this Chapter or a modification of the employer's program.

C. Denial of credits requested under Section 12.24.150 of this Chapter.

D. Mandated program element changes.

Such appeals must be filed with the City within 20 days after the employer receives notice of a final decision. Timely appeals shall be heard by the City's Hearing Examiner. Determinations on appeals shall be based on whether the decision being appealed was consistent with the state law.

12.24.170 Enforcement

A. Compliance. For purposes of this section, compliance shall mean fully implementing, in good faith, all provisions in an approved CTR program. It is provided, however, that affected employers shall be considered as being in compliance with the terms of this Chapter if, on the effective date of the ordinance adopting this Chapter, such employers are in compliance with the provisions of the Pierce County CTR Ordinance (Pierce County Ordinance No. 93-30S and any subsequent amendments). In order to remain in compliance herewith following the effective date of the ordinance adopting this Chapter, such affected employers shall continue on the time table originally established by Pierce County Ordinance No. 93-30S, or any subsequent amendments to said timetable, to meet the CTR goals. New employers shall be required to meet the CTR goals in accordance with the schedule set forth in Section 12.24.070(B) of this Chapter.

B. 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:

1. If an employer is making good faith effort, as defined in RCW 70.94.534(2) and this Chapter, and is meeting either or both goals, the employer is satisfying the objectives of the CTR plan and will not be required to modify its CTR program.

2. If an employer is making a good faith effort, as defined in RCW 70.94.534(2) and this Chapter, but is not meeting 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 an agreement. If an employer is not making a good faith effort, as defined in RCW 70.94.534(2) and this Chapter, and is failing to meet either 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 the 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 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 providing for this Chapter 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 providing for this Chapter.

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 this Chapter.

3. Failure of an employer to meet the requirements of RCW 70.94.534(2) and this Chapter for good faith effort.

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

D. Penalties.

1. The City shall notify employers in writing if they are in violation of this Chapter. The written notification shall state the effective date upon which penalties will begin to accrue. In the event that an affected employer appeals the imposition of penalties, the penalties will not accrue during the appeals process. Should the outcome of the appeals process favor the employer, all or a portion of monetary penalties will be dismissed.

2. No affected employer with an approved CTR program which is making a good faith effort may be held liable for failure to reach the applicable SOV or VMT goal;

3. Each day of failure to implement the program shall constitute a separate violation and is classified as a Class I civil infraction pursuant to the City Code. The penalty for this violation shall be \$250.00 per day.

4. 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 mandates of the CTR program approved by the City of Lakewood and

advise the union that the proposal being made is necessary for compliance with state law (RCW 70.94.531).

E. Appeals of Penalties. Affected employers may appeal penalties pursuant to the provisions of the City Code and RCW 7.80.100.

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SECTION 2. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid, the remainder of such code, ordinance or regulation or the application thereof to other person or circumstances shall not be affected.

SECTION 3. This ordinance will be in full force and effect five days after publication of the ordinance summary as required by law.

ADOPTED by the City Council on this 1st day of March, 1999.

CITY OF LAKEWOOD

Bill Harrison, Mayor

Attest:

Alice M. Bush, CMC, City Clerk

Approved as to Form:

Daniel B. Heid, City Attorney

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