



MIAMI BEACH

OFFICE OF THE MAYOR AND COMMISSION

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber
Members of the City Commission
Alina T. Hudak, City Manager

FROM: Rafael A. Paz, Acting City Attorney

DATE: September 17, 2021

SUBJECT: REFERRAL TO THE LAND USE AND SUSTAINABILITY COMMITTEE OF A DISCUSSION ITEM TO CONSIDER AMENDING THE CITY'S LAND DEVELOPMENT REGULATIONS TO EXTINGUISH THE GRANDFATHERING OF MOTOR SCOOTER RENTALS AS LEGAL, NON-CONFORMING USES AS OF A DATE CERTAIN, WITH THE FINAL DATE FOR THE TERMINATION OF MOTOR SCOOTER RENTALS IN THE CITY TO BE BASED UPON AN AMORTIZATION TIMELINE TO BE ESTABLISHED AS PART OF THE PROPOSED LEGISLATION.

Commissioner David Richardson requests that a discussion item regarding proposed ordinance amendments to the City's Land Development Regulations (similar to Ordinance 1416 enacted by Panama City Beach, Florida, and attached hereto as Exhibit "A") be referred to the Land Use and Sustainability Committee ("LUSC") for consideration at its October 19, 2021 meeting. Essentially, the proposed ordinance amendments would accomplish the following:

- (i) Extinguish the grandfathering of motor scooter rentals as legal-nonconforming uses, based upon an appropriate timeframe (amortization schedule) yet to be established;
- (ii) provide a method for affected businesses to seek limited relief from the use prohibition and extinguishment established by such amendments; and
- (iii) repeal any ordinances, or portions thereof, in conflict with such amendments to the extent of any such conflict(s).

By way of background, the large influx of visitors into the City each year places additional stress on the City's infrastructure, including the City's beaches, parks, roadways and sidewalks, placing increased demands on the City's police, fire, code compliance and sanitation resources. These additional stressors include the large number of visitors who rent motorized scooters, primarily in order to joyride around the City for amusement purposes.

Due to their small size and maneuverability, motorized scooters may be used to weave in and out of traffic, and on and off sidewalks and bicycle paths, thereby endangering pedestrians, cyclists, and operators of other motor vehicles. Unfortunately, City records

demonstrate that the joyriding of motorized scooters has resulted in many violations of State and local laws, and has generated a great deal of complaints of dangerous and reckless conduct.

On numerous occasions, the City Commission has attempted to mitigate these negative impacts of rental scooters by amending the City's General Ordinances and Land Development Regulations to address and remediate these ongoing issues and concerns:

On May 6, 2018, the City Commission amended Chapter 70 of the City Code to establish specific regulations for rentals of electric bicycles, mopeds, motorcycles, motorized bicycles, and motorized scooters, and further prohibited rentals of mopeds, motorcycles that are powered by a motor with a displacement of 50 cubic centimeters or less, and motorized bicycles during specified dates each year; and

On January 16, 2019, the City Commission adopted Ordinance No. 2019-4232, which amended Section 70-70.1 of the City Code, to remove the prohibition regarding rentals of mopeds, motorcycles or motorized bicycles during specified dates each year, and instead set forth certain additional requirements relating to such rentals; and

On September 16, 2020, the Mayor and City Commission adopted Ordinance No. 2020-4356, which again amended Section 70-70.1 of the City Code, by:

- (i) limiting, to a maximum of twenty-five (25), the total number of rental mopeds, motorcycles, and motorized bicycles which any business entity may have in its fleet available for rent or lease;
- (ii) authorizing the City Manager to prohibit the rental or lease of such motorized vehicles upon a declaration of a high impact period;
- (iii) prohibiting the overnight rental or lease of such vehicles;
- (iv) mandating certain signage requirements regarding the prohibited hours of operating such vehicles (7 p.m. through 7 a.m.); and
- (v) establishing additional penalties for violation(s); and

On November 18, 2020, due to continued and ongoing issues with motorized scooters and similar vehicles, the City Commission adopted Ordinance 2020-4369, which further amended Sections 70-70.1 and 70-71 of the City Code, by:

- (i) mandating the installation of an emergency power off ("EPO") device onto each moped, motorcycle powered by motor with a displacement of 50 cubic centimeters or less, and motorized bicycle available for rent or lease by those business establishments renting or leasing such vehicles in the City;
- (ii) requiring all persons that rent or lease such mopeds, motorcycles, and motorized bicycles in the City to return such vehicle prior to 7:00 p.m. daily; and
- (iii) establishing penalties for violations of section 70-70.1; and

On December 9, 2020, the City Commission adopted Ordinance No. 2020-4388, which created Section 142-3 of the Land Use Regulations of the City Code, which prohibited the rental or lease of certain motorized vehicles (including mopeds, motorcycles that are powered by a motor with a displacement of 50 cubic centimeters or less, motorized bicycles, golf carts, motorized scooters and low-speed vehicles) within the City of Miami Beach.

As the prohibition on motor scooter rentals in Ordinance No. 2020-4388 applied prospectively, approximately fourteen (14) existing businesses located within the City at the time became legal, non-conforming ("grandfathered"), thereby allowing them to continue renting or leasing motorized vehicles.

Furthermore, on March 17, 2021, the Mayor and City Commission adopted Ordinance No. 2021-4411, which amended Section 70-70.1 of the City Code, to expand the City Manager's authority to include the suspension or closure of those business establishments that rent or lease autocycles, golf carts, low-speed vehicles and/or motorized scooters upon the City's Manager's declaration of a high impact period.

Most recently, on July 28, 2021, the Mayor and City Commission adopted Ordinance 2021-4429, which prohibits persons and business entities from bringing or delivering certain motorized vehicles to any place or location in the City for the purpose of renting or leasing, or offering for rent or lease, such motorized vehicles.

Notwithstanding the City Commission's extensive legislative efforts to address the issues relating to motor scooter rentals as outlined above, City records demonstrate that motorized scooter rentals continue to result in many violations of State and local laws, and generate a great deal of complaints of dangerous and reckless conduct in the City.

To further develop the proposed ordinance and the policy issues implicated thereby (including, but not limited to, Committee discussion surrounding the impact to residents of the ordinance in order to ensure that any proposed legislation doesn't restrict, or otherwise adversely affect, long-term motor scooter rentals for use by residents), Commissioner Richardson desires to refer this matter for discussion at the October 19, 2021 LUSC meeting.

Should you have any questions or concerns regarding this matter, please do not hesitate to contact me or First Assistant City Attorneys Mark Fishman and Nick Kallergis.

RAP/MAF/NK/bhs

ORDINANCE 1416

AN ORDINANCE OF THE CITY OF PANAMA CITY BEACH, FLORIDA, PROHIBITING THE RENTAL OF MOTOR SCOOTERS; AMENDING THE CITY'S CODE OF ORDINANCES TO PROHIBIT THE RENTAL OF MOTOR SCOOTERS AFTER SEPTEMBER 8, 2020; AMENDING THE CITY'S LAND DEVELOPMENT CODE TO PROHIBIT THE USE OF LAND FOR MOTOR SCOOTER RENTALS AFTER SEPTEMBER 8, 2020, AND TO EXTINGUISH THE GRANDFATHERING OF MOTOR SCOOTER RENTALS AS NON-CONFORMING USES; PROVIDING A METHOD FOR AFFECTED PARTIES TO SEEK LIMITED RELIEF FROM THE USE PROHIBITION ESTABLISHED BY THIS ORDINANCE; REPEALING ALL ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

BACKGROUND RECITALS

WHEREAS, the City of Panama City Beach is a tourist destination frequented by tens of thousands at a time; and

WHEREAS, while drawn to the City by the beach, visitors look for other forms of amusement off the beach as well; and

WHEREAS, several decades ago rental scooter businesses began operating in the City and provided an entertaining means of touring the City; and

WHEREAS, over the years the rental of scooters has proven itself to be a popular form of amusement, as demonstrated by the increasing number of motor scooters registered with the City over the years; and

WHEREAS, as the popularity of rental scooters increased the behavior of scooter operators became noticeably dangerous as traffic violations were more common among rental scooter than other vehicles. This problem was amplified by the lack of training, supervision, and oversight practiced by the rental scooter businesses; and

WHEREAS, as this popularity increased it became clear that this amusement attracted visitors who were, on average, inexperienced youthful drivers who enjoyed "playing in the road" as a group. This dangerous activity has become a staple of the rented scooter experience so much so that the City believes it is engrained in the City's

reputation.

WHEREAS, irresponsible driving behavior by scooter renters has become so common that it frequently affects visitors and residents who are all-too-often forced to modify their own behavior or routes of travel to compensate for this irresponsible behavior, or else fall victim to a motor vehicle accident involving a renter scooter; and

WHEREAS, because neither safety equipment nor insurance are required under state law for motor scooters, parties to a motor vehicle accident involving a motor scooter (especially a rented motor scooter) are at risk of greater damages than in a conventional motor vehicle accident as the scooter driver is entirely unprotected (physically and fiscally) from the effects of the collision and the other party is left without adequate compensation for the losses sustained; and

WHEREAS, the City's efforts to regulate rental scooter businesses to improve the behavior of the industry and its customers have been long and varied, and reflect the longstanding tension between the associated and varied problems observed by the City arising from the rental of scooter and the popularity of rented scooters with tourists, to wit,

- in 1993, the City adopted Ordinance 416, requiring rented scooters to be registered to regulate a variety of issues created by the industry; and
- in 1994, the City passed Ordinance 450-E to protect consumers by regulating the deposits charged for scooter rentals and requiring that safety equipment be available at no charge; and
- in 1995, the City passed Ordinance 450 in response to the increasing number of accidents, injuries, and property damage resulting from rented scooters. The findings of the City in Ordinance 450 are incorporated herein by reference; and
- In 1997, the City passed Ordinance 518 in reaction to an overwhelming number of visitor complaints of excessive security deposit claims for alleged damaged. The City, concerned over the damage to its reputation as a tourist destination, placed limits on security deposits to curb further abuse and excessive claims; and
- In 2002, the City passed Ordinance 747 declaring motor scooter rentals a conditional use and placing additional conditions on motor scooter rental businesses to prevent disturbances of residential neighborhoods; and
- In 2013 the City passed Ordinances 1236 and 1267 which again attempted to address the constant stream of complaints over customer deposit abuses by the motor scooter rental industry. The City also passed Ordinance 1256 requiring inspections of rental scooters to protect against unsafe scooters being rented to unwitting customers. The findings of the City in Ordinance 1236 are incorporated herein by reference; and

- In 2014 the Council adopted several ordinances (1310, 1312 and 1315) to address the exploding number of scooter rentals and dangerous conditions that explosion presented to the visitors and residents;¹
- In 2015, finding that the number of rental scooters more than doubled between 2007 and 2015, the City adopted Ordinance 1337 which required rental scooters businesses carry liability insurance and that operators wear safety vests. The City's findings in Ordinance 1337 are incorporated herein; and
- In 2015, the City adopted Ordinance 1351-L, to address these long-standing issues by requiring a reduction in motor scooter inventory over three years and re-zoned motor scooter rental businesses as a non-conforming use under the City's Land Development Code. The City's findings at that time reflected the Council's desire to prevent phasing out motor scooter rental businesses entirely. The City's findings in Ordinance 1351-L are adopted herein by reference.

RECENT DEVELOPMENTS

WHEREAS, although the present inventory of registered scooters rented in the City have been reduced to approximately 867 units and 902 medallions, the problems with the behavior of rented scooter operators continue unabated; and

WHEREAS, since January 1, 2017 through May 23, 2017, the Panama City Beach Police department wrote 305 rented scooter traffic citations, made 319 rented motor scooter stops and worked 56 rented motor scooter crashes; and

WHEREAS, the number of scooter rentals per day and the typical reckless and often illegal driving behavior of rental operators create an impracticable strain upon City resources and siphons those valuable resources from other important police work; and

WHEREAS, the City is fortunate to enjoy a robust and growing tourism and more recently local and regional retail economy which has resulted in the expansion of major roads and connectors and even more significant increases in the number of vehicles on those roads because the City is linear, being 8 miles long but only one-mile-wide with only three, parallel thoroughfares, all of which combined has resulted in increased congestion on City streets; and

WHEREAS, the materially increased congestion and size of City roads and intersections of roads have made it increasingly dangerous for inexperienced operators

¹ In 2015, City Police initiated 887 traffic stops involving motor scooters, issued 545 traffic citations to rental motor scooter operators, and investigated 124 motor vehicle accidents involving rental motor scooters.

of rented scooters to operate and, frequently play, in the streets; and

WHEREAS, additionally the increased congestion has created greater and greater incentives for the operators of rented scooters to take short cuts through parking lots, on pedestrian sidewalks, on the pier board-walk, and generally through private or quasi-public property where through traffic of any kind is inappropriate, and frequently when those areas are occupied by pedestrians; and

WHEREAS, the parking lot problem has become so severe that numbers of private businesses now prohibit scooter operators from entering their parking lots even though the operators could be potential customers, and have expressed that they have no choice because the rented scooters are operated so recklessly within their parking lots; and

WHEREAS, the limits of the City's infrastructure capacity, resources to police dangerous, disrespectful and, frequently simply mindless, behavior of the rented scooter drivers, combined with the sheer volume of rented motor scooters on the street have materially and adversely impacted the tourists' experiences and the residents' quality of life; and

FOCUS ON BEHAVIOR

WHEREAS, prior to roughly 2014 and the explosion of the number of rented scooters, the City's primary focus in regulating the operation of scooter rental business on site was to curb the excesses of some businesses in overcharging deposits and other business practices;

WHEREAS, with the explosion in the number of scooters, and the congestion of other vehicles on the roads, the City was forced to shift its focus from the business activity at the rental site to the behavior of the customers of the businesses out on the road; and

WHEREAS, in a novel and unprecedented effort to make the youthful and exuberant operators of rented scooters more self-conscious of their surroundings and less likely to engage in reckless and dangerous activity, the city by law, Ordinance 1337, adopted a three prong effort:

- first, as a condition of making the rental contract, the rental business was required to have each customer read a safety brochure and sign it, giving the customer top-of-mind realization of the fact that he or she was about to operate a vehicle on a highway, not just an amusement ride in a field somewhere, and,
- second, requiring the customer to have that signed brochure in his or her possession while operating the scooter, eliminating the possibility that the customer could ever plead ignorance or accident if observed driving

- recklessly, and
- third, requiring the customer to wear a brightly colored vest to continuously remind the customer that he or she was operating a transportation vehicle on a public road, not a trail bike in the woods, and moreover to give other drivers notice that the scooter was being operated by a potentially inexperienced and distracted driver in a foreign traffic system; and

WHEREAS, the City noticed a dramatic reduction in dangerous driving by renters upon the enforcement of Ordinance 1337, but this reduction was short lived following a finding by the First District Court of Appeal that the City was preempted by state law from requiring the operators of rental scooters to wear vests while operating on a public street because the state has preempted the regulation of safety equipment required to exercise the privilege of driving on a public street; and

WHEREAS, the effect of the First DCA's Order has foreclosed the City's ability to specifically address the problems presented by the behavior of the customers of the scooter rental businesses operating within the City; and

WHEREAS, operators of motor scooter rental businesses opposed to City regulation ironically have testified before the City Council on several occasions that no matter what they do or try, they are unable to control the behavior of their customers after they leave the business, presumably seeking sympathy from the Council to minimize the regulation of the industry when in fact this testimony has the opposite effect; and

WHEREAS, at the first reading of this ordinance numerous representatives of one scooter rental business appeared in opposition united by all wearing a red t-shirt emblazoned with its business name and slogan, which is "Ride it Like You Stole It;" and

WHEREAS, Urban Dictionary defines "Drive It Like You Stole It" as "Drive fast; drive as if you stole the car and the police are after you - - to drive a vehicle faster and more recklessly than it should be driven, acting as if you aren't the one paying for the repairs;" and

WHEREAS, the City has attempted everything within its home rule authority to improve or remove the danger and nuisance posed by the behavior of the customers of the scooter rental businesses but its unsuccessful attempts to dampen the unacceptable behavior of the customers of those businesses, and the refusal or inability of the industry itself to do so, have left no effective legislative alternative within its authority other than to make the rented-scooter resource unavailable to the visitors to the beach by prohibiting the rental of them; and

WHEREAS, despite the popularity of the rented-scooters and the benefit of this

amusement to the tourism industry which is the lifeblood of the City, the Council regrettably finds that a prohibition is in the best interests of the City, is of great public need, and is the most reasonable measure left available to the Council to protect the health, safety and welfare of the community and the reputation of the City as a safe and comfortable tourist destination and the benefit to the public outweighs the loss to the affected parties; and

WHEREAS, the City possesses home rule powers to legislate on any matter not inconsistent with general law or special law, and is specifically authorized to create and implement a plan of zoning uses, and to amend the list of uses that are permitted or prohibited; and

WHEREAS, in order to deny access to the rented-scooter resource the City in the exercise of its police power is prohibiting the conduct of renting a scooter anywhere within the city, and repealing the grandfather status of the non-conforming use of the scooter rental use under the City's Land Development Code, both effective September 8, 2020.

NOT A TAKING

WHEREAS, Florida takings law is settled that compensation for lost profits and business loss are creatures of statute, and there is no statute in Florida that commands compensation for profits lost or business damages resulting from the prohibition of renting scooters within the City; and

WHEREAS, the City Council is nonetheless mindful that to prohibit the rental of scooters in the City immediately would disappoint visitors accustomed to renting scooters during their visits to Panama City Beach and could constitute a regulatory taking of the market value of the scooters being rented today; and

WHEREAS, the Council desires to ensure that the businesses affected by this ordinance not only have sufficient time to recover their investment in purchasing scooters to rent, but also to develop alternative business models and encourage their customers to enjoy those alternatives as part of the "Real. Fun. Beach." experience; and

WHEREAS, Florida has long recognized the power of municipalities to amortize nonconforming uses as valid exercise of the police power; and

WHEREAS, the City Council has considered:

- the average cost of a scooter;
- the average rental price of a scooter for a half day and a whole day;
- the fact that the City may prohibit full-day (overnight) rentals;
- the length of the summer seasons;

- the fact that on weekends during the summer season the scooter rental businesses appear to be at full capacity, and that during the weekdays during that season they appear to be at 80% capacity;
- that a 10% allowance for repair downtime and dislocation of scooter inventory is reasonable;
- that it is reasonable to assume that gross income from scooter rentals be apportioned 1/3 to overhead, including employee salaries, 1/3 to profit and 1/3 to cost of goods sold (here rented) meaning that 1/3 of gross revenue is available to amortize the market value of scooter inventories;
- the fact that current scooter inventories include units which are two or more years old and have depreciated in value;
- the fact that the industry advertises for sale used scooters at a remarkably high portion of the average purchase price.

WHEREAS, the Council has considered the time necessary to allow motor scooter rental businesses to recoup the unrealized investments in their current scooters and wishes to provide each affected party sufficient time to recoup those investments; and

WHEREAS, based upon the above considerations, using only half day rentals, and ignoring both the availability of the fall and winter months for rentals, and ignoring the residual value of scooters on resale after being taken out of rental, the City Council finds that a period ending September 8, 2019 is a reasonable time and wholly adequate for the rental scooter owners to recoup any unrealized investment in their rental scooter inventory and other directly related property; and

WHEREAS, the Council desires to provide each affected business more than sufficient time to recoup their investment in scooters and develop alternative lines of business, and also to allow the visiting public to become familiar with the change and therefore has extended the reasonable amortization period from an expiration on September 8, 2019 to September 8, 2020;

WHEREAS, on April 13, 2017, the Council preliminarily determined that the rental of motor scooters should be phased out in the City altogether over a reasonable period that would allow businesses which rent scooters to achieve their investment expectations in the current inventory of scooters and enjoy the time and resources to develop other business models; and

WHEREAS, based upon the forgoing considerations, information available to it, the number of scooters registered with the City, the industry's testimony regarding the amount of scooter rentals per day and the average price of scooter rentals, the Council finds that an amortization period ending on September 8, 2020, will allow each business three tourist seasons in which it will be able to recoup those investments made prior to

April 13, 2017; and

WHEREAS, the Council finds a majority of the businesses currently renting motor scooters also make available for rent 4-wheeled, low speed street vehicles, such that a prohibition on the rental of two and three wheeled motor scooters would not be devastating over a three-year period during which the businesses could phase out the inventory of the motor scooters while keeping their inventory of 4-wheeled, low speed street vehicles; and

WHEREAS, Council finds that a phase out over three years will allow a grace period during which persons who currently rent motor scooters may continue to do so while developing alternate business models, and the visiting public may continue to enjoy the amusement but become aware that the scooters will not be available in the future; and

WHEREAS, recognizing that scooter rental businesses have a greater potential detriment than other uses, the City first designated motor scooter rental businesses as a conditional use, and then prohibited the use but grandfathered then existing businesses, but now finds that the irresponsible behavior of rented motor scooters is adversely affecting the health, safety and welfare of the residents and visitors to the City to such an extent that the grandfathered status of existing businesses should be extinguished; and

WHEREAS, the City Council has determined that the burden on the public of the irresponsible behavior of the scooter renters on the roads, sidewalks and private property of the City far outweighs the burden of the infringement upon the property rights of the very few businesses who have been grandfathered into the continued operation of their scooter rental businesses contrary to the public policies established several years ago in the City's Land Development Code; and

WHEREAS, the City recognizes that each scooter business is unique in its inventory of scooters and other property invested in the rented scooters, and its revenue, so to prevent any business from being unable to recoup its investment, the City has provided a fair and reasonable process by which the businesses may prove that it will be unable to recoup its investment by September 8, 2020; and

WHEREAS, the City petition process allows for either an extension of time for continued operation to prevent any taking of property without adequate opportunity to recover the unrealized investment in that property; and

WHEREAS, the City is authorized to establish and amend the actual list of permitted or prohibited uses within a zoning category, and finds it necessary and appropriate to prohibit scooter rentals; and

Draft dated 5.24.17 Rev. PM

WHEREAS, the City Council finds and determines that prohibiting the rental of scooters within the City will eliminate the problems associated with the behavior of the operators of those scooters; and

WHEREAS, City Manager is authorized to prohibit or regulate the use of heavily travelled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic pursuant to Section 19-50(a) (13) of the City's Code of Ordinances and Section 316.008(1)(h), Florida Statutes (2015), which action is subject to review by the City Council.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PANAMA CITY BEACH:

SECTION 1. The forgoing recitals are correct and express the legislative intent of the people of the City of Panama City Beach. In summation, the City Council finds that the rental of motor scooters in the City creates a continuing nuisance, that repeated attempts to diminish the irresponsible operation of rented motor scooters have been either expressly overruled or practically overcome by the sheer volume of rented motor scooters operated in the City, that even a reduction in the number of rented motor scooters has not substantially diminished the risk to the public traveling on the city's streets, that by the rental companies' own admissions they cannot control what the operators of rented motor scooters do and the City has been unable to abate this nuisance within its home rule authority, and therefore intends to prohibit such rentals entirely after September 8, 2020, unless any current business is able to establish by a preponderance of the evidence that it will be unable to amortize its investment within that time in which case it may be granted relief under this Ordinance.

SECTION 2. From and after the effective date of this ordinance, Article VI, of Chapter 22 of the Code of Ordinances of the City of Panama City Beach, related to

Vehicle Rentals is amended to read as follows (omitted text ~~stricken~~; new text underlined):

Chapter 22 TRAFFIC AND MOTOR VEHICLES

ARTICLE VI. VEHICLE RENTALS

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Sec. 22-105.1 - Registration and inspection.

(a) Each amusement vehicle rented, leased or hired within the City shall be inspected and registered annually with the Chief of Police at the offices of the Police Department at such times as shall be specified by the Chief. The annual application for registration of each vehicle shall include:

- (1) The name, residence and mailing address of the owner, and
 - (2) The name, location and mailing address of the rental, etc. business, and
 - (3) The location of the business where the amusement vehicle will be offered for rental, and
 - (4) A description of each type of vehicle to be rented by the business, including make, model and manufacturer, engine displacement, maximum brake horsepower, maximum seat height from ground, and whether equipped with pedals to permit propulsion by human power, and
 - (5) The approximate number of vehicles of each type to be rented by the business, subject to a continuing obligation to promptly advise the Chief of Police of any material change in such number, and
 - (6) A description of each type of protective headgear and eye protective device to be used, including manufacturer, make model and serial number, if any, and the approximate number of each type, and
 - (7) Evidence satisfactory to the City of any financial responsibility required by law.
- (b) Each application shall be accompanied by a registration fee in the amount of fifty dollars (\$50), plus one dollar (\$1) for each decal or medallion furnished, to defray the cost of enforcing the regulations contained in this Article.
- (c) Each registration shall expire on December 31 next following issuance, regardless of the date of issuance. However, any medallion issued for a low speed vehicle which is not timely renewed by December 31 for the following calendar year shall be void and of no further use or effect.
- (d) Each vehicle to be rented pursuant to this Article shall be inspected by the Chief of Police or his designee to confirm that the vehicle meets all applicable local, state, and federal safety standards, including but not limited to, confirming that the throttle, brakes, lights, blinkers and horn are in apparent working order, that the vehicle has a current tag and does not appear to leak fuel.
- (e) If all conditions in the application and inspection are met, the Chief of Police or his designee shall supply and place upon each vehicle to be rented a decal or medallion, or both, in form and content specified by the Chief of Police or his designee, to identify the vehicle as a rental vehicle associated with the business renting the vehicle.

(f) Within 30 days after the amusement vehicle registration period closes, the Chief of Police shall submit to the City Council the current inventory of each type of amusement vehicle registered for rental in the City and recommend whether further regulation is necessary.

(g) A motor scooter may not be registered with the City under this section unless the scooter was registered prior to April 13, 2017, or the owner of such motor scooter has provided prior to June 1, 2017, clear and convincing evidence of having entered a legally binding agreement to purchase the scooter and paid all or a portion of the purchase price of the scooter on or before April 13, 2017, and is unable to cancel the agreement and receive a return of the payment made, less a reasonable refund fee.

Sec. 22-105.2. Prohibition and attrition of the rental of motor scooters.

(1) On and after September 9, 2020, the act of providing, renting, or delivering a motor scooter, or the solicitation of that service or good, or the rental or hire of a motor scooter, within the City is prohibited.

(2) No motor scooter registered with the city as a rental shall be rented when it becomes unsafe, unfit or illegal for further use without repair or modification.

(3) It shall be unlawful and punishable as provided by law for any person to instruct or permit another to violate this section.

SECTION 3. After conducting multiple public hearings and having personal knowledge of the affected uses, in particular: (1) The cost of new motor scooters; (2) The historical record of the motor scooter businesses annually replacing their inventory with new scooters; (3) The residual value of used scooters annually sold by the local motor scooter rental businesses; (4) The history of motor scooter businesses operating at the capacity of their rental scooter inventory; (5) The average price of scooter rentals; (6) The ability for scooter to be rented multiple times per day; (7) The availability to continue to operate in the short-term vehicle rental marketplace; and (8) The location of each use and the variety of alternative uses readily available at each location; the City Council hereby finds and determines that a period commencing upon the announcement on April 13, 2017, of its intention to prohibit the rental of motor scooters and ending on September 8, 2020, exceeds and is a reasonable period to permit persons engaged in the business of motor scooter rentals to recover their investment.

From and after the effective date of this Ordinance, Motor Scooter Rental Uses may continue as non-conforming uses until September 8, 2020. The following sections of the City's Land Development Code are hereby amended as follows to prohibit the operation of existing scooter rental businesses as a non-conforming use after September 8, 2020 (omitted text ~~stricken~~; new text underlined; bold text not underlined is existing, current law):

1.07.02 Definitions

Amusement – A **Use, Building** or device intended or used primarily to entertain or amuse persons by means of physical or mechanical activity. Examples include, but not limited to, carnival type concessions; rides such as roller coasters, go-cart rides, giant slides, bumper cars, helicopter rides or acceleration and bungee rides; arcades with game machines; rentals of personal watercraft, sailboats, sailboards or water cycles; miniature golf courses; and parasail, kite or watershed rides. The term "**Amusement**" does not include rental of ~~mopeds, motor scooters or~~ motorcycles.

Motor Scooter or Scooter – a motorcycle or two or three or four wheeled vehicle powered by a motor with a displacement of fifty (50) cubic centimeters or less or is rated not in excess of two (2) brake horsepower and which is not capable of propelling such motorcycle at a speed greater than thirty (30) miles per hour on level ground, and shall include a moped as defined in FS 316.03(77) (2015), and any other two or three wheeled, self-propelled vehicle for which state law does not require proof of financial responsibility (see FS Chapter 324 (2015)).
(Ord. #1351, 11/12/15)

Motor Scooter Rental or Scooter Rental – the provision, rental, or hire, or delivery of a **Motor Scooter** for any valuable consideration or the solicitation of that service or good.
(Ord. #1351, 11/12/15)

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5.06.12 Motorcycle Rentals and Deliveries

Motorcycle rentals and delivery may be allowed in the CH zoning district subject to conditional use approval and compliance with the following conditions. These **Uses** are not allowable in the area lying south of a continuation of the centerline of Front Beach Road (Scenic Highway 98) through South Thomas Drive and Thomas Drive.

(Ord. #1254, 11/14/13; Ord. #1351, 11/12/15)

A. The **Use** must be located no greater than five hundred (500) feet from Front Beach Road, Thomas Drive or South Thomas Drive.

B. The **Use** must be located no closer than one thousand five hundred (1,500) feet to a **Single Family** zoning district (R-1A, R-1B, R-1C, R-1CT and R-0) or a limited **Multi-family** zoning district (R-TH and R-2).

C. On-site repair and maintenance activities are limited to equipment rented on site.

D. A minimum area of fifty (50) feet in width and eighty (80) feet in length shall be provided for training and practicing. Such area shall not be dedicated or used for any other purpose.

E. As part of the application, the applicant shall submit information and plans in sufficient detail to show the specific number of motorcycles to be associated with the property, as well as the specific location

where the motorcycles will be displayed, rented and stored on the property. If approved, the applicant shall submit to the Building and Planning Department the identification number of each ~~moped, motor scooter and~~ motorcycle available for rent prior to commencement of business operations. Such total number of motorcycles shall not exceed that approved by the Planning Board.

(Ord. #1351, 11/12/15)

F. The area dedicated to repair and maintenance shall be enclosed with a **Solid Faced** masonry or wooden wall or fence not less than six (6) feet and not more than eight (8) feet in height. The decorative side of the fence shall face outward.

G. One medium or large tree shall be required for every twenty (20) feet of side and rear property boundary. Any medium or large tree required by this section shall not be counted toward any landscaping otherwise required by this Code.

...

9.02.01 Continuation of Non-conforming Development

A. Subject to section 9.02.02, **Non-Conforming Development** may remain in **Use** and in place in its nonconforming state, if such **Development** is otherwise lawful and in existence on the date of enactment or subsequent amendment of this **LDC**. Notwithstanding the forgoing, **Motor Scooter Rental Uses** are subject to the limitations upon the number of **Scooters** at each location set forth in sub-section D of this Section.

B. Nothing in this chapter shall be construed to prevent the ordinary and routine maintenance and repair of nonconforming structures. A non-conforming structure may be issued a roofing permit, regardless of the other provisions of this section.

C. Where an existing **Use** is located in conformity with this **LDC** (or similar, preceding law), the subsequent establishment of a neighboring **Use**, which due to distance limitations would make the pre-existing use non-conforming, shall not cause the prior **Use** to be in violation of this **LDC**. Such **Use** shall not become a non-conforming **Use** but shall continue as if a lawful, conforming **Use** except that the **Use** shall be brought into full compliance with the **Use** regulations in this **LDC** upon discontinuance of occupancy and/or **Use** of the **Development** for a period of more than 180 days in any 365 day period.

D. Any location with eighty (80) **Scooters** or fewer offered for rental consistently during the summer of 2015 shall be limited to offering a maximum of sixty (60) **Scooters**. Any other **Scooter** rental location shall be limited to the following maximum number of rental **Scooters**:

- Immediately: Seventy-five percent (75%) of the number of **Scooters** consistently offered for rent at that location during the summer of 2015.
- After September 5, 2016: Fifty percent (50%) of the number of **Scooters** consistently offered for rent at that location during the summer of 2015.
- After September 5, 2017: Sixty (60) **Scooters**.
- **Motor Scooter Rental Uses shall be discontinued after an amortization period of three years ending on September 8, 2020. If the Use is not discontinued within ten (10) days of the end of the amortization period, the owner shall be subject to a fine of not more than \$500.00 per day and be declared a public nuisance and abated under section 1.04.07(B) of this Land Development Code.**

The City shall prepare and issue for each **Non-Conforming Use Scooter Rental** location a number of medallions unique to that location and each **Scooter** available for rent at a **Non-Conforming Use** must have one of those medallions affixed to it. Excess medallions must be returned to the City on or before

September 5, 2016, and September 5, 2017. Medallions may be used only at the location for which issued. All Scooter medallions must be returned to the City on or before September 8, 2020.

SECTION 4. PETITION FOR EXTRAORDINARY EXTENSION OF AMORTIZATION PERIOD FOR DISCONTINUATION OF MOTOR SCOOTER RENTALS. Any person whose legally protected economic interests are adversely affected by the discontinuance of motor scooter rental uses mandated by this law and who believes that the amortization period specified in section 9.02.01(D) of the City Land Development Code is inadequate to recover their investment shall be entitled to petition the City for an extraordinary extension of time as provided in this section. The petitioner may be represented by an attorney at law licensed to practice law in the state of Florida.

(a) Time of Petition - The petition must be filed with the City Clerk on or before the close of business on or before November 21, 2017.

(b) Contents of Petition – The petition must state:

1. Identification: The petitioner's name, mailing address, e-mail address, if any, and telephone number of the party making the request and the name, address, and telephone number of the party's counsel if the party is represented by counsel;

2. Standing: A detailed description of the petitioner's legally protected interest adversely affected by the mandated discontinuance of motor scooter rentals;

3. Requested Extension: The length of the extraordinary extension

demanded;

4. A statement of the specific facts and grounds for relief petitioner contends warrant the extraordinary extension demanded. The specific grounds for relief under this section, the specific relief sought including the exact amount of time requested;

5. All documents, including a list of all witnesses, or other evidence in support of the petition;

5. Any other matters petitioner deems relevant.

(c) Grounds for Extension: In considering whether to grant all or any portion of the extension demanded, the City shall examine:

1. Whether the petition is complete;
2. Whether the petitioner has standing;
3. Whether the petitioner has demonstrated by a preponderance of the evidence circumstances unique to the petitioner which prevent the petitioner from recouping its investment in the property affected by the discontinuance within the amortization period;
 - a. The amount of the petitioner's investment in the Motor Scooter Rental Use business through April 13, 2017;
 - b. Whether unique circumstances exist which will prevent the petitioner from recouping the amount of such investment that has been or will have been unrealized at the conclusion of the three-year amortization period;

- c. The life expectancy the existing property associated with the non-conforming use;
- d. The diminished value, if any, of any real property owned by the petitioner as a result of the mandatory discontinuance of the existing enterprise on the property;
- e. The diminished value, if any, of a leasehold held by the petitioner as a result of the mandatory discontinuance of the existing enterprise on the property, as well as any contingency clauses therein permitting termination of such lease.

(d) Procedure: Within ten (10) days of receipt, the City Clerk shall forward a timely filed petition and supporting documents to the City Manager and a copy to the Clerk of the Court of Bay County to schedule an Administrative Hearing before a Hearing Officer appointed by the City pursuant to section 25-16 of the City's Code of Ordinances.

No later than ten (10) days before the scheduled hearing, the City Manager shall file and serve upon the petitioner a response to the petition together with copies of any documents and a witness list.

The City Council hereby delegates to all Hearing Officers appointed and serving pursuant to section 25-16 of the City's Code of Ordinances the authority to determine all factual matters and conclusions of law contested between the petitioners and respondent.

The petitioner shall bear the burden of proof to prove entitlement to the

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extraordinary extension demanded by a preponderance of evidence.

At the hearing, evidence, including written or oral testimony and documentary evidence, of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any witness shall be subject to cross examination when testimony is taken or documents are made part of the record. No pleadings, motions, or other papers may be submitted nor any discovery conducted other than that allowed under this section shall be permitted. The petition and hearing may, except as otherwise provided in this section, be conducted in the manner provided by the Florida Rules of Civil Procedure. Each party shall be entitled to a brief opening and closing argument, unless waived. The petitioner shall give opening and closing argument first but will not be afforded a rebuttal to the City's closing argument.

(e) Recommended Order of Hearing Officer. Unless the time period is waived or extended with the consent of all parties, the Hearing Officer shall issue a recommended order in writing and include findings of fact, if any, conclusions of law separately stated, and any recommended extraordinary extension. The Hearing Officer's recommended order must be rendered to the parties and the City Council within ninety (90) days after the hearing.

(f) City Council Adoption of Order - The City Council may adopt the recommended order as the final order of the City. The City Council in its final order may reject or modify the conclusions of law. When rejecting or modifying such conclusion of law, the City Council must state with particularity its reasons for rejecting or modifying

such conclusion of law and must make a finding that its substituted conclusion of law is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The City Council may not reject or modify the findings of fact unless the City Council first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The City Council may accept the recommended extraordinary extension, if any, in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

(g) Appeal. A petitioner aggrieved by a decision of the City Council may seek review by certiorari in the Circuit Court, 14th Judicial Circuit, Bay County, Florida, which shall be the exclusive remedy to challenge the decision or authority of the Council.

SECTION 5. REPEAL. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

SECTION 6. CODIFICATION. The appropriate officers and agents of the City are authorized and directed to codify, include and publish in electronic format the provisions of this Ordinance within the Panama City Beach Code of Ordinances and the Panama City Beach Land Development Code, and unless a contrary ordinance is adopted within ninety (90) days following each such publication, each codification of this

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Ordinance shall become the final and official record of the matters herein ordained and there codified. Section numbers may be assigned and changed whenever necessary or convenient.

SECTION 7. SEVERABILITY. If any section, subsection, clause, phrase, or provision of this Ordinance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 8. EFFECTIVE DATE. This Ordinance shall take effect immediately upon passage.

PASSED, APPROVED AND ADOPTED at the regular meeting of the City Council of the City of Panama City Beach, Florida, this 8th day of June, 2017.


MAYOR

ATTEST:


CITY CLERK

EXAMINED AND APPROVED by me this 8th day of June, 2017.


MAYOR

Published in the PC News Herald on the 3rd day of May, 2017 and

Published in the PC News Herald on the 19th day of May, 2017.

Posted on pcbgov.com on the 9th day of June, 2017.

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Restoring Section g from 5-8-17 and attrition clause from 5-8-17
Revising recitals