

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING CHAPTER 16, MOTOR VEHICLES AND TRAFFIC, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that:

Section 1. Section 16-1, Definitions, of Article I, In General, is amended by adding the following definitions in alphabetical order:

City Manager means the Chief Administrator of the City of Fayetteville or his/her designee.

Customer means a person that rents or operates a shared device from a shared active transportation system permittee.

Device operating area means the right-of-way (for all shared devices) where the operation of a shared device is authorized by a permit.

Department means the Public Services department.

Director means the Director of the City's Public Services department or his/her designee.

Electric-assisted bicycle means a bicycle with two or three wheels that is equipped with a seat or saddle for use by the rider, fully operable pedals for human propulsion, and an electric motor of no more than 750 watts, whose maximum speed on a level surface when powered solely by such a motor is no greater than 20 miles per hour.

Greenway trail means a pathway designated by signage as a public trail for bicycles and pedestrians and not for motorized vehicular use by the general public. A greenway trail is not located within the right-of-way of a street.

Motorized scooter means a vehicle that is steered by a steering handle, designed to be stood upon by the operator while the vehicle is in operation, and powered by a motor capable of propelling the vehicle at a speed no greater than 18 miles per hour on a level surface; and whose wheels have diameters of ten inches or less.

Operate means using the shared device for transportation when used in direct reference to a shared device. Operate includes to park a shared device.

Permit means a permit issued by the department pursuant to this article for a permittee to conduct a shared active transportation system.

Permittee is any person that conducts a shared active transportation system.

Rebalance means to move shared devices from one location to another, generally for the purpose of avoiding having too many devices in one location.

Right-of-way means the area owned or maintained by the City of Fayetteville, State of North Carolina, a public utility, a railroad, or a private concern for the placement of such utilities and/or facilities for the passage of vehicles or pedestrians, including roads, pedestrian walkways, utilities, or railroads.

Shared Active Transportation System (SATS) means a business that provides one or more shared devices for rentals where, by the design of the permittee, the shared devices are intended to be parked in a device operating area when not rented by a customer.

Shared device means bicycle, electrically assisted bicycle, or motorized scooter rented by a permittee to customers through a *Shared Active Transportation System (SATS)*.

Section 2. Article VIII, Pedestrians, Passengers, Bicycles, Pushcarts, and Buses, is amended by creating a new Section 16-223, Shared Active Transportation System (SATS), as follows:

Section 16-223. Shared Active Transportation System (SATS).

Unlawful to operate a Shared Active Transportation System (SATS) without authorization. It is unlawful for any person to conduct a shared active transportation system within the City except pursuant to this article.

a. Permits required; issuance; nature of permits.

- (1) No person may conduct a SATS in the City who does not hold a valid permit. A permit will be issued if the application meets the requirements of this article for issuance of the permit, including payment of applicable fees set by the City Council. The City Manager or his/her designee is authorized to write terms and conditions in permits as appropriate to effectuate this article, including limiting a permittee's shared device fleet size to improve permit compliance.
- (2) The application shall contain, at a minimum, the following information:
 - (a) The applicant's organizing documents (if a corporation, the applicant's articles of incorporation and by-laws; if a limited liability company, the applicant's articles of organization and operating agreement; if a partnership, the partnership's partnership agreement, etc.).
 - (b) If the applicant is a foreign business entity, a certificate of good standing from the secretary of state in the state where the applicant is incorporated, organized, or otherwise formed, as well as a certificate of authority to do business in North Carolina from the North Carolina Secretary of State.

- (c) If the applicant is a domestic business entity, proof that the applicant is properly registered with the North Carolina Secretary of State and current with respect to all requisite state and local filings and fees.
- (d) If the applicant is a sole proprietorship or does business under an assumed name, a copy of the applicant's completed "Assumed Business Name Certificate" is recorded with the Cumberland County Register of Deeds in Cumberland County, North Carolina.
- (e) The name and business address of each person or entity that:
 - 1) Has more than a 10 percent equity, participation, or revenue interest in the applicant; and/or
 - 2) Is a trustee, Director, partner, or officer of that entity or another entity that owns or controls the applicant.
- (f) The name and business address of any parent or subsidiary of the applicant, including those of any business entity which owns or controls the applicant, in whole or in part, or which is owned or controlled by the applicant, in whole or in part, together with a statement describing the business operations of any such parent or subsidiary and the nature of the relationship between said parent or subsidiary and the applicant.
- (g) Information sufficient to show that the applicant is financially, technically, and legally qualified to operate and maintain a SATS device system, as the City shall, in its sole discretion, determine.
- (h) A description of the proposed plan of operation, including, at a minimum, a detailed description of the following:
 - 1) The applicant's current operations in the city and in other cities, including copies of the applicant's operating permits for all such jurisdictions and an explanation of how the applicant's current and future operations will complement existing modes of transportation within Fayetteville, such as local transit agencies and existing, docked bike-share;
 - 2) The applicant's proposed operations in the city, including the maximum number of SATS devices the applicant proposes to use, the plan for balancing and rebalancing SATS devices for equitable city-wide coverage, the plan for inspecting, repairing, servicing, and maintaining SATS devices, the plan for providing and maintaining adequate levels of staff for operation, inspection, repair, service, maintenance, rebalancing, and administration, and the plan to provide adequate customer service;

- 3) The applicant's history of complying, and plans and ability to comply, with federal, state, and local law, rules, regulations, and guidelines, including, but not limited to, NCGS Ch. 20 and any federal, state, and local laws pertaining to data privacy, breach, and the protection of personal information obtained from or about customers of applicant's SATS devices;
 - 4) The applicant's plans to implement safety programs, including, for example, a program by which the applicant will receive information about and notify customers of inappropriate use;
 - 5) The applicant's plans to educate customers of SATS devices about applicable federal, state, and local laws, rules, regulations, and guidelines, as well as any safety and usage recommendations, warnings, or proscriptions the applicant or device manufacturers recommend; and
 - 6) Any other requirements set forth by administrative regulation.
- (3) Permits shall be valid for a period of 1 (one) year from the date of issue. Applicants may apply to renew their permits, following all the procedures prescribed herein. Applications for renewal shall be subject to the same standards of review as applications for an initial permit. Applicants must submit an updated insurance certificate meeting the requirements of this article with any application for a new or renewed permit. A permit does not grant exclusive rights to operate a shared active transportation system in device operating areas.
 - (4) Permits may not be transferred or assigned.
 - (5) Each permittee shall comply with its permit.

b. Equipment and shared devices requirements.

- (1) When used in a shared active transportation system, electric-assisted bicycles shall meet the standards in (i) the Code of Federal Regulations (CFR) under Title 16, Chapter II, Subchapter C, Part 1512 - Requirements for Bicycles, as amended; and (ii) the standards in ISO 43.150 - Cycles, subsection 4210, as amended.
- (2) All shared devices shall comply with the applicable equipment and vehicle registration requirements of NCGS Ch. 20.
- (3) Permittees shall provide, on every shared device, contact information of the permittee, including the website and phone number.

- (4) All shared devices must be equipped with technology, such as Global Positioning System (GPS), that allows the shared device to be located and tracked by the permittee at all times.
- (5) All shared devices shall be inoperable outside of the designed SATS District.
- (6) Permittees shall see that every shared device prominently displays a unique and easily read serial number or other identifier.

c. Operation of SATS.

- (1) A permit is valid for conducting a SATS within the device operating SATS District only and with the owner's or lawful occupant's consent on other real property. It is unlawful to operate a shared device on any real property outside device SATS District without the consent of the property's owner or lawful occupant. Each permittee shall have at all times the ability to discover when its shared devices are operated outside device operating areas and to communicate electronically that information to customers who have operated a shared device outside device operating areas. Permittees shall communicate to customers at the end of a trip when the shared device has been operated outside device operating areas.

Fayetteville's Shared Active Transportation System (SATS) District shall include the location as listed:

(i) Hay Street between Winslow Street and Market Square, (ii) Franklin Street between Winslow Street and Gillespie Street, (iii) West Russell Street between Winslow Street and Donaldson Street, (iv) Segra Stadium access between Hay Street and Ray Avenue, (v) Person Street between Market Square and Ottis F. Jones Parkway, (vi) Winslow Street between West Russell Street and Hay Street, (vii) Williams Street between West Russell Street and Franklin Street, (viii) Ray Avenue between West Russell Street and Maiden Lane, (ix) Burgess Street between Hay Street and Maiden Lane, (x) Anderson Street between Hay Street and Maiden Lane, (xi) Gillespie Street between Market Square and Franklin Street, (xii) Maiden Lane, (xiii) Market Square, (xiv) Pittman Street, (xv) Maxwell Street, (xvi) Donaldson Street, (xvii) Old Street, (xviii) Bow Street, and (xix) Ottis F. Jones Parkway.

- (2) Permittees shall not restrict the operation of shared devices to only certain geographical areas of the city unless approved by the City.
- (3) Each permittee shall implement programs to reduce barriers to low-income persons to rent their shared devices by providing diverse payment options, including options for persons with neither a smartphone nor a credit card to rent their shared devices. These options shall be accessible to low-income persons at multiple locations within the permittee's area of operation.

- (4) Permittees shall provide docking stations for all SATS devices at approved locations in the designated district(s).
- (5) Notwithstanding any other provision of this article, no permittee or business may:
 - (a) Use, display, proffer, or make available for rent any motorized scooter or a new mode of dockless, shared transport upon any greenway, public park, or city parking deck;
 - (b) Display, proffer, or make available for rent any motorized scooter or electric-assisted bicycle that is capable of traveling at more than 20 miles per hour;
 - (c) Ride any shared device on any public sidewalk in the downtown area;
 - (d) Use any new mode of dockless, shared transport upon any public sidewalk;
 - (e) Deploy, station, leave, abandon, or park a SATS device in any public right-of-way or any public area in a manner that:
 - 1) Obstructs pedestrian or vehicular travel upon or blocks pedestrian or vehicular access to a public right-of-way (including, but not limited to, parking a device in anything other than an upright position or in a manner that blocks crosswalks, crosswalk activation buttons, ADA ramps, or otherwise violates ADA accessibility requirements or impedes ADA access);
 - 2) Blocks ingress or egress from a vehicle lawfully parked at the curb of a public right-of-way;
 - 3) Is nearer than 36 inches to a fire hydrant;
 - 4) Poses a public safety hazard; or
 - 5) Is otherwise prohibited by applicable laws or administrative regulations, all as the Director shall, in his or her sole and absolute discretion, determine;
 - 6) Use, display, proffer, make available for rent, station, or leave any motorized scooter on or in any public right-of-way between the hours of 10:00 p.m. and 6:00 a.m.;
 - 7) Display, proffer, or make available for rent any SATS device that is inoperable or unsafe to operate;

- 8) Each motorized scooter must be equipped with always-on front, side, and rear lights that emit a white light visible from a distance of at least 500 feet to the front, side, and rear.
- 9) Each SATS device must be equipped with a warning bell or horn and security hardware.
- 10) Each SATS device must be regularly inspected for wear and tear and stress-based damage. Each SATS device must be regularly maintained and repaired in accordance with manufacturers' recommendations. Worn or damaged parts must be immediately replaced. Unsafe or inoperable devices must be removed from the public right-of-way within 24 hours of notification to, or discovery by, the permittee, and devices that are unsafe to operate must immediately be made unavailable to the public, by the permittee, via remote device lock-down.

d. Permittee communication with customers.

- (1) Permittees shall include substantially the following information for prospective customers on the permittee's mobile app and website and also displayed on the shared device for which the information is applicable:
 - (a) Persons operating shared devices must be at least 16 years old and are encouraged to wear a helmet.
 - (b) North Carolina law requires persons operating the devices to follow applicable traffic laws.
 - (c) City ordinance prohibits operating the device on sidewalks in the downtown district.
 - (d) Operating shared devices are prohibited on greenway trails.
- (2) Permittees shall adopt and implement programs to educate customers on how to operate shared devices safely and all manufacturers' recommendations and warnings pertaining to the operation of devices, including knowledge of laws applicable to operating a shared device in the city.
- (3) Permittees shall communicate to prospective customers sufficient information on charges that may be made, including rates and dollar amounts of fees, including rental charges, minimum charges, maximum charges, charges for additional time, and charges for overage periods. If charges may be based on time or distance, information on the rate per minute, hour, mile, or other applicable time period or distance shall also be provided.
- (4) Permittees shall have a 24-hour, 7-day-a-week, 365-day-a-year hotline and a local office within the City, open, at minimum, from 8:00 a.m. to 5:00

p.m., Monday - Friday for customers to report safety concerns and complaints, and to ask questions, to take payments and conduct other business. Both the hotline and the local office shall be staffed by personnel who can and must respond or dispatch other personnel who can and must respond to customer or city concerns, complaints, and/or requests within two hours of complaint/request unless a shorter timeframe is specified elsewhere in this article.

Additionally, permittees are required to provide contact information for local operation staff for publishing on the City's website and or other materials.

- (5) All communications required by this article to be made by a permittee to prospective customers and customers shall be in clear, plain English and displayed in a sufficiently prominent way that the communication is apparent.
- (6) Each SATS device must prominently display a unique and conspicuous serial number or other identifiers, legible from a distance of 10 feet, the name and contact information, including website, email address, and phone number of the permittee under whose permit the device is authorized, legible from a distance of three feet, and information for users pertaining to safety, traffic laws, and manufacturers' recommendations and warnings.
- (7) Each permittee must require customers to affirmatively sign or check a box within the permittee's registration, service agreement, or mobile application prior to the customer's use of the permittee's device to indicate that the customer agrees to forever release, relinquish, and discharge the City and its officials, officers, employees, representatives, and agents from any and all known and unknown claims, demands, disputes, debts, losses, liabilities, liens, charges, expenses, penalties, proceedings, causes of action, suits, injuries, and damages, including, but not limited to, consequential, indirect, incidental, special, and exemplary damages, pertaining to any personal injury, wrongful death, or property damage which arises, in any manner, in connection with:
 - (a) The customer's rental, use, misuse, or proper or improper placement or parking of the permittee's devices;
 - (b) The City's issuance of, or decision to approve, the permittee's SATS device permit;
 - (c) The permittee's operations, acts, or omissions, including, but not limited to, any failure to inspect, repair, service, charge, and/or maintain devices and to communicate to customers applicable traffic safety laws and appropriate manufacturers' and other warnings and recommendations for the use of devices;
 - (d) Any defective device or equipment the permittee displays deploys, stations, offers for rent, rents, leaves, or abandons;

- (e) The permittee's improper placement or parking of any device;
- (f) The permittees or any of its officers, managers, employees, agents, or representatives' alleged or actual violation of any federal, state, or local law, rule, regulation, ordinance, or guidance in connection with the use of the permit, any device authorized thereunder, or the permittee's business operations;
- (g) The permittee's or any of its officers, managers, employees, agents, or representatives' violation or breach of this article, the administrative regulations adopted pursuant to this article;
- (h) The permittee's failure to secure the customer's consent to the collection, sharing, selling, or dissemination of data in the manner specified in this article, the permittee's failure to protect any such data or to perform financial transactions in accordance with this article; and all other applicable federal, state, and local laws, rules, and regulations;
- (i) The City's failure to enforce the provisions of this article, the administrative regulations adopted pursuant to this article, or permit, insurance, indemnification, security, and liability;
- (j) To the fullest extent permitted by law, the City shall not assume any liability whatsoever with respect to any SATS device permits the city issues or the operation of any SATS devices thereunder. As a condition to the issuance of any SATS device permit, the applicant shall be required to meet all of the following conditions (and by accepting a permit, the applicant agrees to the following conditions):
 - 1) Execute an agreement, in a form approved by the city attorney, agreeing to release, indemnify, defend (at the applicant's sole cost and expense), and hold the City and its officers, officials, employees, representatives, and agents harmless from and against any and all claims, suits, causes of action, losses, damages, demands, injuries, liabilities, or losses, including, but not limited to, any consequential, indirect, incidental, special, or exemplary damages (collectively, the "claims"), which, in any manner, arise out of, in relation to, or in connection with:
 - a) The City Manager or his/her designee issuance of, or decision to approve, a SATS device permit;
 - b) The process used by the City Manager or his/her designee in making its/his/her decision;
 - c) The applicant's operations, acts, or omissions, including, but not limited to, any failure to inspect, repair, service, maintain, or properly place or park

devices and to communicate to customers applicable traffic safety laws and appropriate warnings and recommendations for the use of devices, including, but not limited to, any warnings or recommendations issued by manufacturers;

- d) Any defective device or equipment the applicant displays, deploys, stations, offers for rent, rents, leaves, or abandons;
 - e) The applicant's and/or its officers', managers', employees', agents', representatives', or customers' injury or damage to person or property in connection with the use of the permit or the use, misuse, or parking of any device authorized thereunder, including, but not limited to, any injuries or damage to the public rights-of-way;
 - f) The applicants or any of its officers, managers, employees, agents, representatives, or customers' alleged or actual violation of any federal, state, or local law, rule, regulation, ordinance, or guidance in connection with the use of the permit, any device authorized thereunder, or the applicant's business operations;
 - g) The applicant's or any of its officers, managers, employees, agents, or representatives' breach of the agreement; and/or
 - h) The City's failure to enforce the provisions of this article or any provision of the permit. The applicant's indemnification obligation shall apply to all the above-stated claims, regardless of whether any of the applicant's insurance policies apply thereto.
- 2) Obtain and maintain in continuous effect, for the duration of the SATS device permit and the applicant's use of the public rights-of-way, and one year thereafter, an insurance policy according to City policy from an insurer authorized to conduct business in the state of North Carolina with coverage limits and conditions, from time to time, naming the City an additional insured, on a primary and non-contributory basis to secure the applicant's indemnification obligations under this subsection and the aforementioned agreement. The applicant's insurance policy shall be endorsed to state that coverage shall not be canceled, and the amount of coverage shall not be materially reduced until 30 days following the City's receipt of prior written notice by certified mail. If any insurance policy issued to a permittee

is canceled or the amount of coverage thereof materially reduced for any reason, the SATS device permit issued under this article shall be automatically suspended. In order to reinstate the permit, the permittee shall provide a new certificate and policy of insurance to the City, meeting the requirements of this subsection. Original, signed certificates and endorsements evidencing the coverages required hereunder shall be submitted to the City prior to the issuance of or reinstatement of a permit.

- 3) Permittees shall provide the City with a performance bond or other security acceptable to the City in an amount determined by the City to be sufficient to cover the obligations of the permittee under the permit. The form of the bond is subject to approval by the department after it consults the city attorney and shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina. The bond shall guarantee the performance of all the obligations of the permittee under its permit. If the amount of the bond is set according to the number of deployed shared devices when a permittee intends to increase the number of deployed devices, the permittee shall submit a revised performance bond or other security acceptable to the City before the additional shared devices may be deployed.
- 4) Reimburse the City within 30 calendar days of the date of invoice for all costs and expenses, including, but not limited to, attorneys' fees and court costs, which the City incurs as a result of any legal challenge related to the City's approval of, or activities conducted pursuant to, the applicant's SATS device permit, the device, itself, or damages to the public rights-of-way, public areas, or other city property. The City may, in its sole discretion, elect to participate in defense of any such action. Still, such participation shall not relieve the applicant of any obligations imposed hereunder.
- 5) Reimburse the City within 30 calendar days of the date of invoice for all costs and expenses the City incurs (and which have not already been advanced) to repair the public rights-of-way or other city property damaged in connection with the applicant's and/or its officers', managers', employees', agents', representatives', or customers' use of the public rights-of-way pursuant to the permit issued to the applicant.
- 6) The applicant will conduct all defenses specified in this article at the applicant's sole cost and expense. The City shall reasonably approve the selection of the counsel that will represent the City. The applicant shall not settle or compromise any claim or consent to the entry of any

judgment which affects the City without the prior written consent of the City. In no event shall an adverse judgment be entered against the City, as part of a settlement, without the City's express, prior, written consent.

- 7) The indemnification obligations expressed in this article shall continue during the suspension of the SATS device permit and shall survive the expiration or earlier termination/revocation of the permit and the expiration or lapse of any insurance policy.

f. Parking, placement, rebalancing, and removing shared devices.

- (1) Shared devices shall not be parked in a way that may impede the regular flow of vehicular and pedestrian travel in device operating areas or otherwise cause a violation of the City Code, including this article. Permittees shall inform customers how and where to park a shared device in the manner required by this article. Shared devices shall be upright when parked. The permittee shall remove or re-park every one of its shared devices that are parked in violation of the permit or the City Code in accordance with the following:
 - (a) During the time period of 6:00 a.m. to 10:00 p.m. on weekdays, not including legal holidays, the permittee shall remove or re-park within two (2) hours of receiving notice from any person via mobile or other web application or phone number.
 - (b) During all other times, the permittee shall remove or re-park within 12 hours of receiving notice from any person via mobile or other web application or phone number.
- (2) At any time, the City Manager may make it unlawful to park shared devices in specific locations or portions of device operating areas or public property.
- (3) Permittees shall not deploy a shared device that is inoperable or unsafe to operate. Permittees shall remove from device operating areas within 24 hours of notice any inoperable shared device or any shared device that is not safe to operate.
- (4) Each permittee shall remove and secure its entire fleet of shared devices from device operating areas for all time periods for which the National Weather Service or its successor agency forecasts (i) sustained winds of 40 mph or higher for one hour or more or (ii) wind gusts of 58 mph or higher for any duration in the City.
- (5) Each permittee shall compensate the City for the costs incurred by the City in removing and storing its shared devices that have been improperly parked or rebalanced, including under the circumstances where a permittee fails to remove its shared devices in violation of its permit or in case its permit is terminated or otherwise not in effect.

- (6) Permittees shall provide the department with contact information so that it can order rebalancing. The City has the right to determine specific locations for rebalancing shared devices, as well as times when the shared devices must be removed from device operating areas.
- (7) If the City relocates or removes a permittee's shared devices because of a violation of a permit or this article, the permittee shall pay a fee in an amount set by the City Council.
- (8) The City Manager or his/her designee or any authorized employee of the City may impound any vehicle found in violation of this article and charge a civil penalty. The City Manager or his/her designee is authorized to dispose of an impounded vehicle subject to this article if civil penalties are not paid within 90 days of issuance.

g. Reporting.

- (1) Each permittee shall provide the City with all data concerning the permittee's SATS devices and their use, including real-time data; archival trip data; data pertaining to the frequency and location of trips; data pertaining to the deployment and rebalancing of devices; data pertaining to customer complaints and customer service response; data pertaining to device inspection, maintenance, and defects; accident data; data pertaining to system operations; etc. The data must be accurate, anonymized, and timely provided in a format and via an interface the City approves. The City will only request and use such data as the City needs to support the safe, equitable, and effective management of the permittee's operations within the City. The permittee shall also communicate clearly, conspicuously, and transparently to customers and prospective customers prior to the commencement of a trip whether the permittee will collect, share, or sell any other data and with whom. The permittee must seek and acquire a customer's permission prior to selling the customer's data or sharing it with parties other than the City. The permittee must provide customers an "opt-in" option in furtherance thereof. The permittee must protect and use industry-accepted encryption to encrypt all financial, personal, and uniquely identifying information it collects, stores, or disseminates in strict compliance with all applicable federal, state, and local laws, rules, and regulations. All financial transactions in which the permittee engages with customers must be secure and payment-card-industry compliant.
- (2) Each permittee shall compile, for all of its shared devices deployed in the City, records of collisions or accidents reported to the permittee, the police, or the NC Department of Motor Vehicles, and records of maintenance and repair. Records shall be shared with the City when and in the manner required by the permit at the City's request.

h. Revocation or non-renewal of permit; review of decisions.

- (1) *Revocation or non-renewal; grounds and procedure for revocation or non-renewal.* The Director may (i), at any time, revoke any permit issued to a

permittee or (ii) refuse to renew a permit issued to a permittee under this article and require that permittee remove its entire fleet of shared devices from City designated areas for the following findings:

- (a) Fraud, misrepresentation, or a knowingly false statement with respect to a material fact in the permit application or permit renewal application;
 - (b) The permittee or the permittee's agent or employee violated this article or the terms of the permit up to 10 occurrences;
 - (c) The permittee's customers operated the shared devices in such a manner as to create unsafe traffic conditions, cause a breach of the peace or public nuisance, violate any applicable law, or interfere with the rights of property owners abutting the right-of-way, and such operation is done to such an extent that the health, safety, and welfare of the citizens or their property is at substantial risk if the permit is allowed to continue in effect;
 - (d) The permittee is convicted of any criminal offense that is substantially related to the qualifications, functions, duties, or abilities of the applicant, including, but not limited to, any such pertaining to violent or serious felony, fraud, deceit, or embezzlement; or
 - (e) Fails to pay any penalties or fines imposed by the City pursuant to this article; fails to pay any impound fees imposed by the City pursuant to this article.
- (2) Except in the case of emergency or impracticality, before revoking the permit or denying renewal of a permit, the Director shall provide notice to the permittee and an opportunity to be heard ten (10) business days prior to the hearing. A permit may be revoked or permit renewal denied pursuant to this section even if the person making the findings pursuant to this section had made a contrary finding before the permit was issued or renewed, regardless of whether the facts upon which the finding is made had changed.
- (3) *Notice.*
- (a) The Director shall cause a written notice of the revocation or denial of a renewal to be served on the permittee by first-class mail, email, or other electronic means or fax, to the address or number shown on the permit application or by any method allowed by law for service of a summons in a civil action. The person serving the notice may be anyone 18 years or older, including the Director.
 - (b) If the Director finds that time before a proposed hearing is insufficient to allow service in accordance with subsection (a), the Director may, as an alternative to the means listed in subsection (a), notify the permittee by telephone of the grounds for revocation or

denial of renewal and of the right to appeal, provided a written notice is also sent in accordance with subsection (a) on or before the next day that is not a holiday.

- (c) The notice described in subsection (a) shall set forth a brief statement of the grounds for revocation or denial of renewal and of the right to appeal.
 - (d) The Director shall see that a written record is made to show compliance with this section (3).
- (4) *Retention of fees; waiting period.* If the City revokes a permit, the City shall retain the fee, if any, paid for the permit. In the case of a denial of a permit renewal, the City shall either not accept the renewal fee or return the renewal fee to the permittee. The person whose permit is revoked or renewal denied for grounds stated in subsection (1)(a), (1)(b), or (1)(c), regardless of whether additional grounds existed, shall not be issued a permit under the same section of this article for the remainder of the time for which the revoked permit had been issued or, in the case of a denial of permit renewal, for the term of the renewal period. The City shall use reasonable judgment in deciding whether two applicants are the same so that, for example, technical changes in the applicant, or where the applicant one year is a corporation, and the next year it is an affiliate or subsidiary of the same corporation, may not be disregarded.
- (5) *Review of decisions.* If the issuance, re-issuance, or renewal of a permit is denied, or a permit is revoked, or the permit terms are deemed unacceptable to the permittee, or makes any other decision pursuant to this article with respect to a permit, the applicant or permittee may have that decision reviewed by filing a written request in the office of the City Manager or his/her designee within ten days of the date of the notice of determination. The City Manager shall conduct a hearing in order to review the decision. The City Manager shall cause a written notice of the time and place of the hearing to be given or sent to the person seeking review. The permittee may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The City Manager or his designee may affirm, deny, or modify the decision. The City Manager's determinations under this section shall constitute the final decision of the City and shall not be subject to further administrative review. Failure to request a review within the time and in the manner provided for in this subsection shall constitute a waiver of the right of review. The permit may be used during the review process only if the City Manager or his/her designee determines that its use would not constitute a substantial threat that the grounds described in subsection (1)(b) or (1)(c) will occur, re-occur, or continue during the review process.

i. Penalties for violations.

- (1) *Assessment of civil penalties.* Civil penalties shall be assessed for violations as prescribed in this article, including the terms of a permit. Written notice shall be given to the offender describing the nature of the violation and the amount of the civil penalty. The written notice shall be served to the permittee by US mail to the address listed on the permittee's application. The civil penalty shall be \$200.00 per violation plus the costs incurred by the City resulting from the violation, including costs of removing shared devices from the rights-of-way. Each day's continuing violation shall be a separate and distinct offense.
- (2) *Review of assessment of civil penalties.* Any person who has been assessed a civil penalty under this article may appeal the penalty, pursuant to Section 1-9(2) of the City of Fayetteville Code of Ordinances, by filing a written request to the City Attorney's Office within fifteen days of the date of service of the notice of the civil penalty. The person assessed the penalty and the Director may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request a review within the time and in the manner provided for in this subsection constitutes a waiver of the right of review.
- (3) *Collection of civil penalties.* If the offender does not pay the civil penalty within ten days after having been served with the notice of the civil penalty or filing an appeal, the City may collect the civil penalties by causing to be commenced civil actions in the nature of the debt. The City Manager or his/her designee may compromise such claims, before or after commencement of the civil action, upon a finding that there is a reasonable probability that the City will be unable to collect the entire amount of the claim, that the amount offered in compromise of the claim reasonably reflects either the amount of money available from the offender or the amount the City is likely to recover in the civil action, taking into account the resources required to pursue the civil action, and that the facts and circumstances of the events giving rise to the claim, taken as a whole, indicate that the amount offered in compromise is fair and reasonable. Using the foregoing standards, in an appropriate case, the claim may be abandoned.
- (4) *Equitable remedies.* Any provision of this article, the administrative regulations adopted pursuant to this article, or the permit issued hereunder may be enforced by an equitable remedy, including abatement orders and mandatory or prohibitory injunctions issued by a court of competent jurisdiction. The Cumberland County Superior Court shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application by the City for equitable relief that there is an adequate remedy at law.

Section 3. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become effective July 1, 2023, and be made part of the Code or Ordinances, City of Fayetteville, North Carolina, and the section of this ordinance may be renumbered to accomplish such intention.

ADOPTED this the 10th day of April, 2023.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk