

ORDINANCE NO. ____-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SUNNYVALE AMENDING AND ADDING NEW
SECTIONS TO CHAPTER 10.60 (TRANSPORTATION
DEMAND MANAGEMENT) OF TITLE 10 (VEHICLES
AND TRAFFIC) OF THE SUNNYVALE MUNICIPAL CODE

WHEREAS, on December 1, 2015, City staff updated and presented to City Council the newly revised Transportation Demand Management ("TDM") Program Guidelines, which incorporates a variety of incentives, services and actions for certain employers that are intended to reduce automobile trips to provide additional relief from congestion, parking and air quality impacts; and

WHEREAS, as part of the TDM Program Guidelines, the City desires to increase enforcement efforts and impose penalties against those TDM Program owners that violate the TDM Program requirements; and

WHEREAS, Sunnyvale Municipal Code Chapter 10.60 sets forth the requirements for the City's TDM Program and includes provisions for the enforcement of penalties against TDM Program owners who fail to meet the TDM Program requirements; and

WHEREAS, the City Council hereby adopts the amended Chapter 10.60 of the Sunnyvale Municipal Code.

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

SECTION 1. CHAPTER 10.60 AMENDED AND NEW SECTIONS ADDED. Chapter 10.60 (Transportation Demand Management) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code is hereby amended and new sections added as follows:

Chapter 10.60.

TRANSPORTATION DEMAND MANAGEMENT

- 10.60.010. Purpose and application.**
- 10.60.020. Transportation Demand Management Program
Guidelines. ~~Bay Area Air Quality Management District~~
~~Oversight.~~**
- 10.60.030. Administrative Penalties.**
- 10.60.040. Appeal of Administrative Penalties.**
- 10.60.050. Hearing Procedures.**
- 10.60.060. Final Decision.**
- 10.60.070. Judicial Review.**

10.60.080. Collection of Penalties.

10.60.010. Purpose and application.

The purpose of this chapter is to promote the development of transportation demand management (“TDM”) programs at employer work sites in order to reduce traffic impacts and improve air quality. In order to accomplish that purpose, this chapter establishes certain ~~reporting-program~~ requirements to facilitate ~~evaluation-of~~ the effectiveness ~~administration~~ of TDM programs and to ~~chart-require~~ progress toward achieving average vehicle ridership goals. Additionally, this chapter enacts enforcement procedures to ensure that the TDM goals outlined in Chapter 19.45 are achieved.

10.60.020. ~~Bay Area Air Quality Management District oversight~~ Transportation Demand Management Program Guidelines

The director of public works shall develop detailed procedures and guidelines to ensure the orderly and efficient administration of the requirements of this chapter. These procedures and guidelines are incorporated into this chapter as the TDM Program Guidelines, which may be amended from time to time by the director of public works. The director shall appoint a City TDM Program Manager to implement the requirements of the TDM Program Guidelines.

~~Within the city of Sunnyvale, the implementation of trip reduction and travel demand requirements, pursuant to Government Code Section 65089.3, shall be satisfied through the administration, implementation and enforcement by the Bay Area Air Quality Management District of District Regulation 13, Rule 1 (Trip Reduction Requirements for Large Employers).~~

10.60.030. ~~Annual certification~~ Administrative Penalties.

A violation of the TDM program requirements by the TDM Program owner, as further set forth in the TDM Program Guidelines, may result in the assessment of administrative penalties by the City’s TDM Program Manager. The TDM administrative penalties shall be adopted by City Council resolution and may be amended as necessary by Council.

~~The city shall certify annually to the congestion management agency that this chapter remains in effect.~~

10.60.040. Appeal of Administrative Penalties.

The TDM Program owner may appeal the TDM administrative penalties to the TDM hearing officer within fifteen (15) days of the date of assessment of the penalties, as further outlined in the administrative penalty notice. The TDM hearing officer shall be the director of public works or his or her designee. The hearing officer shall fix a time and place for hearing such appeal and shall give notice thereof in writing to the TDM Program owner by serving it personally, electronically or by depositing it in the United States mail addressed to the TDM Program owner.

10.60.050. Hearing procedures.

(a) The hearing officer may conduct the hearing informally, both as to rules of procedure and admission of evidence, in any manner which will provide a fair hearing.

(b) At the hearing, the party contesting the administrative penalty shall be given the opportunity to testify and to present evidence concerning the administrative penalty.

(c) The failure of any recipient of an administrative penalty to appear at the administrative hearing shall constitute a waiver of any objections to the imposition of the penalty or other appropriate remedy imposed by the hearing officer, and a failure to exhaust their administrative remedies.

(d) The peak hour trip count report submitted by the City's TDM Program Manager shall constitute prima facie evidence of the respective facts contained in those documents.

(e) The hearing officer may continue the hearing and request additional information from the City's TDM Program Manager or the recipient of the administrative penalty prior to issuing a written decision.

10.60.060. -Final Decision.

After considering all of the evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold, cancel or modify the administrative penalty and shall state in the decision the reasons for that decision. The decision of the hearing officer shall be final.

10.60.070. Judicial Review.

The recipient of an administrative penalty may seek judicial review of the final decision by filing a petition for review with the superior court in accordance with the timelines and provisions set forth in the Code of Civil Procedure section 1094.5 et. seq.

10.60.080. Collection of Penalties.

The City may utilize any appropriate remedy in this code or under state law in order to collect any unpaid TDM administrative penalties.

SECTION 2. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15378(b)(5), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is general policy and procedure making and not a project under CEQA.

SECTION 3. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2016, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2016, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM:

City Attorney