

PROPOSED
ORDINANCE NO. 26-19

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE OF THE CITY OF PENSACOLA, FLORIDA CREATING CHAPTER 7-12 OF THE CODE OF THE CITY OF PENSACOLA TO REGULATE A DOCKLESS SHARED MICROMOBILITY DEVICE PILOT PROGRAM; PROVIDING FOR PURPOSE AND APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR A PILOT PROGRAM FOR SHARED MICROMOBILITY DEVICES ON PUBLIC RIGHTS-OF-WAYS; PROVIDING FOR THE VENDORS' RESPONSIBILITIES AND OBLIGATIONS IN OPERATING A SHARED MICROMOBILITY DEVICE SYSTEM; PROVIDING FOR SHARED MICROMOBILITY DEVICE SPECIFICATIONS; PROVIDING FOR THE OPERATION AND PARKING OF A SHARED MICROMOBILITY DEVICE; PROVIDING FOR IMPOUNDMENT OR REMOVAL OR RELOCATION BY THE CITY; PROVIDING FOR ENFORCEMENT, FEES AND PENALTIES; PROVIDING AN APPEAL PROCESS; PROVIDING FOR INDEMNIFICATION AND INSURANCE; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Uniform Traffic Control Law allows municipalities to enact ordinances to permit, control or regulate the operation of vehicles, golf carts, mopeds, micromobility devices, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law as long as such vehicles are restricted to a maximum speed of 15 miles per hour. *Section 316.008(7)(a), Florida Statutes*; and

WHEREAS, the City strives to keep the City rights-of-ways compliant with the Americans with Disabilities Act (ADA), and other federal and state regulations, and is committed to keeping the City accessible for the mobility challenged; and

WHEREAS, the regulated and permitted operation of dockless shared micromobility devices is recognized as an alternative means of personal transportation; and

WHEREAS, dockless shared micromobility devices left unattended and parked or leaned on walls or left on sidewalks creates a hazard to pedestrians and individuals needing access and maneuverability for ADA mobility devices; and

WHEREAS, the City has a significant interest in ensuring the public safety and order in promoting the free flow of pedestrian traffic on streets and sidewalks; and

WHEREAS, the City desires to study the impacts of dockless shared micromobility devices; and

WHEREAS, the City Council authorizes the City to engage in a 12-month pilot program to permit, control and regulate the use of dockless shared micromobility devices on sidewalks and sidewalk areas within the City to begin on January 1, 2020; and

WHEREAS, Chapter 11-4 of the City Code of the City of Pensacola provides standards relating to the regulation of City rights-of-way; and

WHEREAS, the City's intent for instituting the Pilot Program is to ensure public safety, minimize negative impacts on the public rights-of-way, and analyze data in a controlled setting to inform the City on whether to engage a future procurement process for a dockless shared micromobility device program, or other modes of dockless shared transportation, as a permanent transportation program,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Section 7-12-1 of Chapter 7-12, providing for a Dockless Shared Micromobility Device Pilot Program is hereby created to read as follows:

Section 7-12-1. - Establishment of Dockless Shared Micromobility Device Pilot Program.

The purpose of this Chapter is to establish, permit and regulate a Dockless Shared Micromobility Device Pilot Program in the City of Pensacola. The provisions of this Chapter shall apply to the Dockless Shared Micromobility Device Pilot Program and Dockless Shared Micromobility Devices. For the purpose of this Chapter, the applicant, managing agent or Vendor, and owner shall be jointly and severally liable for complying with the provisions of this Chapter, the operating agreement and permit.

SECTION 2. Section 7-12-2 of the Code of the City of Pensacola, Florida, is hereby created to read as follows:

Section 7-12-2 - Definitions.

For purposes of this Chapter, the following words and phrases, when used in this Chapter, shall have the meanings respectively ascribed to them in this section. The definitions in F.S. Ch. 316 apply to this Chapter and are hereby incorporated by reference.

Dockless Shared Micromobility Device (Micromobility Device) means a Micromobility Device made available for shared use or rent to individuals on a short-term basis for a price or fee.

Dockless Shared Micromobility Device System means a system generally, in which Dockless Shared Micromobility Devices are made available for shared use or rent to individuals on a short-term basis for a price or fee.

Geofencing means the use of GPS or RFID technology to create a virtual geographic boundary, enabling software to trigger a response when a mobile device enters or leaves a particular area.

Micromobility Device shall have the meaning ascribed to it in Section 316.003, Florida Statutes, as amended. Micromobility Device(s) are further defined as a vehicle that is powered by a motor with or without a seat or saddle for the use of the rider, which is designed to travel on not more than three wheels and which is not capable of propelling the vehicle at a speed greater than 20 miles per hour on level ground.

Motorized Scooter means any vehicle or micromobility device that is powered by a motor with or without a seat or saddle for the use of the rider, which is designed to travel on not more than three wheels, and which is not capable of propelling the vehicle at a speed greater than 20 miles per hour on level ground.

Pedestrian means people utilizing Sidewalks, Sidewalk Area or Rights-of-way on foot and shall include people using wheelchairs or other ADA-compliant devices.

Rebalancing means the process by which shared Micromobility Devices, or other devices, are redistributed to ensure their availability throughout a service area and to prevent excessive buildup of Micromobility Devices or other similar devices.

Relocate or Relocating or Removal means the process by which the City moves the Micromobility Device and either secures it at a designated location or places it at a proper distribution point.

Rights-of-way means land in which the City owns the fee or has an easement devoted to or required for use as a Transportation Facility and may lawfully grant access pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface of such rights-of-way.

Service Area means the geographical area within the City where the Vendor is authorized to offer Shared Micromobility Device service for its users/customers as defined by the Pilot Program Operating Agreement and Permit.

Sidewalk means that portion of a street between the curb line, or the lateral line, of a roadway and the adjacent property lines, intended for use by pedestrians.

Sidewalk Area(s) includes trail in the area of a sidewalk, as well as the sidewalk and may be a median strip or a strip of vegetation, grass or bushes or trees or street furniture or a combination of these between the curb line of the roadway and the adjacent property.

User means a person who uses a digital network in order to obtain a Micromobility

Device from a Vendor.

Vendor means any entity that owns, operates, redistributes, or rebalances Micromobility Devices, and deploys a Shared Micromobility Device System within the City.

SECTION 3. Section 7-12-3 of the Code of the City of Pensacola, Florida, is hereby created to read as follows:

Section 7-12-3. - Pilot Program for Shared Micromobility Devices on Public Rights-of- Way; Establishment; Criteria.

(a) The City hereby establishes a 12 month Shared Micromobility Device Pilot Program for the operation of shared micromobility devices on Sidewalks and Sidewalk Areas within the City limits.

(b) It is anticipated the Pilot Program will commence on January 1, 2020, or on such other date as directed by the City Council (“Commencement Date”), and will terminate 12 months after the Commencement Date.

(c) Shared Micromobility Devices shall not be operated in the City unless a Vendor has entered into a fully executed Operating License Agreement and permit (“Pilot Program Operating Agreement and Permit”) with the City. The Mayor is authorized to develop, and execute, the Pilot Program Operating Agreement and Permit and any other documents related to the Pilot Program.

(d) If two or more Shared Micromobility Devices from a Vendor, without a valid Pilot Program Operating Agreement and Permit with the City, are found at a particular location within the City, it will be presumed that they have been deployed by that Vendor, and it will be presumed the Vendor is in violation of this Chapter and the Shared Micromobility Devices are subject to impoundment.

(e) A Vendor shall apply to participate in the Pilot Program. The Mayor shall select up to two (2) Vendors to participate in the Pilot Program, unless otherwise directed by the City Council.

(f) No more than a total of five hundred (500) Micromobility Devices, distributed equally among the Vendors selected to participate in the Pilot Program, or as directed by the Mayor, will be permitted to operate within the City during the Pilot Program. Micromobility Devices that are impounded or removed by the City shall count towards the maximum permitted Micromobility Devices authorized within the City.

(g) Once selected as a Pilot Program participant, a Vendor shall submit a one time, non-refundable permit fee of \$500.00, prior to entering into the Pilot Program Operating Agreement and Permit, which shall be used to assist with offsetting costs to the City related to administration and enforcement of this Chapter and the Pilot Program.

(h) In addition to the non-refundable permit fee set forth herein, prior to entering into the Pilot Program Operating Agreement and Permit, a Vendor shall remit to the City a one-time, non- refundable fee in the amount of \$100.00 per device deployed by the Vendor.

(i) Prior to entering into a Pilot Program Operating Agreement and Permit, a Vendor shall, at its own expense, obtain and file with the City a performance bond in the amount of no less than \$10,000.00. The performance bond shall serve to guarantee proper performance under the requirements of this Chapter and the Pilot Program Operating Agreement and Permit; restore damage to the City's Rights-of-way; and secure and enable City to recover all costs or fines permitted under this Chapter if the Vendor fails to comply with such costs or fines. The performance bond must name the City as Obligee and be conditioned upon the full and faithful compliance by the Vendor with all requirements, duties and obligations imposed by this Chapter and the Pilot Program Operating Agreement and Permit. The performance bond shall be in a form acceptable to the City and must be issued by a surety having an A.M. Best A-VII rating or better and duly authorized to do business in the State of Florida. The City's right to recover under the performance bond shall be in addition to all other rights of the City, whether reserved in this Chapter, or authorized by other law, and no action, proceeding or exercise of a right with respect to the performance bond will affect or preclude any other right the City may have. Any proceeds recovered under the performance bond may be used to reimburse the City for such additional expenses as may be incurred by the City as a result of the failure of the Vendor to comply with the responsibilities imposed by this Chapter, including, but not limited to, attorney's fees and costs of any action or proceeding and the cost to Relocate any Micromobility Device and any unpaid violation fines.

(j) The Pilot Program Operating Agreement and Permit will be effective for a 12 month period and will automatically expire at the end of the 12 month period, unless extended, or otherwise modified, by the City Council. Upon expiration of the Pilot Program, Vendors shall immediately cease operations and, within two (2) business days of the expiration of the Pilot Program, Vendors shall remove all Micromobility Devices from the City, unless otherwise directed by the Mayor. Failure to remove all Micromobility Devices within the two (2) business day timeframe, may result in the impoundment of the Micromobility Devices and the Vendor will have to pay applicable fees to recover the Micromobility Devices from impound in accordance with this Chapter.

(k) In the event the Pilot Program is extended, or otherwise modified by the City Council, the Pilot Program Operating Agreement and Permit may be extended consistent with such direction.

(l) Upon expiration of the Pilot Program, Micromobility Devices shall not be permitted to operate within the City until and unless the City Council adopts an ordinance authorizing the same.

SECTION 4. Section 7-12-4 of the Code of the City of Pensacola, Florida, is hereby created to read as follows:

Section 7-12-4. - Operation of a Dockless Shared Micromobility Device System – Vendors' Responsibilities and Obligations; Micromobility Device Specifications.

(a) The Vendor of a Shared Micromobility Device System is responsible for maintenance

of each shared Micromobility Device.

(b) The Micromobility Device shall be restricted to a maximum speed of 15 miles per hour within the City.

(c) Each Micromobility Device shall prominently display the Vendor's company name and contact information, which may be satisfied by printing the company's Uniform Resource Locator (URL) or providing a code to download the company's mobile application.

(d) Vendors must comply with all applicable local, state and federal regulations and laws.

(e) Vendors must provide to the City an emergency preparedness plan that details where the Micromobility Devices will be located and the amount of time it will take to secure all Micromobility Devices once a tropical storm or hurricane warning has been issued by the National Weather Service. The Vendor must promptly secure, all Micromobility Devices within 12 hours of an active tropical storm warning or hurricane warning issued by the National Weather Service. Following the tropical storm or hurricane, the City will notify the Vendor when, and where, it is safe to redistribute the Micromobility Devices within the City.

(f) Micromobility Devices that are inoperable/damaged, improperly parked, blocking ADA accessibility or do not comply with this Chapter must be removed by the Vendor within one hour upon receipt of a complaint. An inoperable or damaged Micromobility Device is one that has non-functioning features or is missing components. A Micromobility Device that is not removed within this timeframe is subject to impoundment and any applicable impoundment fees, code enforcement fines, or penalties.

(g) Vendors shall provide the City with data as required in the Pilot Program Operating Agreement and Permit.

(h) Vendors must provide details on how users can utilize the Micromobility Device without a smartphone.

(i) Vendors must Rebalance the Micromobility Devices daily based on the use within each service area as defined by the Pilot Program Operating Agreement and Permit to prevent excessive buildup of units in certain locations.

(j) The Vendor's mobile application and website must inform users of how to safely and legally ride a Micromobility Device.

(k) The Vendor's mobile application must clearly direct users to customer support mechanisms, including but not limited to phone numbers or websites. The Vendor must provide a staffed, toll-free Customer Service line which must provide support 24 hours per day, 365 days per year.

(l) The Vendor must provide a direct customer service or operations staff contact to City Department staff.

(m) All Micromobility Devices shall comply with the lighting standards set forth in Section

316.2065(7), Florida Statutes, as may be amended or revised, which requires a reflective front white light visible from a distance of at least 500 feet and a reflective rear red light visible from a distance of at least 600 feet.

(n) All Micromobility Devices shall be equipped with GPS, cell phone or a comparable technology for the purpose of tracking.

(o) All Micromobility Devices must include a kickstand capable of keeping the unit upright when not in use.

(p) The only signage allowed on a Micromobility Device is to identify the Vendor. Third-party advertising is not allowed on any Micromobility Device.

(q) The Mayor, at his or her discretion, may create Geofenced areas where the Micromobility Devices shall not be utilized or parked. The Vendor must have the technology available to operate these requirements upon request.

(r) The Mayor, at his or her discretion, may create designated parking zones (i.e., bike corrals) in certain areas where the Micromobility Devices shall be parked.

SECTION 5. Section 7-12-5 of the Code of the City of Pensacola, Florida, is hereby created to read as follows:

Section 7-12-5. - Operation and Parking of a Micromobility Device.

(a) The riding and operating of Micromobility Devices and Motorized Scooters is permissible upon all Sidewalks, Sidewalk Areas and other areas a bicycle may legally travel, located within City limits, except those areas listed below:

- (i) Micromobility Devices and Motorized Scooters are prohibited from operating or parking at all times on streets, sidewalks, bike paths or sidewalk street areas on Palafox Street between Wright and Pine Streets;
- (ii) Micro Micromobility Devices and Motorized Scooters are prohibited from operating at all times on sidewalks along DeVilliers Street between Gregory and Jackson Streets;
- (iii) Veterans Memorial Park as designated by signage;
- (iv) Where prohibited by official posting; or
- (v) As designated in the Pilot Program Operating Agreement and Permit.

(b) A User of a Micromobility Device and Motorized Scooter has all the rights and duties applicable to the rider of a bicycle under Section 316.2065, Florida Statutes, except the duties imposed by Sections 316.2065(2), (3)(b) and (3)(c), which by their nature do not apply to Micromobility Devices and Motorized Scooters.

(c) Micromobility Devices and Motorized Scooters shall be restricted to a maximum speed of 15 miles per hour.

(d) A User operating a Micromobility Device and Motorized Scooter upon and along a

Sidewalk, Sidewalk Area, or across a roadway upon and along a crosswalk, has all the rights and duties applicable to a bicyclist under the same circumstances and shall yield the right-of-way to any Pedestrian and shall give an audible signal before overtaking and passing such Pedestrian.

(e) A User operating a Micromobility Device and Motorized Scooter must comply with all applicable local, state and federal laws.

(f) Use of public sidewalks for parking Micromobility Devices and Motorized Scooters:

- (i) Adversely affect the streets or sidewalks
- (ii) Inhibit pedestrian movement
- (iii) Inhibit the ingress and egress of vehicles parked on- or off-street
- (iv) Create conditions which are a threat to public safety and security
- (v) Prevent a minimum four (4) foot pedestrian clear path
- (vi) Impede access to existing docking stations, if applicable
- (vii) Impede loading zones, handicap accessible parking zone or other facilities specifically designated for handicap accessibility, on-street parking spots, curb ramps, business or residential entryways, driveways, travel lanes, bicycle lanes or be within 15 feet of a fire hydrant
- (viii) Violate Americans with Disabilities Act (ADA) accessibility requirements

SECTION 6. Section 7-12-6 of the Code of the City of Pensacola, Florida, is hereby created to read as follows:

Section 7-12-6. - Impoundment; Removal or Relocating by the City.

(a) Any shared Micromobility Device that is inoperable/damaged, improperly parked, blocking ADA accessibility, does not comply with this Chapter or are left unattended on public property, including Sidewalks, Sidewalk Areas, Rights-of-way and parks, may be impounded, removed, or relocated by the City. A shared rental Micromobility Device is not considered unattended if it is secured in a designated parking area, rack (if applicable), parked correctly or in another location or device intended for the purpose of securing such device.

(b) Any Micromobility Device that is displayed, offered, made available for rent in the City by a Vendor without a valid Pilot Program Operating Agreement and Permit with the City is subject to impoundment or Removal by the City and will be subject to applicable impoundment fees or removal fines as specified in this Chapter.

(c) The City may, but is not obligated to, remove or relocate a Micromobility Device that is in violation of this Chapter. A Vendor shall pay a \$75.00 fee per device that is removed or relocated by the City.

(d) Impoundment shall occur in accordance with F.S. § 713.78. The Vendor shall be solely responsible for all expenses, towing fees and costs required by the towing company to retrieve any impounded Micromobility Device(s). The Vendor of a Micromobility Device impounded under this Chapter will be subject to all liens and terms described under F.S. §

713.78, in addition to payment of all applicable penalties, costs, fines or fees that are due in accordance with this Chapter and applicable local, state and federal law.

SECTION 7. Section 7-12-7 of the Code of the City of Pensacola, Florida, is hereby created to read as follows:

Section 7-12-7. - Operation of a Shared Micromobility Device Program– Enforcement, Fees, Fines and Penalties.

(a) The City reserves the right to revoke any Pilot Program Operating Agreement and Permit, if there is a violation of this Chapter, the Pilot Program Operating Agreement and Permit, public health, safety or general welfare, or for other good and sufficient cause as determined by the City in its sole discretion.

(b) Violations of Sections 7-12-1 through 7-12-9 shall be enforced as non-criminal violations of City ordinances.

(c) Violations of Operating a Shared Micromobility Device System without a valid fully executed Pilot Program Operating Agreement and Permit, shall be fined \$250.00 per day for an initial offense, and \$500.00 per day for any repeat offenses within thirty (30) days of the last offense by the same Vendor. Each day of non-compliance shall be a separate offense.

(d) Violations of this Chapter or of the Pilot Program Operating Agreement and Permit shall be fined at \$100.00 per device per day for an initial offense, and \$200.00 per device per day for any repeat offenses within thirty (30) days of the last same offense by the same Vendor. Each day of non-compliance shall be a separate offense.

(e) The following fees, costs and fines shall apply to Vendors:

- | | | |
|-------|-------------------------------------------------------------|--------------------------------------------------------------------------|
| (i) | Pilot Program Permit Fee | \$ 50.00 – non-refundable |
| (ii) | Performance Bond | \$10,000.00 minimum |
| (iii) | One time per unit fee | \$100 per unit - non-refundable |
| (iv) | Removal or Relocation by the City | \$ 75.00 per device the City Fee |
| (v) | Operating Without a Valid Operating Agreement & Permit Fine | \$250 per day; \$500 per day for second offense |
| (vi) | Permit Violation Fine | \$100.00 per device per day; \$200 per device per day for second offense |

(f) At the discretion of the Mayor, a Vendor is subject to a fleet size reduction or total Pilot

Program Operating Agreement and Permit revocation should the following occur:

- (i) If the violations of the regulations set forth in this Chapter are not addressed in a timely manner; or
- (ii) 15 unaddressed violations of the regulations set forth by this Chapter within a 30 day period; or
- (iii) Submission of inaccurate or fraudulent data.

(g) In the event of fines being assessed as specified herein or a Pilot Program Operating Agreement and Permit revocation, the Mayor shall provide written notice of the fines or revocation via certified mail or other method specified upon in the operating user agreement, informing the Vendor of the violation fines or revocation.

SECTION 8. Section 7-12-8 of the Code of the City of Pensacola, Florida, is hereby created to read as follows:

Section 7-12-8. - Appeal Rights.

(a) Vendors who have been subject to the imposition of violation fines pursuant to Section 13- 2-2 or a Pilot Program Operating Agreement and Permit revocation may appeal the imposition of violation fines or the revocation. Should a Vendor seek an appeal from the imposition of violation fines or the Pilot Program Operating Agreement and Permit revocation, the Vendor shall furnish notice of such request for appeal to the City Code Enforcement Authority no later than ten (10) business days from the date of receipt of the certified letter informing the Vendor of the imposition of violation fines or revocation of the Pilot Program Operating Agreement and Permit.

(b) Upon receipt of a notice of appeal, a hearing shall be scheduled and conducted by the Special Magistrate in accordance with the authority and hearing procedures set forth in the Section 13-1-6. The hearing shall be conducted at the next regular meeting date of the Code Enforcement Authority or other meeting date of the Code Enforcement Authority as agreed between the City and the Vendor.

(c) Findings of fact shall be based upon a preponderance of the evidence and shall be based exclusively on the evidence of record and on matters officially recognized.

(d) The Special Magistrate shall render a final order within thirty (30) calendar days after the hearing concludes, unless the Parties waive the time requirement. The final order shall contain written findings of fact, conclusions of law, and a recommendation to approve, approve with conditions or deny the decision subject to appeal. A copy of the final order shall be provided to the Parties by certified mail or, upon mutual agreement of the Parties, by electronic communication.

(e) A Vendor may challenge the final order by a certiorari appeal filed in accordance with Florida law with the circuit court no later than thirty (30) days following rendition of the final decision or in any court having jurisdiction.

SECTION 9. Section 7-12-9 of the Code of the City of Pensacola, Florida, is

hereby created to read as follows:

Section 7-12-9. - Indemnification and Insurance.

(a) As a condition of the Pilot Program Operating Agreement and Permit, the Vendor agrees to indemnify, hold harmless and defend the City, its representatives, employees, and elected and appointed officials, from and against all ADA accessibility and any and all liability, claims, damages, suits, losses, and expenses of any kind, including reasonable attorney's fees and costs for appeal, associated with or arising out of, or from the Pilot Program Operating Agreement and Permit, the use of right-of-way or city-owned property for Pilot Program operations or arising from any negligent act, omission or error of the Vendor, owner or, managing agent, its agents or employees or from failure of the Vendor, its agents or employees, to comply with each and every requirement of this Ordinance, the Pilot Program Operating Agreement and Permit or with any other federal, state, or local traffic law or any combination of same.

(b) Prior to commencing operation in the Pilot Program, the Vendor shall provide and maintain such liability insurance, property damage insurance and other specified coverages in amounts and types as determined by the City and contained in the Pilot Program Operating Agreement and Permit, necessary to protect the City its representatives, employees, and elected and appointed officials, from all claims and damage to property or bodily injury, including death, which may arise from any aspect of the Pilot Program or its operation.

(c) A Vendor shall include language in their User agreement that requires, to the fullest extent permitted by law, the User to fully release, indemnify and hold harmless the City.

(d) In addition to the requirements set forth herein, the Vendor shall provide any additional insurance coverages in the specified amounts and comply with any revised indemnification provision specified in the Pilot Program Operating Agreement and Permit.

(e) The Vendor shall provide proof of all required insurance prior to receiving a fully executed Pilot Program Operating Agreement and Permit.

SECTION 10. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION 11. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 12. This ordinance shall take effect on the fifth business day after adoption, unless otherwise provided, pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk