

ORDINANCE O-4826

AN ORDINANCE OF THE CITY OF KIRKLAND ENACTING A NEW CHAPTER 19.29 OF THE KIRKLAND MUNICIPAL CODE ENTITLED "PERSONAL DELIVERY DEVICES"; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND APPROVING A SUMMARY ORDINANCE FOR PUBLICATION.

1 WHEREAS, the City of Kirkland is a municipal corporation  
2 organized under Ch. 35A.13 RCW; and  
3

4 WHEREAS, among other authorizations, the City has all powers  
5 possible for a city to have relating to the rights and powers to improve,  
6 maintain, protect, regulate, and use its public ways, as authorized by  
7 RCW 35A.11.020; and  
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9 WHEREAS, over several decades, the City has taken many  
10 strategic actions and invested considerable funds to develop a  
11 multimodal transportation system; and  
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13 WHEREAS, the City's *Transportation Master Plan*, in support of  
14 the continued development of a multimodal transportation system,  
15 states, "Safe and approachable interconnected walking and biking  
16 networks designed for 'all ages and abilities' can offer everyone options  
17 for all kinds of trips;" and  
18

19 WHEREAS, the package, grocery, and prepared food delivery  
20 industries are looking for ways to make more efficient provision of their  
21 services through new technologies, particularly for "last mile" deliveries;  
22 and  
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24 WHEREAS, one of those technologies is Personal Delivery  
25 Devices ("PDDs"); and  
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27 WHEREAS, the City is aware of a variety of current personal  
28 delivery devices that operate—or wish to operate—on public streets and  
29 sidewalks, as well as private property; and  
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31 WHEREAS, State law has adopted minimum regulations for the  
32 use of PDDs anywhere in the State, which includes the requirement that  
33 the devices must be "operated in accordance with all ordinances,  
34 resolutions, rules and regulations established by the jurisdiction  
35 governing the rights-of-way within which the personal delivery device is  
36 operated;" RCW 46.75.020; and  
37

38 WHEREAS, the City wants to ensure that PDDs that operate  
39 within the City do so in a manner that does not greatly diminish the  
40 public's ability to enjoy the City's rights-of-way and facilities, nor  
41 endanger the public health, safety, or welfare; and

WHEREAS, the City has a particular obligation to help guarantee that people with disabilities have the same opportunities as everyone else to participate in the mainstream of American life; and

WHEREAS, in late 2021, the City received four incomplete building applications for PDD operation in the City; and

WHEREAS, because the City did not have any regulations concerning PDDs, the City established a six-month emergency moratorium via Ordinance O-4779 on January 18, 2022, prohibiting, among other things, the acceptance, processing, or issuance of permits related to PDDs; and

WHEREAS, the City began research and analysis aimed at crafting legislation, rules, and regulations applicable to PDDs in the City, and conducted several public hearings and public informational meetings about the proposed operation of PDDs on private property and/or public rights-of-way within the City; and

WHEREAS, on July 5, 2022, the City Council extended the moratorium for an additional six months via Ordinance O-4806; and

WHEREAS, on December 13, 2022, the City Council extended the moratorium again for an additional six months via Ordinance O-4833; and

WHEREAS, staff has worked diligently to conduct research and to craft proposed legislation concerning PDDs; and

WHEREAS, the City desires to establish performance-based regulations for the operation of PDDs that respect federal ADA rights, assure public safety, reduce greenhouse gas emissions, and do not overly burden emergency responders.

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

Section 1. Creation of New Municipal Code Chapter Providing for the Regulation of Personal Delivery Devices. A new chapter is added to the Kirkland Municipal Code as follows:

## **Chapter 19.29 Regulation of Personal Delivery Devices**

### **19.29.010 Purpose**

The purpose of this ordinance is to establish local regulations for the operation of personal delivery devices by private entities in and on all public rights-of-way within the corporate limits of the City of Kirkland, as authorized by RCW 46.75.020(1).

### **19.29.020 Defined Terms**

(a) City. The City of Kirkland, Washington, a municipal corporation.

(b) Cross Kirkland Corridor. The portion of the Eastrail regional rails-to-trails corridor that is owned by the City in fee simple.

(c) Delivery Route. A complete round trip from and to a Dispenser during which a PDD may make one or more delivery stops.

(d) Director. The Director shall be the City's Director of Public Works, or the Director's designee.

(e) Dispenser. A physical structure permitted by the City used by the Eligible Entity for the storage, electrical recharging, package loading, and/or minor maintenance of PDDs.

(f) Eligible Entity. A corporation, partnership, association, firm, sole proprietorship, or other entity engaging in business.

(g) Greenway. A designated and completed transportation segment that promotes higher volumes of walking and biking and encourages or causes lower volumes and speed of motorized vehicles. Greenways feature special signage, and pedestrian and bicycle amenities.

(h) Personal Delivery Device or PDD. An electrically powered devices to which all of the following apply:

1. The device is intended primarily to transport property on sidewalks and crosswalks;

2. The device weighs less than one hundred twenty pounds, excluding any property being carried on the device;

3. The device will operate at a maximum speed of six miles per hour; and

4. The device is equipped with automatic driving technology, including software and hardware, enabling the operation of the device, with the support and supervision of a remote personal delivery device operator.

(i) Personal Delivery Device Right-of-Way Use Permit ("PDD Use Permit"). The permit required under this chapter for use of the City's designated rights-of-way by Personal Delivery Devices.

(j) Pilot Project. A limited term period during which an Eligible Entity may operate in the City for the City to evaluate the performance of the Eligible Entity's equipment, services, interactions with the public, compliance with applicable rules and regulations, and achievement of identified goals.

(k) Pilot Project Areas. The defined area or areas in the City, as determined by the City with input from the Eligible Entity, where the Eligible Entity may conduct its Pilot Project.

### **19.29.030 Basic Requirements of Operation**

Before the operation of any PDD shall occur within the City, all of the following provisions of this subsection must be provided to the City and evaluated by the Director. These materials shall be required before the commencement of a Pilot Project and shall be provided, if ongoing permission is granted by the City, on an annual basis.

a. Application materials.

1. An application form and indemnification agreement as provided by the City.

2. Proof of having obtained a City business license.

3. Proof of insurance in an amount and form acceptable to the City. This shall include a certified copy or original of a comprehensive liability insurance policy naming the City as an additional insured. Such insurance policy shall be maintained and in full force as a condition of ongoing PDD operations. Such insurance shall contain or be endorsed to reflect that the applicant's insurance coverage

is primary with respect to the City. Any additional insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the applicant's insurance and shall not contribute with it.

4. A copy of the Washington State Department of Licensing Self-certification Form as described in RCW 46.75.030.

5. The sworn affidavit described in KMC 19.29.030(d).

6. Identification of the sites from which PDDs will begin and conclude their Delivery Routes; City staff will verify the sites for that proposed activity comply with KZC 115.106.

7. A list providing the identifying numbers for each PDD used within the City.

8. If the Eligible Entity has successfully completed a Pilot Project, then the Eligible Entity must provide a list of any incidents or traffic infractions, as identified in RCW 46.75.030(5).

9. Proof that the Eligible Entity has cyber security programs and protocols in place such that the information they receive from customers for deliveries is protected; and that operation and control of the PDDs cannot be accessed or interfered with in any manner by anyone other than the Eligible Entity.

10. An application fee in the amount set forth by the Director before commencement of the Pilot Period; and, if approved to operate on an ongoing basis, annually thereafter.

b. All PDDs operating within the City, in addition to meeting the requirements of RCW 46.75, shall meet the following requirements.

1. The operational requirements of KZC 115.106 on private property.

2. The sound requirements of KMC 19.29.070(c)

3. The signal activation requirements of KMC 19.29.050(e).

4. Each PDD shall have identified on the outside of the PDD, in clearly legible typeface, the telephone number and e-mail address for contacting the City about customer service issues concerning the operation of the PDD, or compliance or non-compliance with the provisions of this Chapter. The City shall maintain these records of operational concerns filed by telephone or e-mail.

c. Annual Fee. Each Eligible Entity shall pay the City an annual personal delivery device right-of-way use fee ("annual fee") in an amount determined by the Director. The annual fee shall be assessed per PDD and shall be paid at the initial issuance of a PDD Use Permit and annually on the anniversary date of the PDD Use Permit.

d. Reasonable Expectation of Privacy. Each Eligible Entity shall provide to the City prior to the issuance of a PDD Use Permit a sworn affidavit from an authorized representative that the Eligible Entity shall respect all residents' reasonable expectations of privacy, and shall not gather or store any data beyond what is necessary for navigation and/or delivery related to PDD deliveries. By way of illustration and not limitation, "data" shall mean geospatial information, facial recognition data, photos, purchasing history, demographic data, or any other data.

e. Indemnification. An Eligible Entity must provide the City with a written indemnification agreement that provides, at a minimum, the Eligible Entity's agreement to indemnify, defend, and hold the City harmless from any and all claims or causes of action for injury to persons

or property resulting from the Eligible Entity's operation of PDDs within the City, including injuries to persons and property, both real and personal, and including injuries to both public and private properties. This agreement shall be in a form approved by the City.

f. If all provisions above have been met to the City's satisfaction, then a PDD Use Permit may be issued by the Director, as set forth in KMC 19.29.040. The Terminable Right-of-Way Use permit may have conditions attached to it.

#### **19.29.040 Limited Initial Authorization**

a. After an Eligible Entity has obtained the necessary approvals required in KMC 19.29.030, it may operate on designated portions of the City's rights-of-way as a Pilot Project for a period of six months from the date of issuance of the PDD Use Permit. At the end of the Pilot Project, the Eligible Entity must cease operations and the performance of the Eligible Entity during the Pilot Project shall be reviewed by the Director.

b. The City, with input from the Eligible Entity, may establish up to four Pilot Project Areas in which the PDDs may operate during the Pilot Project. Each Pilot Project Area shall not be greater than five percent of the land area of the City, shall be differentiated from each other in terms of land uses and street types, and shall not be contiguous.

c. No more than one Dispenser shall be permitted in each Pilot Project Area.

d. During the Pilot Project, PDD hours of operation shall be 9:00 a.m. to 8:00 p.m.

e. The provisions of KMC 19.29.080(a) shall apply during the Pilot Project.

f. The PDD Use Permit shall be revokable for non-compliance with these regulations, the degree of intervention that has been required by the Police department or other City departments, frequency of complaints, and/or serious safety concerns that arise, as determined by the Director. The Director shall consult with other City departments as determined.

g. At the conclusion of the Pilot Project, the Director shall review the performance of the Eligible Entity during the Pilot Project based upon, but not limited to, the following factors.

1. The quantity and nature of complaints received by the City.

2. The quantity and nature of interventions required by City departments.

3. The quantity and nature of accidents involving a PDD.

4. The quantity and type of infractions issued related to PDD operation.

5. An evaluation of the data required in KMC 19.29.080.

h. Based upon the outcome of the Director's review under this section, an Eligible Entity may apply for an annual permit, as provided in KMC 19.29.030. The Director shall issue a written determination that includes explanatory support.

#### **19.29.050 Right-of-Way Restrictions**

Any operation of a PDD shall have the following restrictions on or in the rights-of-way or other City property:

- a. A PDD may not operate on the shoulders of rights-of-way.
- b. A PDD may not operate on a designated and established Greenway.
- c. A PDD may not operate on the Cross Kirkland Corridor.
- d. A PDD may not operate on a school walk and/or bike route designated by the Lake Washington School District located within the City, within 30 (thirty) minutes prior to the school start time, or the 30 (thirty) minutes following the school end time when such schools are in session.
- e. A PDD may not operate in a controlled intersection or in a crosswalk improved with Rectangular Rapid Flashing Beacons unless the PDD is able to activate both a pedestrian walk signal and Rectangular Rapidly Flashing Beacon signal and unless proper equipment is installed to receive the activation. It shall be the financial responsibility of the Eligible Entity to cause all related technology to be installed.
- f. All PDDs must adhere to Ch. 46.61 RCW, "Rules of the Road."
- g. No Dispenser shall be located on right-of-way or on City-owned property.

#### **19.29.060 Package Delivery Restrictions**

Any operation of a PDD shall be prohibited from transporting or delivering the following:

- a. Beer, wine, spirits, or other consumable alcohol.
- b. Prescription drugs.
- c. Marijuana or marijuana-related products.
- d. Fireworks.
- e. Products regulated by the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives.

#### **19.29.070 Americans with Disabilities Act (ADA) Accommodations**

To address the federal requirement that people with disabilities have accessibility to civic life, and so that people with disabilities do not encounter prolonged inconvenience or risk personal harm or property damage because of the operation of PDDs on the public rights-of-way, the following is required for any operation of PDDs.

- a. A PDD may not operate on a sidewalk or other right-of-way that is narrower than five feet.
- b. When a PDD is operating outside a Dispenser, regardless of the time of day, the PDD shall operate with lights on the front, rear, and sides of the PDD.
- c. PDDs shall be equipped with technology that detects when a person is within twenty-five (25) feet of the PDD. When the PDD is within 25 feet of a person:
  1. It shall activate a signal or bell that warns the person of the PDD's proximity.
  2. It must move to the right side of the right-of-way in the direction of travel within five (5) seconds.

3. If the PDD is on an ADA ramp, it must vacate the ADA ramp within five (5) seconds.

d. If State or federal law require stricter standards than those provided in this Section, they shall control.

#### **19.29.080 PDD Reports**

To assess the quantity of PDD deliveries in the City, the following data shall be collected and reported.

a. At the conclusion of the Pilot Project period, the Eligible Entity shall provide a report to the City that documents the following:

1. The total number of PDD delivery round trips made in each Pilot Project Area during the Pilot Project, the total number of individual deliveries made by the PDDs during the Pilot Project, and the total number of miles traveled per week for all PDDs in each Pilot Project Area.

2. The total number of aborted/unsuccessful deliveries per week for each Pilot Project Area during the Pilot Project.

3. The number of PDD equipment failures.

4. The number of accidents in which a PDD was involved.

b. Should the Eligible Entity obtain an annual permit, then the Eligible Entity shall provide the data identified in 19.29.080(a) 1 through 4 annually.

c. The Director may determine annual reporting is no longer required, or reporting is required on a less frequent basis.

#### **19.29.090 Additional Performance Standards**

In addition to other performance standards identified in this Chapter, the following standards and requirements shall apply to any operation of a PDD.

a. In the event a PDD becomes unable to move or move safely, has become damaged, or has been relocated contrary to its intended delivery route, the Eligible Entity shall cause a person(s) employed by the Eligible Entity to remove or retrieve such PDD within thirty (30) minutes of being made aware of the circumstance. In the event of an emergency, or in the event a PDD is not removed or retrieved in a timely manner as set forth in this section, then the City shall have authority to remove or retrieve the PDD itself and recover costs pursuant to KMC 19.29.100.

b. Whenever practicable, PDDs must move off the right-of-way and wait in private driveways or on other non-public property until the delivery item(s) have been retrieved by the customer.

c. The Eligible Entity shall be responsible for complying with all applicable, nondiscrimination laws and regulations.

d. The Eligible Entity shall develop and enforce policies to ensure safe operation of all PDDs that meet or exceed all applicable industry, State, and federal standards.

e. The Eligible Entity and the City shall advertise complaint lines that are accessible by telephone or e-mail. The lines shall be directed to the City, and the City shall maintain the records of such complaints, which shall identify the quantity, date and time, nature, resolution, and time to resolve the complaints received. These data shall be used at the conclusion on the Pilot Program as provided in

19.29.040(g)1, or as a factor or the cause for invoking the provisions of 19.29.110.

**19.29.100 City Response to Incidents**

In the event the City, including but not limited to employees of the City Fire Department and the City Police Department, is required to remove or retrieve one or more PDDs, the City shall assess the Eligible Entity \$1,500 per occurrence, or the actual costs if they are greater than \$1,500 per occurrence.

**19.29.110 City Reserves Right to Revoke Permission**

Whether during a Pilot Project or while operating on an ongoing basis, the City reserves the right to revoke the Eligible Entity's permission to operate on or in the rights-of-way at any time for any violation of this Chapter or any other violation of law.

Section 2. 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 3. Effective Date. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Section 4. Publication. Publication of this ordinance 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 majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of \_\_\_\_\_, 2023.

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2023.

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

Attest:

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

Approved as to Form:

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



PUBLICATION SUMMARY  
OF ORDINANCE NO. 4826

AN ORDINANCE OF THE CITY OF KIRKLAND ENACTING A NEW CHAPTER 19.29 OF THE KIRKLAND MUNICIPAL CODE ENTITLED "PERSONAL DELIVERY DEVICES"; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND APPROVING A SUMMARY ORDINANCE FOR PUBLICATION.

SECTION 1. Creates a new Municipal Code Chapter 19.29 providing for the regulation of personal delivery devices.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. Provides an effective date for the ordinance.

SECTION 4. 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 \_\_\_\_\_ day of \_\_\_\_\_, 2023.

I certify that the foregoing is a summary of Ordinance \_\_\_\_\_ approved by the Kirkland City Council for summary publication.

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