

Ordinance No. 2019-7
Ordinance Book 1 Volume 1

CH.-78

**AN ORDINANCE ESTABLISHING STANDARDS FOR THE OPERATION AND
REGULATION OF MICROMOBILITY DEVICES IN PUBLIC RIGHTS-OF-WAY BY
THE ADDITION OF ARTICLE XIV TO CHAPTER 78 OF THE CITY CODE**

Section 1. Be it ordained by the City Council of the City of Winston-Salem, North Carolina that Article XIV of Chapter 78 of the City Code is, hereby, established as follows:

ARTICLE XIV. – MICROMOBILITY DEVICES

Sec. 78-365. - Purpose and scope.

Consistent with the City’s goals of enhancing mobility and access, easing traffic congestion, promoting sustainability, and protecting the public health and safety, including pedestrian, vehicular, and other traffic within the public rights-of-way, this Article both facilitates and regulates the proffer and use of systems of shared micromobility devices within the public rights-of-way. All references to “dockless bicycles”, “devices”, “electric, stand-up scooters”, “electric-assisted bicycles”, “micromobility devices”, and “new modes of dockless, shared transport” in this Article refer only to those devices that are operated as part of a commercial enterprise which employs a system of shared devices. This Article shall not apply to privately-owned micromobility devices that are not operated as part of a commercial enterprise or shared device system or scheme, except for Subsections 78-369(c)(1)(3), (4), (5), and (6), 78-376, and 78-377, all of which shall apply to privately-owned micromobility devices of the types indicated in each subsection, with the sole exception of Subsection 78-377(a), which shall only apply to privately-owned electric, stand-up scooters, not to privately-owned bicycles. This Article also shall not apply to any mode of transport, business model, or device that requires a fixed or dedicated docking station or storefront for the rental or return of units or to any device or vehicle that is used by an individual with a mobility disability recognized by the Americans with Disabilities Act, for the purpose of locomotion.

Sec. 78-366. - Definitions.

(a) “Abandon”, with respect to electric, stand-up scooters or dockless bicycles, shall mean leaving such a device unattended and stationary for 24 (twenty-four) or more consecutive hours.

(b) “Customer” shall mean any person who rents, uses, or rides a micromobility device that is part of a system of shared micromobility devices within the City.

(c) “City” shall mean the City of Winston-Salem.

(d) “City Manager” shall mean the City Manager of Winston-Salem or his or her designee.

(e) “Dockless bicycle” shall mean a human-powered or electric-assisted bicycle that is operated as part of a commercial bicycle-sharing system or scheme, by which bicycles are made available for rent/shared use, may be unlocked using a mobile application, and do not require fixed docking stations for customers to receive or return units.

(f) “Electric, stand-up scooter” or “scooter” shall mean a device with no more than 3 (three) 12” (twelve-inch) or smaller-diameter wheels, that has handlebars, is designed to be stood upon by a customer while riding, is powered by an electric motor that is capable of propelling the device with or without human propulsion, at a speed no greater than 20 (twenty) miles per hour, on a paved, level surface, is operated as part of a commercial shared device system or scheme, and does not require fixed or dedicated docking stations for customers to receive or return units.

(g) “Electric-assisted bicycle” shall mean a bicycle with two or three wheels, that is equipped with a seat or saddle for use by the rider, fully operable pedals for human propulsion, and an electric motor capable of producing no more than 750 (seven hundred fifty) watts of output power, that can achieve a maximum speed of no more than 20 (twenty) miles per hour, when powered solely by such motor, on a paved, level surface, and that is operated as part of a commercial shared device system or scheme.

(h) “Greenway” shall mean a pathway designated as a public trail for bicycles and pedestrians, and not for motorized vehicular use by the general public. A greenway is not located within the right-of-way of any street.

(i) “Micromobility device” or “device” shall mean any dockless bicycle, electric, stand-up scooter, or new mode of dockless, shared transport, excluding docked devices and mass transit systems, such as buses, trains, trams, trolleys, and subways, and any vehicles regulated by other articles of Chapter 78, that is rented, operated, or used as part of a system of commercial shared micromobility devices.

(j) “Micromobility device permit” or “permit” shall mean a permit issued, pursuant to Section 78-371, below, for the operation of a system of commercial shared micromobility devices.

(k) “New mode of dockless, shared transport” shall mean a dockless device that is operated as part of a commercial shared device system or scheme, as defined in Subsec. 78-366(i), above, other than a (1) dockless bicycle or (2) electric, stand-up scooter.

(l) “Permittee” shall mean any person or business entity to whom or to which the City issues a micromobility device permit.

(m) “Public area” shall mean any outdoor area that is open to the public for public use, and is owned or operated by the City.

(n) “Re-balancing” shall mean re-distributing micromobility devices within the City to achieve a more equitable and even distribution of devices.

Sec. 78-367. - Administrative regulations.

(a) The City Manager may adopt administrative regulations to implement the provisions of this Chapter, including, but not limited to, permit application procedures and permit conditions, which may include, but shall not be limited to, regulations relating to lawful conduct, public safety, data sharing, data privacy, and/or the timely removal of hazards or obstructions in the public right-of-way.

(b) No person shall fail to comply with the City’s administrative regulations. Any violation of any administrative regulation issued pursuant to this Section shall constitute a violation of this Article and shall subject the violator to the penalties set forth in this Article.

Sec. 78-368. - Permit and compliance with Article required.

No person or business may proffer or make available for rent any micromobility device upon any public right-of-way or public area, within the City, unless the person or business holds a valid micromobility device permit from the City, has paid the proper fees, therefor, and complies with the requirements of this Article, administrative regulations adopted pursuant to Subsec. 78-367(a), the agreement specified in Subsec. 78-374 (a), and the permit.

Sec. 78-369. – Prohibited conduct; equipment.

(a) Permittees shall not discriminate against low- and moderate-income persons in connection with the deployment and rental of the permittee’s micromobility devices. Permittees must deploy and maintain a sufficient number of micromobility devices to satisfy customer demand within census tracts of low- and moderate-income areas of the City, as defined in the permit. Conversely, permittees must limit the excessive concentration of devices in congested areas, as the City Manager shall determine. Permittees must communicate their strategies for deployment of devices to the City, including information pertaining to the type of work force employed, staffing levels, and general re-balancing schedules.

(b) Each permittee shall implement a program to reduce barriers to the rental by low- and moderate-income persons of the permittee’s micromobility devices. Permittees shall do this by providing diverse payment options, including options for persons who possess neither a smart phone nor a credit card. These options shall be made accessible to low- and moderate-income persons at multiple locations throughout the City.

(c) Notwithstanding any other provision of this Article, no person or business may:

- (1) use, display, proffer or make available for rent any electric, stand-up scooter or new mode of dockless, shared transport upon any greenway, public park, or City parking deck, or within Old Salem;
- (2) display, proffer or make available for rent any electric, stand-up scooter or electric-assisted bicycle that is capable of traveling at more than 20 (twenty) miles per hour;
- (3) ride any electric, stand-up scooter upon any public sidewalk;
- (4) use any new mode of dockless, shared transport upon any public sidewalk; or
- (5) deploy, station, leave, abandon, or park a micromobility device in any public right-of-way or any public area in a manner that:
 - aa) obstructs pedestrian or vehicular travel upon or blocks pedestrian or vehicular access to a public right-of-way (including, but not limited to, parking a device in anything other than an upright position or in a manner that blocks crosswalks, crosswalk activation buttons, ADA ramps, or otherwise violates ADA accessibility requirements or impedes ADA access,).
 - (bb) blocks ingress or egress from a vehicle lawfully parked at the curb of a public right-of-way,
 - (cc) is nearer than 36 (thirty-six) inches to a fire hydrant,
 - (dd) poses a public safety hazard, or
 - (ee) is otherwise prohibited by applicable laws or administrative regulations, all as the City Manager shall, in his or her sole and absolute discretion, determine.
- (6) use, display, proffer, make available for rent, station, or leave any electric, stand-up scooter on or in any public right-of-way between the hours of 9 (nine) p.m. and 6 (six) a.m.
- (7) display, proffer, or make available for rent any micromobility device that is inoperable or unsafe to operate.

(d) The holder of a micromobility device permit issued pursuant to Sec. 78-371 shall be responsible for the abandonment by any customer of any micromobility device operated pursuant to the permit and abandoned in contravention of Subsec. 78-369(c)(5), above. Said device shall be subject to immediate impoundment by the City, under Sec. 78-376, below, and the permittee shall be subject to the imposition of both impound fees and civil penalties, per Sec. 78-376, Sec. 78-378, and Sec. 78-379, below.

(e) Each permittee must have the ability to discover when its devices are being used in restricted areas and must communicate that information electronically to customers during or at the conclusion of a trip.

(f) Each electric, stand-up scooter must be equipped with always-on front, side, and rear lights that emit white light visible from a distance of at least 500 (five hundred) feet to the front, side, and rear.

(g) Each micromobility device must be equipped with functional, durable, and effective brakes.

(h) Each micromobility device must prominently display a unique and conspicuous serial number or other identifier, legible from a distance of 10 (ten) feet, the name and contact information, including website, e-mail address, and phone number of the permittee under whose permit the device is authorized, legible from a distance of 3 (three) feet, and information for users pertaining to safety, traffic laws, and manufacturers' recommendations and warnings.

(i) Each micromobility device must be equipped with state-of-the-art shared mobility technology, such as GPS, which allows the device to be located and tracked, in real time, by its permittee, at all times, which records trip origin, destination, and usage, and which is capable of location-based speed regulation and parking restriction, which shall be employed at the City's request. Each electric, stand-up scooter must be able to recognize and implement enforcement mechanisms to prohibit sidewalk riding.

(j) Each micromobility device must be clean, safe, and in good working order, and meet applicable safety standards outlined in the Code of Federal Regulations and as propounded by the International Standardization Organization.

(k) Each micromobility device must be designed and manufactured to withstand the demands of outdoor and shared use.

(l) Each micromobility device must be equipped with a warning bell or horn and security hardware.

(m) Each micromobility device must be regularly inspected for wear and tear and for stress-based damage. Each micromobility device must be regularly maintained and repaired, in accordance with manufacturers' recommendations. Worn or damaged parts must be immediately replaced. Unsafe or inoperable devices must be removed from the public right-of-way within 1 (one) hour of notification to, or discovery by, the permittee, and devices that are unsafe to operate must immediately be made unavailable to the public, by the permittee, via remote device lock-down.

Sec. 78-370. - Permittees' obligations.

(a) Each permittee shall remove and/or re-park every micromobility device authorized under the permittee's permit that is parked in violation of Subsec. 78-369(c)(5) within 2 (two)

hours of receiving notice of the violation from any person, business, or from the City, via phone, e-mail, or other mobile or web application, unless a shorter timeframe is indicated elsewhere in this Article, such as in Subsection 78-369(m). Each permittee must implement parking confirmation and notification systems, such as parking confirmation photograph verification and other systems, to reduce poor parking behavior. Additionally, each permittee must re-balance the devices authorized under its permit, throughout the day, to achieve an equitable distribution of devices.

- (b) Each permittee shall retrieve and remove from the public right-of-way any micromobility device authorized under the permittee's permit that is inoperable or unsafe to operate, and, in the case of an unsafe device, remotely lock down the device, all as per the requirements in Subsection 78-369(m), above.
- (c) Each permittee shall remove all its micromobility devices from the public right-of-way during any period of time when weather conditions or special events necessitate devices' removal to ensure the public health and safety, as the City Manager shall determine.
- (d) Each permittee shall provide the City all data the City requests concerning the permittee's micromobility devices and their use, including real-time data, archival trip data, data pertaining to the frequency and location of trips, data pertaining to the deployment and re-balancing of devices, data pertaining to customer complaints and customer service response, data pertaining to device inspection, maintenance, and defects, accident data, data pertaining to system operations, etc. The data must be accurate, anonymized, and timely provided in a format and via an interface the City approves. The City will only request and use such data as the City needs to support the safe, equitable, and effective management of the permittee's operations within the City. The permittee shall communicate, clearly, conspicuously, and transparently to customers and prospective customers prior to the commencement of a trip that this data will be collected and shared with the City. The permittee shall also communicate, clearly, conspicuously, and transparently to customers and prospective customers, prior to the commencement of a trip, whether the permittee will collect, share, or sell any other data and with whom. The permittee must seek and acquire a customer's permission prior to selling the customer's data or sharing it with parties other than the City. The permittee must provide customers an "opt in" option in furtherance thereof. The permittee must protect, and use industry-accepted encryption to encrypt all financial, personal, and uniquely identifying information it collects, stores, or disseminates, in strict compliance with all applicable federal, state, and local laws, rules, and regulations. All financial transactions in which the permittee engages with customers must be secure and Payment-Card-Industry-compliant.
- (e) Each permittee will record, compile, and maintain data with respect to all accidents involving the permittee's devices, reported to the permittee, the Police Department, the Sheriff's Office, or the North Carolina Department of Motor Vehicles, as well as records of all inspection, maintenance, and repair performed on permittee's devices. The permittee

will share all such data, which must be accurate and anonymized, with the City, at the City's request.

- (f) Each permittee shall include substantially the following information for prospective customers on the permittee's mobile applications and web site, and shall also display said information on the micromobility device to which the information is applicable:
- (1) Persons operating electric, stand-up scooters must be at least 16 (sixteen) years old and are encouraged to wear a helmet.
 - (2) North Carolina law requires persons operating a micromobility device to follow applicable traffic laws.
 - (3) City ordinance prohibits the operation of electric, stand-up scooters and new modes of dockless, shared transport on sidewalks, greenways and in public parks and Old Salem, except that customers may walk electric, stand-up scooters across the sidewalk.
- (g) Each permittee must adopt and implement programs to educate customers on how to safely operate micromobility devices and must apprise customers of all applicable laws regulating the safe and proper operation of a micromobility device and all manufacturers' recommendations and warnings pertaining to the operation of devices. Each permittee must also engage in regular, repeated, and interactive community outreach/engagement and host regularly recurring classes or events, in order to educate the community, at large, about the use of micromobility devices authorized under the permittee's permit and in order to consider community concerns and needs.
- (h) Each permittee shall communicate to prospective customers sufficient information with respect to charges customers may incur, including rates and dollar amounts, rental charges, minimum charges, maximum charges, charges for additional time, and charges for periods of overage. If charges may be based on time or distance, information on the rate per minute, hour, mile, or other applicable time period and distance shall also be provided.
- (i) Each permittee shall maintain a 24-hour (twenty-four-hour), 7-day-a-week (seven-day-a-week), 365-day-a-year (365-day-a-year) hotline and a local office, within the City, open, at minimum, from 8:00 a.m. to 5 p.m. for customers to report safety and other concerns and complaints, to ask questions, to take payments, and to conduct other business. Both the hotline and the local office shall be staffed by personnel who can and must respond or dispatch other personnel who can and must respond to customer or City concerns, complaints, and/or requests within 2 (two) hours of complaint/request, unless a shorter timeframe is specified elsewhere in this Article.
- (j) All communications required by this Article to be made by a permittee to a prospective customers shall be in clear, plain English and displayed in a conspicuous manner.

(k) Permittees must actively engage with City staff to resolve issues and to develop solutions to improve service performance. Permittees shall be responsible for clearly communicating operational adjustments to the City, for promptly responding to citizen and City inquiries and requests, and for promptly resolving any operational issues that arise, all within the timeframes indicated in this Article. Each permittee shall provide the City with an organizational chart of the permittee's team, complete with contact information.

(l) Each permittee must require customers to affirmatively sign or check a box within the permittee's registration, service agreement, or mobile application, prior to the customer's use of the permittee's device, to indicate that the customer agrees to forever release, relinquish, and discharge the City and its officials, officers, employees, representatives, and agents from any and all known and unknown claims, demands, disputes, debts, losses, liabilities, liens, charges, expenses, penalties, proceedings, causes of action, suits, injuries, and damages, including, but not limited to, consequential, indirect, incidental, special, and exemplary damages, pertaining to any personal injury, wrongful death, or property damage which arises, in any manner, in connection with: (i) the customer's rental, use, misuse, or proper or improper placement or parking of the permittee's devices, (ii) the City's/City Manager's issuance of, or decision to approve, the permittee's micromobility device permit, (iii) the process used by the City/City Manager in making its/his/her decision, (iv) the permittee's operations, acts, or omissions, including, but not limited to, any failure to inspect, repair, service, charge, and/or maintain devices and to communicate to customers applicable traffic safety laws and appropriate manufacturers' and other warnings and recommendations for the use of devices, (v) any defective device or equipment the permittee displays, deploys, stations, offers for rent, rents, leaves, or abandons, (vi) the permittee's improper placement or parking of any device, (vii) the permittee's or any of its officers', managers', employees', agents', or representatives' alleged or actual violation of any federal, state, or local law, rule, regulation, ordinance, or guidance, in connection with the use of the permit, any device authorized thereunder, or the permittee's business operations, (viii) the permittee's or any of its officers', managers', employees', agents', or representatives' violation or breach of this Article, the administrative regulations adopted pursuant to Subsec. 78-367(a), the agreement specified in Subsec. 78-374 (a), or the permit, (ix) the permittee's failure to secure the customer's consent to the collection, sharing, selling, or dissemination of data in the manner specified in this Article, (x) the permittee's failure to protect any such data or to perform financial transactions in accordance with Subsec. 78-370(d) and all other applicable federal, state, and local laws, rules, and regulations, and/or (x) the City's failure to enforce the provisions of this Article, the administrative regulations adopted pursuant to Subsec. 78-367(a), the agreement specified in Subsec. 78-374 (a), or the permit.

(m) A permittee who elects to cease operations within the City before the permittee's permit expires must provide the City written notice at least 14 (fourteen) calendar days in advance of the cessation.

(n) Upon the earlier of expiration of a permit or cessation of operations, a permittee must immediately surrender its permit to the City and remove all its devices and associated equipment from the public right-of-way and public areas, unless the City notifies the permittee otherwise, in writing.

Sec. 78-371. - Maximum number of micromobility device permits and micromobility devices; issuance of permits.

(a) The Committee, established pursuant to Subsec. 78-373(a), below, may issue up to 2 (two) micromobility device permits each year for each category of micromobility device. The categories of micromobility device are (1) electric, stand-up scooters, (2) dockless bicycles, and (3) new modes of dockless, shared transport. However, if the Committee determines, in its sole discretion, that there is a need or demand for more micromobility devices than the number proposed or operated by permittees or prospective permittees, the Committee may issue additional permits to other persons or entities, in order to increase the number of devices available.

(b) The City Manager may establish the number of micromobility devices authorized under each micromobility device permit. The City Manager may limit or specify the total number of micromobility devices, including the mix of shared devices, that are to be operated within the City, in order to (1) maintain the integrity of the City's entire transportation system, (2) keep public rights-of-way free and clear of unnecessary obstructions, (3) protect the health, safety, and welfare of the citizens of the City, and (4) ensure access to micromobility devices by low- and moderate-income citizens.

Once a week, the City Manager may adjust the maximum number of devices authorized by each micromobility device permit. The City Manager shall take into consideration market needs, the number of devices deployed in the City, data pertaining to device utilization, operator performance, public safety, seasonal, weather, and environmental conditions, special events, and any other criteria set forth in administrative regulations. The City Manager shall set forth, in writing, the reasons supporting his or her determinations. The City Manager's determinations will be published on the City's website and the City will solicit public comments for 2 (two) business days, which the City Manager will review and consider prior to the City Manager's issuance of final determinations. The City Manager's determinations under this Section shall constitute the final decision of the City and shall not be subject to further administrative review. No person shall fail to comply with the limitation the City Manager establishes on the number of devices. A permittee shall comply with any decrease in the number of devices permitted under the permittee's permit within 2 (two) business days of the City Manager's issuance of a final determination.

(c) There shall be a fee for each device authorized under a permit. Said fee is indicated in Subsec. 78-379(b), below, the Device Fee. Prior to deploying any additional devices authorized under a permit, the permittee must pay the Device Fee specified in Subsec. 78-379(b) for each additional device. The City will not refund any Device Fees for devices that are required to be removed from the permittee's fleet within the City.

Sec. 78-372. - Micromobility device permit application procedure, fees and requirements.

(a) Any person seeking to obtain a micromobility device permit shall submit a written application by June 1st of the year in which an application is made, signed under penalty of perjury, and using the form designated by the City Manager for that purpose.

(b) Fees for the initial application for, and renewal of, a micromobility device permit are listed in Subsec. 78-379(a) and (c) below. Said fees defray the City's costs to administer and enforce the provisions of this Article, reflect charges associated with the use of public property, pursuant to this Article, to conduct a for-profit business, and must be paid at the time of the application for an initial permit or the renewal thereof, before the application will be considered/processed.

(c) The City Manager may specify the information that must be provided in connection with an application and the form in which the information is to be provided. The application shall contain, at a minimum, the following information:

(1) the applicant's organizing documents (if a corporation, the applicant's articles of incorporation and by-laws; if a limited liability company, the applicant's articles of organization and operating agreement; if a partnership, the partnership's partnership agreement, etc.);

(2) if the applicant is a foreign business entity, a certificate of good standing from the secretary of state in the state where the applicant is incorporated, organized, or otherwise formed, as well as a certificate of authority to do business in North Carolina from the North Carolina Secretary of State;

(3) if the applicant is a domestic business entity, proof that the applicant is properly registered with the North Carolina Secretary of State and current with respect to all requisite state and local filings and fees;

(4) if the applicant is a sole proprietorship or does business under an assumed name, a copy of the applicant's completed "Assumed Business Name Certificate", recorded with the Forsyth County Register of Deeds, in Forsyth County, North Carolina;

(5) the name and business address of each person or entity that: (i) has more than a ten percent equity, participation, or revenue interest in the applicant; and/or (ii) is a trustee, director, partner, or officer of that entity or of another entity that owns or controls the applicant;

(6) the name and business address of any parent or subsidiary of the applicant, including those of any business entity which owns or controls the applicant, in whole or in part, or which is owned or controlled by the applicant, in whole or in part, together with a statement describing the business operations of any such parent or subsidiary and the nature of the relationship between said parent or subsidiary and the applicant;

(7) information sufficient to show that the applicant is financially, technically, and legally qualified to operate and maintain a micromobility device system, as the City shall, in its sole discretion determine;

(8) a description of the proposed plan of operation, including, at a minimum, a detailed description of:

(aa) the applicant's current operations in the City and in other cities, including copies of the applicant's operating permits for all such jurisdictions and an explanation of how the applicant's current and future operations will complement existing modes of transportation within the City, such as local transit agencies and existing, docked bike-share,

(bb) the applicant's proposed operations in the City, including the maximum number of micromobility devices the applicant proposes to use, the plan for balancing and re-balancing micromobility devices for equitable City-wide coverage, the plan for inspecting, repairing, servicing, and maintaining micromobility devices, the plan for providing and maintaining adequate levels of staff for operation, inspection, repair, service, maintenance, re-balancing, and administration, and the plan to provide adequate customer service,

(cc) the applicant's history of complying, and plans and ability to comply, with, federal, state, and local law, rules, regulations, and guidelines, including, but not limited to, Chapter 20 of the North Carolina General Statutes and any federal, state, and local laws pertaining to data privacy, breach, and the protection of personal information obtained from or about customers of applicant's micromobility devices,

(dd) the applicant's plans to implement safety programs, including, for example, a program by which the applicant will receive information about and notify customers of inappropriate use,

(ee) the applicant's plans to educate customers of micromobility devices about applicable federal, state, and local laws, rules, regulations, and guidelines, as well as any safety and usage recommendations, warnings, or proscriptions applicant or device manufacturers recommend, and

(ff) any other requirements set forth by administrative regulation.

(d) Permits shall be valid for a period of 1 (one) year from the date of issue. Applicants may apply to renew their permits, following all the procedures prescribed herein. Applications for renewal shall be subject to the same standards of review as applications for an initial permit. Applicants must submit updated insurance certificates, meeting the requirements of Subsection

78-374(b), with any application for a new or renewed permit. A permit does not grant an exclusive right to its holder to operate a system of shared micromobility devices.

Sec. 78-373. - Micromobility permittee selection.

(a) The City Manager will establish a Micromobility Device Permittee Selection Committee (the "Committee"), which shall consist of City staff with appropriate knowledge and experience, and one or more representatives of the public, who are not employees of the City and have been appointed by the City Manager.

(b) The Committee shall review all applications and rank applicants, in accordance with objective criteria set forth in this Article and in administrative regulations established pursuant hereto.

(c) Each qualified applicant shall be evaluated based upon objective criteria which shall include: 1) an evaluation of the applicant's experience, 2) the adequacy (in form and content) of the documentation the applicant provides in response to the requirements in Sec. 78-372, 3) the applicant's and its officers', owners', and principals' history of compliance with applicable federal, state, and local laws, rules, regulations, and guidelines, both within and without the City, and any violations thereof, 4) the applicant's current operations, both within and without the City, 5) the applicant's plans with respect to the elements identified in Subsec. 78-372 (c)(8), including the applicant's public education strategy, 6) the applicant's financial wherewithal and stability, 7) the adequacy of applicant's insurance, 8) the applicant's ability to begin operations in a timely manner, and 8) any other objective criteria established by administrative regulation.

(d) Each applicant shall be furnished with a copy of the Committee's rankings relative to its application within five (5) business days of the Committee's completion of the rankings and provided an opportunity to submit written comments or objections to the Committee's rankings within five (5) business days of the applicant's receipt of the Committee's rankings.

(e) The Committee shall consider the applicant's comments or objections thereto, if any, and shall, thereafter, set forth, in writing, the reasons supporting their determination. The Committee may request additional information from City staff, any applicant, or any other source that would assist in determining applicants' qualifications and ranking.

(f) The Committee may grant a micromobility device permit to the 2 (two) applicants ranked highest in each of the (1) electric, stand-up scooter, (2) dockless bicycle, and (3) new mode of dockless, shared transport categories. However, if the Committee determines in its sole discretion, per Subsec. 78-371(a), above, that the need or demand for micromobility devices exceeds the top-ranked permittees' ability/capacity to provide them, the Committee may issue additional permits to other persons/entities capable of providing the additional devices.

(g) The City Manager may impose, as part of any micromobility device permit the Committee issues, any and all conditions necessary to effectuate the purposes of this Chapter, to mitigate adverse traffic impacts, to ensure accessibility of the public rights-of-way and the removal of obstructions therefrom, and to protect the public health, welfare, and safety. No person, business entity, and/or applicant shall fail to comply with such permit conditions.

(h) Once the City issues a micromobility permit, the selected permittee will be required to pay all fees required by Sec. 78-379 and begin operations within 30 (thirty) calendar days thereafter.

(i) The issuance by the City of a micromobility device permit and the execution by the permit holder and the City of an agreement shall, in no way, be construed as a joint venture or an employment or independent contractor relationship.

Sec. 78-374. - Limitations on City liability; indemnification; agreements; insurance; bonds.

To the fullest extent permitted by law, the City shall not assume any liability, whatsoever, with respect to any micromobility device permits the City issues or the operation of any micromobility devices thereunder. As a condition to the issuance of any micromobility device permit, the applicant shall be required to meet all of the following conditions (and by accepting a permit, the applicant agrees to the following conditions):

(a) Execute an agreement, in a form approved by the City Attorney, agreeing to release, indemnify, defend (at applicant's sole cost and expense), and hold the City and its officers, officials, employees, representatives, and agents harmless from and against any and all claims, suits, causes of action, losses, damages, demands, injuries, liabilities, or losses, including, but not limited to, any consequential, indirect, incidental, special, or exemplary damages (collectively, the "Claims"), which, in any manner, arise out of, in relation to, or in connection with: (i) the City's/Committee's/City Manager's issuance of, or decision to approve, a micromobility device permit, (ii) the process used by the City/Committee/City Manager in making its/his/her decision, (iii) the applicant's operations, acts, or omissions, including, but not limited to, any failure to inspect, repair, service, maintain, or properly place or park devices and to communicate to customers applicable traffic safety laws and appropriate warnings and recommendations for the use of devices, including, but not limited to, any warnings or recommendations issued by manufacturers, (iv) any defective device or equipment applicant displays, deploys, stations, offers for rent, rents, leaves, or abandons, (v) the applicant's and/or its officers', managers', employees', agents', representatives', or customers' injury or damage to person or property, in connection with the use of the permit or the use, misuse, or parking of any device authorized thereunder, including, but not limited to, any injuries or damage to the public rights-of-way, (vi) the applicant's or any of its officers', managers', employees', agents', representatives', or customers' alleged or actual violation of any federal, state, or local law, rule, regulation, ordinance, or guidance, in connection with the use of the permit, any device authorized thereunder, or the applicant's business operations, (vii) the applicant's or any of its officers', managers', employees', agents', or representatives' breach of the agreement, and/or (viii) the City's failure to enforce the provisions of this Article,

the administrative regulations adopted pursuant to Subsec. 78-367(a), the agreement specified in Subsec. 78-374 (a), or any provision of the permit. The applicant's indemnification obligation shall apply to all the above-stated Claims, regardless of whether any of the applicant's insurance policies apply thereto.

(b) Obtain and maintain in continuous effect, for the duration of the micromobility device permit and the applicant's use of the public rights-of-way, and for 1 (one) year, thereafter, an insurance policy satisfactory to the City's Risk Manager, from an insurer authorized to conduct business in the state of North Carolina and possessing a current A.M. Best rating of no less than A:VII, with coverage limits and conditions specified by the City's Risk Manager, as s/he determines necessary and appropriate, from time to time, naming the City an additional insured, on a primary and non-contributory basis to secure the applicant's indemnification obligations under this Section and the aforementioned agreement. The applicant's insurance policy shall be endorsed to state that coverage shall not be cancelled and the amount of coverage shall not be materially reduced until 30 (thirty) days' following the City's receipt of prior written notice by certified mail. If any insurance policy issued to a permittee is cancelled or the amount of coverage thereof materially reduced, for any reason, the micromobility device permit issued under this Article shall be automatically suspended. In order to reinstate the permit, the permittee shall provide a new certificate and policy of insurance to the City, meeting the requirements of this subsection. Original, signed certificates and endorsements, evidencing the coverages required hereunder shall be submitted to the City prior to the issuance of or reinstatement of a permit. The policy limits of the insurance provided hereunder shall not limit the applicant's obligation to the City.

(c) Provide to the City a performance bond, letter of credit, or other surety acceptable to the City Attorney, in an amount determined by the City Manager to be sufficient to cover the obligations of the applicant under this Article, the administrative regulations adopted pursuant to Subsec. 78-367(a), the agreement specified in Subsec. 78-374(a), and the permit. Any bond or letter of credit must be issued by a surety with a credit rating of at least A+ and legally authorized to do business in the state of North Carolina. The surety must guarantee the performance of all of the applicant's obligations under the aforementioned documents. If the amount of the bond is determined according to the number of micromobility devices authorized under the permit, the applicant must submit a revised surety, acceptable to the City Attorney, in an amount sufficient to cover the applicant's obligations pertaining to both the existing and additional authorized devices before the additional devices may be deployed.

(d) Advance to the City all costs and expenses the City anticipates incurring or which the City anticipates others will incur on its behalf as a result of any legal challenge related to the City's approval of, or activities conducted pursuant to, the applicant's micromobility device permit, the device, itself, and/or the damage to, or repair of, the public rights-of-way, public area, or other City property damaged in connection with the applicant's and/or its officers', managers', employees', agents', representatives', or customers' use of the public rights-of-way or public areas pursuant to the permit issued to the applicant.

(e) Reimburse the City within 30 (thirty) calendar days of the date of invoice for all costs and expenses, including, but not limited to, attorneys' fees and court costs, which the City incurs (and which have not already been advanced) as a result of any legal challenge related to the City's approval of, or activities conducted pursuant to, the applicant's micromobility device permit, the device, itself, or damages to the public rights-of-way, public areas, or other City property. The City may, in its sole discretion, elect to participate in the defense of any such action, but such participation shall not relieve the applicant of any of its obligations imposed hereunder.

(f) Reimburse the City within 30 (thirty) calendar days of the date of invoice for all costs and expenses the City incurs (and which have not already been advanced) to repair the public rights-of-way or other City property damaged in connection with the applicant's and/or its officers', managers', employees', agents', representatives', or customers' use of the public rights-of-way pursuant to the permit issued to applicant.

(g) The applicant will conduct all defense specified in this Sec. 78-376 at the applicant's sole cost and expense, and the City shall reasonably approve selection of the counsel that will represent the City. The applicant shall not settle or compromise any claim or consent to the entry of any judgment which affects the City, without the prior written consent of the City. In no event, shall an adverse judgment be entered against the City, as part of a settlement, without the City's express, prior, written consent.

(h) The indemnification obligations expressed in this Article shall continue during the suspension of the micromobility device permit, and shall survive the expiration or earlier termination/revocation of the permit and the expiration or lapse of any insurance policy.

Sec. 78-375. - Grounds for revocation, suspension, or denial of a permit; grounds for the reduction of the number of micromobility devices authorized under a permit.

A micromobility device permit may be revoked, suspended, or denied by the Committee if:

(a) an applicant/permittee or any of its employees, managers, officers, principals, directors, owners, contractors, representatives, or agents:

(1) makes any false or misleading statements, or material omissions on the permit application,

(2) fails to provide information requested or required by the City,

(3) operates or proposes to operate in a manner that endangers the public health, safety, or welfare, as the City Manager shall, in his/her sole and absolute discretion, determine,

(4) fails to comply with, or abide by, any applicable (i) federal, state, or local law, rule, regulation, or ordinance, (ii) any standards or guidance adopted pursuant thereto, or (iii) any requirement or condition imposed by this Article, the administrative regulations adopted pursuant to Subsec. 78-367(a), the agreement specified in Subsec. 78-374 (a), or the permit,

(5) is convicted of any criminal offense that is substantially related to the qualifications, functions, duties, or abilities of the applicant, including, but not limited to, any such pertaining to violent or serious felony, fraud, deceit, or embezzlement,

(6) fails to pay any civil penalties/fines imposed by the City, pursuant to Subsec. 78-378(a),

(7) fails to pay any impound fees imposed by the City, pursuant to Subsec. 78-376(b) and Subsec. 78-379(d), or

(8) if the Committee, or, in the case of an appeal or emergency suspension/revocatin, pursuant to Subsec. 78-375(b), below, the City Manager, determines, in its/his/her sole and absolute discretion, that it is no longer in the public interest for the applicant/permittee to continue to operate within the City.

(b) However, if the City Manager determines, in his/her sole and absolute discretion, that the applicant's operations pose an immediate threat to the public health, safety, or welfare, any suspension or revocation shall take immediate effect following the City Manager's decision. The City Manager shall provide notice of the suspension or revocation to the applicant as soon as reasonably practicable thereafter. All other suspensions and revocations shall take effect 10 (ten) days after the date of notice to the applicant of the suspension or revocation.

(c) Any applicant whose/which permit has been denied, suspended, or revoked may appeal the denial, suspension, or revocation by filing a written request with the City Manager within 10 (ten) days of the date of service of the notice of denial, suspension, or revocation. The City Manager shall hear the appeal, including the appeal of an emergency suspension or revocatio pursuant to Subsec. 78-375(b). The City Manager shall send a written notice to the applicant, stating the time and place of the hearing. The applicant may appear in person or through counsel, and may present evidence, provided, however, that the City Manager shall have the authority to conduct the hearing in the manner and for the length of time the City Manager deems necessary to make a decision. The City Manager may affirm or deny the denial, suspension, or revocation, and the City Manager's decision shall be final. The applicant's failure to request an appeal within the time and in the manner specified in this subsection shall constitute a waiver of the right of appeal.

Sec. 78-376. - Impoundment of devices.

(a) A micromobility device that is displayed, operated, offered or made available for rent, or that is stationed, left, or abandoned, in the public right-of-way or a public area, in violation of this Article, shall be subject to immediate impoundment by the City.

(b) The City shall charge an impound fee for each device the City impounds, which fee shall reflect the City's costs to investigate violations, to enforce the provisions of this Article, the administrative regulations adopted pursuant to Subsec. 78-367(a), the agreement specified in Subsec. 78-374 (a), and the permit, and to impound and store devices. The fee is indicated in Subsec. 78-378(d), below.

(c) No person shall retrieve any impounded micromobility device without demonstrating proper proof of ownership and paying applicable impound fees and any civil penalties assessed in accordance with Subsec. 78-378(a) and Subsec. 78-379(e), below.

Sec. 78-377. – Customer requirements.

(a) Persons using dockless bicycles or electric, stand-up scooters must be at least 16 (sixteen) years old.

(b) Persons using electric, stand-up scooters and dockless bicycles are encouraged to wear helmets.

(c) Persons using micromobility devices must follow all applicable traffic laws.

(d) Persons using electric, stand-up scooters and dockless bicycles must yield the right-of-way to other traffic therein, before entering or crossing a public right-of-way.

(e) Persons using electric, stand-up scooters and dockless bicycles must yield the right-of-way to pedestrians in the public right-of-way.

Sec. 78-378. – Enforcement; penalties for violation.

(a) Civil penalties for violation of Article. Each violation of this Article by a permittee, or by a person or business who or which displays, offers, or makes available for rent any micromobility device, without having obtained a permit therefor, shall subject the offender to the assessment of a civil penalty. Similarly, the abandonment by any customer of any micromobility device operated pursuant to a permit and abandoned in contravention of Subsec. 78-369(c)(5), above, shall subject the permittee to the assessment of a civil penalty. The Committee may assess civil penalties and shall give the offender/permittee written notice of the nature of the violation(s) and the amount of the civil penalties. The notice shall be served by any method allowed by law for the service of

summons in a civil action. The civil penalty shall be \$250.00 (two-hundred-fifty dollars) per violation, plus an additional sum per day for each micromobility device impounded until, and including, the later of the dates on which the offender/permittee lawfully retrieves said device and pays all impound fees and civil penalties thitherto assessed. The amount of the daily impound fee is indicated in Subsec. 78-379(d). In addition, the offender/permittee shall pay any costs the City incurs as a result of the violation, including, but not limited to, those costs specified in Subsec. 78-376(b), above.

(b) Appeal of civil penalties. Anyone who has been assessed a civil penalty under this Article may appeal the assessment by filing a written request with the City Manager within 10 (ten) days of the date of service of the notice of civil penalty. The City Manager shall hear the appeal. The City Manager shall send a written notice to the offender/permittee, stating the time and place of the hearing. The offender/permittee may appear in person or through counsel, and may present evidence, provided, however, that the City Manager shall have the authority to conduct the hearing in the manner and for the length of time the City Manager deems necessary to make a decision. The City Manager may affirm, deny, or modify the penalty, and the City Manager's decision shall be final. The offender's/permittee's failure to request an appeal within the time and in the manner specified in this subsection shall constitute a waiver of the right of appeal.

(c) Collection of civil penalties. If the offender/permittee does not pay the civil penalty or file an appeal with the City Manager, in the manner specified, within 10 (ten) days of the date of service of the notice of civil penalty, or, in the case of an appeal, within 10 (ten) days of the date of the decision on appeal, the City Manager may collect the civil penalty by commencing a civil action for the collection of a debt. The City Manager may compromise or abandon a claim, before or after commencement of the civil action, if the City Manager finds it improbable that the City will collect the entire amount of the claim and that the resources the City will expend to pursue the civil action do not justify its pursuit.

(d) Equitable remedies. Any provision of this Article, the administrative regulations adopted pursuant to Subsec. 78-367(a), the agreement specified in Subsec. 78-374 (a), or the permit issued hereunder may be enforced by an equitable remedy, including abatement orders and mandatory or prohibitory injunctions issued by a court of competent jurisdiction. The Forsyth County Superior Court shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application by the City for equitable relief that there is an adequate remedy at law.

(e) Remedies cumulative. All remedies specified herein shall be cumulative, and the City intends that the revocation, suspension, and denial of a permit shall be just a few remedies among others available to the City. Any violations of this Article punishable as crimes under state law shall be so punishable.

(f) Any person found, pursuant to the processes outlined in this Article, to have violated the Article, administrative regulations adopted pursuant to Subsec. 78-367(a), the agreement specified in Subsec. 78-374 (a), or any permit condition shall reimburse the City and any participating law

enforcement agency their full investigative costs within 30 (thirty) days of the date of invoice therefor.

Sec. 78-379. – Schedule of fees and penalties.

- (a) Initial Permit Fee. The fee for an initial permit application shall be \$1,000 (one thousand dollars).
- (b) Device Fees. The fee for each device authorized under a permit shall be:
 - 1. \$100 (one hundred dollars) per electric, stand-up scooter,
 - 2. \$50 (fifty dollars) per dockless, electric-assisted bicycle, and
 - 3. \$25 (twenty-five dollars) per dockless, human-powered bicycle.
- (c) Permit Renewal Fee. The fee to renew a permit shall be \$500 (five hundred dollars).
- (d) Impound Fee. The impound fee shall be \$50 (fifty dollars) per day for each device the City impounds.
- (e) Civil Penalty. The civil penalty shall be \$250 (two-hundred-fifty dollars) for each violation of this Article, the administrative regulations adopted pursuant to Subsec. 78-367(a), the agreement specified in Subsec. 78-374 (a), or the permit by a permittee or for anyone violating Subsec. 78-368. The civil penalty shall be \$250 (two-hundred-fifty dollars) for any abandonment of a device in contravention of Subsec. 78-369(c)(5), and shall be assessed only to the permittee under whose permit the device is operated.

Section 2. This ordinance shall be effective upon adoption.