

ORDINANCE NO. 1446

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON adopting the City of Des Moines Commute Trip Reduction (CTR) Plan and implementing measures as required by RCW 70.94.527; re-enacting chapter 16.16 DMMC relating to commute trip reduction; repealing the previously codified provisions of chapter 16.16 DMMC and underlying ordinances; codifying a new chapter 16.16 DMMC entitled *Commute Trip Reduction Plan*; and finding that this ordinance is consistent with RCW 70.94.527.

WHEREAS, in 1991 the Legislature passed the state's Commute Trip Reduction (CTR) Law as part of the Washington Clean Air Act (RCW 70.94.521-551), and

WHEREAS, in this legislation, the Legislature intended to improve air quality, reduce traffic congestion, and reduce the consumption of petroleum fuels through employer-based programs that encourage the use of alternatives to the single-occupant vehicle (SOV) for commute trips, and

WHEREAS, the City adopted a Commute Trip Reduction Plan in 1993 and also added Chapter 16.16, Commute Trip Reduction, to the City Code by Ordinance No. 1006, and

WHEREAS, the Legislature modified the law in 2006, with passage of the CTR Efficiency Act (ESSB 6566), which altered the program's goals to more directly deal with congestion and delay issues, and

WHEREAS, changes to state law governing Commute Trip Reduction (CTR) require the City to amend the CTR Plan and Chapter 16.16 of the Municipal Code in order to be consistent with state law, and

WHEREAS, the City has complied with the State Environmental Policy Act and the City's SEPA Rules, and

WHEREAS, notice of the public hearing before the City Council was given to the public in accordance with law and a public hearing was held on the 20th day of November 2008, and all persons wishing to be heard were heard, and

WHEREAS, the Des Moines Planning, Building and Public Works Director acting as the SEPA responsible official issued a determination of nonsignificance (DNS) on the 22nd day of October 2008 and the accompanying comment and appeal periods have lapsed, and

WHEREAS, the City Council finds that the adoption of this ordinance is appropriate and necessary for the preservation of the public health, safety and welfare within the City of Des Moines; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. Chapter 16.16 DMMC and sections 1 through 14 of Ordinance No. 1006 as amended by sections 1 through 11 of Ordinance No. 1264 are repealed and replaced with the following.

Sec. 2. Adoption by reference. The City Council hereby adopts by reference the Commute Trip Reduction Plan as set forth in Attachment "A" attached hereto, consisting of 31 pages, and re-enacts chapter 16.16 DMCC as modified herein.

Sec. 3. Definitions.

(1) **Use of words and phrases.** As used in this ordinance, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(2) **Affected employee.** "Affected employee" means a full-time employee who begins his or her regular work day at a single worksite covered by the Commute Trip Reduction Plan between 6:00 a.m. and 9:00 a.m. (inclusive) on two (2) or more weekdays for at least twelve continuous months who is not an independent contractor. Seasonal agricultural employees, including seasonal employees of processors of agricultural products, are excluded from the count of affected employees.

(3) **Affected employer.** "Affected employer" means an employer that employs one hundred (100) or more full-time employees at a single worksite covered by the Commute Trip Reduction Plan who are scheduled to begin their regular work day between 6:00 a.m. and 9:00 a.m. (inclusive) on two (2) or more weekdays for at least twelve (12) continuous months. Construction worksites, when the expected duration of the construction is less than two years, are excluded from this definition. (Also see definition of employer.)

(4) **Alternative mode.** "Alternative mode" means any means of commute transportation other than that in which the single-occupant motor vehicle is the dominant mode, including telecommuting and compressed work week schedules if they result in reducing commute trips.

(5) **Alternative work schedules.** "Alternative work schedules" mean programs such as compressed work week schedules that eliminate work trips for affected employees.

(6) **Base year.** "Base year" means the twelve-month period which commences when a major employer is determined by the jurisdiction to be participating within the CTR program. The City uses this twelve-month period as the basis upon which it develops commute trip reduction goals.

(7) **Base year survey or baseline measurement.** "Base year survey" or "baseline measurement" means the survey, during the base year, of employees at a major employer worksite to determine the drive-alone rate and vehicle miles traveled per employee at the worksite. The jurisdiction uses this measurement to develop commute trip reduction goals for the major employer. The baseline measurement must be implemented in a manner that meets the requirements specified by the City.

(8) **Carpool.** "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.

(9) **Commute trips.** "Commute trips" mean trips made from a worker's home to a worksite (inclusive) on weekdays.

(10) **CTR.** "CTR" is the abbreviation of Commute Trip Reduction.

(11) **CTR program.** "CTR program" means an employer's strategies to reduce employees' drive alone commutes and average VMT per employee.

(12) **Commute trip vehicle miles traveled per employee.** "Commute trip vehicle miles traveled per employee" means the sum of the individual vehicle commute trip lengths in miles over a set period divided by the number of full-time employees during that period.

(13) **Compressed work week.** "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 eighty (80) hours in nine (9) days, but may also include other arrangements.

(14) **Custom bus/buspool.** "Custom bus/buspool" means a commuter bus service arranged specifically to transport employees to work.

(15) **Dominant mode.** "Dominant mode" means the mode of travel used for the greatest distance of a commute trip.

(16) **Drive alone.** "Drive alone" means a motor vehicle occupied by one (1) employee for commute purposes, including a motorcycle.

(17) **Drive alone trips.** "Drive alone trips" means commute trips made by employees in single occupant vehicles.

(18) **Employee transportation coordinator.** "Employee transportation coordinator (ETC)" means a person who is designated as responsible for the development, implementation and monitoring of an employer's CTR program.

(19) **Employer.** "Employer" means a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district, or other individual or entity, whether public, non-profit, or private, that employs workers.

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

(21) **Flex-time.** "Flex-time" is an employer policy that provides work schedules allowing individual employees flexibility in choosing the start and end time but not the number of their working hours.

(22) **Full-time employee.** "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.

(23) **Good faith effort.** "Good faith effort" means that an employer has met the minimum requirements identified in RCW 70.94.531 and this ordinance, and is working collaboratively with the City to continue its existing CTR program or is developing and implementing program modifications likely to result in improvements to its CTR program over an agreed-upon length of time.

(24) **Implementation.** "Implementation" means active pursuit by an employer of the CTR goals of RCW 70.94.521-555 and this ordinance as evidenced by appointment of an employee transportation coordinator (ETC), distribution of information to employees regarding alternatives to drive alone commuting, and commencement of other measures according to its approved CTR program and schedule.

(25) **A major employer.** "A major employer" means a private or public employer, including state agencies, that employs one hundred or more full-time employees at a single worksite who are scheduled to begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for at least twelve (12) continuous months.

(26) **Major employer worksite or affected employer worksite.** "Major employer worksite" or "affected employer worksite" or "worksite" means the physical location occupied by a major employer, as determined by the local jurisdiction.

(27) **Major employment installation.** "Major employment installation" means a military base or federal reservation, excluding tribal reservations, or other locations as designated by the City, at which there are one hundred or more affected employees.

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

(29) **Notice.** "Notice" means written communication delivered via the United States Postal Service with receipt deemed accepted three (3) 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.

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

(31) **Peak period trip.** "Peak period trip" means any commute 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.

(32) **Proportion of drive alone trips or drive alone rate.** "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 potential trips taken by employees working during that period.

(33) **Ride matching service.** "Ride matching service" means a system which assists in matching commuters for the purpose of commuting together.

(34) **Teleworking or telecommuting.** "Teleworking" or "telecommuting" means the use of telephones, computers, or other similar technology to permit an employee to work from home, eliminating a commute trip, or to work from a work place closer to home, reducing the distance traveled in a commute trip by at least half.

(35) **Transit.** "Transit" means a multiple-occupant vehicle operated on a for-hire, shared-ride basis, including bus, passenger ferry, rail, shared-ride taxi, shuttle bus, or vanpool.

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

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

(38) **Vanpool.** "Vanpool" means a vehicle occupied by from five (5) to fifteen (15) people traveling together for their commute trip, resulting in the reduction of a minimum of one motor vehicle trip.

(39) **Vehicle miles traveled (VMT).** "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.

(40) **Week.** "Week" means a seven-day calendar period starting on Monday and continuing through Sunday.

(41) **Weekday.** "Weekday" means any day of the week except Saturday or Sunday.

(42) **Writing, written or in writing.** "Writing," "written," or "in writing" means original signed and dated

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

Sec. 4. Des Moines CTR Plan. The goals established for Des Moines and affected employers in the City's Commute Trip Reduction Plan set forth in Attachment "A", dated October, 2008, and consisting of 31 pages, are incorporated herein by reference. The City staff is directed to make any corrections for typographical errors, include any graphical materials for information, and complete the Commute Trip Reduction Plan.

Sec.5. CTR goals.

(1) **Commute Trip reduction goals.** The City's goals for reductions in the proportions of drive-alone commute trips and vehicle miles traveled per employee by affected employers in City's jurisdiction, major employment installations, and other areas designated by the City are hereby established by City's CTR Plan incorporated by section 4 of this ordinance. These goals establish the desired level of performance for the CTR program in its entirety in the City.

The City will set the individual worksite goals for affected employers based on how the worksite can contribute to City'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 section 8 of this ordinance.

(2) **Commute Trip Reduction goals for affected employers.** The drive-alone and VMT goals for affected employers in the City are hereby established as set forth in the CTR Plan incorporated by (section 4 above).

If the goals for an affected employer or newly affected employer are not listed in the CTR Plan, they shall be established by the City at a level designed to achieve City's overall goals for the jurisdiction and other areas as designated by the City. The City shall provide written notification of the goals for each affected employer worksite by providing the information when the City reviews the employer's proposed program and incorporating the goals into the program approval issued by the City.

Sec. 6. Responsible agency. The planning, building and public works department is responsible for implementing this chapter, the CTR plan, and the City's CTR program for its own employees. The planning, building and public works director may issue such rules and administrative procedures as are necessary to implement this chapter.

Sec. 7. Applicability. The provisions of this ordinance shall apply to any affected employer within the geographic limits of the CTR Plan adopted in (section 4 above).

(1) **Notification of applicability.**

(a) In addition to City's established public notification for adoption of an ordinance, a notice of

availability of a summary of this ordinance, a notice of the requirements and criteria for affected employers to comply with the ordinance, and subsequent revisions shall be published at least once in official newspaper not more than 30 (thirty) days after passage of this ordinance or revisions.

(b) Affected employers located in the City are to receive written notification that they are subject to this ordinance. Such notice shall be addressed to the company's chief executive officer, senior official, CTR program manager, or registered agent at the worksite. Such notification shall provide ninety (90) days for the affected employer to perform a baseline measurement consistent with the measurement requirements specified by the City.

(c) Affected employers that, for whatever reason, do not receive notice within thirty (30) days of passage of the ordinance and are either notified or identify themselves to the City within ninety (90) days of the passage of the ordinance will be granted an extension to assure up to ninety (90) days within which to perform a baseline measurement consistent with the measurement requirements specified by the City.

(d) Affected employers that have not been identified or do not identify themselves within 90 (ninety) of the passage of the ordinance and do not perform a baseline measurement consistent with the measurement requirements specified by the City within ninety (90) days from the passage of the ordinance are in violation of this ordinance.

(e) If an affected employer has already performed a baseline measurement, or an alternative acceptable to the City, under previous iterations of this ordinance, the employer is not required to perform another baseline measurement.

(2) Newly affected employers.

(a) Employers meeting the definition of "affected employer" in this ordinance must identify themselves to the City within ninety (90) days of either moving into the boundaries outlined in the CTR Plan adopted in (section 4 above) or growing in employment at a worksite to one hundred (100) or more affected employees. Employers who do not identify themselves within ninety (90) days are in violation of this ordinance.

(b) Newly affected employers identified as such shall be given ninety (90) days to perform a baseline measurement consistent with the measurement requirements specified by the City. Employers who do not perform a baseline measurement within ninety (90) days of receiving written notification that they are subject to this ordinance are in violation of this ordinance.

(c) Not more than ninety (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 City. The program will be developed in consultation with the planning, building and public works director to be consistent with the goals of the CTR Plan adopted

in section 4 above. The program shall be implemented not more than ninety (90) days after approval by the City. Employers who do not implement an approved CTR Program according to this schedule are in violation of this ordinance and subject to the penalties outlined in section 11.4 below.

(3) **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 an affected employer no longer employs one hundred (100) or more affected employees and expects not to employ one hundred (100) or more affected employees for the next twelve (12) months, that employer is placed on a 12-month watch and are subject to the same program requirements as other affected employers. At the end of the 12-month watch, if they no longer employ one hundred (100) affected employees, they are no longer an affected employer. It is the responsibility of the employer to provide documentation to the City that they are no longer an affected employer. It is the responsibility of the employer to notify the City that it is no longer an affected employer. The burden of proof lies with the employer.

(b) If the same employer returns to the level of one hundred (100) or more affected employees within the same twelve (12) months, that employer will be considered an affected employer for the entire 12 months and will be subject to the same program requirements as other affected employers.

(c) If the same employer returns to the level of one hundred (100) or more affected employees twelve (12) or more months after its change in status to an "unaffected" employer, that employer shall be treated as a newly affected employer and will be subject to the same program requirements as other newly affected employers.

Sec. 8. Requirements for employers - RCW 70.94.531. An affected employer is required to make a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, to develop and implement a CTR program that will encourage its employees to reduce VMT per employee and drive alone commute trips. The CTR program must include the mandatory elements as described below.

(1) **Mandatory Program elements.** Each employer's CTR Program shall include the following mandatory elements:

(a) **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 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 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 City with the employer's program description and regular report.

(2) **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.

(3) **CTR Program report and description.** Affected employers shall review their program and file a regular progress report with the City in accordance with the format 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.

At a minimum, the employer's CTR Program Report and Description must include:

(a) A general description of the employment site location, transportation characteristics, employee parking availability, on-site amenities, and surrounding services;

(b) The number of employees affected by the CTR program and the total number of employees at the site;

(c) Documentation on compliance with the mandatory CTR program elements as described in section 8(1);

(d) Description of any additional elements included in the employer's CTR program as described in section 8(2); and

(e) A statement of organizational commitment to provide appropriate resources to the program to meet the employer's established goals.

(4) **Biennial measure of employee commute behavior.** In addition to the mandatory 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% response rate from employees at the worksite.

Sec. 9. 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. The City and the employer shall agree on the record keeping requirements as part of the accepted CTR program.

Sec. 10. Schedule and process for CTR Program description and report.

(1) **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 biennial report within ninety (90) days of submission, the employer's program or annual report is deemed accepted. The City may extend the review period up to ninety (90) days. The implementation date for the employer's CTR program will be extended an equivalent number of days.

(2) **Schedule.** Upon review of an employer's initial CTR program, the City shall establish the employer's regular reporting date. This report will be provided in a form provided by the City consistent with section 8(3) above.

(3) **Modification of CTR Program elements.** Any affected employer may submit a request to the City for modification of CTR requirements. Such request may be granted if one of the following conditions exist:

(a) The employer can demonstrate it would be unable to comply with the CTR program elements for reasons beyond the control of the employer; or

(b) The employer can demonstrate that compliance with the program elements would constitute an undue hardship.

(4) **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 thirty (30) days before the due date for which the extension is being requested. Extensions not to exceed ninety (90) days shall be considered for reasonable causes. The City shall grant or deny the employer's extension request by written notice within ten (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 thirty (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.

(5) **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 ninety (90) days after receiving written notice from the City that the program has been approved or with the expiration of the program review period without receiving notice from the City.

Sec.11. Enforcement.

(1) **Compliance.** For purposes of this section, compliance shall mean:

(a) Fully implementing in good faith all mandatory program elements as well as provisions in the approved CTR Program Description and Report;

(b) Providing a complete CTR Program Description and Report on the regular reporting date; and

(c) Distributing and collecting the CTR Program Employee Questionnaire during the scheduled survey time period.

(2) **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:

(a) If an employer meets either or both goals, the employer has satisfied the objectives of the CTR plan and will not be required to improve its CTR program;

(b) If an employer makes a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, but has not met the applicable drive alone or VMT goal, no additional modifications are required.

(c) If an employer fails to make a good faith effort as defined in RCW 70.94.534(2) and this ordinance, and fails to meet the applicable drive alone or VMT reduction goal, the City shall direct the employer to revise its program within thirty (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 thirty (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 thirty (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 ten (10) working days of the conference.

(3) **Violations.** The following constitute violations if the deadlines established in this ordinance are not met:

(a) Failure to self identify as an affected employer;

(b) Failure to perform a baseline measurement, including:

(i) Employers notified or that have identified themselves to the City within ninety (90) days of the ordinance being adopted and that do not perform a baseline measurement consistent with the requirements specified by the City within ninety (90) days from the notification or self-identification;

(ii) Employers not identified or self-identified within ninety (90) days of the ordinance being adopted and that do not perform a baseline measurement consistent with the requirements specified by the City within ninety (90) days from the adoption of the ordinance;

(c) Failure to develop and/or submit on time a complete CTR program;

(d) 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 ordinance;

(e) Submission of false or fraudulent data in response to survey requirements;

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

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

(4) **Penalties.**

(a) No affected employer with an approved CTR program which has made a good faith effort may be held liable for failure to reach the applicable drive alone or VMT goal;

(b) Each day of failure to implement the program shall constitute a separate violation, subject to penalties as described in DMMC 1.24.190(2).

(c) 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:

(i) 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

(ii) 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).

Sec. 12. Exemptions and goal modifications.

(1) **Worksite exemptions.** An affected employer may request the City to grant an exemption from all CTR program requirements or penalties for a particular worksite. The employer must demonstrate that it would experience undue hardship in complying with the requirements of the ordinance as a result of the characteristics of its business, its work force, or its location(s). An exemption may be granted if and only if the affected employer demonstrates that it faces extraordinary circumstances, such as bankruptcy, and is unable to implement any measures that could reduce the proportion of drive alone trips and VMT per employee. Exemptions may be granted by the City at any time based on written notice provided by the affected employer. The notice should clearly explain the conditions for which the affected employer is seeking an exemption from the requirements of the CTR program. The City shall grant or deny the request within thirty (30) days of receipt of the request. The City shall review annually all employers receiving exemptions, and shall determine whether the exemption will be in effect during the following program year.

(2) **Employee exemptions.** Specific employees or groups of employees who are required to drive alone to work as a condition of employment may be exempted from a worksite's CTR program. Exemptions may also be granted for employees who work variable shifts throughout the year and who do not rotate as a group to identical shifts. The City will use the criteria identified in the CTR Board Administrative Guidelines to assess the validity of employee exemption requests. The City shall grant or deny the request within thirty (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.

(3) **Modification of CTR Program goals.**

(a) An affected employer may request that the City modify its CTR program goals. Such requests shall be filed in writing at least sixty (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.

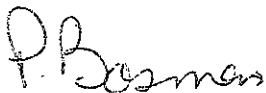
(b) The City will review and grant or deny requests for goal modifications in accordance with procedures and criteria identified in the CTR Board Guidelines.

Sec. 17. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this 20th day of November, 2008 and signed in authentication thereof this 20th day of November, 2008.



MAYOR

APPROVED AS TO FORM:



City Attorney

ATTEST:



City Clerk

Effective Date: December 20, 2008

Published: December 10, 2008

LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

CITY OF DES MOINES

ORDINANCE NO. 1446, Adopted November 20, 2008.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance adopts the City of Des Moines Commute Trip Reduction (CTR) Plan and implements measures as required by RCW 70.94.527; re-enacts chapter 16.16 DMMC; repeals the previously codified provisions of chapter 16.16 DMMC and underlying ordinances; codifies a new chapter 16.16 DMMC entitled *Commute Trip Reduction Plan*; and finds that this ordinance is consistent with RCW 70.94.527.

The full text of the ordinance will be mailed without cost upon request.

Denis Staab
City Clerk

Published: December 10, 2008