

Attachment A
Ordinance O-2019-27

Micromobility
September 9, 2019 Second Reading

AN ORDINANCE

ADDING A NEW CHAPTER 5.57 TO THE LAKEWOOD MUNICIPAL CODE CONCERNING THE LICENSING OF COMMERCIAL MICROMOBILITY COMPANIES

WHEREAS, the City Council of the City of Lakewood recognizes the transportation opportunities and community challenges associated with micromobility devices;

WHEREAS, the City Council believes a local licensing system for micromobility companies is appropriate to improve transportation while protecting the health, safety and welfare of the community;

WHEREAS, approval of this ordinance on first reading is intended only to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity present evidence and testimony regarding the proposal; and

WHEREAS, approval of this ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies the proposal.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood Colorado:

SECTION 1. A new Chapter 5.57 is hereby added to Title 5 (Business Licenses and Regulations) of the Lakewood Municipal Code to read in full as follows:

Chapter 5.57

COMMERCIAL MICROMOBILITY – PILOT PROGRAM

5.57.010 Definitions

As used in this Chapter, the following words and terms shall be defined as follows:

"Bicycle" means a vehicle propelled by human power applied to pedals upon which a person may ride and having two tandem wheels or having two parallel wheels and one forward or rear wheel, all of which are more than fourteen inches in diameter.

"Bicyclist" means any person operating a bicycle or an electric assisted bicycle anywhere within the City.

"City" means the City of Lakewood, Colorado.

"City Manager" means the Lakewood City Manager or designee.

"Commercial Micromobility Company" or "Company" means a business, person or other entity that provides bicycles, electric assisted bicycles, EPAMD and/or electric mobility devices within the City for a fee. Commercial Micromobility Company does not include any entity or person that provides five (5) bicycles, electrical assisted bicycles, EPAMD and/or electric mobility devices or fewer within the City as a minor component of its business relationship with Riders, such as landlord for tenants, employer for

employees, schools for students and staff, geographically use-restricted to private property, or personally owned and used.

“Commercial Micromobility License” or “License” means a license required under this Chapter 5.57.

“Device” means a bicycle, electric assisted bicycle, EPAMD or electric mobility device.

“Electric Assisted Bicycle” means a vehicle having two tandem wheels or two parallel wheels and one forward or rear wheel, fully operable pedals, an electric motor not exceeding seven hundred fifty (750) watts of power, and a top motor-powered speed of twenty (20) miles per hour.

“Electric Mobility Device” means a device weighing less than 100 pounds, typically with handlebars and an electric motor, that has a maximum speed of twenty (20) miles per hour on a paved level surface when powered solely by the electric motor. Electric mobility device does not include a motorcycle, low-power scooter, toy vehicle, golf car, low speed electric vehicle, wheelchair or any device designed to assist people with mobility impairments who use the pedestrian rights of way.

“Electric Personal Assistive Mobility Device” or “EPAMD” means a self-balancing, nontandem two-wheeled device, designed to transport only one person, that is powered solely by an electric propulsion system producing an average power output of no more than seven hundred fifty (750) watts.

“Rider” means any person operating a Device.

5.57.020 License Required

It is unlawful for any Commercial Micromobility Company to operate or to allow its Devices to be operated or to locate its Devices within the City without a valid Commercial Micromobility License.

5.57.030 License Application

A. All applicants for a Commercial Micromobility License Pilot Program shall file an application with the City Clerk on forms approved by the City Manager and provided by the City Clerk.

B. The City Manager will establish an initial application deadline. All applications received by this deadline that are approved shall have a common effective date that will initiate a prohibition of additional Licenses for a period determined by the City Manager not to exceed one (1) year. After the initial one-year license period expires, applications from new licensees may be submitted at any time using the latest City requirements.

C. The application for a License shall include, but not be limited to, the following:

1. The applicant shall identify the types of Devices proposed for use in the City, and detail why the selected devices are the best fit for the City.

2. The applicant shall submit a proposal that includes the following:

- a. The maximum and minimum number of each type of Device that the applicant will initially make available to the public;
- b. A usage-based method for increasing and decreasing the maximum number of each type of Device the applicant will make available to the public; and
- c. The recommended maximum number of each type of Device to be initially provided for use in the City by all Companies in the aggregate. The City may waive this requirement if it determines, in the City's sole and absolute discretion, that such information is no longer necessary.

d. Method by which applicant will ensure that all riders are 18 years of age or older and are in possession of a valid driver's license.

e. Geofencing plan that ensures that devices are not ridden in designated dismount zones, as identified by the City Manager.

3. The applicant shall submit a plan, acceptable to the City Manager, to provide for the following:

- a. Education of Riders regarding legal operation and parking of Devices;
- b. Incentives for Riders to properly operate and park Devices; up to and including revocation of a Rider's access to Company's Devices~~;~~;
- c. Initial distribution and on-going re-distribution of Devices;
- d. Retrieval of Devices;
- e. Inspection ~~and~~ repair and replacement of Devices as new and safer technologies become available;
- f. Methods to ~~encourage Riders to use helmets~~make helmets available to all riders;
- g. Establishment of a customer and community feedback system, whereby feedback and complaints are addressed.
- h. The sharing of ridership, customer service and safety-related data relating to both ridership and devices (e.g., recalls, voluntary or mandatory for device or component of device); ~~and~~
- ~~h~~i. Permanently affixing to each Device a weatherproof, permanent sign that identifies the owner of the Device, a unique Device identification number geographically tracked by the Company, and a customer service phone number; ~~and~~
- j. Permanently affix to each Device a head lamp and reflectors that increase visibility during permitted riding hours at times when natural lighting may be insufficient.

4. The applicant shall provide contact information, as determined by the City Manager, which is continuously monitored by a local representative for questions, maintenance issues, complaints, safety concerns or other issue resolution including retrieving Devices.

5. If an applicant's previous License was revoked or suspended, the applicant shall also demonstrate, in a form or manner satisfactory to the City, that the cause of the revocation or suspension has been remedied and will not reoccur.

5.57.0359 Unilateral Discretion

The City Manager retains absolute and unilateral discretion to add, delete, or otherwise amend the requirements, standards, and regulations of a License. This discretion includes, but is not limited to, the power to any time, revoke, suspend, modify, or terminate a License or the entire License program at any time.

5.57.040 Requirements for License Issuance

A. The City Manager may limit the number of Companies and Licenses for each type of Device. A Company with a previous License, in good standing with the City, will receive a new License upon an approved application before any new Companies to the City are issued Licenses.

B. Each License shall include and be subject to, but not limited to, the following requirements acceptable to the City Manager:

1. Certification for each Device;

2. The minimum number of each type of Device the Company will typically make available to the public during normal operating hours;

3. The maximum number of each type of Device the Company can make available to the public upon initiation of the License term;

4. A usage-based method for increasing and decreasing the maximum number of each type of Device the Company can make available to the public;

5. Maximum time for Device retrieval for each Device that fails an inspection, is improperly parked, is unused for any 48-hour period, causes a verified complaint, or exceeds the Company's approved maximum number for such Device;

6. Obligations to:

a. Educate Riders of legal operation and parking of Devices and that the City is neither providing nor approving any Device nor insuring the Company or Riders;

b. Incentivize Riders to properly operate and park Devices including conditions in which use by particular Riders would be prohibited;

c. Initially distribute, re-distribute and retrieve Devices;

d. Inspect and repair Devices;

e. Encourage Riders to use helmets;

f. Share data at a frequency and in a format and granularity adequate to verify Company operations meet the intent of the License, and for auditing, police enforcement and infrastructure planning needs of the City; ~~and~~

g. Permanently affix to each Device a weatherproof, permanent sign that identifies the owner of the Device, a unique Device identification number geographically tracked by the Company and a customer service contact, as determined by the City Manager; ~~and-~~

h. Provide liability and medical insurance coverage meeting the state automotive insurance minimum requirement as part of the rental agreement.

7. The Company's authorization for the City to relocate or impound any Device improperly parked or otherwise in violation of this chapter;

8. An affirmative obligation by the Company to timely and fully cooperate with the Lakewood Police Department during any investigation of an incident alleged to have involved a Device or Rider associated with the Company;

9. Whether advertising is permitted on any Device;

10. A comprehensive general liability insurance certificate naming the City of Lakewood and its officers and its employees as additional insureds;

11. Company commitment to indemnify, defend and hold harmless the City of Lakewood and its employees from and against all third-party claims and a waiver of liability/release of claims in favor of the City, including from Riders;

12. Acknowledgement of the City's liability limitations under the Colorado Governmental Immunity Act;

13. Remedies including License modification, License suspension and License revocation for violation of any provision of the License;

14. Payment of applicable License fees and the deposit amount required prior to a License becoming valid;

15. A report of Company operations submitted to the City no later than thirty (30) calendar days following expiration of the License as required by the City Manager; and

16. Signature of an authorized person binding the Company to the License terms.

17. Licensees shall obtain and maintain BBB accreditation, and have and maintain a defined-minimum rating of (Insert letter rating here, e.g., A).

C. Licenses are not assignable or transferable; with the exception of assignment to a successor entity in the event of a sale of all or substantially all of Licensee's assets or stock or a reorganization within Licensee's existing ownership structure.

D. Licenses shall be effective for a period not to exceed 365 calendar days or as determined by the City Manager.

5.57.050 - License Fees and Costs

A. The City Manager shall establish a License application fee adequate to recover the average costs of application review and preparing and issuing a License. This fee must be paid upon submission of a License application. The City will not process applications submitted unless the fee has been paid.

B. Each Company shall deposit an amount determined by the City Manager from which the City may deduct its costs associated with the Company's operation and Devices, including, but not limited to, City responses to public inquiries, Device relocation or retrieval, and Device impoundment.

1. The deposit amount shall be based on the maximum number of Devices the Company is permitted to provide to the public, the Licensee's performance record in the City and other communities, and other considerations determined by the City Manager to be relevant to the City's potential costs attributable in part or in whole to the Company.

2. The City Manager shall establish a minimum deposit amount below which the company shall replenish within thirty (30) calendar days of notice from the City the fund to an amount determined by the City Manager.

3. The City shall provide an annual reconciliation to the Company of the deposit amount and costs paid from the deposit amount.

4. The remaining deposit amount shall be returned to the Company following:

a. Expiration of the current License without approval of a License for the immediately subsequent period;

b. Submittal of the required operations report; and

c. Deduction of any amounts necessary to retrieve any of the Company's Devices remaining within the City and any other appropriate costs.

C. Insufficient funds on deposit with the City shall not relieve any Company of the obligation to reimburse the City for costs for which the deposit is intended and may result in, but is not limited to, License suspension or revocation.

D. The City Manager may reduce or waive the deposit requirement for any Company based on previous License periods during which use of the deposit was unnecessary or minimal.

5.57.060 - Device Relocation, Retrieval and Impoundment

- A. Any Device not in compliance with the License shall constitute a violation of this chapter.
- B. The City is authorized to relocate or retrieve and impound any Device not in compliance with a License. The City shall give notice to the Company of each impounded Device. Such notice shall be to any one of the Company's contacts identified on the License application. The Company shall reclaim impounded devices within 30 calendar days of notice from the City.
- C. The City shall deduct from the Company's funds on deposit with the City all costs and fees of such impoundment. To the extent such deposit is inadequate, the Company shall pay to the City the remaining amounts due within 30 calendar days of billing, and such amounts shall accrue interest after such due date. If not paid within 30 calendar days after billing, such amounts, including interest and collection costs, shall be subject to collection by any lawful method.
- D. The City may sell, donate, recycle or dispose of any Device, as determined by the City Manager, if:
1. The City impounds a Device that is not reclaimed by the Company within thirty (30) calendar days of the date of receipt of the notice provided in subsection B hereof; or
 2. The relevant Company is not identifiable.

Such action by the City shall not relieve the Company of its obligation to pay costs and fees.

5.57.070 - Report of Changes

The Company shall report any change in ownership, contact information or location to the City within ten (10) calendar days of the change.

5.57.080 Administration and Enforcement

- A. Administration. This chapter shall be administered and enforced by the City Manager. The City Manager is hereby authorized and directed to promulgate and implement rules, regulations and procedures necessary or appropriate for administration and enforcement of this Chapter.
- B. Enforcement. The City is hereby authorized to enter into, on or upon any public property to examine a Device or parts thereof, to obtain information as to the identity of the owner of any Device, to retrieve or relocate any Device and to impound any Device in accordance with the provisions of this Chapter. Nothing contained in this Chapter shall be deemed to limit the City Manager from entering private property pursuant to permission from the owner or occupant thereof.
- C. Appeal. Any Company may appeal any order, decision or determination of the City Manager that is directly applicable to such Company in accordance with the following:
1. The appeal shall be in writing and received by the City Manager within ten (10) calendar days after delivery of the City Manager's order, decision or determination or, if the order, decision or determination is not one that is directed at any particular Company, within ninety (90) calendar days after the order, decision or determination has been enacted.

2. The appeal shall include the specific objection to the order, decision or determination being appealed, the bases for the appeal including relevant citations to the City's Municipal Code, if applicable, and any specific action proposed by the Company to warrant reconsideration.
3. The City Manager shall designate a hearing officer to hear and decide the appeal through an informal hearing held within twenty (20) calendar days of the City's receipt of the appeal, unless the hearing officer grants additional time for good cause.
4. The hearing officer is authorized to uphold, modify or overturn the City Manager's order, decision or determination. Such order, decision or determination shall remain in effect during the pendency of any appeal.
5. The hearing officer shall render a written decision, which shall be mailed to the appealing Company within fifteen (15) calendar days of the hearing.
6. The decision of the hearing officer shall constitute a final agency action for purposes of any further appeal.

5.57.090 – Noncompliance

- A. It is unlawful for any person to violate a provision of this Chapter or a provision of a License.
- B. Continued operation in compliance with a License shall be a continuing condition of the validity of the License. The City Manager may immediately suspend, modify or revoke a License upon evidence satisfactory to the City Manager of noncompliance by a Company. Suspension, modification or revocation of a License is not an exclusive remedy for any violation of a License.

5.57.100 Cumulative Effect

The provisions of this chapter are cumulative and in addition to any and all other procedures, remedies or penalties provided in the City's municipal code or by state law for the abatement of, or prosecutions for, nuisances. Proceedings under this chapter shall not prejudice or affect any other action, whether civil, criminal, equitable or administrative, for abatement or other remedy of such conditions. Nothing contained herein shall be deemed to invalidate, supersede or render ineffective any other provision of any ordinance of the City. Neither the inclusion, nor the failure to include, under the terms of this chapter, any act or condition otherwise in violation of any provision of this code or other ordinance of the City, is unlawful or constitutes a nuisance, shall be deemed to render such act or condition lawful.

SECTION 2. Effective Date. This Ordinance shall become effective thirty (30) days after final publication.

SECTION 3. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a regular meeting of the Lakewood City Council on the 10th day of June, 2019; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 13th day of June, 2019; set for public hearing on the ____ day of ____, 2019; read, finally passed and adopted by the City Council on the ____ day of ____, 2019; and signed and approved by the Mayor on the ____ day of June, 2019.

Adam Paul, Mayor ATTEST:

Margy Greer, City Clerk

APPROVED AS TO FORM:

Timothy P. Cox, City Attorney