



## **CITY OF KIRKLAND**

**City Attorney's Office**

**123 Fifth Avenue, Kirkland, WA 98033 425.587.3030**

**[www.kirklandwa.gov](http://www.kirklandwa.gov)**

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### **MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Kevin Raymond, City Attorney

**Date:** January 24, 2022

**Subject:** Ratification and Reaffirmation of Temporary Moratorium Related to Autonomous Personal Delivery Devices

### **RECOMMENDATION:**

It is recommended that City Council adopt attached Ordinance O-4782, ratifying and reaffirming O-4779, which on January 18, 2022 declared an emergency and adopted a temporary moratorium on the City's acceptance of applications for review and/or issuance of building permits for autonomous personal delivery device dispensers and on the acceptance of applications for review and/or issuance of right-of-way permits for autonomous personal delivery devices. By including Ordinance O-4782 as part of the consent calendar, the Council is adopting the Ordinance.

### **BACKGROUND DISCUSSION:**

The City Council's January 18, 2022 meeting was characterized as a special meeting because its study session began at 5:00 pm rather than the 5:30 pm start time that is typical of the Council's regular meetings. During the meeting, the Council met in executive session to discuss potential litigation before later adopting, on an emergency basis, the temporary moratorium described above and in more detail in Ordinance O-4779. City staff recommends that Ordinance O-4779 be ratified and reaffirmed through the attached Ordinance O-4782 at the Council's February 1, 2022 regular meeting. This action, as part of the consent calendar, would allow for broader public awareness of the temporary moratorium as well as an opportunity for public comment during Items from the Audience and in advance of the public hearing scheduled for March 1, 2022.

cc: Ordinance O-4779  
Proposed Ordinance O-4782 Ratifying and Reaffirming Ordinance O-4779

## ORDINANCE O-4779

AN ORDINANCE OF THE CITY OF KIRKLAND IMPOSING A MORATORIUM WITHIN ALL ZONES OF THE CITY ON THE ACCEPTANCE OF APPLICATIONS FOR THE REVIEW AND/OR ISSUANCE OF BUILDING PERMITS FOR AUTONOMOUS PERSONAL DELIVERY DEVICE DISPENSERS AND ON THE ACCEPTANCE OF APPLICATIONS FOR THE REVIEW AND/OR ISSUANCE OF RIGHT-OF-WAY USE PERMITS FOR AUTONOMOUS PERSONAL DELIVERY DEVICES; AND DECLARING AN EMERGENCY.

1 WHEREAS, the City has the authority to adopt moratoria  
2 pursuant to RCW 35A.63.220 and RCW 36.70A.390 and KMC  
3 135.30.1; and  
4

5 WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 allow  
6 the City to adopt a moratorium for up to six months without notice  
7 and without a public hearing, so long as a public hearing is  
8 conducted within 60 days of adoption of the moratorium; and  
9

10 WHEREAS, RCW 35A.13.190 requires the Council to  
11 approve an emergency ordinance by a vote of a "majority plus  
12 one;" and  
13

14 WHEREAS, in April of 2019, the State Legislature passed  
15 House Bill 1325, codified as Chapter 46.75 Revised Code of  
16 Washington (RCW), which identifies and defines autonomous  
17 personal delivery devices (APDDs) and sets forth some State  
18 requirements that must be met before APDDs may operate  
19 anywhere in the State of Washington; and  
20

21 WHEREAS, pursuant to RCW 46.75.020(1), the first  
22 requirement for use of an APDD is that it must be "operated in  
23 accordance with all ordinances, resolutions, rules and regulations  
24 established by the jurisdiction governing the rights-of-way within  
25 which the personal delivery device is operated"; and  
26

27 WHEREAS, the City has not yet enacted any ordinances,  
28 resolutions, rules and/or regulations regarding the operations of  
29 APDDs within the City; and  
30

31 WHEREAS, the City has currently received four (4)  
32 applications for building permits to construct and maintain the  
33 large container-like storage dispensers for APDDs, which the  
34 applicants call "hives," in various City zones including the LIT  
35 Industrial Zone, the FHNC Commercial Zone, the JBD 2 Juanita  
36 Business District Zone and the PLA 6B Institutional Zone; and

37 WHEREAS, the applicants for the hives have asked for  
38 authorization to place them in various locations, such as a parking  
39 spot at a gas station that currently does not have sufficient

40 parking for the current uses on the property, and a parking spot  
41 at a church; and  
42

43 WHEREAS, the City needs time to study the proposed hives  
44 to determine what type of use the hives will be defined as (such  
45 as general commercial, outside storage, warehouse, etc.), to  
46 accurately account for any impact hives may have on the public's  
47 health, safety, and welfare; for example, the City must determine  
48 whether hives should be restricted to a certain zone or zones;  
49 whether they should be prohibited in certain areas, such as within  
50 100 feet of a school and/or daycare center; and many other  
51 issues, such as design, lighting, signage, clearance, additional  
52 parking requirements for access, effect on existing uses of the  
53 property where they are located, etc.; and  
54

55 WHEREAS, the applicants have requested permits for hives  
56 so that they can begin using APDDs within the City primarily on  
57 sidewalks and cross walks, because State law restricts APDDs uses  
58 primarily to sidewalks and cross walks; and  
59

60 WHEREAS, the City needs time to study what types of rules  
61 and regulations it should enact for use of APDDs and hives in the  
62 City, for example, whether use of APDDs should be prohibited at  
63 certain times of the day and/or night, such as during rush hour;  
64 regulations to ensure APDDs interact safely with pedestrians, pets,  
65 children, street vehicles, etc.; whether use of APDDs is compliant  
66 with the Americans With Disabilities Act (the "ADA"); and the  
67 proper reporting requirements to the City with regard to  
68 accidents, injuries, and failures; etc.; and  
69

70 WHEREAS, adoption of rules and regulations related to  
71 APDDs and hives will involve amendments to both the *Kirkland*  
72 *Municipal Code* and the *Kirkland Zoning Code*; that such possible  
73 amendments will require discussions and public hearings  
74 regarding the establishment of new zoning laws before the  
75 Planning Commission, the City Council, and the Houghton  
76 Community Council; and it could take an indeterminate amount of  
77 time for these groups to analyze the impacts of APDDs and hives  
78 and to reach recommendations and decisions on applicable rules  
79 and regulations; and  
80

81 WHEREAS, an emergency moratorium is necessary to  
82 protect the public health, safety, and welfare while the City studies  
83 the impacts of APDDs and hives, and undertakes the public  
84 processes of amending its relevant ordinances, resolutions, rules,  
85 and regulations to allow for safe zoning and operation of APDDs  
86 and hives.  
87

88 NOW, THEREFORE, the City Council of the City of Kirkland  
89 do ordain as follows:

90 Section 1. Imposition of a Moratorium. Pursuant to RCW  
91 35A.63.220, RCW 36.70A.390, and KMC 35.30.1, a moratorium  
92 hereby is imposed in the City of Kirkland on the acceptance of  
93 applications for, review of, or issuance of any permit related in

any way to the use or storage of autonomous personal delivery devices (APDDs).

Section 2. Duration of Moratorium. This moratorium shall remain in effect for six months from the effect date of this ordinance unless terminated earlier as provided by law.

Section 3. Public Hearing Date. A public hearing shall be held pursuant to 35A.63.220 and RCW 36.70A.390 during the regular City Council meeting of Tuesday, March 1, 2022 at 7:30 PM. Due to the ongoing COVID-19 protocols, this public hearing will occur virtually, online. Information on how to participate is available on the City website at [www.kirklandwa.gov/Government/City-Council](http://www.kirklandwa.gov/Government/City-Council). City hall is located at 123 5<sup>th</sup> Avenue, Kirkland, WA.

Section 4. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

Section 5. Effective Date. This ordinance is hereby declared and designated a public emergency ordinance necessary for the protection of public health and safety and shall be effective immediately upon its passage by the City Council.

Section 6. Publication shall be pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by affirmative vote of at least 5 members of the Kirkland City Council in open meeting this 18<sup>th</sup> day of January, 2022.


Signed in authentication thereof this 18 day of January, 2022.

  
Penny Sweet, Mayor

Attest:

  
Kathi Anderson, City Clerk

Approved as to Form:

  
Kevin Raymond, City Attorney

Publication Date: 1/24/2022

PUBLICATION SUMMARY  
OF ORDINANCE O-4779

AN ORDINANCE OF THE CITY OF KIRKLAND IMPOSING A MORATORIUM WITHIN ALL ZONES OF THE CITY ON THE ACCEPTANCE OF APPLICATIONS FOR THE REVIEW AND/OR ISSUANCE OF BUILDING PERMITS FOR AUTONOMOUS PERSONAL DELIVERY DEVICE DISPENSERS AND ON THE ACCEPTANCE OF APPLICATIONS FOR THE REVIEW AND/OR ISSUANCE OF RIGHT-OF-WAY USE PERMITS FOR AUTONOMOUS PERSONAL DELIVERY DEVICES; AND DECLARING AN EMERGENCY.

SECTION 1. Imposes a moratorium on the acceptance of applications for, review of, or issuance of any permit related in any way to the use or storage of autonomous personal delivery devices (APDDs).

SECTION 2. Defines the duration of the Ordinance.

SECTION 3. Sets a public hearing date.

SECTION 4. Provides a severability clause for the ordinance.

SECTION 5. Declares that a public emergency exists requiring that the ordinance take effect immediately.

SECTION 6. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 18 day of January, 2022.

I certify that the foregoing is a summary of Ordinance O-4779 approved by the Kirkland City Council for summary publication.

  
\_\_\_\_\_  
Kathi Anderson, City Clerk

## ORDINANCE O-4782

AN ORDINANCE OF THE CITY OF KIRKLAND RATIFYING AND REAFFIRMING ORDINANCE O-4779, IMPOSING AN EMERGENCY MORATORIUM WITHIN ALL ZONES OF THE CITY ON THE ACCEPTANCE OF APPLICATIONS FOR THE REVIEW AND/OR ISSUANCE OF BUILDING PERMITS FOR AUTONOMOUS PERSONAL DELIVERY DEVICE DISPENSERS AND ON THE ACCEPTANCE OF APPLICATIONS FOR THE REVIEW AND/OR ISSUANCE OF RIGHT-OF-WAY USE PERMITS FOR AUTONOMOUS PERSONAL DELIVERY DEVICES.

1 WHEREAS, the City Council, at its January 18, 2022 special  
2 meeting did meet in executive session to discuss potential  
3 litigation before reconvening in open public session to consider  
4 and then enact Ordinance O-4779, declaring an emergency and  
5 imposing a temporary moratorium on the City's acceptance of  
6 applications for the review and/or issuance of building permits for  
7 autonomous personal delivery device dispensers and right-of-way  
8 permits for autonomous personal delivery devices; and  
9

10 WHEREAS, Ordinance O-4779 did establish, pursuant to  
11 RCW 35A.63.220 and RCW 36.70A.390, a March 1, 2022 public  
12 hearing on the temporary moratorium; and  
13

14 WHEREAS, the Council wishes to increase public awareness  
15 of the temporary moratorium, provide for public comment at the  
16 Council's February 1, 2022 regular meeting, and take the action  
17 of ratifying and reaffirming Ordinance O-4779.  
18

19 NOW, THEREFORE, the City Council of the City of Kirkland  
20 do ordain as follows:

21 Section 1. Ordinance O-4779 is hereby ratified and  
22 reaffirmed.  
23

24 Section 2. Effective Date. This ordinance shall be in force  
25 and effect five days from and after its passage by the Kirkland City  
26 Council and publication, as required by law.

27           Passed by majority vote of the Kirkland City Council in open  
28 meeting this \_\_ day of February, 2022.

29  
30           Signed in authentication thereof this \_\_ day of February,  
31 2022.

\_\_\_\_\_  
Penny Sweet, Mayor

Attest:

\_\_\_\_\_  
Kathi Anderson, City Clerk

Approved as to Form:

\_\_\_\_\_  
Kevin Raymond, City Attorney