

SPONSORED BY:
MAYOR BROWN



ORDINANCE NO. 2020-18

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AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF NEPTUNE BEACH, CREATING A SECTION 22-7, ARTICLE I, IN GENERAL, CHAPTER 22, TRAFFIC AND MOTOR VEHICLES; INSTITUTING A TEMPORARY MORATORIUM ON THE COMMERCIAL RENTAL AND LEASE, AND USE OF RENTED AND LEASED, ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES, MICROMOBILITY DEVICES AND MOTORIZED SCOOTERS; PROVIDING FOR LEGISLATIVE FINDINGS, DESIGNATION OF THE TEMPORARY MORATORIUM, CONFLICTING ORDINANCES, SEVERABILITY, ENFORCEMENT, AND AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Florida Constitution and Section 166.021, Florida Statutes, provides that municipalities have governmental, corporate, and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions, and render municipal services; and

WHEREAS, pursuant to the Florida Constitution, a city may exercise any power for municipal purposes except as otherwise provided by law; and

WHEREAS, Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act," reinforces the authority granted under the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law, and to enact ordinances in further thereof, including its policing and regulatory powers; and

WHEREAS, the City of Neptune Beach ("City") is experiencing the unusual presence and increasing use of commercially rented electric personal assistive mobility devices, micromobility devices, and motorized scooters in the downtown area of the City; and

WHEREAS, Section 316.003(23), Florida Statutes, defines an electric personal assistive mobility device as any self-balancing, two-nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of 750 watts (1 horsepower), the maximum speed of which, on a paved level surface when powered solely by such a propulsion system while being ridden by an operator who weighs 170 pounds, is less than 20 miles per hour, and electric personal assistive mobility devices are not vehicles as defined in this section; and

WHEREAS, Section 316.003(39), Florida Statutes, defines a micromobility device as any motorized transportation device made available for private use by reservation through an online application, website, or software for point-to-point trips and which is not capable of

traveling at a speed greater than 20 miles per hour on level ground, and the term includes motorized scooters and bicycles; and

WHEREAS, Section 316.003(46), Florida Statutes, defines a motorized scooter as any vehicle or micromobility device that is powered by a motor with or without a seat or saddle for the use of the rider, which is designed to travel on not more than three wheels, and which is not capable of propelling the vehicle at a speed greater than 20 miles per hour on level ground, and the term does not include an electric bicycle; and

WHEREAS, City staff and City law enforcement officers have observed users of electric personal assistive mobility devices, micromobility devices, and motorized scooters riding in an unsafe manner, riding on sidewalks and park areas, failing to observe traffic control devices, and neglecting to stop at intersections with stop signs, failing to yield to pedestrians, and other dangerous maneuvers that have put people at risk; and

WHEREAS, local commercial vendors who rent these devices and scooters have advised police department officials that although they were not prepared for the immense popularity of these devices and scooters, they intend to obtain more such devices and increase rentals at hotels and store fronts throughout the City; and

WHEREAS, there appears to be no organized management or control of the devices and scooters that are being used in the City and that are being left in areas throughout the City when the user discontinues use; and

WHEREAS, with this sudden occurrence of the large number of devices and scooters, and their rampant uncontrolled use, the City has found it necessary to issue this ordinance concerning this emergent special condition in the interest of public health, safety, and welfare and for protection of the users of the devices and scooters; and

WHEREAS, Section 316.008(1)(t), Florida Statutes, authorizes local authorities to reasonably exercise their police powers to adopt and enforce such temporary or experimental regulations as may be necessary to cover emergencies or special conditions; and

WHEREAS, Section 316.2068(5), Florida Statutes, authorizes a municipality to regulate the operation of electric personal assistive mobility devices on any road, street, sidewalk, or bicycle path under its jurisdiction if the governing body of the municipality determines that regulation is necessary in the interest of safety; and

WHEREAS, Section 316.2128(1), Florida Statutes, provides that a local government through the exercise of its powers under Section 316.008, Florida Statutes, may regulate and govern the operation of micromobility devices and motorized scooters on streets, highways, sidewalks, and sidewalk areas under the local government's jurisdiction; and

WHEREAS, the existing situation regarding such devices creates a danger to person and property within the City that must be addressed expeditiously to protect the residents and businesses of the City; and

WHEREAS, allowing such matters to remain unregulated will result in damage to property and potential loss of life which requires immediate attention; and

WHEREAS, pursuant to the above cited laws the City also has the authority to impose a moratorium and pause the abounding expansion of rentals until such time as appropriate regulations are in place for the public health, safety and welfare; and

WHEREAS, City staff and the City police department are to continue researching and working on permanent solutions to these emergent special conditions during the temporary moratorium imposed by this Ordinance, including but not limited to permitting and licensing regulations, zoning regulations, police powers regulations, traffic safety, and public safety; and

WHEREAS, during the temporary moratorium imposed by this Ordinance, the City Council desires an opportunity to hear input from local residents, businesses, and City departments to better prepare and take any steps necessary for the adoption and implementation of permanent regulations to address these emerging matters; and

WHEREAS, it is not the purpose or intent of this Ordinance to restrict or deny the use of personally owned electric personal assistive mobility devices, micromobility devices, and motorized scooters in the City, if they are operated consistent with Florida Law and City Code; and

WHEREAS, it is not the purpose or intent of this Ordinance to adversely affect the local businesses that lawfully engage in the business or intend to lawfully engage in the business of leasing or renting electric personal assistive mobility devices, micromobility devices, and motorized scooters in the City; and

WHEREAS, the City intends to effectively determine the best approach to permit and govern the leasing and renting business and use of electric personal assistive mobility devices, micromobility devices, and motorized scooters in the City; and

WHEREAS, the City finds a legitimate public purpose and it is in the best interests of the public health, safety, and welfare to impose a temporary moratorium on the commercial leasing and rental and use of commercially rented or leased electric personal assistive mobility devices, micromobility devices, and motorized scooters in the City until such time as appropriate City regulations are in place.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF NEPTUNE BEACH, FLORIDA:

SECTION 1. RECITALS AND LEGISLATIVE FINDINGS.

The above recitals and legislative findings are ratified and made a part of this Ordinance.

SECTION 2. Creating a New Section 22- 7 (Temporary Moratorium), Article I, Chapter 22 (Traffic and Motor Vehicles), Ordinance Code. A new Section 22-7, Article I, Chapter 22 is hereby created to read as follows:

TEMPORARY MORATORIUM.

A temporary moratorium is imposed on the commercial leasing and renting and use of commercially leased or rented electric personal assistive mobility devices, micromobility devices, and motorized scooters in the City. While this temporary moratorium is in effect, the City shall not authorize, allow, accept, process, or approve any application relating to the operation or commercial leasing and renting of these devices and scooters. This moratorium applies to any business that operates out of a hotel, motel, store, vendor stand, and any other local business location in the City, and to any online business operation that makes these devices and scooters locally available in the City. Nothing in this Ordinance shall be construed as a limit on the lawful use of the private ownership of these devices and scooters. Those individuals that use their privately owned devices and scooters are required to follow all Florida Laws and City Ordinances relating to these devices and scooters. This moratorium is imposed pursuant to the City's police and regulatory powers to protect the public health, safety, and welfare of the community at large and shall remain in effect until such time as repealed by the City Council as part of adoption of permanent regulations. The moratorium imposed by this Ordinance shall remain in effect for a period of 12 months from its effective date or until it is repealed by the City Council as part of its adoption of permanent regulations, whichever is sooner.

SECTION 3. CONFLICTING ORDINANCES.

That all ordinances or parts of ordinances in conflict with this Ordinance or parts thereof previously adopted or entered by the City in conflict with this Ordinance are temporary suspended to the extent inconsistent herewith and until a future ordinance is permanently addresses the subject matter.

SECTION 4. SEVERABILITY.

If any section, subsection, clause, or provision of this Ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this Ordinance.

SECTION 5. ENFORCEMENT.

The City's code enforcement officer, law enforcement officers, or any other person authorized to enforce ordinances in the City, may enforce the provisions of this Ordinance. Any enforcement action or legal remedy available under controlling state law, including but not limited to, prosecution as a misdemeanor with a fine not exceeding \$500.00 per violation, may be imposed as a penalty against the business and/or individual violator. Nothing contained herein shall prevent the City from taking such other lawful action in law and equity as may be necessary to remedy any violation of, or refusal to comply with, any part of this Ordinance, including but not limited to:

- a. Code enforcement action pursuant to City of Neptune Beach Ordinances against a business and/or individual;
- b. Pursuit of injunctive and/or declaratory relief in a court of competent jurisdiction against a business and/or individual;
- c. Initiating an action against a business and/or individual to recover any and all damages that may result from a violation of, or a refusal to comply with, any part of this Ordinance; or
- d. Utilizing any other action or enforcement method allowable by law.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect immediately upon approval.

VOTE RESULTS OF FIRST READING:

Mayor Elaine Brown	YES
Vice Mayor Fred Jones	YES
Councilor Kerry Chin	YES
Councilor Lauren Key	YES
Councilor Josh Messinger	YES

Passed on First Reading this 7th day of December, 2020.

VOTE RESULTS OF SECOND AND FINAL READING:

Mayor Elaine Brown	YES
Vice Mayor Fred Jones	YES
Councilor Kerry Chin	YES
Councilor Lauren Key	YES
Councilor Josh Messinger	YES

Passed on Second and Final Reading this 19th day of January, 2021.

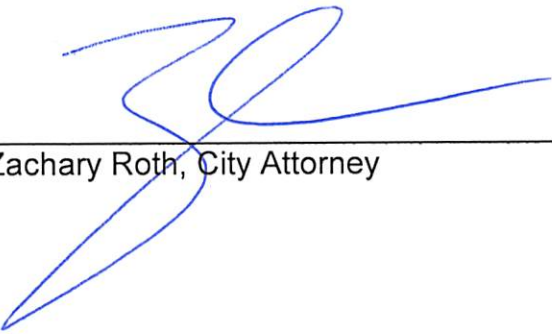

Elaine Brown, Mayor

ATTEST:


Catherine Ponson, City Clerk



Approved as to form and content:



A handwritten signature in blue ink, consisting of a stylized 'Z' followed by a horizontal line and a large loop, is positioned above a horizontal line.

Zachary Roth, City Attorney