

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

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