

ORDINANCE 2021 – 14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE DELETING AND REPLACING CHAPTER 90, SECTION 91 – 93, “RESERVED” OF THE COMMERCE MUNICIPAL CODE WITH A “SCOOTER AND BICYCLE SHARING” ORDINANCE AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.

BE IT ORDAINED BY THE CITY OF COMMERCE, TEXAS:

WHEREAS, the City has a duty to protect the health, safety and welfare of the citizens of the City of Commerce; and

WHEREAS, the City regulates and controls the public right of way, including public streets and sidewalks; and

WHEREAS, to meet that duty, it is the policy of the City to promote efficient and safe use of the public right of way in the City of Commerce; and

WHEREAS, a transportation business model described as a bicycle and scooter sharing service has emerged in recent years, and the City of Commerce currently has no Ordinance that governs the operation of bicycle and scooter sharing services; and

WHEREAS, this Scooter and Bicycle Sharing ordinance provides for the regulations of scooter and bicycle sharing services to be carried out in a manner that protects the public health and safety, promotes public convenience, regulates the use of the public right of way and respects free enterprise.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE, TEXAS:

SECTION 1: That Chapter 90, Section 91 – 93 “Reserved” is hereby deleted in its entirety and replaced as set out in Exhibit A, attached, and made a part of this ordinance for all purposes.

SECTION 2: That if the provisions of any section, subsection, paragraph, subdivision, or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

SECTION 3: That any person, firm, or corporation violating the provisions of this Ordinance, shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.

SECTION 4: Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective immediately upon passage.

SECTION 5: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 6: Severability. Should any section, subsection, sentence, clause, or phrase of this Ordinance be declared unconstitutional, illegal, or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance

shall remain in full force and effect. The City of Commerce hereby declares that it would have passed this Ordinance, and each section, subsection, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 7: Effective Date. This Ordinance shall take effect immediately from and after its passage.

PASSED AND APPROVED on the FIRST READING at a regular meeting of the City Council of the City of Commerce, Texas, on the 20th day of April 2021.

PASSED AND APPROVED on the SECOND READING at a regular meeting of the City Council of the City of Commerce, Texas on this the 18th day of May 2021.

ATTEST:



Molly Jacobsen, City Secretary

(seal)

CITY OF COMMERCE, TEXAS



Wyman Williams, Mayor

APPROVED AS TO FORM:



Charles Anderson, City Attorney

EXHIBIT "A"

CHAPTER 90, SCOOTER AND BICYCLE SHARING

Sec. 90-1. Scope.

This Chapter governs the operation of scooter and bicycle sharing business operations, both dockless and with docks, in the public right-of-way. Scooter sharing or bicycle sharing shall not be considered an itinerant vendor business as regulated by the Land Development Code. Scooters and bicycles under this Chapter shall not be vehicles for hire under Chapter 98. This Chapter does not apply to a moped, motorcycle or a motorized mobility device under Texas Transportation Code Chapter 542. This Chapter does not apply to an electric personal assistive mobility device, a neighborhood electric vehicle or a golf cart under Texas Transportation Code Chapter 551.

Sec. 90-2. Definitions.

As used in this Chapter:

- (1) Dockless Vehicle: a bicycle, an electric bicycle, or an electric motor-assisted scooter, pursuant to the definitions set forth in Texas Transportation Code, Sections 541.201 and 551.351, that can be located and unlocked using a smartphone app.
- (2) Bicycle: Every device propelled by human or electric power upon which any person may ride, having two (2) or more wheels, any of which is over fourteen (14) inches in diameter.
- (3) Bicycle Sharing: The renting of a bicycle(s) on a short-term basis generally in exchange for compensation.
- (4) Home Zones: Zones designated by the City Manager, which shall be identified on a map to be made available in the office of the City Secretary, wherein Vendor shall use the City right-of-way on a non-exclusive basis, solely for the purpose of placement of scooters and bicycles for rental.
- (5) Operator: Any person operating, riding on, or using a scooter or bicycle for rental.
- (6) Scooter: Every device propelled by human or electric power upon which any person may ride, having a narrow footboard mounted between two (2) or more wheels with an upright steering handle attached to the front wheel.
- (7) Scooter Sharing: The renting of a scooter(s) on a short-term basis generally in exchange for compensation.
- (8) Vendor: Any person or entity that distributes scooters and bicycles for rental.

Sec. 90-3. Vendor Permit Required.

- (a) It shall be an offense for a vendor that provides scooters and bicycles for the purpose of scooter sharing or bicycle sharing to place scooters and bicycles in the City's right-of-way, or other City property, without a bicycle or scooter share permit obtained from and authorized by the office of the City Secretary.
- (b) To obtain an operating authority permit, a person shall make an application to the City Secretary in the manner prescribed by the City Manager. The applicant must be the person who will own, control, or operate the proposed scooter or bicycle sharing business.
- (c) An applicant shall file with the City Secretary a verified application statement, to be accompanied by a non-refundable permit fee, containing the following:
 - (1) The form of business of the applicant and, if the business is a corporation or association, a copy of the documents establishing the business and the name and address of each person with a 20 percent or greater ownership interest in the business.
 - (2) The verified signature of the applicant.
 - (3) The address of the fixed facilities to be used in the business, if any, and the address of the applicant's corporate headquarters, if different from the address of the fixed facilities.
 - (4) The name of the person designated by the applicant to receive on behalf of the applicant any future notices sent by the City to the operator, that person's contact information, including a mailing address, telephone number and email or other electronic address.
 - (5) Certificate of insurance naming the City of Commerce as an additional insured as required by Section 90-4.
 - (6) Documentary evidence of payment of ad valorem taxes on property within the City, if any, to be used in connection with the operation of the proposed scooter or bicycle sharing business.
 - (7) The number and types of scooters or bicycles to be operated.
 - (8) A permit agreement including indemnification to the City; and
 - (9) A copy of a current contract with one or more institutions of higher education within the City Limits of the City of Commerce which the applicant provides scooter and/or bicycle sharing services.
- (d) A permit issued under this section shall be valid, unless otherwise revoked, for a period of twenty-four (24) months or two (2) calendar years from the date of issuance. A Permit may be renewed for an additional twelve (12) months or one (1) calendar year following the process in this section.
- (e) The Permit fee shall be set forth and established in the Fee Ordinance.

Sec. 90-4 Insurance.

- (a) A permit holder shall procure and keep in full force and effect no less than the insurance coverage required by this section through a policy or policies written by an insurance company that is authorized to do business in the State of Texas and is acceptable to the City of Commerce.
- (b) The insured provisions of the policy must name the City as an additional insured, and the coverage provisions must provide coverage for any loss or damage that may arise to any person or property by reason of the operation of a scooter or bicycle.
- (c) A Permit holder shall maintain the following insurance coverages:
 - (1) The commercial general liability insurance must provide single limits of liability for bodily injury (including death) and property damage of one million dollars (\$1,000,000.00) for each occurrence, with a two million dollar (\$2,000,000.00) annual aggregate,
 - (2) If a permit holder will utilize motor vehicles in its operations, the business automotive liability insurance must cover owned, hired, and non-owned vehicles, with a combined single limit for bodily injury (including death) and property damage of five hundred thousand dollars (\$500,000.00).
 - (3) Worker's compensation insurance with statutory limits.
 - (4) Employer's liability insurance with the following minimum limits for bodily injury by:
 - (a.) Accident, five hundred thousand dollars (\$500,000.00) per each accident; and
 - (b.) Disease, five hundred thousand dollars (\$500,000.00) per employee with a per policy aggregate of five hundred thousand dollars (\$500,000.00).
- (d) Insurance required under this Chapter must:
 - (1) Include a cancellation provision in which the insurance company is required to notify the City Secretary in writing not fewer than thirty (30) days before cancelling the insurance policy (for a reason other than non-payment) or before making a reduction in coverage.
 - (2) Include a cancellation provision in which the insurance company is required to notify the City Secretary in writing not fewer than ten (10) days before cancelling for nonpayment.
 - (3) Cover all scooters or bicycles during the times that the vehicles are deployed or operating in furtherance of the permit holder's business.
 - (4) Include a provision requiring the insurance company to pay every covered claim on a first dollar basis.
 - (5) Require notice to the City Secretary if the policy is cancelled or if there is a reduction in coverage; and
 - (6) Comply with all applicable federal, state, and local laws.
- (e) No person who has a twenty (20) percent or greater ownership interest in the permit holder may have an interest in the insurance company.

(f) A permit holder may not be self-insured.

(g) Any insurance policy required by this Chapter must be on file with and approved by the City prior to the issuance of a permit agreement and must remain in effect during the term of the permit agreement.

Sec. 90-5 Permit Denial and Revocation.

The City Secretary may determine that a vendor's permit should be denied or revoked for the reasons set forth below. The City Secretary shall provide written notice of the denial or revocation of a permit to the vendor, detailing the reason for the denial or revocation of the permit, and a statement informing the vendor of its right to appeal the denial or revocation of its permit to the City Manager.

(a) Denial of Permit. The application shall be denied, and no permit shall be issued, if the City finds that:

1. Any statement made in the application is incomplete, inaccurate, misleading, or false; or
2. The vendor has not complied with this Chapter or has had a history of noncompliance with the provisions of this Chapter.

(b) Revocation of Permit. The City may revoke a permit due to vendor's failure to comply with permit requirements, this Chapter, or any applicable federal, state, or local law or regulation. Permits may also be revoked for one or more of the following reasons:

1. Any statement made in the application is inaccurate, misleading, or false.
2. Failure to maintain insurance as required by this Chapter.
3. Operation of scooters and bicycles that are not authorized by the permit, or in a manner not authorized by this Ordinance.
4. Posing an unreasonable risk to the health, safety, and welfare of the public; or
5. Nonpayment of permit fee owed City in accordance with this Chapter.

Sec. 90-6. Appeal of denial or revocation of permit.

(a) If the City Secretary determines that grounds exist for the denial or revocation of a permit under this Chapter, the applicant or permittee shall be notified of such denial or revocation in writing by certified mail, stating the reasons for denial or revocation, the effective date and that the applicant or permittee has the right to appeal.

(b) The denial or revocation of a permit may be appealed to the City Manager by filing written notice of appeal within ten (10) business days of receipt of the denial or revocation with the City Manager's office. The notice of appeal should contain all information on which the City Manager can decide.

(c) The City Manager shall issue a decision on the denial or revocation in writing within five (5) business days of receipt of the written notice of appeal.

(d) If no appeal is filed within ten (10) business days, the decision of the City Secretary becomes final and unappealable.

Sec. 90-7 Home Zones.

The City Council of the City of Commerce authorizes the City Manager to create, modify or remove home zones for scooter and/or bicycle sharing within the City of Commerce. Vendors shall not operate a scooter or bicycle share service in areas of the City not designated as a home zone. If no home zones have been established by the City Manager, the home zones shall be (1) the area within one mile of any institution of higher learning which the vendor has a contract to provide scooter and/or bike sharing services, and (2) within the Central Business District area map on file with the City Secretary.

Sec. 90-8 Operation of Scooters and Bicycles Permitted in Accordance with this Chapter.

(a) Scooters and bicycles may not be parked in a manner that would impede normal and reasonable pedestrian access on a sidewalk or in any manner that would reduce the minimum clear width of a sidewalk to less than 48 inches.

(b) Scooters and bicycles may not be parked in a manner that would impede vehicular traffic on a street or alley.

(c) Scooters and bicycles may not be parked in a manner that would impose a threat to public safety or security.

(d) Scooters and bicycles may not be parked on a public street.

(e) Scooters and bicycles may not be deployed on a block where the sidewalk is less than 96 inches in width, or on a block that does not have sidewalks. The City Manager may determine other blocks where deploying scooters and bicycles is prohibited.

(f) Scooters and bicycles must be deployed on a sidewalk or other hard surface, at a bicycle rack, or at a city-owned location. Scooters and bicycles may only be deployed on private property with the express permission of the property owner. (Permission MUST be in writing from the property owner.)

(g) Scooters and bicycles must stand upright while parked.

(h) Scooters and bicycles may not be parked within five feet of a crosswalk or curb ramp, unless given specific permission by the City Manager.

(i) Scooters and bicycles may not be parked in a way that blocks:

- (1) Transit stops, shelters or platforms
- (2) Commercial loading zones
- (3) Railroad or light rail tracks or crossings
- (4) Passenger loading zones or valet parking service areas

(5) Disabled parking zones

(6) Street furniture that requires pedestrian access (for example, benches or parking pay stations)

(7) Building entryways

(8) Vehicular driveways.

(j) Scooters and bicycles that are parked in an incorrect manner must be re-parked or removed by the operator.

(k) Scooters and bicycles that are parked outside of a Home Zone, may remain in the same location for up to 24 hours if they are parked in accordance with this section.

(l) The City may remove and store any bicycle or scooter that is left parked outside of the Home Zone for more than 24 hours.

(1) Vendor is responsible for the costs of removal and storage

(2) The City shall invoice vendor for the cost of removal and storage

(3) Any bicycle or scooter that has been removed and is unclaimed for more than thirty (30) days shall become the property of the City of Commerce.

(m) Every person riding a bicycle or scooter upon the streets of the City shall be subject to provisions of all laws and Ordinances applicable to the operator of any other vehicle, except those provisions of laws and Ordinances which, by their very nature, can have no application; provided, however, it shall not be unlawful to ride a bicycle or scooter on a public sidewalk.

Sec. 90-9 Criminal offenses.

(a) A person commits an offense if, within the City, the person operates or causes or permits the operation of a scooter or bicycle sharing service without a valid permit issued under this Chapter.

(b) A person commits an offense if the person violates or attempts to violate a provision of this Chapter.

(c) A culpable mental state is not required for the commission of an offense under this Chapter. A separate offense is committed each day in which an offense occurs.

(d) Prosecution for an offense under this Chapter does not prevent the use of other enforcement remedies or procedures applicable to the person charged with the conduct or involved in the offense.

(e) Any person who violates any of the provisions of this Chapter shall be guilty of a Class C misdemeanor and upon adjudication or conviction thereof shall be fined in an amount not to exceed five hundred dollars (\$500.00) for each offense.