

**ORDINANCE ESTABLISHING REGULATIONS FOR MOTORIZED SCOOTERS
AND ELECTRIC ASSISTED BICYCLES AND THE OPERATION
OF SHARED ACTIVE TRANSPORTATION SYSTEMS
IN THE CITY OF GASTONIA**

WHEREAS, the City Council desires to establish regulations to allow the use of portions of the right-of-way and city real property by motorized scooters and by privately owned shared active transportation systems; to maintain the rights-of-way clear of unnecessary obstructions; and to protect the health, safety, and welfare of the citizens of Gastonia;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GASTONIA THAT:

Section 1: The Code of Ordinances of the City of Gastonia is hereby amended by adding a new Chapter 21 as follows:

Chapter 21. - SHARED ACTIVE TRANSPORTATION SYSTEMS

Sec. 21-1. - Adoption of definitions in general statutes.

The definitions of the following words set out in G.S. 20-4.01, as amended from time to time, are adopted as part of this article: electric assisted bicycle and vehicle.

Sec. 21-2. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

Bicycle means a non-motorized vehicle with two or three wheels in tandem, a steering handle, one or two saddle seats, and pedals by which the vehicle is propelled.

Customer means a person that rents or operates a shared device from a shared active transportation system permittee.

Device operating area means the right-of-way (for all shared devices) and greenway trails (for bicycles only) where operation of a shared device is authorized by a permit.

Department means the city's planning department.

Director means the director of the city's planning department or her/his designee.

Electric assisted bicycle means a bicycle with two or three wheels that is equipped with a seat or saddle for use by the rider, fully operable pedals for human propulsion, and an electric motor of no more than 750 watts, whose maximum speed on a level surface when powered solely by such a motor is no greater than 20 miles per hour.

Greenway trail means a pathway designated by signage as a public trail for bicycles and pedestrians and not for motorized vehicular use by the general public. A greenway trail is not located within the right-of-way of a street.

Motorized scooter means a vehicle that is steered by a steering handle, designed to be stood upon by the operator while the vehicle is in operation, and powered by a motor capable of propelling the vehicle at a speed no greater than 18 miles per hour on a level surface; and whose wheels have diameters of ten inches or less.

Operate means, when used in direct reference to a shared device, to use the shared device for transportation. Operate includes to park a shared device.

Permit means a permit issued by the department pursuant to this article for a permittee to conduct a shared active transportation system.

Permittee is any person that conducts a shared active transportation system.

Rebalance means to move shared devices from one location. to another, generally for the purpose of avoiding having too many devices in one location.

Right-of-way means the area owned or maintained by the City of Gastonia, State of North Carolina, a public utility, a railroad, or a private concern for the placement of such utilities and/or facilities for the passage of vehicles or pedestrians, including roads, pedestrian walkways, utilities, or railroads. Right-of-way includes the following, if they satisfy the foregoing definition: public street, highway, bridge, alley, bike lane, sidewalk, trail, median, gutter, or shoulder.

Shared active transportation system (SATS) means a business that provides one or more shared devices for rentals where, by design of the permittee, the shared devices are intended to be parked in a device operating area, but not connected to a dedicated docking station, when not rented by a customer.

Shared device means bicycle, electric assisted bicycle, or motorized scooter rented by a permittee to customers through a SATS.

Sec. 21-3. - Authorization.

Unlawful to operate SATS without authorization. It is unlawful for any person to conduct a shared active transportation system within the city except pursuant to this article.

Sec. 21-4. - Permits required; issuance; nature of permits.

- (a) No person may conduct a SATS in the city who does not hold a valid permit. A permit will be issued if the department finds that the application meets the requirements of this article for issuance of the permit, including payment of applicable fees, which shall be set from time to time by city council. Permits will be effective for a period of one year and are renewable subject to the same standards of review as for the initial permit. The director is authorized to write terms and conditions in permits as appropriate to effectuate this article, including limiting the shared device fleet size of a permittee to improve permit compliance.
- (b) A permit does not grant exclusive rights to operate a shared active transportation system in device operating areas.
- (c) Each permittee shall comply with its permit.

Sec. 21-5. - Equipment and shared devices requirements.

- (a) When used in a shared active transportation system, bicycles and electric assisted bicycles shall meet the standards in (i) the Code of Federal Regulations (CFR) under Title 16, Chapter

II, Subchapter C, Part 1512 - Requirements for Bicycles, as amended; and (ii) the standards in ISO 43.150 - Cycles, subsection 4210, as amended.

- (b) All shared devices shall comply with the applicable equipment and vehicle registration requirements of N.C.G.S. Ch. 20.
- (c) Permittees shall provide, on every shared device, contact information of the permittee including the website and phone number.
- (d) All shared devices must be equipped with technology, such as GPS, that allows the shared device to be located and tracked by the permittee at all times.
- (e) Permittees shall see that every shared device prominently displays a unique and easily read serial number or other identifier.

Sec. 21-6. - Operation of SATS.

- (a) A permit is valid for conducting a SATS within device operating areas only, and with the consent of the owner or lawful occupant on other real property. It is unlawful to operate a shared device on any real property outside device operating areas without consent of the property's owner or lawful occupant. Each permittee shall have at all times the ability to discover when its shared devices are operated outside device operating areas and to communicate electronically that information to customers who have operated a shared device outside device operating areas. Permittees shall communicate to customers at the end of a trip when the shared device has been operated outside device operating areas.
- (b) Permittees shall not restrict the operation of shared devices to only certain geographical areas of the city unless approved by the city.
- (c) Permittees shall not discriminate against low and moderate income persons in connection with permitted activities and conducting its SATS in the city. Permittees must deploy and maintain a sufficient number of shared devices to satisfy customer demand within census tracts of low and moderate income areas of the city as defined in the permit.
- (d) Each permittee shall implement programs to reduce barriers to low-income persons to rent its shared devices by providing diverse payment options, including options for persons with neither a smart phone nor a credit card to rent its shared device. These options shall be made accessible to low-income persons at multiple locations within the permittee's area of operation.
- (e) The director is authorized to limit the total number of shared devices, including the mix of shared devices, within device operating areas in order to (1) maintain the integrity of the city's entire transportation system; (2) keep rights-of-way free and clear of unnecessary obstructions; and (3) protect the health, safety, and welfare of the citizens of the city.

Sec. 21-7. - Permittee communication with customers.

- (a) Permittees shall include substantially the following information for prospective customers on the permittee's mobile app and web site, and also displayed on the shared device for which the information is applicable:
 - (1) Persons operating bicycles and electric assisted bicycles are encouraged to wear helmets.

- (2) Persons operating motorized scooters must be at least 16 years old and wear a helmet.
- (3) NC law requires persons operating the device to follow applicable traffic laws.
- (4) City ordinance prohibits operating the device on sidewalks.
- (5) Operating electric assisted bicycles and motorized scooters is prohibited on greenway trails.
- (b) Permittees shall adopt and implement programs to educate customers on how to safely operate shared devices, including knowledge of laws applicable to operating a shared device in the city.
- (c) Permittees shall communicate to prospective customers sufficient information on charges that may be made, including rates and dollar amounts of fees, including rental charges, minimum charges, maximum charges, charges for additional time, and charges for overage periods. If charges may be based on time or distance, information on the rate per minute, hour, mile, or other applicable time period or distance shall also be provided.
- (d) Permittees shall have a 24-hour phone number for customers to report safety concerns and complaints, and to ask questions.
- (e) All communications required by this article to be made by a permittee to prospective customers and customers shall be in clear, plain English and displayed in a sufficiently prominent way that the communication is obvious.

Sec. 21-8. - Insurance, indemnification, security, and liability.

- (a) At all times when conducting a SATS, a permittee shall maintain insurance in effect and provide proof of such insurance, both as required by the department.
- (b) Every permittee shall defend and indemnify the city from and against all claims and liabilities that arise from the acts and omissions of the permittee and its customers in device operating areas, to the extent the acts and omissions relate to the operation of shared devices.
- (c) Permittees shall provide the city with a performance bond, or other security acceptable to the director, in an amount determined by the director to be sufficient to cover the obligations of the permittee under the permit. The form of the bond is subject to approval by the department after it consults the city attorney, and shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina. The bond shall guarantee the performance of all the obligations of the permittee under its permit. If the amount of the bond is set according to the number of deployed shared devices, when a permittee intends to increase the number of deployed devices, the permittee shall submit a revised performance bond, or other security acceptable to the director, before the additional shared devices may be deployed.
- (d) Each permittee shall be responsible for the costs of repair to public property damaged by its customers' use of its shared devices.

Sec. 21-9. - Parking, placement, rebalancing, and removing of shared devices.

- (a) Shared devices shall not be parked in a way that may impede the regular flow of vehicular and pedestrian travel in device operating areas or otherwise cause a violation of the City Code,

including this article. Permittees shall inform customers how and where to park a shared device in the manner required by this article. Shared devices shall be upright when parked. The permittee shall remove or re-park every one of its shared devices that is parked in violation of the permit or the City Code in accordance with the following:

- (1) During the time period of 6:00 a.m. to 6:00 p.m. on weekdays, not including legal holidays, the permittee shall remove or re-park within two hours of receiving notice from any person via mobile or other web application or phone number.
- (2) During all other times, the permittee shall remove or re-park within 12 hours of receiving notice from any person via mobile or other web application or phone number.
- (b) At any time the city may make it unlawful to park shared devices in specific locations or portions of device operating areas or public property by action of the city council.
- (c) Permittees shall remove every bicycle and electric assisted bicycle before it is parked in the same location for more than seven consecutive days.
- (d) Permittees shall remove every motorized scooter before it is parked in the same location for more than 72 consecutive hours.
- (e) Permittees shall not deploy a shared device that is inoperable or unsafe to operate. Permittees shall remove from device operating areas within 24 hours of notice any inoperable shared device or any shared device that is not safe to operate.
- (f) Each permittee shall remove and secure its entire fleet of shared devices from device operating areas for all time periods for which the National Weather Service or its successor agency forecasts (i) sustained winds of 40 mph or higher for one hour or more, or (ii) wind gusts of 58 mph or higher for any duration in the city.
- (g) Each permittee shall compensate the city for the costs incurred by the city in removing and storing its shared devices that have been improperly parked or rebalanced, including under the circumstances where a permittee fails to remove its shared devices in violation of its permit or in case its permit is terminated or otherwise not in effect.
- (h) Permittees shall provide the department with contact information so that it can order rebalancing. The city has the right to determine specific locations for rebalancing shared devices, as well as times when the shared devices must be removed from device operating areas.
- (i) If the city relocates or removes a permittee's shared devices because of a violation of a permit or this article, the permittee shall pay a fee in an amount set from time to time by city council.

Sec. 21-10. - Reporting.

- (a) Each permittee shall provide the city, or to such other persons that the city may specify, with data regarding customers and shared device trips, in the format and timeline specified by the director. The data shall include real-time availability data for all devices, archival trip data for all devices including the frequency and location of shared device trips during the permit period, including identification of the shared device by type. This data will be used to support safe, equitable, and effective management of the shared active transportation system throughout the city. The permittee shall communicate to prospective customers that this data will be collected and shared with the city.

- (b) Each permittee shall compile, for all of its shared devices deployed in the city, records of collisions or accidents reported to the permittee, the police, or the NC Department of Motor Vehicles, and records of maintenance and repair. Records shall be shared with the city when and in the manner required by the permit.

Sec. 21-11. - Revocation or non-renewal of permit; review of decisions.

- (a) Revocation or non-renewal; grounds and procedure for revocation or non-renewal. The director may, (i) at any time, revoke any permit issued to a permittee or (ii) refuse to renew a permit issued to a permittee under this article and require that permittee remove its entire fleet of shared devices from city designated areas, if the director finds:
- (1) Fraud, misrepresentation, or a knowingly false statement with respect to a material fact in the permit application or permit renewal application;
 - (2) The permittee or the permittee's agent or employee violated this article or the terms of the permit; or
 - (3) The permittee's customers operate the shared devices in such a manner as to create unsafe traffic conditions, cause a breach of the peace or public nuisance, violate any applicable law, or interfere with the rights of property owners abutting the right-of-way, and such operation is done to such an extent that the health, safety, and welfare of the citizens or their property is at substantial risk if the permit is allowed to continue in effect;

Except in case of emergency or impracticality, before revoking the permit or denying renewal of a permit, the director shall give reasonable notice to the permittee and an opportunity to be heard. A permit may be revoked or permit renewal denied pursuant to this section even if the person making the findings pursuant to this section had made a contrary finding before the permit was issued or renewed, regardless of whether the facts upon which the finding is made had changed.

(b) Notice.

- (i) The director shall cause a written notice of the revocation or denial of renewal to be served on the permittee by first-class mail, email or other electronic means, or fax, to the address or number shown on the permit application, or by any method allowed by law for service of a summons in a civil action. The person serving the notice may be any person who is 18 years or older, including the director.
 - (ii) If the director finds that time before a proposed hearing is insufficient to allow service in accordance with subsection (i), the director may, as an alternative to the means listed in subsection (i), notify the permittee by telephone of the grounds for revocation or denial of renewal and of the right to appeal, provided a written notice is also sent in accordance with subsection (i) on or before the next day that is not a holiday.
 - (iii) The notice described in subsection (i) shall set forth a brief statement of the grounds for revocation or denial of renewal and of the right to appeal.
 - (iv) The director shall see that a written record is made to show: compliance with this section (b).
- (c) Retention of fees; waiting period. If the city revokes a permit, the city shall retain the fee, if any, paid for the permit. In the case of a denial of a permit renewal, the city shall either not accept the renewal fee or return the renewal fee to the permittee. The person whose permit is

revoked or renewal denied for grounds stated in subsection (a)(1), (a)(2), or (a)(3), regardless of whether additional grounds existed, shall not be issued a permit under the same section of this article for the remainder of the time for which the revoked permit had been issued or, in the case of a denial of a permit renewal, for the term of the renewal period. The director shall use reasonable judgment in deciding whether two applicants are the same so that, for example, technical changes in the applicant, or where the applicant one year is a corporation and the next year it is an affiliate or subsidiary of the same corporation, may be disregarded.

- (d) *Review of decisions.* If the director denies the issuance of a permit, revokes a permit, denies renewal of a permit, issues a permit with terms deemed unacceptable to the permittee, or makes any other decision pursuant to this article with respect to a permit, the applicant or permittee may have that decision reviewed by filing a written request in the office of the director within ten days of the date of the notice of decision. The director or a person designated by the city manager for this purpose who is neither the person who made the decision complained of nor that person's subordinate, shall be named as the hearing officer to conduct a hearing in order to review the decision. The director shall cause a written notice of the time and place of the hearing to be given or sent to the person seeking review. The failure of the hearing officer to set a hearing within 30 days of the filing of the written request for review, or to deliver a decision within 15 days after the hearing, or within any shortened periods set by the director, shall be deemed a denial of the relief sought and affirmance of the action for which review was sought. The permittee and the director may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request a review within the time and in the manner provided for in this subsection shall constitute a waiver of the right of review. The permit may be used during the review process only if the director determines that its use would not constitute a substantial threat that the grounds described in subsection (a)(2) or (a)(3) will occur, re-occur, or continue during the review process.
- (e) *Certiorari.* A decision by the hearing officer is subject to review by the Gaston County Superior Court by proceedings in the nature of certiorari. The petition for review shall be filed with the clerk of Superior Court within the earlier of 30 days after the denial and affirmance are deemed to occur pursuant to subsection (d), or within 30 days after the decision is delivered to the applicant. Delivery is made by hand-delivery of the decision to the applicant, or by first-class or certified mail to the address provided on the application. Delivery by mail is complete when placed in the custody of the U.S. Postal Service.

Sec. 21-12. - Penalties for violations.

- (a) *Assessment of civil penalties.* The director shall assess civil penalties for violation of this article, including the terms of a permit. The director shall give the offender written notice of the nature of the violation and the amount of the civil penalty. The notice shall be served by any method allowed by law for service of a summons in a civil action, provided that the person delivering the notice may be any person who is 18 years or older, including the director. The civil penalty shall be \$200.00 per violation plus the costs incurred by the city resulting from the violation, including costs of removing shared devices from the right-of-way.

- (b) *Review of assessment of civil penalties.* Any person who has been assessed a civil penalty under this article may have that assessment reviewed by filing a written request in the office of the director within ten days of the date of service of the notice of the civil penalty. A person designated by the city manager for this purpose who is neither the person who assessed the civil penalty nor that person's subordinate shall be named as the hearing officer to conduct a hearing in order to review the assessment. The director shall cause a written notice of the time and place of the hearing to be given or sent to the person seeking review. The person assessed the penalty and the director may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request review within the time and in the manner provided for in this subsection constitutes a waiver of the right of review.
- (c) *Collection of civil penalties.* If the offender does not pay the civil penalty within ten days after having been served with the notice of the civil penalty, the director may collect the civil penalties by causing to be commenced civil actions in the nature of debt. The director may compromise such claims, before or after commencement of the civil action, if the director finds there is a reasonable probability that the city will be unable to collect the entire amount of the claim, that the amount offered in compromise of the claim reasonably reflects either the amount of money available from the offender or the amount the city is likely to recover in the civil action, taking into account the resources required to pursue the civil action, and that the facts and circumstances of the events giving rise to the claim, taken as a whole, indicate that the amount offered in compromise is fair and reasonable. Using the foregoing standards, in an appropriate case, the director may abandon a claim.
- (d) *Criminal remedies.* Except for provisions, if any, of this article that regulate the operation of shared devices, each violation of this article, including the terms of a permit, is a misdemeanor punishable by a maximum fine of \$500.00.
- (e) *Available remedies.* This article and the provisions of permits issued under this article may be enforced by an appropriate equitable remedy, including abatement orders and mandatory or prohibitory injunctions, issuing from a court of competent jurisdiction. The general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the city for equitable relief that there is an adequate remedy at law. In applying this section, the city council intends that revocation of a permit be deemed to be a remedy among other authorized remedies.

Section 3. All ordinances or portions of ordinances in conflict herewith are hereby repealed.

Section 4. Should any provision of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Section 5. This ordinance shall take effect and be in force from and after the date of its adoption.

Adopted this the ____ day of _____, 2020.

Walker E. Reid, III, Mayor

Suzanne J. Gibbs, City Clerk

EXAMPLE-GASTONIA