

ORDINANCE NO. 669

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATED TO TRANSPORTATION DEMAND MANAGEMENT AND COMMUTER TRIP REDUCTION, ADOPTING THE CITY'S COMMUTE TRIP REDUCTION PLAN AND IMPLEMENTING MEASURES AS REQUIRED BY CHAPTER 70.94 RCW; DESCRIBING VIOLATIONS AND SETTING PENALTIES FOR SAME; AND ADDING A NEW CHAPTER 10.28 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, Chapter 202 of the laws of 1991 as codified as R.C.W. 70.94.521 through 70.94.551 of the Revised Code of Washington set forth a procedure wherein the state, counties and municipalities are to participate in a program to reduce the number of commuting trips made by workers within the state; and

WHEREAS, the legislature found that automobile traffic is a major source of emissions of air contaminants and that the automotive traffic aggravates traffic congestion; and

WHEREAS, the congestion created imposes significant costs upon Washington's businesses, governmental agencies and individuals in terms of lost working hours and delays in the delivery of goods and services; and

WHEREAS, the Legislature found that traffic congestion worsens automobile related air pollution and increases the consumption of fuel leading to a degradation of the habitability of many of Washington's cities and suburban areas; NOW THEREFORE

BE IT ORDAINED by the City Council of the City of Gig Harbor, Washington as follows:

Section 1. A new chapter 10.28 shall be added to the Gig Harbor Municipal Code to read as follows:

CHAPTER 10.28
COMMUTER TRIP REDUCTION

10.28.010 PURPOSE. The purpose of this chapter is to promote the public health, safety, and general welfare by establishing goals for employers to reduce Single Occupant Vehicle (SOV) use and Vehicle Miles Traveled (VMT); by providing standards to measure SOV and VMT reduction against; and by requiring that Commute Trip Reduction Programs be established in accordance with RCW Chapter 70.94.

10.28.020 INTENT. The intent of this chapter is 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 for the commute trip.

10.28.030 DEFINITIONS. For the purpose of this ordinance, the following definitions shall apply:

- A) "Affected Employee" means a full-time employee who begins his or her regular work day at a single work site between 6:00 a.m. and 9:00 a.m. (inclusive) on two or more weekdays for at least twelve continuous months. Seasonal agriculture employees, including seasonal employee of processors of agricultural products are excluded from the count of affected employees. Construction workers who work at a construction site with an expected duration of less than two years are excluded from this definition.
- B) "Affected Employer" means an employer that employs 100 or more full-time affected employees at a single work site 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 per week for at least twelve continuous months.
- C) "Alternative Commute Mode" refers to any means of commuting other than that in which the single-occupant motor vehicle is the dominant mode. Telecommuting and compressed work weeks are considered alternative commute modes if they result in the reduction of commute trips.
- D) "Alternative Work Schedules" are programs such as compressed work weeks that

eliminate work trips for affected employees. Alternative work schedules are understood to be an ongoing arrangement between the employee and the employer.

- E) "Base Year" means the period from January 1, 1994, through December 31, 1994, on which goals for vehicle miles traveled per employee and proportion of single-occupant vehicle trips shall be based.
- F) "Car Pool" means a motor vehicle occupied by two (2) to six (6) people traveling together for their commute trip which results in the reduction of a minimum of one motor vehicle commute trip.
- G) "City" which means the City of Gig Harbor, Washington.
- H) "Commute Trip" means a trip that is made from an employee's home to a work site with a regularly scheduled work start time of 6:00 a.m. and 9:00 a.m. (inclusive) on weekdays.
- I) "Commute Trip Reduction (CTR) Law" means the portion of the Clean Air Act adopted to accomplish commute trip reduction (RCW 70.94.521-551).
- J) "Commute Trip Reduction (CTR) Plan" means the City of Gig Harbor plan and ordinance to regulate and administer the CTR Programs of affected employers. The CTR Plan is attached to the ordinance as Attachment A, and incorporated by reference into the ordinance as if fully set forth.
- K) "Commute Trip Reduction (CTR) Program" means an employer's strategies to reduce affected employees' single-occupant vehicle use and vehicle miles traveled per employee.
- L) "Commute Trip Reduction (CTR) Task Force Guidelines" means the official guidelines to the State CTR Law (RCW 70.94.521-551) developed by the Washington State Commute Reduction Task Force (RCW 70.94.537).

- M) "Commute Trip Reduction (CTR) Zone" means an area, such as a census tract or combination of census tracts, within the City characterized by similar employment density, population density, level of transit service, parking availability, access to high occupant vehicle facilities, and other factors that are determined to affect the level of single-occupant vehicle commuting.
- N) "Commuter Matching Service" means a system that assists in matching commuters for the purpose of commuting together.
- O) "Compressed Work Week" means an alternative work schedule, in accordance with employer policy, that allows a full-time employee to eliminate at least one work day every two weeks by working longer hours during the remaining work days, resulting in fewer commute trips by the employee; for example, three or four workdays per week. Compressed work weeks are understood to be an ongoing arrangement.
- P) "Custom Bus/Buspool" means a commuter bus service arranged specifically to transport employees to work.
- Q) "Day(s)" means calendar day(s).
- R) "Dominant Mode" means the mode of travel used for the greatest distance of a commute trip.
- S) "Employee Transportation Coordinator (ETC)" means a designated person who is responsible for administering the employer's CTR program.
- T) "Employer" means a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district or other individual or entity, whether public, nonprofit or private, that employs people.
- U) "Flex-Time" is an employer policy allowing individual employees some flexibility in choosing the time, but not the number, of their working hours to facilitate the use of

alternative modes. Flex-time is understood to be an ongoing arrangement.

- V) "Full-Time Employee" means a person, other than an independent contractor, scheduled to be employed on a continuous basis for 52 weeks for an average of at least 35 hours per week.
- W) "Implementation" or "Implement" means active pursuit by an employer to achieve the CTR goals of the CTR law (RCW 70.94.521-551) and this chapter.
- X) "Mode" is the means of transportation used by employees, such as single-occupant motor vehicle (carpool, vanpool), transit, ferry, bicycle, and walking.
- Y) "Newly Affected Employer" refers to an employer that is not an affected employer upon the effective date of this chapter, but who becomes an affected employer subsequent to the effective date of this chapter.
- Z) "Proportion of Single-Occupant Vehicle (SOV) Trips" or "Single-Occupant Vehicle (SOV) Rate" means the number of commute trips over a set period made by affected employees in SOVs divided by the number of affected employees working during that period.
- AA) "Single-Occupant Vehicle (SOV)" means a motor vehicle occupied by one (1) employee for commute purposes, including a motorcycle.
- BB) "Single-Occupant Vehicle (SOV) Trips" means trips made by affected employees in SOVs.
- CC) "Single Work Site" 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, occupied by one or more affected employers.
- DD) "Telecommuting" means the authorization of an employee to work at home or a

telecommuting center on a regular basis, thus eliminating a commute trip or reducing the distance traveled in a commute trip by at least half of the employee's regular commute distance. Telecommuting can include, but is not limited to, the use of telephones, computers, or other similar technology.

- EE) "Transportation Demand Management (TDM)" means the use of strategies to reduce the use of single-occupant vehicles and vehicle miles traveled.
- FF) "Transit" means a multiple-occupant vehicle operated on a shared-ride basis. This definition includes bus, ferry, rail, shared-ride taxi, or shuttle bus.
- GG) "Transportation Management Organization (TMO)" or "Transportation Management Association (TMA)" means 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.
- HH) "Vanpool" means a vehicle occupied by seven (7) to fifteen (15) people traveling together for their commute trip which results in the reduction of a minimum of six motor vehicle trips.
- II) "Vehicle Miles Traveled (VMT) Per Employee" means 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.
- JJ) "Week" means a seven-day calendar period, starting on Monday and continuing through Sunday.
- KK) "Weekday" means Monday, Tuesday, Wednesday, Thursday, and Friday.
- LL) "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 via mail or delivery.

10.28.040 RESPONSIBLE CITY OFFICIAL. The City Administrator will be responsible for enforcing this chapter and the Commute Trip Reduction Plan.

10.28.050 APPLICABILITY.

- A) Affected Employer. The provision of this chapter shall apply to any affected employer at any single work site within the limits of the City of Gig Harbor.
- B) Change in status as an Affected Employer. Any of the following changes in an employer's status will change the employer's CTR Program requirements:
 - 1. Becomes a Non-Affected Employer. If an employer initially designated as an affected employer no longer employs 100 or more affected employees and expects not to employ 100 or more affected employees for the next 12 months, that employer is no longer an affected employer. It is the responsibility of the employer to notify the City that it is no longer an affected employer.
 - 2. Change in Status Within a 12-Month Period. If an employer drops below the threshold and then returns to the threshold 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 program requirements as other affected employers.
 - 3. Change in Status After a 12-Month Period. If an employer drops below the threshold and then returns to the threshold 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.
- C) Newly Affected Employers.

1. Reporting Date. Newly affected employers must identify themselves to the City within 180 days of either moving into the boundaries of the City of Gig Harbor or growing in employment at a work site to 100 or more affected employees. Employers who do not identify themselves within 180 days will be considered to be in violation of this chapter.
2. CTR Program Schedule. Newly affected employers shall have 180 days, after reporting their affected status to the City, to develop and submit a CTR Program. After submittal of the program, newly affected employers shall have 180 days to implement the CTR Program.
3. CTR Goal Achievement. Newly affected employers shall have two years to demonstrate progress toward meeting the first CTR goal of 15 percent, four years for the second goal of 25 percent; and six years for the third goal of 35 percent.

10.28.060 NOTIFICATION OF APPLICABILITY

- A) Publication Notice. The City will publish the CTR Ordinance as required by law within twelve (12) days after adoption of this ordinance and attachment 'A', the Commute Trip Reduction Plan, shall be available to the public upon request.
- B) Notice to Known Affected Employers. Known affected employers located in the City of Gig Harbor will receive written notification that they are subject to this chapter. Such notice shall be by certified mail or delivery, return receipt requested, addressed to the company's chief executive officer, senior official, or CTR manager at the work site. Such notification shall be delivered a minimum of 150 days prior to the due date for submittal of their CTR Program. The City's failure to send out any notice to any affected employer does not change the employer's status as an affected employer, nor does it relieve the affected employer from any requirement imposed by this ordinance.
- C) Self-Identification of Affected Employers. Employers that, for whatever reasons, do not

receive notice within 30 days of the adoption of this ordinance shall identify themselves to the City of Gig Harbor within 90 days of the adoption of this ordinance. Upon self-identification, or after receipt of notice as described in subsection (B) above, such affected employers will be granted one hundred-eighty (180) days to develop a CTR Program as required by this chapter, and to submit it to the City, as required in Section 10.28.070.

- D) Notification of Non-Applicability. It is the responsibility of the employer to provide the City of Gig Harbor with information, in writing, regarding the non-applicability of this chapter to their work site.

10.28.070 REQUIREMENTS FOR AFFECTED EMPLOYERS

- A) CTR Programs.

1. CTR Program Required. Affected employers must develop a commute trip reduction program for their employees as required by this ordinance and submit it to the City within six months after the adoption of this ordinance. The program must be consistent with and meet the requirements of the City Commute Trip Reduction Plan, Attachment 'A' to this ordinance, and this chapter.
2. CTR Program Description. Two CTR zones have been designated in Pierce County, the Tacoma/Fife zone, and the outer-county zone. Base year values for the Outer County Zone have been established and are outlined in the City of Gig Harbor's CTR Plan. The employer's program must be designed to meet the SOV/VMT reduction goals of 15 percent, 25 percent and 35 percent for 1997, 1999, and 2001, respectively, from the zone's base year values. That is, the 1997 goal is 85 percent of the zone's base year values, the 1999 goal is 75 percent of the base year values and the 2001 goal is 65 percent of the base year values.

3. Program Requirements. The program submitted by the affected employer shall contain the following:
 - a) Site Description. General description of the employment site location, transportation characteristics, and surrounding services, including unique conditions experienced by the employer or its employees.
 - b) Employee Description. Number of employees affected by the CTR Program.
 - c) CTR Program Elements. Description of CTR elements to be implemented by the employer to meet the commute trip reduction goals of the CTR Law, this chapter and the City of Gig Harbor's CTR Plan.
4. CTR Program Schedule. Schedule of implementation, assignment of responsibilities, and commitment to provide appropriate resources.

B) CTR Program Elements.

1. Employee Transportation Coordinator: The employer shall designate a transportation coordinator to administer the employer's CTR Program. The coordinator's name, location, and telephone number must be displayed prominently at each affected work site. The coordinator shall oversee all elements of the employer's CTR Program and act as liaison between the employer and the City of Gig Harbor.

An employer may have a single employee transportation coordinator if there are multiple affected sites. An employer may utilize the employee transportation coordinator services of a transportation management organization. The use of a transportation management organization by an employer in place of an

employee transportation coordinator shall not affect any of the employer's responsibilities under this chapter.

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 contain the information to be distributed and the method in which the information shall be distributed.
3. CTR Program Elements: In addition to the specific program elements described above, the employer's CTR Program shall include, but is not limited to, one or more of the following:
 - a) Provision of preferential parking or reduced parking charges, or both for high occupant vehicles;
 - b) Instituting or increasing parking charges for SOVs;
 - c) Provision of commuter ride matching services to facilitate employee ride-sharing for commute trip;
 - 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 vehicle for carpooling or vanpooling;
 - h) Permitting the use of the employer's vehicle for carpooling or vanpooling;
 - i) Cooperation with 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 area, and showers for employees who bicycle or walk to work;
 - l) Provision of a program of parking incentives such as rebate 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 work site closer to their homes;

- n) Establishment of a program of alternative work schedules which reduce commuting, such as a compressed work week;
- o) Implementation of other measures designed to facilitate the use of high-occupant vehicles, such as on-site day care facilities and emergency taxi services.

C) CTR Program Reporting.

1. Annual Reports. Annual Reports shall be prepared by affected employers utilizing the official CTR Program Report Form and submitted to the City. The Annual Reports must include a review of employee commuting and or progress toward meeting the SOV and VMT reduction goals.
2. Measurement Year Reports. Measurement Year Reports shall be prepared by employer on or before the annual anniversary date of submission of its first program to the City, in the years of 1997, 1999, and 2001. The Measurement Year Reports shall serve as an annual report for that year. Survey information about the employer's affected employees achievement of the CTR goals shall be collected and reported. The survey of employees shall utilize the Washington State Energy Office CTR survey form or an approved alternative form. Affected employers shall file a Measurement Year Report with the City of Gig Harbor, utilizing the official CTR Program Report Form.

- D) Record Keeping. Affected employers shall keep records related to the CTR Program they implement. Employers shall maintain all records listed in their CTR Program for a minimum of 24 months.

10.28.080 CTR GOAL MODIFICATION AND CTR PROGRAM WAIVER.

- A) CTR Goal Modification. An affected employer may make a request to the City of Gig Harbor City Administrator for modification of CTR Program Goals. Such request may be granted if one of the following conditions exist:

1. Beyond Control of Affected Employer. The affected employer can demonstrate it would be unable to comply with the CTR Program elements for reasons beyond the control of the employer.
2. Affected Employer's Work Site Conditions Differ from the Base Year Values. To apply for a goal modification under this subsection, the affected employer must demonstrate that its work site condition differ from the base year values. This demonstration must include evidence from employee surveys administered within 90 days of the adoption of this ordinance, or within 90 days of becoming a newly identified affected employer. These surveys must be administered at the work site and show that the affected employer's own base year values of VMT per employee and SOV rates were higher than the CTR zone average; and subsequently, in the measurement year(s) showing that the affected employer has achieved reductions from its own base values that are comparable to the reduction goals stated in the CTR plan of 15 percent, 25 percent, and 35 percent.
3. A Significant Number of Employees Need Their Personal Commuting Vehicles for Work Related Trips. An affected employer may apply for a modification of CTR Goals if it can demonstrate that significant numbers of its employees need to use the vehicles they drive to work during the work day for work purposes. The affected employer shall provide documentation indicating how many employees meet this condition and must demonstrate that no reasonable alternative commute mode exists for these employees and that the vehicles cannot reasonably be used for carpools or vanpools. Under this condition, the applicable goals will not be changed, but those employees who need daily access to the vehicles they drive to work will not be included in the calculations of proportion of SOV trips and VMT per employee used to determine the affected employer's progress toward program goals.
4. CTR Values of Contiguous CTR Zones are More Applicable. An affected employer may apply for a modification of CTR goals if it demonstrates that its

work site is contiguous with a CTR zone boundary and that the work site conditions affecting alternative commute options are similar to those for affected employers in the adjoining CTR zone. Under this condition, the affected employer's work site may be made subject to the same goals for VMT per employee and modification based on these conditions prior to the CTR Program implementation date.

- B) CTR Program Waiver. An affected employer may request the City of Gig Harbor grant a waiver from all CTR Program requirements or penalties for a particular work site. The affected employer must demonstrate that it would experience undue hardship in complying with requirements of this chapter as a result of the characteristics of its business, its work force, or its location(s). A waiver may be granted if and only if the affected employer demonstrates that it faces extraordinary circumstances, and is unable to implement any measures that could reduce the proportion of SOV trips and VMT per employee. Waivers may be granted by the City during the Annual Program Review process. The City shall annually review all waivers issued to affected employers, in order to determine whether the circumstances which necessitated granting the waiver still exist, and whether the waiver will be in effect during the following program year.
- C) Application for CTR Goal Modification or CTR Program Waiver.
1. Application Process. An affected employer that is seeking a CTR goal modification or a CTR Program waiver must make an application to the City. Such application shall be made within 90 days of the adoption of this chapter, or within 90 days of attaining status as a newly identified affected employer. Application shall be made 60 days prior to the annual program review date in all subsequent years.
 2. Application Form. An affected employer that is seeking a CTR goal modification or a CTR Program waiver shall use the City CTR Program Report Form.

10.28.090 ANNUAL REPORTING AND MEASUREMENT YEAR REPORTING.

Affected employers whose VMT per employee and proportion of SOV trips are equal to (within two percent (2%)) or less than the goals described in the CTR Plan for one or more future goal years may submit a letter by certified mail or delivery, return receipt requested, to the City Administrator, demonstrating how it met such goals. A two percent (2%) margin has been allowed under the CTR Law, therefore, if the affected employer is at thirteen percent (13%) instead of fifteen percent (15%) the first goal year, they still will qualify for a waiver. If the affected employer commits in writing to continue their current level of effort, they shall be exempt from the requirements of this chapter except for the requirements to submit annual CTR Program Reports and Measurement Year Reports to the City. If any of these reports indicate the employer does not satisfy the next applicable goal(s), the affected employer shall immediately become subject to all requirements of this chapter.

10.28.100 SUBMITTAL AND REVIEW OF CTR PROGRAM DESCRIPTIONS, ANNUAL REPORTS, AND MEASUREMENT YEAR REPORTS.

A) CTR Program Description Submittal and Document Review.

1. Submittal. The affected employer shall submit the CTR Program Description to the City within 180 days of the adoption of this ordinance.
2. Extensions. An affected employer may request that the City allow it additional time to submit a CTR Program. Such request must be made to the City in writing no less than thirty (30) days before the due date of the Program for which the extension is being requested. Requests must be made by certified letter, return receipt requested, to the City Administrator. If the Administrator does not deny the request in writing within ten (10) days after the City's receipt of the request, the extension shall be deemed to have been granted. Extensions shall not exempt an affected employer from any responsibility in meeting program goals.

3. Document Review. The City shall have ninety (90) days after receipt of an affected employer's CTR Program Report form to determine whether or not the affected employer's CTR Program is acceptable. This review period may be extended by the City for an additional ninety (90) days, upon notification to the affected employer. If the review period is extended, the implementation date for the affected employer's CTR Program shall also be extended an equivalent number of days. If the City determines that the CTR Program is unacceptable, the City shall notify the affected employer of this decision in writing, and shall state the reasons for the rejection of the Program.
4. Review Criteria. In its review of an affected employer's CTR Program, the City shall determine whether the affected employer achieves both the SOV and VMT goals as set forth in the City's CTR Plan, and whether the affected employer has satisfied the objectives of the CTR Law and complied with this ordinance.
5. Request for Meeting. Within ten (10) days of receipt of written notice of an unacceptable CTR Program, either the City or affected employer may request a meeting to discuss the City's decision. This meeting shall be scheduled during the City's official hours.
6. Modifications to CTR Program and Penalties. The City shall recommend modifications to the affected employer's CTR Program and determine whether penalties are appropriate under the following:
 - a) Failure to Achieve One CTR Goal. If an affected employer achieves one of the CTR goals for the particular measurement year, but in recognition of the affected employer's successful efforts in commute trip reduction, the City will not penalize the affected employer if it does not implement recommended modification.
 - b) Failure to Achieve Any CTR Goal. If an affected employer fails to meet

both the VMT per employee goal and the SOV rate goal for a particular measurement year, the City shall propose modifications to the CTR Program within thirty (30) days, and direct the affected employer to revise its Program, and may penalize the affected employer if it does not implement recommended modifications.

7. Implementation of CTR Modifications. If the City requires modifications to an affected employer's CTR Program due to the CTR Program's unacceptability, the affected employer shall have thirty (30) days to submit a revised CTR Program that includes the proposed modifications. The revised CTR Program shall be sent to the City by certified mail, return receipt requested, and the City shall review the revisions within thirty (30) days and notify the employer of acceptance or rejection of the revised CTR Program. If a revised program is not acceptable, the City may require the affected employer to meet with CTR staff for the purpose of reaching a consensus on the required CTR Program. A final decision on the required CTR Program will be issued in writing by the City within ten (10) days of the meeting.

B) Due Date for Annual Reports and Measurement Year Reports.

1. The City shall establish the affected employer's annual reporting date, which shall not be less than 12 months from the day the CTR Program is submitted. Each year on the affected employer 's reporting date, the affected employer shall submit an annual CTR report to the City Administrator.
2. Extensions. An affected employer may request that the City allow it additional time to submit an annual CTR Program report or a CTR Measurement Year report. Such requests shall be made to the City in writing no less than thirty (30) days before the due date of the Program for which the extension is being requested. Requests must be made by certified letter, return receipt requested to the City Administrator. If the Administrator does not deny the request in

writing within ten (10) days after the City's receipt of the request, the extension shall be deemed to have been granted. Extensions shall not exempt an affected 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.

10.28.110 ENFORCEMENT.

- A) Compliance. For purposes of this section, compliance shall mean fully implementing all provisions in the City of Gig Harbor CTR Plan or meeting or exceeding VMT and SOV goals of the CTR Law (RCW Chapter 70.94.521-551).
- B) Violations. It shall be a violation of this ordinance for any affected employer to:
 - 1. Fail to develop and/or submit on time a complete CTR Program by the applicable deadlines as stated in this ordinance.
 - 2. Fail to implement an approved CTR Program by the applicable deadlines as stated in this ordinance.
 - 3. Fail to modify an unacceptable CTR Program by the applicable deadlines as stated in this ordinance.
 - 4. Fail of an affected employer to identify itself to the City within 180 days of the adoption of this ordinance.
 - 5. Fail of a newly affected employer to identify itself to the City within 180 days of becoming an affected employer .
 - 6. Fail to submit on time an annual CTR Program Report to the City.
 - 7. Fail to maintain agreed-upon CTR Program records.

8. Intentionally submitting fraudulent or false information, data and/or survey results.

C) Penalties.

1. Civil Infraction. Any affected employer violating any provision of this ordinance shall be deemed to have committed a Class 1 Civil Infraction, and shall be subject to civil penalties pursuant to R.C.W. 7.80.120(a) .
2. Written Notice. Whenever the City Administrator or his/her designated representative, makes a determination that an affected employer is in violation of this ordinance, the City Administrator shall issue a written notice and order and send it certified mail or registered receipt requested, to the affected employer. In addition to any requirements set forth in RCW 7.80 the notice and order shall contain:
 - a) The name and address of the affected employer .
 - b) A statement that the City has found the affected employer to be in violation of this chapter with a brief concise description of the conditions found to be in violation.
 - c) A statement of the corrective action required to be taken. If the City has determined that corrective action is required, the order shall require that all corrective action be completed by a date stated in the notice.
 - d) A statement specifying the amount of any civil penalty assessed on account of the violation.
3. Penalty Amount. The penalty for violation shall be \$250 per day.
4. Penalty Accrual. Penalties will begin to accrue if compliance is not achieved by the date stated in the official notice from the City. In the event that an affected employer appeals the imposition of penalties, the penalties will not accrue during the appeals process. Should the City Council decide in favor of the

appellant, all or a portion of the monetary penalties will be dismissed.

5. Union Negotiations. 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 affected employer and pursued in good faith. Unionized affected employers shall be presumed to act in good faith compliance if they:

- a) Propose to a recognized union any provisions of the affected employer's CTR Program that is subject to bargaining as defined by the National Labor Relations Act; and
- b) Advise the union of the existence of the statute and the mandates of the CTR Program approved by the City of Gig Harbor and advise the union that the proposal being made is necessary for compliance with state law (RCW 70.94.531).

10.28.120 APPEALS.

- A) Appeals. Any aggrieved affected employer may appeal administrative decisions regarding modification of goals, modification of CTR Program elements, and penalties to the City Council. Appeals shall be filed with the City Administrator within thirty (30) days of the administrative decision (or receipt of Notice and Order). Appeals shall be heard pursuant to the procedures set forth in Gig Harbor Municipal Code chapter 1.23. Such appeal to the City Council shall be de novo. The City Council will evaluate affected employers' appeals of administrative decisions by determining if the decisions were consistent with the CTR Law (RCW Chapter 70.94.521-51) and the City's adopted ordinance on the subject.
- B) Judicial Appeal. The decision of the City Council shall be considered a final decision, appealable only to the Superior Court of Washington for Pierce County. Appeals to the Superior Court shall be made 30 days from final action of the City Council.

Section 2 - Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this ordinance.

Section 3 - Effective Date. This ordinance shall take effect and shall be in full force and effect five (5) days after its passage, approval and publication as required by law.

PASSED by the Council of the City of Gig Harbor, this 11th day of April, 1994.

APPROVED:

Gretchen A. Wilbert, Mayor

ATTEST:

MARK E. HOPPEN
City Administrator/Clerk

Filed with City Clerk: 2/4/94

Passed by City Council: 4/11/94

Date Published: 4/20/94

Date Effective: 4/25/94