

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR BAY COUNTY, FLORIDA

CLASSY CYCLES, INC.,
a Florida corporation and
CLASSIC RENTALS, INC.,
a Florida corporation,

Plaintiffs,

vs.

CASE NO. 17000619CA

PANAMA CITY BEACH, a
Florida municipal corporation,

Defendant

_____ /

COMPLAINT

COMES NOW, the Plaintiff, CLASSY CYCLES, INC., a Florida corporation, (hereinafter "CYCLES") and CLASSIC RENTALS, INC., a Florida corporation (hereinafter "RENTALS") (CYCLES and RENTALS may be referred to herein collectively as the "BUSINESSES"), and sues the Defendant, the PANAMA CITY BEACH, a Florida municipal corporation, (hereinafter the "CITY"), for declaratory relief and injunction pursuant to Ch. 86, Fla. Stat., and allege:

GENERAL ALLEGATIONS

1. This is an action in which the amount in controversy exceeds the sum or value of \$15,000 exclusive of interest, costs and attorney's fees.
2. All conditions precedent to the bringing of this action have either been performed by the BUSINESSES or have otherwise occurred.
3. CYCLES is a Florida corporation with its principal place of business located

within the corporate limits of the CITY and Bay County, Florida.

4. RENTALS is a Florida corporation with its principal place of business located within the corporate limits of the CITY and Bay County, Florida.

5. The CITY is a Florida municipal corporation located entirely within Bay County, Florida.

6. On or about June 8, 2017, the governing body of the CITY (the “CITY COUNCIL”) enacted Ordinance No. 1415. A copy of Ordinance No. 1415 is attached hereto as Exhibit “A”.

7. On or about June 8, 2017, the CITY COUNCIL enacted Ordinance No. 1416. A copy of Ordinance No. 1416 is attached hereto as Exhibit “B”. (Both Ordinance No. 1415 and Ordinance No. 1416 may be referred to herein collectively as the “ORDINANCES”)

8. Ordinance No. 1416 imposes a total prohibition of the rental of motor scooters or scooters within the CITY after September 8, 2020. For the purposes of Ordinance No. 1416, the term “Motor scooter or scooter” is defined in Section 1.07.02 of the CITY’s Land Development Code as shown on page 12 of Ordinance No. 1416.

9. Ordinance No. 1415 prohibits the overnight rental and use of rental scooters between certain hours in any part of the CITY. For the purposes of Ordinance No. 1415, the term “Motor Scooter or scooter” is defined as:

Motor scooter or scooter shall mean a motorcycle or two or three or four wheeled vehicle powered by a motor with a displacement of fifty (50) cubic centimeters or less or is rated not in excess of two (2) brake horsepower and which is not capable of propelling such motor scooter at a speed greater than thirty (30) miles per hour on level ground, and shall include a moped as defined in this section and any other two or three wheeled, self-propelled vehicle for which state law does not require proof of financial responsibility (see FS Chapter 324 (2013)).

Sec. 22-5, Code of Ordinances of the CITY. A copy of Sec. 22-5 of the Code of Ordinances of the CITY is attached hereto as Exhibit “C”. (The definitions of the term “Motor scooter or scooter” found in Sec. 22-5, Code of Ordinances of the CITY and on page 12 of Ordinance No. 1416 are not materially different and the term “SCOOTER” will be used hereinafter to refer to motor vehicles which meet both definitions.)

10. The BUSINESSES are in the business of renting SCOOTERS.

11. A substantial part of the BUSINESSES’ business income is derived from the rental of SCOOTERS.

12. The BUSINESSES rent SCOOTERS from establishments located within the CITY.

13. The ORDINANCES directly regulate the BUSINESSES by restricting the rental of SCOOTERS and ultimately eliminating the rental of SCOOTERS within the CITY.

14. Both of the ORDINANCES will have the effect of eliminating the rental of SCOOTERS within the CITY. Ordinance No. 1416 contains an explicit prohibition on rentals effective September 8, 2020. While Ordinance No. 1415 does not contain an explicit prohibition on the renting of SCOOTERS within the CITY, the effect of Ordinance No. 1415 will be to immediately make it impossible for the BUSINESSES to economically rent SCOOTERS. This is because Ordinance No. 1415 immediately prohibits the “overnight” rental of SCOOTERS, and the “overnight” rental of SCOOTERS make up the vast majority of the income derived by the BUSINESSES from the rental of SCOOTERS.

15. The CITY COUNCIL has stated that its reasons for enacting the ORDINANCES are the CITY COUNCIL’s belief that:

A. Persons who rent SCOOTERS in the CITY tend to misbehave while operating the SCOOTERS within the CITY; and,

B. The ORDINANCES will deny such persons access to rented SCOOTERS and thereby eliminate any misbehavior which may occur on such rented SCOOTERS.

16. The BUSINESSES do not believe that the ORDINANCES are valid and therefore are in doubt as to their rights under the ORDINANCES.

17. There is a bona fide and actual dispute between the parties and there is a present and practical need for the declaration requested.

18. The dispute set forth herein involves a present, ascertainable set of facts and the rights, powers or privileges of the parties depend upon the facts stated and the law applicable to the facts. The relief sought herein is not sought merely for the purpose of providing legal advice or to satisfy curiosity.

COUNT I - THE ORDINANCES ARE PREEMPTED

19. The BUSINESSES reallege the allegations contained in paragraphs 1 through 18 above.

20. Ch. 316, Fla. Stat., the Florida Uniform Traffic Control Law, contains a detailed code regulating traffic throughout the state.

21. The Florida legislature has expressly preempted local regulation of the matters covered by Ch. 316, Fla. Stat. *See*, § 316.007, Fla. Stat., (“The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized.”); *Accord*, § 316.002, Fla. Stat.; *See also*, § 166.021(3)(c),

Fla. Stat., (“[T]he legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except: ... (c) Any subject expressly preempted to state or county government by the constitution or by general law.”)

22. The operation of SCOOTERS, rented or otherwise, is governed by Ch. 316, Fla. Stat. *See*, § 316.072(1), Fla. Stat. (“The provisions of this chapter shall apply to the operation of vehicles and bicycles and the movement of pedestrians upon all state-maintained highways, county- maintained highways, and municipal streets and alleys and wherever vehicles have the right to travel.”) and § 316.003(95), Fla. Stat., (Defining “vehicle” as “Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.”)

23. Through the ORDINANCES, the CITY seeks to regulate indirectly, legislate concurrently upon and impact matters which are expressly preempted to the State.

WHEREFORE, the BUSINESSES request this court:

- A. Declare that the ORDINANCES are unenforceable and should be stricken because they are expressly preempted;
- B. Enter its temporary and permanent injunction against the CITY, enjoining the CITY from enforcing the ORDINANCES in any way and requiring the repeal thereof; and,
- C. Granting the BUSINESSES such other and further relief as the court deems just and proper.

COUNT II - THE ORDINANCES IMPERMISSIBLY BURDEN STATUTORY RIGHTS

24. The BUSINESSES reallege the allegations contained in paragraphs 1 through 18 above.

25. In § 322.41, Fla. Stat., the Florida Legislature has granted to all licensed drivers the privilege of operating vehicles on the street and highways of the state.

26. The ORDINANCES disfavor and burden the utilization of the privilege granted to all properly licensed members of the general public by § 322.41, Fla. Stat. The ORDINANCES have burdened the right to operate a SCOOTER by adding the additional requirement that those wishing to operate a SCOOTER in the CITY must purchase one or rent it outside of the CITY and transport it into the CITY. The right conferred by the Legislature in § 322.41, Fla. Stat., has not been so conditioned in the statute, and the CITY cannot add these additional requirements.

WHEREFORE, the BUSINESSES request this court:

- A. Declare that the ORDINANCES are unenforceable and should be stricken because they attempt to impermissibly burden statutory rights granted to licensed drivers;
- B. Enter its temporary and permanent injunction against the CITY, enjoining the CITY from enforcing the ORDINANCES in any way and requiring the repeal thereof; and,
- C. Granting the BUSINESSES such other and further relief as the court deems just and proper.

**COUNT III - THE ORDINANCES CANNOT LAWFULLY
PROHIBIT THE BUSINESSES**

27. The BUSINESSES reallege the allegations contained in paragraphs 1 through 18 above.

28. The general laws of Florida recognize the rental of vehicles as a legitimate business and impose regulations upon it. *See*, § 322.38, Fla. Stat., (Prohibiting the rental of a motor vehicle to a person who is not a licensed driver. Requiring the business renting the motor vehicle to inspect the driver license of the person to whom the vehicle is to be rented, and compare and verify the signature thereon with the signature of such person written in his or her presence. Requiring the business renting the motor vehicle to keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of said latter person, and the date and place when and where the said license was issued and make such information available to any police officer, or officer or employee of the Department of Highway Safety and Motor Vehicles.)

29. SCOOTERS fall within the definition of “motor vehicle” used in § 322.38, Fla. Stat. *See*, § 322.01(27), Fla. Stat. (Defining “motor vehicle” as “any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power, motorized wheelchairs, and motorized bicycles as defined in s. 316.003.”)

30. As the general laws of Florida permit the rental of SCOOTERS and impose conditions thereon, the BUSINESSES are neither *per se* a nuisance nor otherwise detrimental to the public health, welfare, or morals of the community.

31. As SCOOTER rentals are not a nuisance *per se*, the CITY can regulate but not prohibit the BUSINESSES. As the ORDINANCES seek to prohibit the rental of SCOOTERS within the CITY, the ORDINANCES are arbitrary and unreasonable and should be stricken by the court.

WHEREFORE, the BUSINESSES request this court:

- A. Declare that the ORDINANCES are unenforceable and should be stricken because they attempt to prohibit a lawful business which is not a nuisance *per se*;
- B. Enter its temporary and permanent injunction against the CITY, enjoining the CITY from enforcing the ORDINANCES in any way and requiring the repeal thereof; and,
- C. Granting the BUSINESSES such other and further relief as the court deems just and proper.

Respectfully submitted,

OERTEL, FERNANDEZ, BRYANT
& ATKINSON, P.A.

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ATTORNEYS FOR RENTALS

ATTORNEYS FOR CYCLES

EXHIBIT “A”

ORDINANCE 1415

AN ORDINANCE OF THE CITY OF PANAMA CITY BEACH, FLORIDA, AMENDING THE CITY'S CODE OF ORDINANCE RELATED TO MOTOR SCOOTERS; PROHIBITING THE OVERNIGHT RENTAL OF MOTOR SCOOTERS YEAR-ROUND; PROVIDING THAT OPERATION AFTER 7PM SHALL BE DEEMED A VIOLATION PUNISHABLE BY CIVIL PENALTY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

WHEREAS, the City Council has received numerous complaints regarding the operation of rented scooters over the years; and

WHEREAS, the City Police Chief has reported an increase in calls from private owners asking to trespass rented scooters from their property, and complaints from business owners regarding the movement of rented scooters through their properties; and

WHEREAS, the City Council has observed the frequent and recurring recreational use of scooters operating on sidewalks, boardwalks, parking lots, parking garages, weaving in and out of traffic, and the numerous traffic stops undertaken by law enforcement to address and curb such use which is in violation of state and local laws; and

WHEREAS, the Council finds that two material factors have combined to generate or increase the irresponsible behavior of the rented scooter operators which has become a public nuisance, namely (1) the fact that the scooters are rented in many, and probably most, cases as an amusement to ride-the-strip, to see and be seen, and not to "go to the grocery store," and (2) that the increase of traffic congestion on the City streets resulting from the growth of retail and accommodations has denied the rented scooter operators the use of the streets for amusement and so they weave in traffic and scoot along sidewalks, the right shoulder of the road, parking lots, all in conflict with pedestrians; and

WHEREAS, based upon personal experience and the observations of many who have spoken with the Council Members, the Council finds that the danger and nuisance of this irresponsible behavior is greater at night simply because, 'it is dark'; and

WHEREAS, the City Police Chief has stated scooter rentals at night present the biggest nuisance to the public and the greatest impediment to his department's protection of the visitors and residents of this City; and

WHEREAS, in November 2015 the Council enacted Ordinance 1351-L prohibiting overnight rentals of scooters in March of every year; and

WHEREAS, during March 2016 and 2017 the rented scooter nuisance at night was

abated, but recommenced immediately upon the expiration of the prohibition; and

WHEREAS, in order to gauge the effectiveness of extraordinary (and unsustainable) police enforcement of the traffic laws violated by rented scooters at night, the City made scooter traffic violations a priority during the first two weeks of April, 2017, using the mutual aid and extra officers the police department had acquired during March for college spring break; and

WHEREAS, the result of the extra effort and presence was that the scooters just migrated to where the police were not, literally like a Whac-a-Mole game; and

WHEREAS, the Council is aware that the scooter rental businesses disagree that the problem is greatest at night, and point to the fact that the number and time of tickets issued by the police do not support that conclusion, but the Council finds and determines that the number of tickets issued, day or night, does not accurately reflect the extent of the rented scooter nuisance for two reasons (1) as the Chief of Police testified, his officers have discretion in writing a ticket and he will not interfere with that discretion, and (2) his firm, standing policy precludes his officers from chasing rented scooter violators because the scooters are too nimble and the risk to the public and his officers is too great, especially at night; and

WHEREAS, the scooter rental businesses, in opposition to this Ordinance, have stated before the Council that most of their rentals, sometimes as much as 90%, are overnight rentals; and

WHEREAS, based upon their personal observations, the Council finds that the number of instances of reckless rented scooter behavior is greatest at night; and

WHEREAS, there are approximately 870 rented scooters operating within the City; and

WHEREAS, numerous City businesses no longer allow scooters to enter their parking lots due to the reckless operation of the rented scooters in the lots, the lack of insurance coverage, a history of nuisance to pedestrians and property damage and associated risks presented by rental scooter drivers, and these problems are indicative of the problems on city streets and sidewalks being caused by rented scooters; and

WHEREAS, during the period of March 1 through April 13, 2017, the City Police Department conducted 3,162 traffic stops while also attempting to protect the public and investigate other crimes committed in the City; and

WHEREAS, during the first 13 days of April, 2017, the City Police Department received 19 citizen complaints, and rented scooters after 5:00 p.m. were involved in 81 traffic stops and 18 motor vehicle accidents which resulted in 104 traffic citations; and

WHEREAS, City Police Officers receive numerous requests to remove rental scooters from private property or are forced to arrange for the towing of vehicles following traffic citations or motor vehicle accidents. During the first 13 days of April, 2017, seven City Police Officers spent over an hour waiting on rental scooters to be towed which drains the City's resources and ability to protect the safety of the public; and

WHEREAS, the City Police Chief has observed that the March prohibition on overnight scooter rentals has been the most effective ordinance recently passed to curb threats to health, safety, and welfare; and

WHEREAS, the Council has received testimony from the Chief indicating that scooter operation is most in tension with local traffic in the evening when families get in their cars to go to dinner; and

WHEREAS, the Council finds that the operation of rented motor scooters is particularly dangerous at night because the congestion and proclivities of the visitors and the extraordinary demands placed upon law enforcement prevent adequate policing of scooter operation at night, in addition to the fact that typically visitors who rent scooters are unfamiliar with the area, and often are not skilled scooter drivers so that they become more easily confused and distracted in nighttime traffic with reduced visibility and the glare of artificial lights; and

WHEREAS, in addition, the cover of darkness coupled with the nighttime market for illegal substances and the ability of a limited number of skilled scooter drivers to nimbly maneuver scooters in traffic to evade law enforcement, combined, create an environment that is contrary to the City's goal of being a safe, drug-free and family-oriented tourist destination; and

WHEREAS, in light of these findings, the Council determines that the rental of motor scooters at night should be prohibited in order to protect the health, safety and welfare of all citizens and visitors in the City after dark; and

WHEREAS, the City Council finds that the prohibition of scooters during the month of March was an effective measure to enable law enforcement to focus on other matters; and

WHEREAS, the Council finds and determines that an immediate prohibition of the rental of scooters between 7pm and 7am daily is necessary to protect the health, safety and welfare of the City's residents and guests, and will enable the police department to focus on other law enforcement matters by reducing the disproportionate time the force must spend to police and respond to the secondary effects of this single industry; and

WHEREAS, the Council finds that immediately prohibiting the overnight rental of

scooters will not deny all beneficial or productive use of the current scooter inventory of rental businesses because daytime rentals will still be available and the scooters themselves retain economic value for sale or use for other purposes; and

WHEREAS, the Council is mindful that the scooter rental businesses directly affected by this Ordinance (and ultimately by Ordinance 1416 banning the rental of scooters entirely in three years, if adopted), have vigorously asserted that those laws will deprive them of significant future profits based upon their prior experience and they have promised to sue the City for those losses; and

WHEREAS, the Council has conducted numerous, lengthy and at times exhausting public hearings on the rented scooter problem and ways to lawfully address it, and the Council members have received literally countless comments, telephone calls and emails from the public and the affected businesses; and

WHEREAS, to paraphrase the Florida Supreme Court, the City Council understands that when it exercises its legislative power to enact ordinances such as this Ordinance (and Ordinance 1416 ultimately banning scooter rentals) it is acting as an arbiter of disputes among groups and individuals for the purpose of resolving conflicts among competing interests in the community; and

WHEREAS, after carefully considering all the information brought to it, and the experience and common sense of its members, and thoughtfully balancing (1) the burden placed on the public by the irresponsible behavior of the rented scooters on public and private property, against (2) the infringement upon the property rights of the very few businesses who have been grandfathered into the continued operation of their scooter rental business, and notwithstanding that those five businesses contend that they are able to make large profits from the rentals, the Council determines that the health, safety and welfare of the public must prevail and that, to quote the United States Supreme Court in a case very similar to this one:

“It is true that [the scooter rental businesses] must bear the costs of these regulations. But, within limits, that is a burden borne to secure the advantage of living and doing business in a civilized community. We hold that the simple prohibition of the sale [here rental] of lawfully acquired property does not effect a taking in violation of the Fifth Amendment.”

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PANAMA CITY BEACH:

SECTION 1. From and after the effective date of this ordinance Section 22-101 of

the Code of Ordinances of the City of Panama City Beach, related to overnight vehicle rentals is amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

Sec. 22-101. - Overnight rentals ~~and operation of rented-motor scooters at night prohibited during college spring break.~~

~~As used here, college spring break means the period commencing March 1 at 12:01 a.m. and ending March 31 at 11:59 p.m. each year, unless that period is extended by resolution of the City Council adopted on or before the immediately preceding January 31st as authorized here.~~

(1) ~~No person who makes a scooter available for~~ **shall** ~~rent~~ **or shall** make a scooter available for rent, **or permit another to rent or make available for rent,** ~~overnight, or rent a scooter overnight or between~~ **7pm and 7am** ~~sunset and sunrise each day, during college spring break~~

(2) **The act of providing, renting, or delivering a motor scooter, or the solicitation of that service or good within the City for use or possession during the period between 7pm and 7am daily is prohibited and shall be punishable pursuant to the schedule set forth in Section 22-105.6. Failure of the owner of a rented scooter, or of any agent of the owner engaged in the provision, rental or delivery of a motor scooter, to include in the rental agreement a requirement that the scooter be returned before 7pm on the same day rented shall be deemed an unlawful provision by such person of a motor scooter for overnight use or rental. Any act by the owner of a rented scooter or by an agent of the owner which would create a belief in the mind of a reasonable rental customer that the owner or agent will not object to a failure to return the rented scooter before 7pm on the day rented shall be deemed an unlawful provision by such person of a motor scooter for overnight use or rental.** ~~Any rented scooter operated on the road at night (between one-half hour after sunset and one-half hour before sunrise as estimated by the times listed in any local publication or government website) during college spring break shall be confiscated and impounded by the City. Possession of the impounded scooter shall be surrendered to the owner of the scooter, or to his, her or its authorized representative, no sooner than the next business day and only after payment of an impound fee and storage fee in such amounts as may be established by resolution of the City Council from time to time based upon the charges negotiated by the city with private parties for these services.~~

SECTION 2. The City finds that a violation of this Ordinance presents a serious threat to the public health, safety and welfare which is irreparable and irreversible and of an itinerant or transient nature.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

SECTION 4. The appropriate officers and agents of the City are authorized and directed to codify, include and publish in electronic format the provisions of this Ordinance


within the Panama City Beach Code, and unless a contrary ordinance is adopted within ninety (90) days following such publication, the codification of this Ordinance shall become the final and official record of the matters herein ordained. Section numbers may be assigned and changed whenever necessary or convenient.

SECTION 5. This Ordinance shall take effect immediately upon passage.

PASSED, APPROVED AND ADOPTED at the regular meeting of the City Council of the City of Panama City Beach, Florida, this 8th day of June, 2017.


MAYOR

ATTEST:


CITY CLERK

EXAMINED AND APPROVED by me this 8th day of June, 2017.


MAYOR

Published in the PC News Herald on the 15th day of May, 2017.

Posted on pcbgov.com on the 9th day of June, 2017.

EXHIBIT “B”

ORDINANCE 1416

AN ORDINANCE OF THE CITY OF PANAMA CITY BEACH, FLORIDA, PROHIBITING THE RENTAL OF MOTOR SCOOTERS; AMENDING THE CITY'S CODE OF ORDINANCES TO PROHIBIT THE RENTAL OF MOTOR SCOOTERS AFTER SEPTEMBER 8, 2020; AMENDING THE CITY'S LAND DEVELOPMENT CODE TO PROHIBIT THE USE OF LAND FOR MOTOR SCOOTER RENTALS AFTER SEPTEMBER 8, 2020, AND TO EXTINGUISH THE GRANDFATHERING OF MOTOR SCOOTER RENTALS AS NON-CONFORMING USES; PROVIDING A METHOD FOR AFFECTED PARTIES TO SEEK LIMITED RELIEF FROM THE USE PROHIBITION ESTABLISHED BY THIS ORDINANCE; REPEALING ALL ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

BACKGROUND RECITALS

WHEREAS, the City of Panama City Beach is a tourist destination frequented by tens of thousands at a time; and

WHEREAS, while drawn to the City by the beach, visitors look for other forms of amusement off the beach as well; and

WHEREAS, several decades ago rental scooter businesses began operating in the City and provided an entertaining means of touring the City; and

WHEREAS, over the years the rental of scooters has proven itself to be a popular form of amusement, as demonstrated by the increasing number of motor scooters registered with the City over the years; and

WHEREAS, as the popularity of rental scooters increased the behavior of scooter operators became noticeably dangerous as traffic violations were more common among rental scooter than other vehicles. This problem was amplified by the lack of training, supervision, and oversight practiced by the rental scooter businesses; and

WHEREAS, as this popularity increased it became clear that this amusement attracted visitors who were, on average, inexperienced youthful drivers who enjoyed "playing in the road" as a group. This dangerous activity has become a staple of the rented scooter experience so much so that the City believes it is engrained in the City's

reputation.

WHEREAS, irresponsible driving behavior by scooter renters has become so common that it frequently affects visitors and residents who are all-to-often forced to modify their own behavior or routes of travel to compensate for this irresponsible behavior, or else fall victim to a motor vehicle accident involving a renter scooter; and

WHEREAS, because neither safety equipment nor insurance are required under state law for motor scooters, parties to a motor vehicle accident involving a motor scooter (especially a rented motor scooter) are at risk of greater damages than in a conventional motor vehicle accident as the scooter driver is entirely unprotected (physically and fiscally) from the effects of the collision and the other party is left without adequate compensation for the losses sustained; and

WHEREAS, the City's efforts to regulate rental scooter businesses to improve the behavior of the industry and its customers have been long and varied, and reflect the longstanding tension between the associated and varied problems observed by the City arising from the rental of scooter and the popularity of rented scooters with tourists, to wit,

- in 1993, the City adopted Ordinance 416, requiring rented scooters to be registered to regulate a variety of issues created by the industry; and
- in 1994, the City passed Ordinance 450-E to protect consumers by regulating the deposits charged for scooter rentals and requiring that safety equipment be available at no charge; and
- in 1995, the City passed Ordinance 450 in response to the increasing number of accidents, injuries, and property damage resulting from rented scooters. The findings of the City in Ordinance 450 are incorporated herein by reference; and
- In 1997, the City passed Ordinance 518 in reaction to an overwhelming number of visitor complaints of excessive security deposit claims for alleged damaged. The City, concerned over the damage to its reputation as a tourist destination, placed limits on security deposits to curb further abuse and excessive claims; and
- In 2002, the City passed Ordinance 747 declaring motor scooter rentals a conditional use and placing additional conditions on motor scooter rental businesses to prevent disturbances of residential neighborhoods; and
- In 2013 the City passed Ordinances 1236 and 1267 which again attempted to address the constant stream of complaints over customer deposit abuses by the motor scooter rental industry. The City also passed Ordinance 1256 requiring inspections of rental scooters to protect against unsafe scooters being rented to unwitting customers. The findings of the City in Ordinance 1236 are incorporated herein by reference; and

Draft dated 5.24.17 Rev. PM

- In 2014 the Council adopted several ordinances (1310, 1312 and 1315) to address the exploding number of scooter rentals and dangerous conditions that explosion presented to the visitors and residents;¹
- In 2015, finding that the number of rental scooters more than doubled between 2007 and 2015, the City adopted Ordinance 1337 which required rental scooters businesses carry liability insurance and that operators wear safety vests. The City's findings in Ordinance 1337 are incorporated herein; and
- In 2015, the City adopted Ordinance 1351-L, to address these long-standing issues by requiring a reduction in motor scooter inventory over three years and re-zoned motor scooter rental businesses as a non-conforming use under the City's Land Development Code. The City's findings at that time reflected the Council's desire to prevent phasing out motor scooter rental businesses entirely. The City's findings in Ordinance 1351-L are adopted herein by reference.

RECENT DEVELOPMENTS

WHEREAS, although the present inventory of registered scooters rented in the City have been reduced to approximately 867 units and 902 medallions, the problems with the behavior of rented scooter operators continue unabated; and

WHEREAS, since January 1, 2017 through May 23, 2017, the Panama City Beach Police department wrote 305 rented scooter traffic citations, made 319 rented motor scooter stops and worked 56 rented motor scooter crashes; and

WHEREAS, the number of scooter rentals per day and the typical reckless and often illegal driving behavior of rental operators create an impracticable strain upon City resources and siphons those valuable resources from other important police work; and

WHEREAS, the City is fortunate to enjoy a robust and growing tourism and more recently local and regional retail economy which has resulted in the expansion of major roads and connectors and even more significant increases in the number of vehicles on those roads because the City is linear, being 8 miles long but only one-mile-wide with only three, parallel thoroughfares, all of which combined has resulted in increased congestion on City streets; and

WHEREAS, the materially increased congestion and size of City roads and intersections of roads have made it increasingly dangerous for inexperienced operators

¹ In 2015, City Police initiated 887 traffic stops involving motor scooters, issued 545 traffic citations to rental motor scooter operators, and investigated 124 motor vehicle accidents involving rental motor scooters.

of rented scooters to operate and, frequently play, in the streets; and

WHEREAS, additionally the increased congestion has created greater and greater incentives for the operators of rented scooters to take short cuts through parking lots, on pedestrian sidewalks, on the pier board-walk, and generally through private or quasi-public property where through traffic of any kind is inappropriate, and frequently when those areas are occupied by pedestrians; and

WHEREAS, the parking lot problem has become so severe that numbers of private businesses now prohibit scooter operators from entering their parking lots even though the operators could be potential customers, and have expressed that they have no choice because the rented scooters are operated so recklessly within their parking lots; and

WHEREAS, the limits of the City's infrastructure capacity, resources to police dangerous, disrespectful and, frequently simply mindless, behavior of the rented scooter drivers, combined with the sheer volume of rented motor scooters on the street have materially and adversely impacted the tourists' experiences and the residents' quality of life; and

FOCUS ON BEHAVIOR

WHEREAS, prior to roughly 2014 and the explosion of the number of rented scooters, the City's primary focus in regulating the operation of scooter rental business on site was to curb the excesses of some businesses in overcharging deposits and other business practices;

WHEREAS, with the explosion in the number of scooters, and the congestion of other vehicles on the roads, the City was forced to shift its focus from the business activity at the rental site to the behavior of the customers of the businesses out on the road; and

WHEREAS, in a novel and unprecedented effort to make the youthful and exuberant operators of rented scooters more self-conscious of their surroundings and less likely to engage in reckless and dangerous activity, the city by law, Ordinance 1337, adopted a three prong effort:

- first, as a condition of making the rental contract, the rental business was required to have each customer read a safety brochure and sign it, giving the customer top-of-mind realization of the fact that he or she was about to operate a vehicle on a highway, not just an amusement ride in a field somewhere, and,
- second, requiring the customer to have that signed brochure in his or her possession while operating the scooter, eliminating the possibility that the customer could ever plead ignorance or accident if observed driving

recklessly, and

- third, requiring the customer to wear a brightly colored vest to continuously remind the customer that he or she was operating a transportation vehicle on a public road, not a trail bike in the woods, and moreover to give other drivers notice that the scooter was being operated by a potentially inexperienced and distracted driver in a foreign traffic system; and

WHEREAS, the City noticed a dramatic reduction in dangerous driving by renters upon the enforcement of Ordinance 1337, but this reduction was short lived following a finding by the First District Court of Appeal that the City was preempted by state law from requiring the operators of rental scooters to wear vests while operating on a public street because the state has preempted the regulation of safety equipment required to exercise the privilege of driving on a public street; and

WHEREAS, the effect of the First DCA's Order has foreclosed the City's ability to specifically address the problems presented by the behavior of the customers of the scooter rental businesses operating within the City; and

WHEREAS, operators of motor scooter rental businesses opposed to City regulation ironically have testified before the City Council on several occasions that no matter what they do or try, they are unable to control the behavior of their customers after they leave the business, presumably seeking sympathy from the Council to minimize the regulation of the industry when in fact this testimony has the opposite effect; and

WHEREAS, at the first reading of this ordinance numerous representatives of one scooter rental business appeared in opposition united by all wearing a red t-shirt emblazoned with its business name and slogan, which is "Ride it Like You Stole It;" and

WHEREAS, Urban Dictionary defines "Drive It Like You Stole It" as "Drive fast; drive as if you stole the car and the police are after you - - to drive a vehicle faster and more recklessly than it should be driven, acting as if you aren't the one paying for the repairs;" and

WHEREAS, the City has attempted everything within its home rule authority to improve or remove the danger and nuisance posed by the behavior of the customers of the scooter rental businesses but its unsuccessful attempts to dampen the unacceptable behavior of the customers of those businesses, and the refusal or inability of the industry itself to do so, have left no effective legislative alternative within its authority other than to make the rented-scooter resource unavailable to the visitors to the beach by prohibiting the rental of them; and

WHEREAS, despite the popularity of the rented-scooters and the benefit of this

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amusement to the tourism industry which is the lifeblood of the City, the Council regrettably finds that a prohibition is in the best interests of the City, is of great public need, and is the most reasonable measure left available to the Council to protect the health, safety and welfare of the community and the reputation of the City as a safe and comfortable tourist destination and the benefit to the public outweighs the loss to the affected parties; and

WHEREAS, the City possesses home rule powers to legislate on any matter not inconsistent with general law or special law, and is specifically authorized to create and implement a plan of zoning uses, and to amend the list of uses that are permitted or prohibited; and

WHEREAS, in order to deny access to the rented-scooter resource the City in the exercise of its police power is prohibiting the conduct of renting a scooter anywhere within the city, and repealing the grandfather status of the non-conforming use of the scooter rental use under the City's Land Development Code, both effective September 8, 2020.

NOT A TAKING

WHEREAS, Florida takings law is settled that compensation for lost profits and business loss are creatures of statute, and there is no statute in Florida that commands compensation for profits lost or business damages resulting from the prohibition of renting scooters within the City; and

WHEREAS, the City Council is nonetheless mindful that to prohibit the rental of scooters in the City immediately would disappoint visitors accustomed to renting scooters during their visits to Panama City Beach and could constitute a regulatory taking of the market value of the scooters being rented today; and

WHEREAS, the Council desires to ensure that the businesses affected by this ordinance not only have sufficient time to recover their investment in purchasing scooters to rent, but also to develop alternative business models and encourage their customers to enjoy those alternatives as part of the "Real. Fun. Beach." experience; and

WHEREAS, Florida has long recognized the power of municipalities to amortize nonconforming uses as valid exercise of the police power; and

WHEREAS, the City Council has considered:

- the average cost of a scooter;
- the average rental price of a scooter for a half day and a whole day;
- the fact that the City may prohibit full-day (overnight) rentals;
- the length of the summer seasons;

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- the fact that on weekends during the summer season the scooter rental businesses appear to be at full capacity, and that during the weekdays during that season they appear to be at 80% capacity;
- that a 10% allowance for repair downtime and dislocation of scooter inventory is reasonable;
- that it is reasonable to assume that gross income from scooter rentals be apportioned 1/3 to overhead, including employee salaries, 1/3 to profit and 1/3 to cost of goods sold (here rented) meaning that 1/3 of gross revenue is available to amortize the market value of scooter inventories;
- the fact that current scooter inventories include units which are two or more years old and have depreciated in value;
- the fact that the industry advertises for sale used scooters at a remarkably high portion of the average purchase price.

WHEREAS, the Council has considered the time necessary to allow motor scooter rental businesses to recoup the unrealized investments in their current scooters and wishes to provide each affected party sufficient time to recoup those investments; and

WHEREAS, based upon the above considerations, using only half day rentals, and ignoring both the availability of the fall and winter months for rentals, and ignoring the residual value of scooters on resale after being taken out of rental, the City Council finds that a period ending September 8, 2019 is a reasonable time and wholly adequate for the rental scooter owners to recoup any unrealized investment in their rental scooter inventory and other directly related property; and

WHEREAS, the Council desires to provide each affected business more than sufficient time to recoup their investment in scooters and develop alternative lines of business, and also to allow the visiting public to become familiar with the change and therefore has extended the reasonable amortization period from an expiration on September 8, 2019 to September 8, 2020;

WHEREAS, on April 13, 2017, the Council preliminarily determined that the rental of motor scooters should be phased out in the City altogether over a reasonable period that would allow businesses which rent scooters to achieve their investment expectations in the current inventory of scooters and enjoy the time and resources to develop other business models; and

WHEREAS, based upon the forgoing considerations, information available to it, the number of scooters registered with the City, the industry's testimony regarding the amount of scooter rentals per day and the average price of scooter rentals, the Council finds that an amortization period ending on September 8, 2020, will allow each business three tourist seasons in which it will be able to recoup those investments made prior to

April 13, 2017; and

WHEREAS, the Council finds a majority of the businesses currently renting motor scooters also make available for rent 4-wheeled, low speed street vehicles, such that a prohibition on the rental of two and three wheeled motor scooters would not be devastating over a three-year period during which the businesses could phase out the inventory of the motor scooters while keeping their inventory of 4-wheeled, low speed street vehicles; and

WHEREAS, Council finds that a phase out over three years will allow a grace period during which persons who currently rent motor scooters may continue to do so while developing alternate business models, and the visiting public may continue to enjoy the amusement but become aware that the scooters will not be available in the future; and

WHEREAS, recognizing that scooter rental businesses have a greater potential detriment than other uses, the City first designated motor scooter rental businesses as a conditional use, and then prohibited the use but grandfathered then existing businesses, but now finds that the irresponsible behavior of rented motor scooters is adversely affecting the health, safety and welfare of the residents and visitors to the City to such an extent that the grandfathered status of existing businesses should be extinguished; and

WHEREAS, the City Council has determined that the burden on the public of the irresponsible behavior of the scooter renters on the roads, sidewalks and private property of the City far outweighs the burden of the infringement upon the property rights of the very few businesses who have been grandfathered into the continued operation of their scooter rental businesses contrary to the public policies established several years ago in the City's Land Development Code; and

WHEREAS, the City recognizes that each scooter business is unique in its inventory of scooters and other property invested in the rented scooters, and its revenue, so to prevent any business from being unable to recoup its investment, the City has provided a fair and reasonable process by which the businesses may prove that it will be unable to recoup its investment by September 8, 2020; and

WHEREAS, the City petition process allows for either an extension of time for continued operation to prevent any taking of property without adequate opportunity to recover the unrealized investment in that property; and

WHEREAS, the City is authorized to establish and amend the actual list of permitted or prohibited uses within a zoning category, and finds it necessary and appropriate to prohibit scooter rentals; and

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WHEREAS, the City Council finds and determines that prohibiting the rental of scooters within the City will eliminate the problems associated with the behavior of the operators of those scooters; and

WHEREAS, City Manager is authorized to prohibit or regulate the use of heavily travelled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic pursuant to Section 19-50(a) (13) of the City's Code of Ordinances and Section 316.008(1)(h), Florida Statutes (2015), which action is subject to review by the City Council.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PANAMA CITY BEACH:

SECTION 1. The forgoing recitals are correct and express the legislative intent of the people of the City of Panama City Beach. In summation, the City Council finds that the rental of motor scooters in the City creates a continuing nuisance, that repeated attempts to diminish the irresponsible operation of rented motor scooters have been either expressly overruled or practically overcome by the sheer volume of rented motor scooters operated in the City, that even a reduction in the number of rented motor scooters has not substantially diminished the risk to the public traveling on the city's streets, that by the rental companies' own admissions they cannot control what the operators of rented motor scooters do and the City has been unable to abate this nuisance within its home rule authority, and therefore intends to prohibit such rentals entirely after September 8, 2020, unless any current business is able to establish by a preponderance of the evidence that it will be unable to amortize its investment within that time in which case it may be granted relief under this Ordinance.

SECTION 2. From and after the effective date of this ordinance, Article VI, of Chapter 22 of the Code of Ordinances of the City of Panama City Beach, related to

Vehicle Rentals is amended to read as follows (omitted text ~~stricken~~; new text underlined):

Chapter 22 TRAFFIC AND MOTOR VEHICLES

ARTICLE VI. VEHICLE RENTALS

...

Sec. 22-105.1 - Registration and inspection.

(a) Each amusement vehicle rented, leased or hired within the City shall be inspected and registered annually with the Chief of Police at the offices of the Police Department at such times as shall be specified by the Chief. The annual application for registration of each vehicle shall include:

- (1) The name, residence and mailing address of the owner, and
 - (2) The name, location and mailing address of the rental, etc. business, and
 - (3) The location of the business where the amusement vehicle will be offered for rental, and
 - (4) A description of each type of vehicle to be rented by the business, including make, model and manufacturer, engine displacement, maximum brake horsepower, maximum seat height from ground, and whether equipped with pedals to permit propulsion by human power, and
 - (5) The approximate number of vehicles of each type to be rented by the business, subject to a continuing obligation to promptly advise the Chief of Police of any material change in such number, and
 - (6) A description of each type of protective headgear and eye protective device to be used, including manufacturer, make model and serial number, if any, and the approximate number of each type, and
 - (7) Evidence satisfactory to the City of any financial responsibility required by law.
- (b) Each application shall be accompanied by a registration fee in the amount of fifty dollars (\$50), plus one dollar (\$1) for each decal or medallion furnished, to defray the cost of enforcing the regulations contained in this Article.
- (c) Each registration shall expire on December 31 next following issuance, regardless of the date of issuance. However, any medallion issued for a low speed vehicle which is not timely renewed by December 31 for the following calendar year shall be void and of no further use or effect.
- (d) Each vehicle to be rented pursuant to this Article shall be inspected by the Chief of Police or his designee to confirm that the vehicle meets all applicable local, state, and federal safety standards, including but not limited to, confirming that the throttle, brakes, lights, blinkers and horn are in apparent working order, that the vehicle has a current tag and does not appear to leak fuel.
- (e) If all conditions in the application and inspection are met, the Chief of Police or his designee shall supply and place upon each vehicle to be rented a decal or medallion, or both, in form and content specified by the Chief of Police or his designee, to identify the vehicle as a rental vehicle associated with the business renting the vehicle.

(f) Within 30 days after the amusement vehicle registration period closes, the Chief of Police shall submit to the City Council the current inventory of each type of amusement vehicle registered for rental in the City and recommend whether further regulation is necessary.

(g) A motor scooter may not be registered with the City under this section unless the scooter was registered prior to April 13, 2017, or the owner of such motor scooter has provided prior to June 1, 2017, clear and convincing evidence of having entered a legally binding agreement to purchase the scooter and paid all or a portion of the purchase price of the scooter on or before April 13, 2017, and is unable to cancel the agreement and receive a return of the payment made, less a reasonable refund fee.

Sec. 22-105.2. Prohibition and attrition of the rental of motor scooters.

(1) On and after September 9, 2020, the act of providing, renting, or delivering a motor scooter, or the solicitation of that service or good, or the rental or hire of a motor scooter, within the City is prohibited.

(2) No motor scooter registered with the city as a rental shall be rented when it becomes unsafe, unfit or illegal for further use without repair or modification.

(3) It shall be unlawful and punishable as provided by law for any person to instruct or permit another to violate this section.

SECTION 3. After conducting multiple public hearings and having personal knowledge of the affected uses, in particular: (1) The cost of new motor scooters; (2) The historical record of the motor scooter businesses annually replacing their inventory with new scooters; (3) The residual value of used scooters annually sold by the local motor scooter rental businesses; (4) The history of motor scooter businesses operating at the capacity of their rental scooter inventory; (5) The average price of scooter rentals; (6) The ability for scooter to be rented multiple times per day; (7) The availability to continue to operate in the short-term vehicle rental marketplace; and (8) The location of each use and the variety of alternative uses readily available at each location; the City Council hereby finds and determines that a period commencing upon the announcement on April 13, 2017, of its intention to prohibit the rental of motor scooters and ending on September 8, 2020, exceeds and is a reasonable period to permit persons engaged in the business of motor scooter rentals to recover their investment.

From and after the effective date of this Ordinance, Motor Scooter Rental Uses may continue as non-conforming uses until September 8, 2020. The following sections of the City's Land Development Code are hereby amended as follows to prohibit the operation of existing scooter rental businesses as a non-conforming use after September 8, 2020 (omitted text ~~stricken~~; new text underlined; bold text not underlined is existing, current law):

1.07.02 Definitions

Amusement – A **Use, Building** or device intended or used primarily to entertain or amuse persons by means of physical or mechanical activity. Examples include, but not limited to, carnival type concessions; rides such as roller coasters, go-cart rides, giant slides, bumper cars, helicopter rides or acceleration and bungee rides; arcades with game machines; rentals of personal watercraft, sailboats, sailboards or water cycles; miniature golf courses; and parasail, kite or watershed rides. The term "**Amusement**" does not include rental of ~~mopeds, motor scooters or~~ motorcycles.

Motor Scooter or Scooter – a motorcycle or two or three or four wheeled vehicle powered by a motor with a displacement of fifty (50) cubic centimeters or less or is rated not in excess of two (2) brake horsepower and which is not capable of propelling such motorcycle at a speed greater than thirty (30) miles per hour on level ground, and shall include a moped as defined in FS 316.03(77) (2015), and any other two or three wheeled, self-propelled vehicle for which state law does not require proof of financial responsibility (see FS Chapter 324 (2015)).
(Ord. #1351, 11/12/15)

Motor Scooter Rental or Scooter Rental – the provision, rental, or hire, or delivery of a **Motor Scooter** for any valuable consideration or the solicitation of that service or good.
(Ord. #1351, 11/12/15)

...

5.06.12 Motorcycle Rentals and Deliveries

Motorcycle rentals and delivery may be allowed in the CH zoning district subject to conditional use approval and compliance with the following conditions. These **Uses** are not allowable in the area lying south of a continuation of the centerline of Front Beach Road (Scenic Highway 98) through South Thomas Drive and Thomas Drive.
(Ord. #1254, 11/14/13; Ord. #1351, 11/12/15)

- A.** The **Use** must be located no greater than five hundred (500) feet from Front Beach Road, Thomas Drive or South Thomas Drive.
- B.** The **Use** must be located no closer than one thousand five hundred (1,500) feet to a **Single Family** zoning district (R-1A, R-1B, R-1C, R-1CT and R-0) or a limited **Multi-family** zoning district (R-TH and R-2).
- C.** On-site repair and maintenance activities are limited to equipment rented on site.
- D.** A minimum area of fifty (50) feet in width and eighty (80) feet in length shall be provided for training and practicing. Such area shall not be dedicated or used for any other purpose.
- E.** As part of the application, the applicant shall submit information and plans in sufficient detail to show the specific number of motorcycles to be associated with the property, as well as the specific location

where the motorcycles will be displayed, rented and stored on the property. If approved, the applicant shall submit to the Building and Planning Department the identification number of each ~~moped, motor scooter and~~ motorcycle available for rent prior to commencement of business operations. Such total number of motorcycles shall not exceed that approved by the Planning Board.

(Ord. #1351, 11/12/15)

F. The area dedicated to repair and maintenance shall be enclosed with a **Solid Faced** masonry or wooden wall or fence not less than six (6) feet and not more than eight (8) feet in height. The decorative side of the fence shall face outward.

G. One medium or large tree shall be required for every twenty (20) feet of side and rear property boundary. Any medium or large tree required by this section shall not be counted toward any landscaping otherwise required by this Code.

...

9.02.01 Continuation of Non-conforming Development

A. Subject to section 9.02.02, **Non-Conforming Development** may remain in **Use** and in place in its nonconforming state, if such **Development** is otherwise lawful and in existence on the date of enactment or subsequent amendment of this **LDC**. Notwithstanding the forgoing, **Motor Scooter Rental Uses** are subject to the limitations upon the number of **Scooters** at each location set forth in sub-section D of this Section.

B. Nothing in this chapter shall be construed to prevent the ordinary and routine maintenance and repair of nonconforming structures. A non-conforming structure may be issued a roofing permit, regardless of the other provisions of this section.

C. Where an existing **Use** is located in conformity with this **LDC** (or similar, preceding law), the subsequent establishment of a neighboring **Use**, which due to distance limitations would make the pre-existing use non-conforming, shall not cause the prior **Use** to be in violation of this **LDC**. Such **Use** shall not become a non-conforming **Use** but shall continue as if a lawful, conforming **Use** except that the **Use** shall be brought into full compliance with the **Use** regulations in this **LDC** upon discontinuance of occupancy and/or **Use** of the **Development** for a period of more than 180 days in any 365 day period.

D. Any location with eighty (80) **Scooters** or fewer offered for rental consistently during the summer of 2015 shall be limited to offering a maximum of sixty (60) **Scooters**. Any other **Scooter** rental location shall be limited to the following maximum number of rental **Scooters**:

- Immediately: Seventy-five percent (75%) of the number of **Scooters** consistently offered for rent at that location during the summer of 2015.
- After September 5, 2016: Fifty percent (50%) of the number of **Scooters** consistently offered for rent at that location during the summer of 2015.
- After September 5, 2017: Sixty (60) **Scooters**.
- **Motor Scooter Rental Uses shall be discontinued after an amortization period of three years ending on September 8, 2020. If the Use is not discontinued within ten (10) days of the end of the amortization period, the owner shall be subject to a fine of not more than \$500.00 per day and be declared a public nuisance and abated under section 1.04.07(B) of this Land Development Code.**

The City shall prepare and issue for each **Non-Conforming Use Scooter Rental** location a number of medallions unique to that location and each **Scooter** available for rent at a **Non-Conforming Use** must have one of those medallions affixed to it. Excess medallions must be returned to the City on or before

September 5, 2016, and September 5, 2017. Medallions may be used only at the location for which issued. All Scooter medallions must be returned to the City on or before September 8, 2020.

SECTION 4. PETITION FOR EXTRAORDINARY EXTENSION OF AMORTIZATION PERIOD FOR DISCONTINUATION OF MOTOR SCOOTER RENTALS. Any person whose legally protected economic interests are adversely affected by the discontinuance of motor scooter rental uses mandated by this law and who believes that the amortization period specified in section 9.02.01(D) of the City Land Development Code is inadequate to recover their investment shall be entitled to petition the City for an extraordinary extension of time as provided in this section. The petitioner may be represented by an attorney at law licensed to practice law in the state of Florida.

(a) Time of Petition - The petition must be filed with the City Clerk on or before the close of business on or before November 21, 2017.

(b) Contents of Petition – The petition must state:

1. Identification: The petitioner's name, mailing address, e-mail address, if any, and telephone number of the party making the request and the name, address, and telephone number of the party's counsel if the party is represented by counsel;

2. Standing: A detailed description of the petitioner's legally protected interest adversely affected by the mandated discontinuance of motor scooter rentals;

3. Requested Extension: The length of the extraordinary extension

demanded;

4. A statement of the specific facts and grounds for relief petitioner contends warrant the extraordinary extension demanded. The specific grounds for relief under this section, the specific relief sought including the exact amount of time requested;

5. All documents, including a list of all witnesses, or other evidence in support of the petition;

5. Any other matters petitioner deems relevant.

(c) Grounds for Extension: In considering whether to grant all or any portion of the extension demanded, the City shall examine:

1. Whether the petition is complete;
2. Whether the petitioner has standing;
3. Whether the petitioner has demonstrated by a preponderance of the evidence circumstances unique to the petitioner which prevent the petitioner from recouping its investment in the property affected by the discontinuance within the amortization period;
 - a. The amount of the petitioner's investment in the Motor Scooter Rental Use business through April 13, 2017;
 - b. Whether unique circumstances exist which will prevent the petitioner from recouping the amount of such investment that has been or will have been unrealized at the conclusion of the three-year amortization period;

- c. The life expectancy the existing property associated with the non-conforming use;
- d. The diminished value, if any, of any real property owned by the petitioner as a result of the mandatory discontinuance of the existing enterprise on the property;
- e. The diminished value, if any, of a leasehold held by the petitioner as a result of the mandatory discontinuance of the existing enterprise on the property, as well as any contingency clauses therein permitting termination of such lease.

(d) Procedure: Within ten (10) days of receipt, the City Clerk shall forward a timely filed petition and supporting documents to the City Manager and a copy to the Clerk of the Court of Bay County to schedule an Administrative Hearing before a Hearing Officer appointed by the City pursuant to section 25-16 of the City's Code of Ordinances.

No later than ten (10) days before the scheduled hearing, the City Manager shall file and serve upon the petitioner a response to the petition together with copies of any documents and a witness list.

The City Council hereby delegates to all Hearing Officers appointed and serving pursuant to section 25-16 of the City's Code of Ordinances the authority to determine all factual matters and conclusions of law contested between the petitioners and respondent.

The petitioner shall bear the burden of proof to prove entitlement to the

extraordinary extension demanded by a preponderance of evidence.

At the hearing, evidence, including written or oral testimony and documentary evidence, of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any witness shall be subject to cross examination when testimony is taken or documents are made part of the record. No pleadings, motions, or other papers may be submitted nor any discovery conducted other than that allowed under this section shall be permitted. The petition and hearing may, except as otherwise provided in this section, be conducted in the manner provided by the Florida Rules of Civil Procedure. Each party shall be entitled to a brief opening and closing argument, unless waived. The petitioner shall give opening and closing argument first but will not be afforded a rebuttal to the City's closing argument.

(e) Recommended Order of Hearing Officer. Unless the time period is waived or extended with the consent of all parties, the Hearing Officer shall issue a recommended order in writing and include findings of fact, if any, conclusions of law separately stated, and any recommended extraordinary extension. The Hearing Officer's recommended order must be rendered to the parties and the City Council within ninety (90) days after the hearing.

(f) City Council Adoption of Order - The City Council may adopt the recommended order as the final order of the City. The City Council in its final order may reject or modify the conclusions of law. When rejecting or modifying such conclusion of law, the City Council must state with particularity its reasons for rejecting or modifying

such conclusion of law and must make a finding that its substituted conclusion of law is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The City Council may not reject or modify the findings of fact unless the City Council first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The City Council may accept the recommended extraordinary extension, if any, in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

(g) Appeal. A petitioner aggrieved by a decision of the City Council may seek review by certiorari in the Circuit Court, 14th Judicial Circuit, Bay County, Florida, which shall be the exclusive remedy to challenge the decision or authority of the Council.

SECTION 5. REPEAL. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.


SECTION 6. CODIFICATION. The appropriate officers and agents of the City are authorized and directed to codify, include and publish in electronic format the provisions of this Ordinance within the Panama City Beach Code of Ordinances and the Panama City Beach Land Development Code, and unless a contrary ordinance is adopted within ninety (90) days following each such publication, each codification of this

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Ordinance shall become the final and official record of the matters herein ordained and there codified. Section numbers may be assigned and changed whenever necessary or convenient.

SECTION 7. SEVERABILITY. If any section, subsection, clause, phrase, or provision of this Ordinance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 8. EFFECTIVE DATE. This Ordinance shall take effect immediately upon passage.

PASSED, APPROVED AND ADOPTED at the regular meeting of the City Council of the City of Panama City Beach, Florida, this 8th day of June, 2017.


MAYOR

ATTEST:


CITY CLERK

EXAMINED AND APPROVED by me this 8th day of June, 2017.


MAYOR

Published in the PC News Herald on the 3rd day of May, 2017 and
Published in the PC News Herald on the 19th day of May, 2017.
Posted on pcbgov.com on the 9th day of June, 2017.

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N:\PCB\ACTIVE\1.147 Mopeds Regulation (Scooters)\1.147-19 Banning Scooters
Forever\20170524-2 Ord. Banning Scooter draft.docx

Restoring Section g from 5-8-17 and attrition clause from 5-8-17
Revising recitals

EXHIBIT “C”

Sec. 22-05. - Definitions.

Definitions. The following words, terms or phrases, when used in this Chapter 22, shall have the meanings respectively ascribed to them:

Amusement vehicle shall mean a motorcycle, moped, motor scooter, motorized scooter, low speed street vehicle, golf cart, dune or swamp buggy, go-cart, megacycle, or other vehicle rented or leased to customers which provides locomotion not capable of propelling the vehicle of a speed greater than 45 miles per hour on a street or highway, but not including bicycles.

Bicycles shall mean every vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than twenty (20) miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than twenty-five (25) inches from the ground when the seat is adjusted to its highest position or a scooter or similar device.

Emergency vehicles shall include, but not be limited to, law enforcement, firefighting, rescue squad, ambulance, or other emergency vehicles which are marked as such.

Fire and safety lane shall mean a fire apparatus or emergency vehicle access way to or beside a commercial building, having an all-weather driving surface of not less than ten (10) feet of unobstructed width and required by governmental authority.

Golf cart shall mean a motor vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour. A low speed vehicle modified pursuant to section 319.14(10)(a), Florida Statutes, shall be considered a golf cart for the purpose of this section once proof of compliance is presented to the City.

Low speed vehicle shall mean any four-wheeled vehicles whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, but shall not include golf carts or motor scooters. Low-speed vehicles must comply with the safety standards enumerated in C.F.R. s. 571.500 and section 316.2122, Florida Statutes.

Marked fire and safety lane shall mean a fire and safety lane marked by a pavement stripe and posted at intervals of fifty feet (50') or less by signs which state: "Fire and Safety Lane. Parking of motor vehicles prohibited at all times."

Moped shall mean any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels; with a motor rated not in excess of two (2) brake horsepower and not capable of propelling the vehicle at a speed greater than thirty (30) miles per hour on level ground; and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed fifty (50) cubic centimeters.

Motor scooter or scooter shall mean a motorcycle or two or three or four wheeled vehicle powered by a motor with a displacement of fifty (50) cubic centimeters or less or is rated not in excess of two (2) brake horsepower and which is not capable of propelling such motor scooter at a speed greater than thirty (30) miles per hour on level ground, and shall include a moped as defined in this section and any other two or three wheeled, self-propelled vehicle for which state law does not require proof of financial responsibility (see FS Chapter 324 (2013)).

Motorized scooter shall mean any vehicle not having a seat or saddle for the use of the rider, designed to travel on not more than three (3) wheels, and not capable of propelling the vehicle at a speed greater than thirty (30) miles per hour on level ground.

Motor vehicle shall mean any self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, or moped.

Private property shall mean any real property within the city which is privately owned and which is not public property.

Public property shall mean any street or highway which shall include the entire width between the boundary lines of every way publicly maintained for the purposes of vehicular travel, and shall also mean any other publicly owned property or facility.

Registered owner shall mean the person or entity that is registered by state law as the title holder of a motor vehicle on the date that a violation of this section occurs.

Stop, stand or park shall mean any stopping, standing or parking of a vehicle, whether occupied or not, other than momentarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

Vehicle shall mean every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

(Ord. No. 805, § 1, 5-22-03; Ord. No. 980, § 1, 9-8-05; Ord. No. 1351-L, § 2, 11-12-2015; Ord. No. 1398, § 2, 2-23-2017)