**ENROLLED ORDINANCE**

*PUBLISHED PURSUANT TO CHAPTER 1 SECTION 4.5 OF THE REVISED ORDINANCES OF THE CITY OF EVERETT AND IN COMPLIANCE WITH MASSACHUSETTS GENERAL LAWS Chapter 43, Section 23.*

ENROLLED:

DATE OF PROPOSED ORDAINMENT:

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**CITY COUNCIL …………………………………………………………….No. C0360-20**

IN THE YEAR TWO THOUSAND AND TWENTY

**AN ORDINANCE** **ADDING TRANSPORTATION DEMAND MANAGEMENT TO THE CITY’S ZONING ORDINANCE**

Councilor /s/ Rosa DiFlorio, as President

**Preamble:** The purpose of this Section 35 is to describe the required elements of participation in transportation demand management (TDM) programs in the City. TDM participation is intended to prevent, reduce, and mitigate the impacts of development on parking demands, the City’s transportation system, neighborhood livability, public safety, and the environment. TDM programs provide residents, employees, and visitors with information and incentives to reduce drive-alone vehicle travel to achieve the City’s parking and transportation goals. These are all objectives of the Everett Transportation Strategy, which serves as a cornerstone for all decisions related to transportation in Everett. This Section will serve as one component of implementing that Plan’s recommendations.

**Now**, therefore, by the authority granted to the City Council of the City of Everett, Massachusetts to make ordinances:

**Be it Ordained** by the City Council of the City of Everett, Massachusetts that the Revised Ordinances of the City of Everett be amended as follows:

Section 17 of Appendix A of the Revised Ordinances shall hereby be amended by adding a new subsection (R) as follows:

(R) Any proposed site plan or change of use that would not meet the off-street parking requirements of Section 17.A.2 through 13 will be subject to the requirements of Section 35.

(C0360-20)

Section 30 of Appendix A of the Revised Ordinances shall hereby be amended by striking the word “minimum” from Subsection 30.G.2.c.

Section 30 of Appendix A of the Revised Ordinances shall hereby be further amended by adding a new Subsection 30.G.2.f. as follows:

(f) Any proposed site plan or change of use that would not meet the off-street parking requirements of Section 30.G.1 will be subject to the requirements of Section 35.

 (C0360-20)

Appendix A of the Revised Ordinances shall hereby further amended by adding a new Section 35 as follows:

**SECTION 35 TRANSPORTATION DEMAND MANAGEMENT**

(C0360-20)

**A: Purpose and Definitions**

1. **Purpose.** The purpose of this Section 35 is to describe the required elements of participation in transportation demand management (TDM) programs in the City. TDM participation is intended to prevent, reduce, and mitigate the impacts of development on parking demands, the City’s transportation system, neighborhood livability, public safety, and the environment. TDM programs provide residents, employees, and visitors with information and incentives to reduce drive-alone vehicle travel to achieve the City’s parking and transportation goals. These are all objectives of the Everett Transportation Strategy, which serves as a cornerstone for all decisions related to transportation in Everett. This Section will serve as one component of implementing that Plan’s recommendations.
2. **Definition of Terms**. The following are standard terms to be used throughout this Section and are defined accordingly. They may also apply to other City Ordinances and actions.
	1. “Applicant” refers to the individual or entity, and their successor or assigns, proposing a Development to the City of Everett, including without limitation any City department, employee, committee, commission, board, or council, for its review, approval, and permitting. Trustees of any condominium association are successors or assigns of the Applicant for that Development.
	2. “City” refers to the government of the City of Everett, including without limitation any City department, employee, committee, commission, board, or council,
	3. “Contributions” refers to monetary payments, credit agreements, or in-kind resource dedication that an Applicant or its appointed designee must make to the City or to the City’s appointed partner organization providing TDM Services on a recurring, scheduled basis as set forth in the Applicant’s Site Plan approval with the City.
	4. “Development” refers to a specific project or phase of a project, requiring the approval and permitting of the City and potentially other public agencies of the Commonwealth of Massachusetts.
	5. “Everett Transportation Strategy Plan” or “Transportation Master Plan” refers to the City’s Transportation Strategy Plan , as it may from time to time be amended, for the overall management of transportation systems for the City, which may include actions or recommendations that fall outside the bounds of this Section 35 but that broadly supports TDM as a mobility strategy for the City.
	6. “Members” and “Membership” refer to active participation in a Transportation Management Association.
	7. “TDM Services” refers to any combination of parking, transportation, or mobility related programs, products, software platforms or applications, operating services, or other resources used in the City’s efforts to reduce drive-alone vehicle trips or to mitigate a Development’s impacts on the transportation system arising from vehicle access and use.
	8. “Transportation Demand Management” or “TDM” refers to the broad set of parking and transportation planning policies, strategies, and actions generally employed by the City, intended to reduce single-occupant vehicle trips and vehicle access and roadway demand related to Developments, or more broadly throughout the City in general.
	9. “Transportation Demand Management Plan” or “TDM Plan” is a document required of an Applicant as part of the Site Plan review and approval process for a Development that meets one or more of the Section 35 applicability thresholds. The TDM Plan shall include specific TDM Services that mitigate the transportation and parking impacts of the development and identify overall TDM goals.
	10. “Transportation Management Association” or “TMA” refers to an organization, which may or may not be a division of the government of the City, responsible, at a minimum, for:
		1. Advisory services to Applicants or their appointed designees on the development of a Transportation Demand Management Plan;
		2. Peer review and oversight of Transportation Demand Management Plans;
		3. Recommendations to City of Everett staff on Transportation Demand Management Plans and their approval or refinement; and
		4. Maintenance of a comprehensive inventory of Transportation Demand Management Plans, including periodic monitoring and reporting to the City of the effectiveness of these plans and compliance to their terms and requirements.
		5. Providing and promoting joint TDM services for its dues paying members.

**B: Applicability, Zoning Relief and Site Plan Review**

1. **Thresholds for compliance with Section 35.** Each Applicant proposing a development, that meets at least one of the four thresholds set forth in the following subsections shall be subject to and comply with this Section 35.
	1. **Development Intensity.** All Developments that include, at minimum, any one of the following as principal or accessory uses:
		1. 10,000 gross square feet of non-residential, commercial space;
		2. 10 total residential dwelling units;
		3. 10 hotel rooms or
		4. 10 school or other educational/vocational classrooms.
	2. **Access constraints.** Significant limits to site access that place substantial transportation burden on a small portion of the City transportation network, as determined by the Planning Director or his/her designee and identified generally in the User Guide.
	3. **Total number of trips.** Any Development generating at least 500 total daily trip ends, regardless of the intensity of any individual uses within that Development, according to the then most current version of the Institute of Traffic Engineers Trip Generation Manual.
	4. **Parking provided above or below ordinance minimum requirements.** ADevelopment that proposes to provide a number of vehicle parking spaces below or above the parking requirements set forth in the City’s Zoning Ordinance.
2. Notwithstanding anything to the contrary set forth in this Section 35, exclusively residential developments proposing to result in the creation of less than ten (10) total residential units on a lot are exempt from this Section 35. If the proposed development will bring the total number of residential units on the lot to 10 or more, this Section 35 shall apply.
3. Notwithstanding anything to the contrary in this Zoning Ordinance, including Appendix A, Section 3.Q., this Section 35 shall apply to qualifying Developments for which the City is an Applicant.
4. Each Development that is subject to Section 35 shall require site plan review and approval by the Planning Board pursuant to Section 19. Prior to approval of any application for site plan review, the Planning Board shall review for compliance with this Section 35 and may include conditions of approval designed to ensure that compliance. Said application shall include, at a minimum, a proposed TDM Plan for the Development and a Project Description. The Project Description shall include trip generation estimates and proposed vehicle and bicycle parking. The description may include phased development to occur for a period of up to ten (10) years or the specific timeline requirements the City has established for impact analysis, whichever is greater.
5. No parking variance or special permit authorizing a reduction in the number of required off-street parking spaces shall be required for any Development that meets one or more the aforesaid thresholds and proposes to provide less than the required number of parking spaces for that Development.
6. The Zoning Board may not grant a variance from compliance with the requirements of this Section 35.
7. Pre-Application Conference (Non-Mandatory).An Applicant subject to Section 35 may request to meet with City staff or their designee prior to submittal of a Site Plan application for guidance on compliance herewith, TDM plans, TMA Membership obligations, as well as potential TDM Services.

**C: TDM Requirements**

1. **Transportation Management Association (TMA) Membership.**
	1. Size thresholds for required membership. Each Applicant for a Development subject to Section 35 shall secure, and maintain for the life of the Development, on behalf of that Development, membership in the TMA at a level related to its occupancy status and permit requirements per the Membership Schedule on file with the Planning Director or designee. TMA membership requirements are expanded based on a Development’s receipt of a certificate of occupancy or additional permitting required beyond that required by the City.
	2. Fee schedule for Membership Contributions. An Applicant or designee must make an initial payment, pro-rated on a partial-year basis, by the first date of the calendar month after approval of the Site Plan Review application, and must continue to make payments by January 1 of a calendar year to the TMA as long as any certificate of occupancy, business license, or other form of active permitting is in effect. Payments must be made on an annual basis. Payments will follow a fee schedule on file with the City Planning Director or designee.
2. **Absence of a TMA.** In the event that the City has not designated a TMA, that a designated TMA is dissolved or otherwise ceases to exist, or that a TMA does not provide services directly in the City of Everett, Applicants subject to Section 35 shall be required to meet the requirements of this Section through TDM Plans. In these circumstances, any requirements for written agreements between an Applicant and the TMA that the City has included as part of its Ordinances would be waived until such time as the City requests that the Applicant join a newly created or revived TMA.
3. **Independent implementation of TDM Strategies and Enhancements.** An Applicant or designee may elect to provide its own TDM services beyond those made available by the TMA at any given time. Examples may include, but not be limited to, circulator or other passenger transportation services; or provision of shared bicycles or other personal mobility devices.
	1. An Applicant may provide physical infrastructure contributions that broadly support TDM, but these contributions will not exempt an Applicant subject to Section 35 from TMA membership.
	2. All services or infrastructure provided in this manner shall be open to any users wishing to use them and shall meet all requirements for public services in the Americans with Disabilities Act (ADA).
	3. Upon such time that the City or TMA offer similar comparable services on the scale of a larger district or geographic area above and beyond the Development, the Applicant or Designee is encouraged to pay a fair-share contribution to these services instead of continuing to operate its own service.
4. **Calculation of Impact (Points) and TDM Plans.** Proposed Developments will be assigned an impact score based on the amount of parking, trip generation, and traffic impact their Developments are estimated to generate. Each Applicant must document this impact score in the TDM Plan filed with its Site Plan application. The impact score will be based on the schedule of TDM Impacts on file with the City Planning Director or designee.
5. **Calculation of TDM Credits.** The City will accept TDM strategies as having different levels of effectiveness in mitigating transportation impacts referenced in Subsection 4 above. Applicants must include a combination of TDM strategies in TDM plans that provide a total credit score equal to or greater than the Development’s impact score. These will be based on scores detailed in a schedule of TDM credits on file with the City Planning Director or designee.
6. **Upper Limits to TDM obligations under this Section.** The City may, at its sole discretion, set an *upper limit* to the degree to which any Applicant must mitigate the impact score for a Development, as defined in Subsection 4 above, with a credits score derived from TDM measures that would be incorporated into a TDM Plan. This upper limit, if it is defined, will apply to all Applications and Developments subject to this Section 35, and an Applicant will only be responsible for providing TDM Services that represent a credits score equal to this upper limit. If a Development has incurred an impact score exceeding this upper limit, the City may request other contributions to infrastructure, services, or other public assets of the City in a way that mitigates the impact represented in that portion of the impact score. This shall be based on a rational nexus between the nature of the impact and the mitigation being requested or offered.

**D: Occupancy, Monitoring, and Reporting Requirements**

1. **Program Delivery Timeline.** Any infrastructure contributions and service contracts that constitute part of an Applicant’s initial TMA Contributions must be completed and/or presented to the City prior to a Certificate of Occupancy. Expanded TMA Contributions as set forth in Section C.3.a herein shall be completed and/or presented to the City within the time designated by the City prior to issuance of a Certificate of Occupancy.
2. **Reporting Options.** An Applicant or designee must complete two of the following and submit along with annual Contributions by January 1 of the first full calendar year after receiving a certificate of occupancy, and every calendar year after, during the time this Section 35 is in effect:
	1. Employee/Resident Mode Share Survey. This survey should provide information (as comprehensive as possible) on the principal means of access to the Development by employees, residents, or other principal users.
	2. Annual Traffic Count and Analysis. Applicant may submit a traffic count demonstrating that vehicular traffic volumes substantially related to the Development have not increased beyond those documented as part of a TDM Plan. Applicants must propose a methodology for this analysis and the analysis must be completed by a professional engineer or other certified transportation professional.
	3. TMA program participation report, providing detail on the Development’s level of participation in TMA programs.
3. **Not meeting TDM Plan commitments and goals.** If a Development’s reporting shows that it does not meet the commitments and goals set forth in its approved TDM Plan, such as exceeding acceptable traffic impact or failing to meet travel mode shift goals defined in the TDM Plan, the Applicant or designee will revise its TDM Plan in partnership with the TMA (or Planning Director or designee in event there is no TMA) to incorporate additional TDM measures and incentives. Any such revised plans must be submitted to the City within 90 days of the initial reporting for that calendar year. In the event that an Applicant and the TMA (or Planning Director or designee) reach agreement on additional TDM Services those additional TDM Services shall be treated as a condition of the approved TDM Plan and Site Plan Approval. In the event that an Applicant and the TMA (or Planning Director or designee) are unable to reach agreement on additional TDM Services, the Applicant shall apply to the Planning Board to amend its TDM Plan and Site Plan Approval to include new or alternative TDM Services that will result in the Applicant meeting its TDM Plan goals and commitments.
4. The Planning Director or designee shall have the authority, but not the obligation, to authorize the substitution of one or more TDM Services so long as total credit score contained in the approved TDM Plan meets or exceeds the approved impact for the Development. Any approved substitution shall be treated as a condition of the approved TDM Plan and Site Plan Approval.

**E: Compliance and Enforcement**

1. **Notice of Non-Compliance.** The Planning Director, Building Commissioner or designee may issue a notice of non-compliance with any requirement of Section 35, an approved TDM Plan or any TDM related conditions included in the site plan approval for a Development subject to Section 35, 60 days after such non-compliance is noted.
2. **Voluntary Compliance Request Period.** Upon notice of non-compliance, the City will allow an Applicant or designee a period of up to thirty (30) days to correct non-compliance or to provide a written request to the Planning Director, TMA (if any exists), or other appointed designee that Applicant or designee wishes to correct non-compliance with technical assistance of the TMA or if none exists, to seek technical assistance from the Planning Director or designee
3. **Enforcement**. In the event of non-compliance that is not corrected within the initial 60-day period in Section E.1 and the 30-day compliance request period of Section E.2 or any other violation of this Section 35 or any Site Plan approval issued hereunder, the City, acting through the Planning Director or Building Commissioner, may, as an alternative to criminal prosecution, elect to use the non-criminal disposition procedure set forth in G.L. c. 40, §21D including issuance of a fine of $300 per day for each day a violation continues and may seek any other remedies available at law or in equity to enforce this section 35 or any condition of any Site Plan approval issued hereunder.

**F: Severability**

The provisions of this Section are severable. If any provision of this Section is held invalid, the other provisions of this Section shall not be affected thereby. If the application of this Section or any of its provisions to any person or circumstance is held invalid, the application of this Section and its provisions to other persons and circumstances shall not be affected thereby.

This ordinance shall take effect upon passage by the City Council and subsequent approval by His Honor the Mayor.

A true copy attest




Sergio Cornelio, City Clerk