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ORDINANCE NO. _____

ORDINANCE AMENDING TITLE 15 (PUBLIC SERVICES), CHAPTER 15.08 (STREET RENTALS) OF THE EL PASO CITY CODE TO CREATE A NEW SECTION 15.08.150 (SHARED MOBILITY DEVICES) TO REGULATE SHARED MOBILITY DEVICES WITHIN THE PUBLIC RIGHT OF WAY AND AMENDING TITLE 15 (PUBLIC SERVICES). THE PENALTY IS AS PROVIDED IN SECTION 15.08.150 OF THE EL PASO CITY CODE AS AMENDED.

WHEREAS, new technology has evolved to allow for the shared use by the public of mobility devices; and

WHEREAS, this new technology allows shared use mobility devices to be placed on public places without the need of dock stations to store for return and retrieval of such mobility devices; and

WHEREAS, the public right of way is primary for the passage of persons and goods;

WHEREAS, the City has authority to allow for the use of a street or sidewalk for a private purpose provided that use does not interfere with the public use of the street and the sidewalk and does not create a dangerous condition on the street or sidewalk; and

WHEREAS, the City finds that it is in the best interest of the public to regulate shared use mobility devices on city streets and sidewalks in order to ensure that the public use of the streets and sidewalks is maintained and no dangerous conditions on the street or sidewalk are created; and

WHEREAS, the City finds that it is in the best interest of the public to evaluate for 12 months the placement of shared use mobility devices on the public right of way;

WHEREAS, in order to allow the City to adapt to the challenges presented during the evaluation period, it is important to designate a person within the City organization to enact regulations administratively; and

WHEREAS, prior to or following the end of the evaluation period, the City may amend this ordinance, or enact further ordinances, to regulate shared use mobility devices in accordance to the findings made during the evaluation period, including the possibility of regulating through a franchise agreement.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF EL PASO:

SECTION 1. Title 15 (Public Services), Chapter 15.08 (Street Rentals) of the El Paso City Code is amended to create a new Section 15.08.150 (Shared Mobility Devices) to read as follows:

15.08.150- Shared Mobility Devices

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A. Definitions. For purposes of this Section, the following terms have the following definitions.

1. "Director" means the person designated by the City Manager in charge of overseeing the enforcement of this Section.
2. "Electric Personal Assistive Mobility Device" means a two non-tandem wheeled device designed for transporting one person that is self-balancing and propelled by an electric propulsion system with an average power of 750 watts or one horsepower.
3. "Non-Personally Identifiable Information" or "non-PII" means data or information that is anonymous.
4. "Person" means a natural person as well as any entity or organization formed under the laws of any state in the United States or abroad.
5. "Permit" means a permit issued by the Director under this Section.
6. "Public Right of Way" means any portion of a street or sidewalk dedicated to the City of El Paso for the use of the public.
7. "Risk Manager" means the person designated by the City Manager as such.
8. "Shared Use Mobility Device(s)" means a motor driven, or non-motor driven, bicycle, scooter, Electric Personal Assistive Mobility Device, or other similar device made available by a Person to the public for rent regardless of whether a fee is charged for the rental of such device. The definition applies regardless of whether the Shared Use Mobility Device is dock less or must be returned to a docking station.

B. Prohibition. A Person shall not place a Shared Use Mobility Device on the Public Right of Way without obtaining a Permit under this Section of the El Paso City Code. A Person who obtains a Permit under this Section shall abide by all requirements prescribed under this Section as well as all regulations adopted by the Director under the authority granted to the Director under this Section.

C. Permit. A Person who wants to place a Shared Use Mobility Device on the Public Right of Way shall apply for a Permit on an application form as required by the Director. The Director shall issue a Permit to a Person that complies with requirements of this Section and any regulations adopted by the Director pursuant to this Section. The Director shall not issue a Permit to a Person that does not comply with the requirements of this Section or any regulations adopted by the Director pursuant to this Section. A Person is not eligible to apply for a Permit for one year following a revocation of a Permit under this Section. Unless terminated earlier as provided under this Section, all Permits issued under this Section expire January 31, 2020 regardless of the date such permit is issued. No Permit shall be issued to a Person owing ad valorem taxes to the City or who has

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defaulted on an agreement with the City within 5 years preceding the application for a Permit under this Section. Notwithstanding anything to the contrary, a permit may only be issued to a Person who owns the Shared Use Mobility Devices for which the Permit is requested. All application forms and documents under this Section must be executed by the owner of the Shared Use Mobility Devices. Nothing in this Section prohibits City Council from amending this Section to change the expiration date of all Permits.

D. Regulations and Authority of Director. The Director is authorized to perform the following:

1. Adopt, amend, and repeal regulations for the use, deployment, operation, hours of operation, maintenance, disposal of batteries, customer service, terms of use, public education, identification, contact information, personnel, equipment, speed limits, placement and parking, proof of ownership, timeframes for compliance, advertisement, redistribution, and removal of Shared Use Mobility Devices. The Director is also authorized to adopt, amend, and repeal regulations regarding the collection of Non Personally Identifiable Information data including, but not limited to, the use and sharing of Data with the City of El Paso. The City shall only use this information for the purposes of evaluating public transportation improvements, other public improvements, and public services. The City may release such non-PII pursuant to any request made under the Texas Public Information Act.
2. Establish an application form to ensure that all requirements of this Section, and any regulations adopted by the Director pursuant to this Section, are met.
3. Establish and modify boundaries within the City of El Paso for placement of Shared Use Mobility Devices.
4. Establish limits on the number and deployment of Shared Use Mobility Devices allowed within the boundaries established by the Director. The Director shall consider all factors, including but not limited to, the need or demand of Shared Use Mobility Devices within the boundaries established by the Director. The Director may request in the application form any relevant data necessary to allow the Director to evaluate requests to increase the number of Shared Use Mobility Devices allowed under a Permit.
5. Require applicants to show proof of compliance with provisions of this Section or regulations adopted by the Director.
6. Prohibit the placement, or require the immediate removal, of Shared Use Mobility Devices in certain areas of the City to accommodate any events or construction taking place on the Public Right of Way or address any emergencies that require emergency traffic control.

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7. Deny a Permit for failure to comply with this Section or the regulations adopted by the Director under this Section. The Director may deny a permit for up to one year following a Person's failure to comply with this Section or the regulations adopted by the Director under this Section.
 8. Revoke a Permit after 3 violations by a Person of any requirements under this Section or the regulations adopted by the Director under this Section. Notwithstanding anything to the contrary, the Director shall revoke a permit after the first failure by a Person to comply with the requirements of Subsections P and G below.
 9. Deny or Revoke a Permit upon discovery of any false information submitted by a Person under this Section.
 10. Remove any Shared Use Mobility Devices placed on the Public Right of Way in violation of this Section or any regulation adopted by the Director under this Section. The Director shall assess all costs incurred by the City to the owner of the Shared Use Mobility Device.
- E. Proof of Ownership. A Person shall submit proof of ownership for all Shared Use Mobility Devices under a Permit.
- F. Insurance Requirements. The Risk Manager shall establish the coverages and amounts of insurance that will be required to obtain a Permit under this Section. A Person applying for a Permit shall submit, with the application, a copy of the following documents showing proof of compliance with the coverages and amounts established by the Risk Manager: a certificate of insurance and a complete insurance policy with all endorsements. A Person shall maintain the coverages and amounts of insurance as established by the Risk Manager for the duration of the Permit. A Person shall add the City of El Paso as an additional insured to all insurance policies under this Section.
- G. Indemnification and Release Requirements. Prior to obtaining a Permit, a Person applying for a Permit shall agree in writing to an indemnification and release agreement in the form approved by the City's Risk Manager after review by the City Attorney's Office. Refusal to indemnify the City, as required under the indemnification and release agreement, will result in a revocation of a Permit and future denial of a Permit under this Section.
- H. Bond Requirements. The Risk Manager shall establish bond or irrevocable letter of credit requirements to cover the following: any damages by the public right of way caused by a Shared Use Mobility Device, costs of removing from the Public Right of Way a Shared Use Mobility Device, and costs of storing and disposing of any Shared Use Mobility Devices. A Person shall comply with the bond requirements or irrevocable letter of credit requirements established in this Section for the duration of a Permit.

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- I. Fees charged to customers. A Person holding a Permit under this Section shall clearly communicate rates to customers prior to the use of a device by any person.
- J. Maintenance and Charging. A person shall not perform maintenance on any Shared Use Mobility Device or charge any Shared Use Mobility Device on a Public Right of Way.
- K. Non-Transferability. Permits issued under this Section are not transferable.
- L. No Property Rights. A Permit does not grant any Person an exclusive right to any portion of the Right of Way.
- M. Enforcement. The Director, a code enforcement officer, and/or a City of El Paso Police Officer are authorized to enforce the provisions of this Section and the regulations adopted by the Director under this Section. A person authorized to enforce this Section is authorized to remove/relocate Shared Use Mobility Devices that are left unattended in a manner that threatens the public safety or welfare. A person authorized to enforce this Section is also authorized to require a Person using a Shared Use Mobility Device to remove/relocate a Shared Use Mobility Device that is left in a manner that threatens the public safety or welfare.
- N. Termination. Any Permits issued under this Section may be terminated by City Council for a public purpose as determined by City Council. This provision does not limit the authority of the Director under this Section.
- O. Fees and Costs. City Council may establish fees related to this Section in the annual budget resolution, including but not limited to fees for the use of the Public Right of Way, fees for processing claims, and fees for impoundment of a Shared Use Mobility Device, as may be permitted by law. In addition, the City Council may establish fees sufficient to cover the costs of processing claims related to Shared Use Mobility Devices received by the City. A Person applying for a Permit, holding a Permit, or appealing a denial or revocation of a Permit under this Section shall pay the fees in the amounts provided in the annual budget resolution adopted by City Council.
- P. Damages by Shared Use Mobility Device. A Person shall be responsible for the costs incurred by the City in repairing any damages to the Public Right of Way or any other property owned by the City of El Paso caused by a Shared Use Mobility Device owned by the Person or by the use of a Shared Use Mobility Device owned by the Person regardless of who the user of the Shared Use Mobility Device is at the time the damage was caused. The City, at its sole discretion, may elect to repair any damage caused by a Shared Use Mobility Device and assess the costs to the owner of the Shared Use Mobility Device. The owner of a Shared Use Mobility who receives an invoice from the City under this Section shall pay the invoice within 30 calendar days of receiving the invoice. The Director shall revoke the Permit of a Person who fails to comply with the requirements of this provision.

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- Q. Appeal. A Person may appeal the denial or revocation of a permit under this Section by submitting an appeal request in writing to the City Manager, or designee, and paying the required appeal fee within 15 calendar days of an action to deny or revoke a permit. The City Manager, or designee, shall hold a hearing within 30 calendar days of receiving an appeal request and appeal fee. The City Manager, or designee, shall review the denial of a Permit or revocation of a Permit for compliance with the requirements of this Section and the regulations adopted by the Director under this Section. A decision by the City Manager, or designee, is final. A Person may also appeal the assessment of any damages under Subsection P above in the same manner as described herein provided that prior to the appeal hearing the Person pays the invoice assessed under Subsection P.
- R. Headings. All headings in this Section are for reference purposes only and do not control the meaning of any provision under this Section.
- S. Penalty. A person who violates a provision under this Section may be subject to any and all of the following:
- a. A Person who violates any provision under this Section shall be found guilty of a Class C misdemeanor and punished by a fine not to exceed \$500. Each day a person fails to comply with the provisions of this Section constitutes a separate offense.
 - b. A Person that violates any provision under this Section may have a Permit denied or revoked.
 - c. A Person that violates any provision under this Section may have the Person's Share Use Mobility Devices removed by the City from the Public Right of Way. Such removal shall be at the sole expense of the Person owning the Shared Use Mobility Device and the City may employ any methods allowed under law to recover the expenses of removing from the Public Right of Way and storing a removed Shared Use Mobility Device. A Person shall pay all expenses incurred by the City in the removal of a Shared Use Mobility Device before the City releases the Shared Use Mobility Device to the Person. Any Shared Use Mobility Devices that remain unclaimed for a period of 30 calendar days following removal from the Public Right of Way shall be disposed of in accordance to applicable law.
- T. Abatement. Nothing in this Section limits the City of El Paso's right to abate an unlawful obstruction or use of a Public Right of Way. The City may remove from the Public Right of Way any items unlawfully placed on the Public Right of Way and dispose of such item, including by sale, after 30 calendar days of notification to the owner or following a reasonable, but unsuccessful, attempt to locate the owner of such item. The City is entitled to retain any proceeds of a sale disposing of an item in order to cover the costs incurred by the City for removal and storage of such item.

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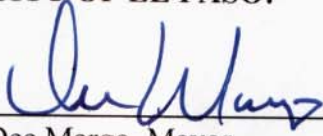
U. Not Applicable. This Section does not apply to the following: a Person, or government entity, placing a Shared Use Mobility Device on the Public Right of Way pursuant to a valid permit or authorization issued under any other Section of the El Paso City Code; or a government entity placing a Shared Use Mobility Device on the Public Right of Way pursuant to an interlocal or other similar agreement with the City of El Paso. A Permit under this Section does not authorize a Person to place or operate a Shared Use Mobility Device on private property or property owned or controlled by any other governmental entity, school district, or institution of higher education, including but not limited to the University of Texas at El Paso.

SECTION 2. Except as herein amended, all provisions of Title 15 remains in full force and effect.

SECTION 3. This Ordinance takes effect January 31, 2019.


ADOPTED this 8th day of January, 2019.

CITY OF EL PASO:



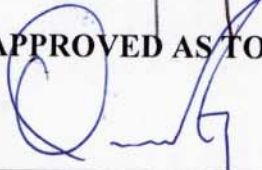
Dee Margo, Mayor

ATTEST:



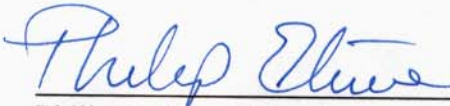
Laura D. Prine, City Clerk

APPROVED AS TO FORM:



Omar A. De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:



Philip F. Etwe, Director
Planning & Inspections Department

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