

## City of Fayetteville Staff Review Form

2019-0407

Legistar File ID

7/2/2019

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Blake Pennington

6/24/2019

CITY ATTORNEY (021)

Submitted By

Submitted Date

Division / Department

## Action Recommendation:

Recommend enactment of an ordinance regulating electric motorized scooters, scooter-share programs, and scooter-share operators in the City of Fayetteville. The proposed ordinance includes an emergency clause to make the ordinance effective immediately upon passage by the City Council and approval by Mayor Jordan.

## Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? NA

Current Budget

\$

-

Funds Obligated

\$

-

Current Balance

\$

-

Does item have a cost? NA

Item Cost

Budget Adjustment Attached? NA

Budget Adjustment

Remaining Budget

\$

-

V20180321

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



OFFICE OF THE  
CITY ATTORNEY

## DEPARTMENTAL CORRESPONDENCE



**Kit Williams**  
*City Attorney*

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**TO: Mayor Jordan**  
**City Council**

**FROM: Blake Pennington**, Assistant City Attorney  
**Peter Nierengarten**, Environmental Director

**DATE: June 24, 2019**

**RE: Electric Motorized Scooter Ordinance**

The Arkansas General Assembly passed Act 1015 of 2019, which created the Electric Motorized Scooter Act. This Act, which will go into effect on July 24, 2019, authorizes the deployment of electric motorized scooters and scooter-share programs throughout the State of Arkansas.

The Act defined electric scooters as two or three wheeled mobility devices that are equipped with a handle bar, standing floorboard and weigh less than 100 lbs. They must be powered by an electric motor and are limited to a maximum speed of 15 mph.

The Act also contains some very limited safety regulations but also provides for local authority regulation of such scooters and scooter-share programs:

“Except as otherwise provided by law, a local authority may establish reasonable standards, rules, or regulations providing for the:

- (1) Safe operation of electric motorized scooters; and

## *Electric Motorized Scooter Ordinance*

(2) Presence of electric motorized scooters on public property.”

Ark. Code Ann. §27-51-1905(a).

Following the passage of the Electric Motorized Scooter Act, the City Attorney’s Office began working with Sustainability and Engineering staff to draft an ordinance regulating the operation of scooters and scooter-share programs. We looked at and borrowed from the scooter-share ordinances in Dallas, Austin, Fort Lauderdale, and Charlotte.

Article I of the proposed ordinance contains rules of general applicability to both private scooter owners, scooter share program operators, and scooter-share program customers. Electric scooter operations, parking and safety regulations apply to all scooters city-wide and are very similar to rules for bicycles. Scooters may operate on trails, in bicycle lanes, on the right-hand side of the roadway and on sidewalks, where a building face is not adjacent to the sidewalk. Scooters must be parked in the upright position in a way that does not block sidewalks, impede pedestrians or interfere with ADA access. Improperly parked scooters must be re-parked or removed by the scooter-share operator.

Article II of the proposed ordinance contains regulations that are specific to scooter share operators and scooter share programs. Such scooter share operators will be required to obtain a permit, will be limited in the number of scooters they are authorized to deploy, and are subject to additional operational, insurance, and data sharing requirements.

The proposed ordinance allows for up to 1000 scooters (max of 500 scooters per scooter share operator) to be permitted in Fayetteville. The initial six-month application fee is \$150 per scooter-share operator plus \$20 per scooter. Fees collected shall be used to cover the cost to administer the program and to provide infrastructure improvements and maintenance related to the operation and parking of electric scooters. The ordinance also requires that scooter-share operators communicate clear rates to customers and that the per minute use fee may not exceed 1/5<sup>th</sup> the cost to unlock a shared scooter.

## *Electric Motorized Scooter Ordinance*

Additionally, Article II requires that scooter-share operators have the ability to implement no-park, no-ride, and slow-ride zones as designated by the City. Scooter-share operators are also required to share anonymized fleet and ride activity data with the City.

Because the Electric Motorized Scooter Act will go into effect on July 24, we have included an emergency clause so that the ordinance passed by the City Council will go into effect immediately. We believe that the unregulated deployment of potentially hundreds or thousands of these scooters would be a serious risk to the public peace, health, and safety.

# EXHIBIT A

## Chapter 75

## ELECTRIC MOTORIZED SCOOTERS AND SCOOTER-SHARE PROGRAMS

### ARTICLE I GENERAL PROVISIONS

#### § 75.01 Definitions

- (A)(1) "Electric motorized scooter" means a device that:
- (i) Weighs less than one hundred pounds (100 lbs);
  - (ii) Has two (2) or three (3) wheels;
  - (iii) Has a handlebar;
  - (iv) Is equipped with a floorboard that can be used to stand on while riding the electric motorized scooter;
  - (v) Is powered by an electric motor; and
  - (vi) Has a maximum speed of twenty miles per hour (20 m.p.h.) with or without human propulsion on a paved level surface.
- (2) "Electric motorized scooter" does not include A motorcycle, an electric bicycle, an electric personal assisted mobility device, a motor-driven cycle, a motorized bicycle as defined in Ark. Code Ann. § 27-20-101, a moped; or an electric bicycle under Ark. Code Ann. § 27-51-1702;
- (B) "Scooter-share operator" means a person or company offering a shared scooter for hire;
- (C) "Scooter-share program" means a service in which a shared scooter is made available to use for hire; and
- (D) "Shared scooter" means an electric motorized scooter offered for hire.

#### § 75.02 Operation of electric motorized scooters

Electric motorized scooters operated within the City of Fayetteville, whether privately owned or part of a scooter-share program, are subject to the following regulations:

- (A) Electric motorized scooters shall not be operated by a person under sixteen (16) years of age;
- (B) Electric motorized scooters shall not be operated at a speed greater than fifteen (15) miles per hour;
- (C) Operation on sidewalks
  - (1) Any individual operating an electric motorized scooter upon a sidewalk shall yield the right-of-way to pedestrians and shall give an audible signal before overtaking and passing a pedestrian.
  - (2) No person shall operate an electric motorized scooter upon a sidewalk which abuts a building, when riding on the sidewalk would endanger pedestrians, or where operation of an electric motorized scooter on a sidewalk is prohibited by an official traffic control device.
  - (3) Any individual operating an electric motorized scooter within a pedestrian crosswalk must yield the right-of-way to motor vehicle traffic and pedestrians. To earn the protections of a pedestrian, an individual must dismount, walk the electric motorized scooter, and obey applicable traffic control devices.
- (D) Riding on Roadways and Bicycle Facilities
  - (1) Any person operating an electric motorized scooter upon a roadway at less than the normal and reasonable speed of traffic shall ride in the right hand lane of the roadway subject to the following provisions:
    - a) If the right hand lane is wide enough to be safely shared with overtaking vehicles, a person operating an electric motorized scooter shall ride far enough to the right as judged safe by a reasonable scooter user to facilitate the movement of such overtaking vehicles unless other conditions make it unsafe to do so.

- b) A person operating an electric motorized scooter may use a lane other than the right hand lane when:
  - i. Passing another vehicle;
  - ii. Preparing for a left turn;
  - iii. Avoiding conditions, including, but not limited to, fixed or moving objects, or surface hazards;
  - iv. Lanes are too narrow for an electric motorized scooter and vehicle to travel safely side by side;
  - v. Approaching an intersection where there is a designated right turn lane and the scooter user does not intend to turn right, the scooter user may ride on the left-hand side of such designated lane;
  - vi. Riding on a roadway designated for one-way traffic, when the scooter user may ride as near to the left-hand curb or edge of such roadway as judged safe by the scooter user; or
  - vii. Riding on parts of roadways designated for bicycles.
- (2) A scooter user shall not be expected or required to:
  - a) Ride over or through any hazards or apparent hazards.
  - b) Ride without a reasonable safety margin on the right-hand side of the roadway.
  - c) A person operating an electric motorized scooter in compliance with this section and not violating any other section of law is not impeding traffic.
- (E) The operator of an electric motorized scooter emerging from an alley, driveway or building shall, upon approaching a sidewalk or the sidewalk area extending across the alleyway, yield the right-of-way to all pedestrians approaching on such sidewalk area and, upon entering the roadway, shall yield the right-of-way to all vehicles approaching on such roadway
- (F) No person riding upon any electric motorized scooter shall attach either the scooter or the rider to any vehicle upon a roadway.
- (G) No person operating an electric motorized scooter shall carry any package, bundle or article, which prevents the rider from keeping at least one (1) hand upon the handlebars.

### **§ 75.03 Parking of electric motorized scooters**

- (A) Electric motorized scooters may not be parked in a manner that would impede normal and reasonable pedestrian access on a sidewalk or in any manner that would reduce the minimum clear width of a sidewalk to less than 48 inches.
- (B) Electric motorized scooters may not be parked in a manner that violates the Americans with Disabilities Act.
- (C) Electric motorized scooters may not be parked in a manner that would impede vehicular traffic on a street or alley.
- (D) Electric motorized scooters may not be parked in a manner that would impose a threat to public safety or security.
- (E) Electric motorized scooters may not be parked on a public street without specific permission from the City.
- (F) Electric motorized scooters may not be deployed on a block where the sidewalk is less than 96 inches in width, or on a block that does not have sidewalks. The City may determine other blocks or areas where deploying electric motorized scooters are prohibited.
- (G) Electric motorized scooters must be deployed on a sidewalk or other hard surface, at a bicycle rack, or at a city-owned location. Electric motorized scooters may only be deployed on private property with the permission of the property owner.
- (H) Electric motorized scooters must stand upright while parked.
- (I) Electric motorized scooters may not be parked within five feet of a crosswalk or curb ramp, unless given specific permission by the City.
- (J) Electric motorized scooters may not be parked in a way that blocks:
  - (1) Transit stops, shelters, or platforms.

- (2) Commercial loading zones.
- (3) Railroad or light rail tracks or crossings.
- (4) Passenger loading zones or valet parking service areas.
- (5) Disabled parking zones.
- (6) Street furniture that requires pedestrian access (for example, benches or parking pay stations).
- (7) Building entryways.
- (8) Vehicular driveways.
- (K) Electric motorized scooters parked along multi-use trails may only be parked at trailheads or other areas identified by the City.
- (L) Electric motorized scooters that are parked in an incorrect manner must be re-parked or removed by the operator within two hours of receiving notice from the City on weekdays between 6:00 a.m. and 6:00 p.m. (excluding holidays) and within 12 hours of receiving notice from the City at all other times.
- (M) Electric motorized scooters that are parked in a residential area may remain in the same location for up to 48 hours as long as it is parked in accordance with this section. An operator shall relocate or rebalance electric motorized scooters parked in a residential area after receiving a citizen request or complaint in accordance with the timeframes specified in §75.11(P)

## **§ 75.04 Safety Regulations**

Electric motorized scooters shall be equipped with a brake and, for those units that operate at night, a front light that emits white light as well as a red light and reflector at the rear of the unit. All electric motorized scooters shall have front and back lights that are always on and are visible from a distance of at least 500 feet under normal atmospheric conditions at night. Front and rear lights must stay on at least 90 seconds after the unit has stopped.

## **ARTICLE II –REGULATIONS APPLICABLE TO SCOOTER-SHARE PROGRAMS AND SCOOTER-SHARE OPERATORS**

### **§75.10 Permit required**

- (A) A person commits an offense if, within the city, he or she operates, or causes or permits the operation of, a scooter-share program without a valid operating authority permit issued under this Chapter.
- (B) Issuance of a permit does not authorize the operation of a shared scooter on the University of Arkansas campus or private property without the approval of the property owner.
- (C) The total number of permits issued by the City for shared scooters shall not exceed 1,000 at any time.
- (D) Application for operating authority permit
  - (1) To obtain an operating authority permit, a person shall make application in the manner and on the form prescribed by the City. The applicant must be the person who will own, control, or operate the proposed shared scooter program.
  - (2) An application shall be accompanied by the non-refundable application fee and shall contain at least the following information:
    - a. The form of business of the applicant and, if the business is a corporation or association, a copy of the documents establishing the business and the name and address of each person with a 20 percent or greater ownership interest in the business;
    - b. The verified signature of the applicant;
    - c. The address of the fixed facilities to be used in the operation, if any, and the address of the applicant's corporate headquarters, if different from the address of

- the fixed facilities;
  - d. The name of the person designated by the applicant to receive on behalf of the applicant any future notices sent by the city to the operator, and that person's contact information, including a mailing address, telephone number, and email address;
  - e. Documentary evidence from an insurance company indicating that such insurance company has bound itself to provide the applicant with the liability insurance required by this Chapter;
  - f. Documentary evidence of payment of ad valorem taxes on property within the city, if any, to be used in connection with the operation of the proposed shared scooter program;
  - g. The number and types of shared scooters to be operated; and
  - h. An agreement to indemnify the city.
- (3) An operating authority permit may be renewed following the process in this section.
- (4) Application and fleet fees.
  - (1) The initial application for an operating authority permit must be accompanied by an application fee of \$150.00 and a fee of \$20.00 per shared scooter in the operator's fleet. Applications to renew an operating authority permit must be accompanied by an application fee of \$100.00 and a fee of \$20.00 per shared scooter in the operator's fleet.
  - (2) Fees collected pursuant to this subsection shall first be applied to the costs incurred by the City for administering the scooter share permit program and then to infrastructure improvements and maintenance related to the operation of electric motorized scooters.
- (E) Changes to information in operating authority application.
  - (1) Any changes to the information provided in the operating authority permit application must be reported to the City, in the manner prescribed by the City, within 10 days of the change.
  - (2) If the information reported to the City under this section includes an increase in the number of shared scooters, any additional vehicle fees due shall be submitted to the City simultaneously with the change in information.
- (F) An operating authority permit expires six (6) months from the date it is issued.
- (G) An Operator's initial fleet must be a minimum of 100 shared scooters and shall not exceed 250 shared scooters. Operators may request an increase to their initial fleet of up to 250 shared scooters as part of their first permit renewal. A request for an increase in fleet size shall include a rationale and analysis to justify the additional fleet size. Authorization of additional units is at the sole discretion of the City. Operators shall be limited to a maximum of 500 shared scooters in their fleets.
- (H) A scooter-share operator or scooter-share program shall not charge a per minute fee to users exceeding 1/5<sup>th</sup> the cost to unlock a shared scooter.
- (I) Refusal to issue or renew operating authority permit.
  - (1) The City shall refuse to issue or renew an operating authority permit if the applicant:
    - a. intentionally or knowingly makes a false statement as to a material matter in an application for a permit or permit renewal; or
    - b. has been convicted twice within a 12-month period for a violation of this article regarding the deployment of a shared scooter or the rebalancing or removal of a dockless vehicle, or a rule or regulation adopted under this article regarding the deployment of a shared scooter or the rebalancing or removal of a shared scooter, or has had an operating authority permit revoked within two years of the date of application.
  - (2) If the City determines that a permit should be denied, the City shall notify the applicant or operator in writing that the application is denied and include in the notice the specific reason or reasons for denial and a statement informing the applicant or operator of the right to, and the process for, appeal of the decision.
- (J) Suspension or revocation of operating authority permit.
  - (1) The City may suspend an operating authority permit if the City determines that the operator failed to comply with a request to remove a shared scooter or a request to rebalance shared



- scooters issued by the City within the time specified in the order. Suspension of an operating authority permit does not affect the expiration date of the permit.
- (2) The City shall revoke an operating authority permit if the City determines that the operator has:
- made a false statement as to a material matter in the application concerning the operating authority permit;
  - failed to maintain the insurance required by this article;
  - operated shared scooters that were not authorized by the operating authority permit; or
  - failed to pay a fee required by this article.
- (3) After revocation of an operating authority permit, an operator is not eligible for another permit for a period of up to two years, depending on the severity of the violation resulting in the revocation.

(K) Appeals. Any person whose application for an operating authority permit, or renewal of an operating authority permit, is denied by the City, or an operator whose operating authority permit has been revoked or suspended by the City, may appeal the decision to the City Council by filing a written notice in the City Clerk's office within ten (10) business days of the decision.

### **§ 75.11 Operation of scooter-share programs**

Scooter-share operators shall comply with the following requirements for scooter-share programs:

- Operators shall provide a method for users to utilize shared-scooter programs without a smartphone.
- Rates for shared scooters shall be clearly and understandably communicated to customers prior to use.
- Shared scooters programs shall ensure that its application and website educates users about how to comply with the general operation, parking, and safety regulations set forth in § 75.05-75.07.
- Shared scooters shall be equipped with an on-board GPS unit or equivalent that can report the location of a unit at any time for the purposes of use, recovery, repair, data collections, and incident investigation.
- Shared scooters shall be high quality, sturdily built to withstand the rigors of outdoor storage and constant use.
- Shared scooters shall employ tamper-resistant security hardware.
- Shared scooters used in systems issued a license must employ an electric motor of less than 750 watts (1 h.p.).
- Operators must have the ability to implement no-ride zones, the ability to slow scooters, and the ability to prevent parking in areas identified by the City. Operators must also have the ability to require shared scooters to be parked in certain areas designated by the City.
- Shared scooters shall meet the most up-to-date equivalent safety standards as those outlined in the Code of Federal Regulations and the International Organization for Standardization for bicycles. Currently, scooters shall meet CPSC in Public Law 107-309 for standards around weight bearing.
- For all shared scooters used the maximum motor-assist speed for licensed units shall be 15 mph, when ridden in the street environment.
- Shared scooters shall be able to securely stand upright when parked.
- Shared scooters shall be inspected when removed from routine service, to ensure that all of its components are present and functioning properly.
- Operators must be capable of quickly identifying and addressing safety and maintenance issues with shared scooters, including a mechanism for customers to notify the company that there is a safety or maintenance concern with the scooter.
- Operators must be capable of remotely disabling the use of a unit if it is reported or found to have a safety, maintenance, or other hazardous condition. Scooters that are reported as unsafe or non-functional shall be immediately deactivated for rental and removed from operations until repaired.
- Operators shall remove any unit that is not safe to operate within four (4) hours of receipt of notice and shall not be redeployed until repaired.

- (P) Operators shall respond to complaints and obstructions within the following time frames:
- (1) Sidewalk obstructions – 60 minutes
  - (2) Travel and bicycle lanes – 60 minutes
  - (3) Transit stop obstructions – 60 minutes
  - (4) Environmentally sensitive area – 60 minutes
  - (5) Private property – 2 hours
  - (6) Other obstructions and nuisances – 2 hours
  - (7) Unauthorized portions of parks and trails – 2 hours
  - (8) Other unauthorized areas – 2 hours
- (Q) Operators shall have a program in place to ensure proper recycling and disposal of batteries under universal waste battery disposal standards pursuant to Title 40 of the Code of Federal Regulations, Part 273.

#### **§ 75.12 Identification of shared scooters**

Scooter-share operators shall ensure that each shared scooter:

- (A) Clearly displays the emblem of the operator;
- (B) Clearly displays the operator's customer support information including customer service phone number, website, and application; and
- (C) Bears a unique alphanumeric identification number that is visible from a distance of five feet (5') and is not covered by a branding or other marking.

#### **§ 75.13 Minimum insurance requirements**

- (A) A scooter-share operator shall carry the following insurance coverage dedicated exclusively for operation of a shared scooter and shall provide a valid certificate insurance each year the operator's permit is renewed:
- (1) Commercial general liability insurance coverage with a limit of no less than one million dollars (\$1,000,000) for each occurrence and five million dollars (\$5,000,000) aggregate;
  - (2) Umbrella or excess liability coverage with a limit of no less than five million dollars (\$5,000,000) for each occurrence and five 35 million dollars (\$5,000,000) aggregate; and
  - (3) Workers' compensation coverage as required by law.
- (B) A valid certificate of insurance evidencing the coverage required by this section shall be submitted within ten (10) days of the issuance of an initial operating authority permit.
- (C) Scooter-share operators may not be self-insured.
- (D) Insurance required by this section shall include a cancellation provision in which the insurance company is required to notify the City in writing not fewer than ten (10) days before cancelling the insurance policy for any reason or before making a reduction in coverage.

#### **§ 75.14 Data Sharing**

- (A) A scooter-share operator shall provide:
- (1) Anonymized fleet and ride activity data for all trips starting or ending within the City of Fayetteville;
  - (2) All ride activity data for any trip resulting in an accident report.
- (B) Such data shall include:
- a. Total number of daily, weekly, and monthly riders;
  - b. Total number of vehicles in service for the reporting period;
  - c. Aggregated monthly summary data in the form of heat maps showing routes, trends, origins, and destinations;
  - d. Total number of miles traveled daily, weekly, and monthly by users;
  - e. Average time each shared scooter spends available (not in use);
  - f. A report or chart showing the times and days when more than 75% of a fleet is in use at one time;

- g. Duration of ride per day of the week;
  - h. Summary of fleet numbers lost to theft or vandalism;
  - i. Summary of customer comments, complaints, and requests for service; resolutions to comments, complaints, and requests for service; and the time it took to resolve any complaint or request for service; and
  - j. Monthly summary of repairs per shared scooter; and
  - k. Any other report requested by the City.
- (C) Such data shall be provided to the City of Fayetteville at least monthly.