

STAFF REPORT

To: Mayor and Council Members Date: November 27, 2018
From: Ken Putnam, PE, Transportation Department Director
Via: Cathy Ball, PE, Acting City Manager
Subject: Regulation of E-Scooters

Summary Statement: The consideration of an ordinance adopting Chapter 19, Article I, Section 19-16 of the Code of Ordinances of the City of Asheville, regarding the use of e-scooters within the City.

Review: Electric scooters, commonly called “e-scooters,” have increased markedly in popularity over the past several years, with the emergence of e-scooter share programs greatly increasing the use of the devices since January 2017. As seen across the country, some of the companies operating e-scooter shares initially begin operating their systems without receiving appropriate permissions from local jurisdictions, whether through permits or licenses, and do so often without warning.

City Transportation Department staff commissioned a bike share study in mid-2017 which has been underway and originally did not include analysis or consideration of e-scooters. In September of 2018, staff determined that it was necessary to add e-scooters to the scope of the study, given that their popularity across the country was growing substantially and other North Carolina cities were currently either actively piloting e-scooter share programs or considering them. Additionally, many companies that offer bike shares also operate e-scooter share programs.

At the October 24, 2018, Multimodal Transportation Commission (MMTC) meeting, staff discussed the desire to add e-scooters to the scope of the bike share study and to postpone the release of the draft study in order to have additional opportunity to analyze potential e-scooter use in Asheville, as well as conduct additional public outreach. The MMTC supported the proposed addition of e-scooters to the study. Later the same evening, staff learned that the company Bird was planning to launch an e-scooter share operation in Asheville the next morning. Bird did not notify the City, nor pursue appropriate permits or licenses, and deployed approximately 200 e-scooters in downtown on October 25, 2018.

City staff contacted Bird immediately requesting that they cease operations due to public health, safety, and welfare concerns regarding their use, as well as the company’s violation of several existing ordinances concerning the use of public right-of-way. Staff collected and stored the e-scooters, which representatives of Bird retrieved later the same evening. Despite verbally agreeing to postpone operations until the City determined next steps, Bird redeployed e-scooters Saturday, October 27th, at which time City staff again collected and stored the e-scooters.

While research into this relatively new form of transportation is limited, a 2017 Israeli study, published in the Journal of Traffic Injury Prevention, found a prevalence of e-scooter related

injuries in that country, and raised questions regarding “the social and economic advantages of electric-powered 2-wheeled vehicles.” Domestically, doctors at the following hospitals have raised concerns regarding the unregulated use of e-scooters: Cedars Sinai Medical Center, Zuckerberg San Francisco General Hospital, University of Utah Health, Eskenazi Health, Scripps Mercy Hospital, and the UCLA Medical Center. Taken together, the City’s Transportation department believes that the unregulated use of e-scooters within City limits poses a threat to public safety.

Additionally, e-scooter share and/or rental programs rely on public sidewalks as the means of transfer of the vehicle from one rider to another. From the short time Bird was operating in Asheville, and based on the experience of other cities, it appears that without proper regulation, e-scooters will be left on the sidewalks in a manner that blocks the public right of way, poses a tripping hazard, and makes City sidewalks less safe for pedestrians.

The action proposed for City Council consideration is an ordinance that seeks to postpone the operation of any and all e-scooters, whether operated by a company or by an individual, within the City of Asheville until such time that the City Council may decide to allow and regulate them in a manner that seeks to ensure the public health, safety, and welfare of its citizens.

Transportation staff expects to complete the bike and e-scooter share study in early 2019, which will provide broad recommendations for the City to consider in terms of the regulation and permitting/licensing of bike and/or e-scooter share operators and the use of the vehicles themselves within the public right-of-way. Staff expects to simultaneously begin developing more detailed regulatory and policy recommendations for consideration that could be included in a Request for Proposals and subsequent permit/license application for bike and/or e-scooter share operators.

Pros:

- Will provide the City with time to review the results of its pending bike-share/e-scooter feasibility study before e-scooters are allowed to go into use.
- Will prevent the unregulated use of e-scooters from jeopardizing public safety if and until a more comprehensive regulatory scheme may be put in place with respect to e-scooters.

Con:

- Delays the use of e-scooters as a mode of transportation within the City.

Fiscal Impact: While the proposed ordinance provides for a \$100 fine per violation, it is unknown how many such fines might be assessed under the ordinance.

Recommendation: Staff recommends that City Council adopt the proposed Chapter 19, Article I, Section 19-16 of the Code of Ordinances of the City of Asheville.

Attachment:
(1) Ordinance

ORDINANCE NO. _____

ORDINANCE REGULATING THE USE OF E-SCOOTERS WITHIN CITY LIMITS.

WHEREAS, the City of Asheville (herein "City") has the authority pursuant to N.C. Gen. Stat. § 160A-174(a) to, by ordinance, define, prohibit, regulate or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens or the peace and dignity of the City; and

WHEREAS, pursuant to N.C. Gen. Stat. § 160A-296(a) the City has general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits; and

WHEREAS, the City has the authority pursuant to N.C. Gen. Stat. § 160A-300 to prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic upon the public streets, sidewalks, alleys, and bridges of the city; and

WHEREAS, the City has the authority pursuant to N.C. Gen. Stat. § 160A-193(a) to summarily remove, abate, or remedy everything in the city limits that is dangerous or prejudicial to the public health or public safety; and

WHEREAS, the City has determined that the unregulated use of e-scooters on public street, sidewalks, alleys, bridges and other ways of public passage within its corporate limits creates dangerous conditions detrimental to the health, safety, peace and welfare of the City's residents and visitors; and

WHEREAS, the City has determined that the unregulated parking, placement, storage, exhibition, demonstration, selling, renting or offering to rent of e-scooters on public streets, sidewalks, alleys, bridges and other ways of public passage within its corporate limits by e-scooter share businesses creates dangerous conditions detrimental to the health, safety, peace and welfare of the City's residents and visitors; and

WHEREAS, the City has previously commissioned a bike share and e-scooter feasibility study with an expected completion date during the first quarter of 2019; and

WHEREAS, the City wishes to consider the results of the pending bike share and e-scooter feasibility study prior to determining whether e-scooters and e-scooter share businesses may be safely integrated into the City's transportation infrastructure.

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

Section 1. Chapter 19, Article I, Section 19-16 of the Code of Ordinances of the City of Asheville is repealed as previously drafted, and is hereby amended to read:

Sec. 19-16. E-Scooters and E-Scooter Share Programs

(a) The following definitions shall apply to this section:

“E-scooter” shall mean any two-wheeled device capable of propulsion by a motor or other power source with handlebars and a floorboard designed to be stood upon when riding. This device may also have a seat that does not interfere with the ability of the rider to stand and ride. This definition shall not include motorcycles, mopeds, or Electric Personal Assistive Mobility Devices as defined by the North Carolina General Statutes.

“E-scooter Share Operator” means an individual or a public, private, or non-profit entity that owns, manages or operates a system whereby e-scooters are parked, placed, stored, exhibited, demonstrated, sold, rented or offered for rent on public sidewalks and right-of-ways to customers on a self-service basis through an electronic platform.

(b) It shall be unlawful to park, place, store, exhibit, demonstrate, sell, rent or offer to sell or rent any e-scooter on any street, sidewalk, square, avenue, alley or within any park or other publicly owned property within the corporate limits of the City of Asheville.

(c) It shall be unlawful for any E-scooter Share Operator to permit an e-scooter it owns or leases to be parked, placed, stored, exhibited, demonstrated, sold, rented or offered for sale or rent on any street, sidewalk, square, avenue, alley or within any park or other publicly owned property within the corporate limits of the City of Asheville.

(d) It shall be unlawful to operate an e-scooter on any public street, sidewalk, alley, bridge or other way of public passage or within any park or on any other public property within the corporate limits of the City of Asheville.

(e) It shall be unlawful for any E-scooter Share Operator to permit an e-scooter it owns or leases to be operated on any public street, sidewalk, alley, bridge or other way of public passage or within any park or on any other public property within the corporate limits of the City of Asheville.

(f) A violation of this section shall be punishable by a civil penalty of one-hundred dollars (\$100) per occurrence, to be recovered by the city in a civil action in the nature of debt, if the offender does not pay the penalty within thirty (30) days of receiving a notice of violation. This penalty shall be in addition to any penalty imposed by any other ordinance, rule, regulation or other provision of law.

(g) This section may be enforced by any city department or employee as designated by the City manager, who shall be authorized to remove any e-scooter found to be in violation of this section from any sidewalk, square, park or other public property without prior notice.

(h) Any e-scooter removed from City property pursuant to subsection (g) shall be returned to its owner upon the City receiving adequate proof of ownership. If an e-scooter removed from City property remains unclaimed after a period of sixty (60)

days, it will be deemed abandoned, and may be disposed of in any manner permitted by law.

Section 2. Appendix B of the Code of Ordinances of the City of Asheville amended by adding subsection L to read as follows:

L. The penalty for violating the e-scooter regulations of Chapter 19, Article I of the Code of Ordinances shall be \$100 per violation.

Section 3. Chapter 19, Article I, Section 19-14 of the Code of Ordinances of the City of Asheville, is repealed as previously drafted, and is hereby amended to read:

Civil penalties as set forth in Appendix B of this Code shall be assessed for the violation of the provisions of sections 19-16, 19-137, 19-138, 19-139, 19-140, 19-143, and 19-144 of this chapter. All other violations of this chapter shall constitute an infraction punishable by a fine of not more than \$50.00.

Section 4. This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law.

Section 5. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not adversely affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 6. The provisions of this ordinance shall be in full force and effect upon adoption.

Read, approved and adopted this the 27th day of November, 2018.

City Clerk

Mayor

Approved as to form:

City Attorney