

**CITY OF MERCER ISLAND
ORDINANCE NO. 09C-10**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON
RESCINDING MERCER ISLAND CITY CODE CHAPTER 10.70,
COMMUTE TRIP REDUCTION PLAN; ADOPTING MERCER ISLAND
CITY CODE CHAPTER 10.71, COMMUTE TRIP REDUCTION PLAN**

WHEREAS, motor vehicle traffic is a major source of emissions that pollute the air, and air pollution causes significant harm to public health and degrades the quality of the environment; and

WHEREAS, increasing motor vehicle traffic aggravates traffic congestion in the Town Center of Mercer Island; and

WHEREAS, traffic congestion imposes significant cost on City business, government, and individuals in terms of lost working hours and delays in the delivery of goods and services as well as making the City a less desirable place to live, work, visit, and do business; and

WHEREAS, capital and environmental costs of fully accommodating the existing and projected motor vehicle traffic on roads and highways are prohibitive while decreasing the demand for vehicle trips is significantly less costly and is at least as effective in reducing traffic congestion and its impacts as constructing new transportation facilities; and

WHEREAS, employers have significant opportunities to encourage and facilitate the reduction of single-occupant vehicle commuting by employees; and

WHEREAS, in 1991 the state legislature enacted the State Commute Trip Reduction (CTR) Law, now known as the Commute Trip Reduction Efficiency Act, to require local governments in those counties experiencing the greatest automobile-related air pollution and traffic congestion to develop and implement plans to reduce single-occupant vehicle commute trips; and

WHEREAS, in 2006 the state legislature updated the Commute Trip Reduction Efficiency Act, codified in RCW 70.94.521, to extend the effective date and to make other significant revisions to the Act; and

WHEREAS, state policy, as set forth in RCW 70.94.527 and the CTR Board Guidelines, requires the City of Mercer Island to develop and implement a plan to reduce single occupant vehicle commute trips and vehicle miles travelled; and

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

WHEREAS, the City of Mercer Island's Commute Trip Reduction Plan was approved by the Puget Sound Regional Council in October 2007 and the State CTR Board in January 2008; and

WHEREAS, this ordinance is consistent with the CTR Board guidelines and RCW 70.94.521 through RCW 70.94.551;

WHEREAS, the State of Washington's 2006 update to the Commute Trip Reduction Efficiency Act caused Chapter 10.70 MICC to be outdated and in need of substantial revisions;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: **MICC Chapter 10.70 Commute Trip Reduction (CTR) Plan.** MICC Chapter 10.70 "Commute Trip Reduction (CTR) Plan" is hereby rescinded.

Section 2: **MICC Chapter 10.71 Commute Trip Reduction (CTR) Plan.** MICC Chapter 10.71 "Commute Trip Reduction (CTR) Plan" is hereby adopted, as follows:

10.71.010 Definitions

For the purpose of this Chapter, the following definitions shall apply:

"Affected Employee" means a full-time employee who begins his or her regular work day at a single worksite for an effected employer between 6:00 a.m. and 9:00 a.m. (inclusive) on two or more weekdays for at least twelve continuous months. Seasonal agricultural employees, including seasonal employees of processors of agricultural products, are excluded from the count of affected employees.

"Affected Employer" means an employer that employs one hundred (100) or more full-time employees at a single worksite, within the City of Mercer Island, who are scheduled to begin their regular work day between 6:00 a.m. and 9:00 a.m. (inclusive) on two or more weekdays for at least twelve continuous months. Construction worksites, when the expected duration of the construction is less than two years, are excluded from this definition.

"Baseline measurement" means the survey of affected employers to determine the drive-alone rate and vehicle miles traveled per employee at the worksite. The City uses this measurement to develop commute trip reduction goals for the affected employer. The baseline measurement must be conducted in a manner that meets the requirements specified by City.

"Carpool" means a motor vehicle, including a motorcycle, occupied by two to six people of at least 16 years of age traveling together for their commute trip, resulting in the reduction of a minimum of one motor vehicle commute trip.

"City" means the City of Mercer Island.

"Commute Trips" mean trips made from a worker's home to an affected worksite on weekdays.

“CTR” is the abbreviation of Commute Trip Reduction.

“CTR Plan” or “Commute Trip Reduction Plan” means the City’s plan authorized by MICC 10.71.020.

"CTR Program" means an affected employer's City approved strategies to reduce employees' drive alone trips and average VMT per employee.

"Compressed Work Week" means an alternative work schedule, in accordance with employer policy, that regularly allows a full-time employee to eliminate at least one work day every two weeks by working longer hours during the remaining days, resulting in fewer commute trips by the employee. This definition is primarily intended to include weekly and bi-weekly arrangements, the most typical being four 10-hour days or 80 hours in nine days, but may also include other arrangements.

“Drive Alone” or “Single-Occupant Vehicle” means a motor vehicle occupied by one (1) person for commute purposes, including a motorcycle.

“Employee Transportation Coordinator (ETC)” means a person who is designated as responsible for the development, implementation and monitoring of an employer's CTR program.

“Full-Time Employee” means a person, other than an independent contractor, whose position is scheduled on a continuous basis for 52 weeks for an average of at least 35 hours per week.

“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 70.94.521-555 and this Chapter as evidenced by appointment of an employee transportation coordinator (ETC), distribution of information to employees regarding alternatives to drive alone trips, and commencement of other measures according to its approved CTR program and schedule.

"Proportion of Drive Alone Trips" or "Drive Alone Rate" means the number of commute trips over a set period made by employees in single-occupancy vehicles divided by the number of actual commute trips by employees working during that period.

“Single Worksite” means a building or group of buildings on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-way.

"Vehicle Miles Traveled (VMT) Per Employee" means the sum of the individual vehicle commute trip lengths in miles made by employees over a set period divided by the number of employees during that period.

10.71.020 City of Mercer Island CTR Plan

The City Manager or his/her designee shall adopt and administer a Commute Trip Reduction Plan that will regulate affected employers' CTR programs, and set CTR goals for affected employers that are consistent with this Chapter. The City will review the CTR Plan each year and update the CTR Plan as necessary and at least once every 4 years.

10.71.030 Applicability

The provisions of this Chapter shall apply to any affected employer within the corporate limits of the City of Mercer Island.

10.71.040 Baseline Survey and CTR Program

A. Affected employers shall perform a baseline measurement within (90) days from the effective date of this Chapter or within 90 days of becoming an affected employer, whichever occurs later.

B. If an affected employer has performed a baseline measurement or equivalent thereto that was approved by the City pursuant to any previous Commute Trip Reduction Plan within three (3) years prior to the initial effective date of this Chapter, such measurement will be used as that employer's baseline measurement.

C. Affected employers shall identify themselves to the City within (90) days of becoming an affected employer.

D. Not more than 90 days after receiving written notification of the results of the baseline measurement from the City, an affected employer shall develop and submit a CTR Program to the City. The program will be developed in consultation with the City so as to be consistent with the goals of the CTR Plan. The program shall be implemented not more than 90 days after approval by the City.

E. If an affected employer has a City approved CTR Program in place at the time of the initial effective date of this Chapter, that Program shall remain effective until the Program's next scheduled update.

10.71.050 Change in Status as an Affected Employer

A. If an employer initially designated as an affected employer no longer employs one hundred (100) or more employees and expects not to employ one hundred (100) or more affected employees for the next twelve (12) months, that employer may submit a written request to the City to no longer be treated as an affected employer. If the employer proves to the City's satisfaction that it will not employ one hundred or more employees for the next twelve months, that employer is no longer an affected employer.

B. If an employer satisfies the requirements in paragraph A of this Section and subsequently employs one hundred (100) or more affected employees within the same twelve (12) months, that employer will be considered an affected employer for the entire 12 months and will be required to continue its most recent approved CTR program.

C. If an employer satisfies the requirements in paragraph A of this Section and subsequently employs one hundred (100) or more affected employees twelve (12) or more months after its

change in status to an unaffected employer, that employer shall be treated as a newly affected employer and will be subject to the same program requirements as other newly affected employers.

10.71.060 Requirements for Employers

Every 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 trips. Each affected employer's CTR program must include the mandatory elements as described in MICC 10.71.070 and the additional program elements as required in MICC 10.71.080.

10.71.070 Mandatory Program Elements

Each affected employer's CTR program shall include the following mandatory elements:

A. Employee Transportation Coordinator (ETC). The employer shall designate an 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 City. 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.

B. Information Distribution. Information about alternatives to drive alone trips 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 City with the employer's program description and regular report.

10.71.080 Additional Program Elements

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

- A. Provision of preferential parking for high-occupancy vehicles
- B. Reduced parking charges for high-occupancy vehicles;
- C. Instituting or increasing parking charges for drive alone commuters;
- D. Provision of commuter ride matching services to facilitate employee ridesharing for commute trips;
- E. Provision of subsidies for rail, transit, or vanpool fares and/or transit passes;
- F. Provision of vans or buses for employee ridesharing;
- G. Provision of subsidies for carpools, walking, bicycling, teleworking, or compressed schedules;
- H. Provision of incentives for employees that do not drive alone to work;
- I. Permitting the use of the employer's vehicles for carpooling or vanpooling;
- J. Permitting flexible work schedules to facilitate employees' use of transit, carpools, or vanpools;
- K. Cooperation with transportation providers to provide additional regular or express service to the worksite;

- L. Construction of special loading and unloading facilities for transit, carpool, and vanpool users;
- M. Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;
- N. Provision of a program of parking incentives such as a rebate for employees who do not use the parking facilities;
- O. 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;
- P. Establishment of a program of alternative work schedules, such as a compressed work week, which reduces commute trips;
- Q. 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;
- R. Charging employees for parking, and/or the elimination of free parking; and
- S. Other measures that the employer believes will reduce the number and length of commute trips made to the site.

10.71.090 CTR Program Report and Description

A. Affected employers shall review their program and file a biennial CTR Program Report and Description with the City in accordance with the format and schedule provided by the City. 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.

B. 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 as described in MICC 10.71.070;
4. Description of any additional elements included in the employer's CTR program (as described in MICC 10.71.080); and
5. A statement of organizational commitment to provide appropriate resources to the program to meet the employer's established goals.

C. Document Review. The City shall review each affected employers' proposed CTR program within 90 days of receiving it from an affected employer. The City will approve, reject, or request modifications to the proposed CTR program within the 90 day review period unless the City provides written notification to the affected employer that the City will extend the review period by no more than 90 days. If the City does not expressly approve, reject, or request modifications to the proposed CTR program within the review period, the proposed CTR program will be deemed accepted. In the event the City requires modifications to the CTR program within a certain time frame or otherwise extends the review period, the implementation date for the employer's CTR program will be extended an equivalent number of days.

D. Modification of CTR Program Elements

1. Employer Requested Modifications. Any affected employer may submit a request to the City for modification of its approved CTR program. Such request may be granted if one of the following conditions exist:

- a. The affected employer can demonstrate it would be unable to comply with the CTR program elements for reasons beyond the control of the employer, or
- b. The affected employer can demonstrate that compliance with the program elements would constitute an undue hardship.

The City may ask the affected employer to substitute a program element of similar trip reduction potential rather than grant the employer's request.

2. City Required Modifications.

a. If an affected employer meets either the drive alone or VMT goals established in the CTR Plan, the employer has satisfied the objectives of the CTR plan and will not be required to improve its CTR program;

b. If an affected 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.

c. If an affected 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 City 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 Report and Description, including the requested modifications or equivalent measures, within 30 days of receiving written notice to revise its program. The City shall review the revisions and notify the employer of acceptance or rejection of the revised program. If a revised program is not accepted, the City will send written notice to that effect to the employer within 30 days and, if necessary, require the employer to attend a conference with program review staff for the purpose of reaching a consensus on the required program. A final decision on the required program will be issued in writing by the City within 10 working days of the conference.

E. Extensions. An affected 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 directed to the City Manager or his/her designee at least 30 days before the due date for which the extension is being requested. Extensions not to exceed 90 days shall be considered for reasonable causes. The City shall grant or deny the employer's extension request by written notice within 10 working days of its receipt of the extension request. If there is no response issued to the employer, an extension is automatically granted for 30 days. Extensions shall not exempt an employer from any responsibility in meeting program goals. Extensions granted due to delays or difficulties with any program element(s) shall not be cause for discontinuing or failing to implement other program elements. An employer's regular reporting date shall not be adjusted permanently as a result of these extensions. An employer's biennial reporting date may be extended at the discretion of the City.

10.71.100 Biennial Measure of Employee Commute Behavior

In addition to the baseline measurement, affected employers shall conduct a survey 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) to all affected employees at least once every two years, and strive to achieve at least a 70% response rate from affected employees in the City of Mercer Island.

10.71.110 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 City for a minimum of 48 months.

10.71.120 Exemptions and Goal Modifications

A. Worksite Exemptions. An affected employer may request the City to grant an exemption from any or all CTR program requirements or penalties for a particular worksite. The employer must demonstrate that it would experience undue hardship in complying with some or all the requirements of this Chapter 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 City at any time based on a written request provided by the affected employer. The request should clearly explain the conditions for which the affected employer is seeking an exemption from some or all the requirements of this Chapter. The City shall grant or deny the request within 30 days of receipt of the request. The City shall review annually all affected employers receiving exemptions, and shall determine whether the exemption will be in effect during the following program year.

B. Employee Exemptions. 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 Administrative Guidelines to assess the validity of affected employee exemption requests. The City shall grant or deny the request within 30 days of receipt of the request. The City shall review annually all employee exemption requests, and shall determine whether the exemption will be in effect during the following program year.

C. Modification of CTR Program Goals

1. An affected employer may request that the City modify its CTR program goals. Such requests shall be filed in writing at least 60 days prior to the date the worksite is required to submit its program description or biennial 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 Board 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 biannual report.

10.71.130 Civil Monetary Penalties

A. Each day an affected employer violates this Chapter shall constitute a separate violation and shall be considered a Class I infraction pursuant to RCW 7.80.120. The penalty for a violation shall be \$50 per day.

B. No affected employer with an approved CTR program which has made a good faith effort will be required to pay a civil monetary penalty solely for its failure to reach its applicable drive alone or VMT goal;

C. An affected employer shall not be liable for civil monetary 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:

1. 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

2. Advise the union of the existence of the statute and the mandates of the CTR program approved by the City and advise the union that the proposal being made is necessary for compliance with state law (RCW 70.94.531).

10.71.140 Appeals

A. Reconsideration of Decisions – Conference. Any affected employer wishing to appeal a decision regarding program approval, goal modifications, program modifications, or exemptions must request a conference with the City Manager or his or her designee to request a reconsideration of the decision. Such a conference must be requested within ten (10) City business days of the decision and shall be scheduled within thirty (30) days of the decision. The City shall issue a final decision on the reconsideration request within ten (10) City business days of the completion of the conference. Any action seeking judicial review of the final decision must be filed within (14) days from the date the decision is rendered.

B. Appeals of Notice of Infraction. Any appeal of a notice of infraction issued for a violation of this Chapter may be appealed pursuant to Chapter 7.80 RCW and rules of procedure governing the Mercer Island Municipal Court.

Section 4: Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

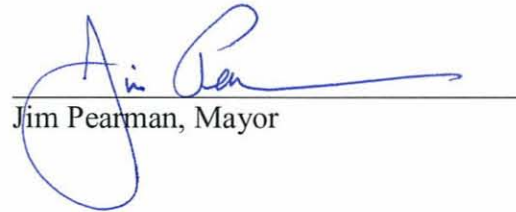
Section 5: Severability/Validity. The provisions of this ordinance are declared separate and severable. If any section, paragraph, subsection, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The City Council hereby declares that they would have passed this ordinance and each

section, paragraph, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, paragraphs, clauses or phrases were unconstitutional or invalid.

Section 5: Effective Date. This ordinance shall take effect and be in force thirty (30) days after its passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 7th day of December, 2009 and signed in authentication of its passage.

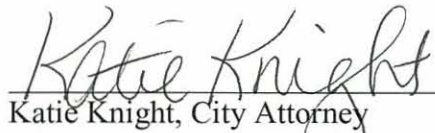
CITY OF MERCER ISLAND


Jim Pearman, Mayor

ATTEST:


Allison Spietz, City Clerk

Approved as to Form:


Katie Knight, City Attorney

Date of Publication: 12/16/09