



Date: September 18, 2018

To: Thomas J. Bonfield, City Manager
Through: Keith Chadwell, Deputy City Manager
From: Terry Bellamy, Transportation Director
Subject: Establishment of Ordinance to Regulate Shared Active Transportation Systems (SATS)

Executive Summary

Staff has been working on a new ordinance that would establish a permitting procedure for the regulation of shared active transportation systems within the City of Durham, utilizing best practices and lessons learned from other communities. While there is currently a permit process to regulate dockless bicycles, there is no ordinance that expressly regulates the operation of dockless motorized scooters or electric assisted bicycles in the right-of-way. The proposed ordinance was considered by the City Council in September and referred back to staff to request comments from the Bicycle and Pedestrian Advisory Committee (BPAC) and seek guidance from the Durham Police Department on the enforcement of motor vehicle codes related to motorized scooters. These comments are discussed in the Issues and Analysis, and BPAC’s comments are also attached as Attachment C. The ordinance has also been modified to, among other things, define motorized scooters as “vehicles” (without reference to mopeds), but still require that all shared devices comply with applicable local, state and federal laws, including state equipment and registration requirements. The Transportation Department will issue a permit if a permittee can evidence compliance with these laws.

Recommendation

The Administration recommends that the City Council adopt the Ordinance to Regulate the Operation of Shared Active Transportation Systems; and, adopt the Ordinance to Establish Shared Active Transportation System Permittee Fees.

The ordinance modifies the existing ordinance regarding dockless bike share operation by deleting definitions in Section 66-307 and the entirety of Section 66-314 of the city code and adding a new article to Chapter 50.

Background

Since November 2017, dockless bike share companies have operated in the City of Durham. Since this time, the number of cities with dockless bike share has expanded dramatically. In addition, dockless bike share companies have expanded to offer new products such as electric-assist bicycles and electric scooters.

During the past eight months more than 60,000 trips were taken on the approximately 1,000 to 1,400 bikes in operation. In general, there is public support for the program. In a survey of residents conducted in July 2018, more than 60 percent felt the bike share program should continue while 20 percent of residents felt it should be discontinued. Residents like that the program provides a flexible and convenient transportation option, is affordable, and encourages

bicycling. The main complaints have been about bikes blocking sidewalks, bikes looking cluttered, and bikes being left on private property.

Many companies have expressed interest in offering electric scooters, including the companies that currently offer bicycles. The proposed recommendations establish a permit for scooters and electric assisted bicycles, and also incorporate better ways to regulate the operation of shared active transportation systems (SATS) within the City. They also incorporate recommendations from City Council, BPAC, and staff.

Issues and Analysis

- **Police Enforcement:** The Police Department was asked to provide feedback on how they would enforce motorized scooter use. They provided the following response: “The Police Department will address violations of the law that present an obvious and immediate risk to public safety. Addressing violations may entail notice to the Transportation Department so that it may pursue civil penalties against the business owners/operators. Given the fact that civil remedies are available, and because moped operators are not required to have a license which will impact an officer’s ability to issue criminal citations, the Police Department does not anticipate being the primary agent for the regulation of these devices.”
- **Comments from the Bicycle and Pedestrian Advisory Commission:** BPAC reviewed the proposed ordinance at their meeting on September 18th and provided a letter with their comments (Attachment C). The following is a summary of their comments and a response to their comments:
 - 50-464: Proposed financial penalties for deploying unpermitted devices. Any person that operates a SATS in the City is subject to the SATS ordinance whether they have applied for a permit or not. In addition to the penalties and fees available under the SATS ordinance, the City has other penalties and mechanisms to enforce violations of the City Code.
 - 50-467: Providing information in Spanish. When asked about the feasibility of adding instructions in Spanish, scooter companies explained while the app is available in Spanish it would be difficult to have instructions on the device in Spanish. There is limited room on the scooter, and adding more information means it would have to be smaller and less visible. Staff is not aware of other cities where on-device instructions in Spanish are required. Language could be added to the permit application asking the companies to demonstrate their efforts to serve the Spanish speaking population of Durham.
 - 50-468d: Damage to public property. If damage occurs the City will repair the public property and charge the operator for the cost, so a required timeframe for repairs is not necessary.
 - 50-469: Parking areas. The Transportation Department is planning to develop designated on-street areas where bicycles and scooters can be parked. This does not need to be addressed in the ordinance.
 - 50-470: Timeline for reporting. The Ordinance has been modified giving authority to the Director to determine the timeline for data reporting. Additionally, the proposed ordinance will require real-time availability data and the permit will require the permittee provide data to a third part operator to manage the program.

- Use of electric assist bicycles and electric scooters on greenways. The Transportation Department agrees that policies and ordinance language could be improved to better address where electric assist bicycles and electric scooters can operate, specifically as it relates to greenways. The Department will work with Parks and Recreation and the Attorney's Office to explore options.
- Workforce model of chargers: The Transportation Department understands the potential issues that can result from this, and are reviewing practices of other cities to determine what can be required as part of the permit application process.
- Definition of a "motorized scooter": The ordinance has been revised to remove the reference to "moped" as defined in G.S. 20-4.01(27)(j). The definition of motorized scooter, however, retains the use of the term "vehicle" as defined in G.S. 20-4.01(49). This modification does not mean that a motorized scooter could not still be considered a moped by the NCDOT or NCDMV. Whether defined as a "moped" or a "vehicle" under state law, motorized scooters must be registered to be lawfully operated on the streets of North Carolina, unless they are expressly exempt from registration. Assuming that future legislative changes may be made to the definition of motorized scooters, or NCDOT and NCDMV are able to make an interim determination of how best to categorize these devices under current law, the SATS ordinance should not have to be modified or updated. To operate motorized vehicles on roadways, the companies are still required to show their devices comply with applicable local, state, and federal laws. As part of the permit approval process, the Transportation Department will require the companies to show that their motorized vehicles are authorized to be operated on the roadways pursuant to state law and approved by the applicable state agencies that they meet and/or have been granted an exception on all requirements.
- Fees: The fees have not been modified since the September 17th City Council Meeting. The Administration believes the proposed permittee fees account for the staff time necessary to sufficiently administer the shared active transportation program. The difference in fee per device is based on the anticipated use of the device and related staff time to monitor and regulate device movement and parking.

Alternatives

The Durham City Council could decide to:

- Approve the recommended amendment establishing a permitting procedure to regulate the operation of shared active transportation systems within the City of Durham,
- Keep the current bike share ordinance without revision
- Send the item back to staff for further review; or,
- Not approve the amendment, allowing any scooter company to operate in the City without a permit.

Financial Impact

The administration of the project will require a commitment of staff resources. The fees associated with the permit are anticipated to help offset this cost.

Equal Business Opportunity Summary

The Department of Equal Opportunity/Equity Assurance did not review this item for compliance with the Ordinance to Promote Equal Business Opportunities in City Contracting.

Attachments

Attachment A: Ordinance to Regulate the Operation of Shared Active Transportation Systems

Attachment B: Ordinance to Establish Shared Active Transportation System Permittee Fees

Attachment C: Letter from the Durham Bicycle and Pedestrian Advisory Commission