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MEMORANDUM

To: Kurt Triplett, City Manager

From: Julie Underwood, Director of Public Works
Stephanie Croll, Senior Assistant City Attorney
John Starbard, Deputy Director of Public Works

Date: December 16, 2022

Subject: DRAFT ORDINANCE—PERSONAL DELIVERY DEVICES

RECOMMENDATION:

It is recommended that the City Council review the draft ordinance concerning regulation of personal delivery devices on the City's rights-of-way and provide direction to staff.

Staff also has attached the draft regulations for personal delivery device operation only on private property that the Council has reviewed previously, but staff primarily is seeking review of the ordinance concerning operation on the rights-of-way because that has not been reviewed by the Council previously in ordinance format.

BACKGROUND DISCUSSION:

Personal delivery devices are an emerging technology that facilitate "last mile" delivery of packages, groceries, and prepared food. They are autonomous, though they do require humans to load them, unload them, and assist with set-up and unforeseen occurrences. Generally, they are permitted by Washington State law (RCW 46.75), though that Chapter also provides that the devices must be "operated in accordance with all ordinances, resolutions, rules and regulations established by the jurisdiction governing the rights-of-way within which the personal delivery device is operated."

When this topic was first introduced to the Council, the terminology used was "automated personal delivery devices" or APDDs. The Council and the public will note that the word "automated" has been eliminated in the memo and in the proposed code. This was done to mirror the state language governing these devices in RCW 46.75. The definitions section, RCW 46.75.010, names them "personal delivery devices" but describes them as devices "equipped with automated driving technology" among other features. Staff proposes to adopt the state terminology and definition in the draft code amendments.

In late 2021, staff received four incomplete building applications from representatives of Amazon to site "dispensers" for the storage, electrical recharge, and operational support of what are now called personal delivery devices (or "PDDs"). At about this same time, staff noticed that PDDs were being operated on streets and sidewalks near the Maintenance Center. Given that the City had no

regulations concerning the siting of dispensers or the operation of PDDs on its rights-of-way, and given that local governments have broad powers to regulate the rights-of-way within their jurisdictions (RCW 35A.11.020), staff recommended and the Council enacted a six-month emergency moratorium related to PDDs, Ordinance O-4779. That moratorium was enacted on January 18, 2022, and prohibited, among other things, the acceptance, processing, or issuance of permits related to PDDs. During the initial moratorium period, staff worked to gain a better understanding of PDDs. Staff surveyed other jurisdictions in which PDDs were operating and reviewed their regulations, in addition to conducting public outreach. As allowed by law, the moratorium was extended on July 5, 2022, and again on December 13, 2022.

As part of its initial research effort, staff accepted Amazon's invitation to observe some PDD field testing that was occurring in unincorporated Snohomish County near Mill Creek. Several Kirkland staff participated in the field visit. Staff's observations, which were reported to the Council during its May 3, 2022 Regular Meeting, were that the Amazon PDDs, which are under the proprietary name "Scout," operated somewhat erratically at times, maneuvered with delay and hesitancy around even minor obstacles, and seemed as if they would present serious challenges on sidewalks and ramps to those in the ADA community.

One of the benefits Amazon cited for its Scout program was that it would reduce greenhouse gas emissions because the Scouts are electric. During the field visit, though, Amazon representatives stated that Scouts would augment but not replace van deliveries, and that as a customer-focused company if a customer preferred a van delivery then the customer could have a van delivery.

Public Outreach and City Council/Commission Review

Since the establishment of the moratorium, staff has undertaken several steps to hear from the public and inform the Council and other City officials. All dates are in 2022. At each of the meetings listed below, the public was afforded opportunity to provide comment.

January 18	City Council Meeting—Moratorium ordinance established
February 1	City Council Meeting—Moratorium ordinance ratified
March 1	City Council Meeting—Public hearing, scope of work reviewed
March 28	Houghton Community Council
April 18	Virtual community meeting (6:00 p.m.)
April 19	Virtual community meeting (10:00 a.m.)
April 19	Field demonstration by Amazon in Snohomish County
April 27	Transportation Commission
April 28	Planning Commission
May 3	City Council Meeting—Update provided, regulatory options selected
May 25	Transportation Commission
June 23	Planning Commission—Public hearing and deliberations (draft regulations for private and institutional properties only)
July 5	City Council Meeting—Council discussion about conceptual regulations for operation on rights-of-way; extension of moratorium for six months
December 13	City Council Meeting—Extension of moratorium for six months

Though there have been numerous opportunities, the City has received very little public comment about this topic. A total of approximately five members of the community attended the two virtual community meetings; no public comment was offered at any of the commission meetings or the

Houghton Community Council meeting; and at the March 1 public hearing one representative of Amazon addressed the Council and one letter from a community member was submitted in advance.

Previous Council Direction

At the May 3, 2022, Regular Meeting, staff presented the Council with three options for further development: 1) disallowing PDDs in Kirkland, 2) allowing them only on private property, or 3) allowing PDDs on a limited use basis on the City's rights-of-way.

Option 2, private property, was seen as fitting for a large mixed-use development or an institutional use such as a college. Option 2 would prohibit even the crossing of a PDD on publicly-owned right-of-way; it would be for operation only on private property with the agreement of the property owner.

On May 3, the Council indicated that if a private property owner wanted to have PDDs operate on their private property, then perhaps that was acceptable. The Council was not definitive about PDD operation on rights-of-way.

Staff provided draft Zoning Code regulations for PDD operation on private property to the Council on July 5 (see Attachment A, "Draft Regulations—KZC 115.196, 'Personal Delivery Devices'"). The Council reviewed but did not take action on those draft regulations.

As to regulations for PDD operation on rights-of-way, which would be codified in the Municipal Code, staff presented a conceptual framework. The City's rights-of-way are under the advisory purview of the Transportation Commission, which rarely if ever reviews draft code language in the same way the Planning Commission does. Therefore, staff facilitated a discussion of a conceptual regulatory framework for operation on the rights-of-way with the Transportation Commission, then offered a similar conceptual framework to the City Council at its July 5 meeting, noting suggestions from the Transportation Commission.

At its July 5 meeting, the Council discussed conceptual regulations for the operation of PDDs on the rights-of-way. In brief, the Council's discussion considered:

- Concerns with ADA accommodation;
- Climate change and documentation of greenhouse gas reduction efforts;
- Whether residents could enjoy a reasonable expectation of privacy with PDDs;
- That the City should be open to the development and testing of new technologies;
- How accidents and incidents would be addressed;
- What the City gains from having this technology operate in the City, including financial gains;
- How the operation of such technology appears to run counter to decades of policy and capital investment to make the City more accessible and multimodal; and
- That staff should explore performance-based regulations that meet the City's expectations.

Staff then worked to draft an ordinance that was based upon the conceptual framework and addressed the Council comments and interests.

Outreach to Other Entities

In an effort to develop additional ideas for draft regulations, particularly concerning the ADA community, staff reached out to several entities:

- The Office of Senator Patty Murray, seeking referrals to ADA-focused organizations that may have suggestions, including any suggestions at the federal level;
- Disability Rights Washington
- National Disability Rights Network
- Washington Center for the Blind
- National Federation of the Blind
- Here and Now (organization to connect and empower the paralysis community in the Pacific Northwest)
- Washington Cities Insurance Authority (WCIA)

Staff discovered that these organizations either had not considered PDDs at all or only peripherally so. However, they were interested in Kirkland's draft.

While Kirkland was the first jurisdiction to contact WCIA about recommended insurance levels, and thus WCIA was surprised initially, it did reply with a recommended insurance level being a limit of \$5,000,000 in Commercial General Liability insurance for any company that wants to operate delivery devices within the city limits. WCIA also offered to provide a third-party review of the City's draft ordinance. Staff has provided the draft ordinance to WCIA, and third-party review conducted by attorney Adam Rosenberg with the Williams Kastner law firm is expected mid-December. Should Mr. Rosenberg have recommended edits, they will be provided to the Council and highlighted during the January 3 discussion.

Announcement from Amazon

On October 7, Amazon issued a national press announcement and also contacted Kirkland directly. The announcement said that Amazon was, "ending [its] field tests and reorienting the program." Amazon had "learned through feedback that there were aspects of the program that weren't meeting customers' needs."

All four applications that had been submitted to the City have been withdrawn by the entities that were acting on behalf of Amazon, and staff has cancelled the applications.

However, the City knows from its research and discussion that Amazon is not the only entity experimenting and deploying PDD technology. Other delivery companies such as Federal Express are identified on the Internet as exploring PDD use, universities are using them for on-campus delivery of prepared food, and Amazon itself told the City in recent months—prior to the announcement referenced above—that it was exploring a grocery-only option. Thus, staff continues to recommend that the Council provide direction about PDD operation in Kirkland. Staff recommends further that the Council take legislative action in the first quarter of 2023, well before the extended moratorium expires.

Summary of Draft Ordinance

Staff has prepared a draft ordinance for Title 19, "Street and Sidewalks," of the Municipal Code (see Attachment B). In summary:

- 19.29.030 Describes the application process for obtaining a Personal Delivery Device Right-of-Way Use Permit. Among other requirements, applicants must submit an initial report relating to baseline climate change data; identification information for each PDD; history of infractions and incidents (if it has completed a pilot project); proof of cybersecurity programs and protocols; must meet signal activation requirements

- (related to RRFBs and signalized crosswalks); and a sworn affidavit related to reasonable expectation of privacy.
- 19.29.040 Describes operation for a six-month pilot project in up to four defined areas of the City. At the end of the pilot project, the Director of Public Works, or designee, shall evaluate performance and determine whether an annual permit shall be granted.
- 19.29.050 PDD operation is prohibited in shoulders; Greenways; CKC; school walk routes within timeframes; and controlled intersections, signalized crosswalks, or RRFB crosswalks unless signal operation technology is provided. PDDs must abide by the Rules of the Road, and no dispenser shall be on rights-of-way or City-owned property.
- 19.29.060 Identifies items that are prohibited from being transported or delivered via PDDs.
- 19.29.070 Identifies required performance to address ADA accommodations, such as: minimum width of sidewalk, terms for moving to the side or vacating a sidewalk or ramp, and light- and sound-identifying technology.
- 19.29.080 Identifies baseline, monthly pilot project, and on-going reporting requirements to evaluate the climate change/greenhouse gas factors of PDD operation. Also requires reporting on equipment failure and accidents.
- 19.29.090 Identifies other performance standards, such as: retrieving failed or damaged PDDs, vacation from sidewalks while waiting for a package recipient, required delivery to both single-family and multifamily, complaint line, and semi-annual reporting.
- 19.29.100 City shall charge if it needs to remove or retrieve a PDD itself.
- 19.29.110 Right of City to revoke permission to operate for violation of these regulations or any other violation of law.

SEPA Review

A SEPA Environmental Checklist has been prepared. Based on the analysis and given the nature of the potential Zoning Code and/or Municipal Code amendments, a standard Determination of Non-Significance (DNS) was prepared. Notice was sent in November; no party commented.

NEXT STEPS:

Staff is not requesting final action on this matter at this meeting. Staff is seeking the Council's direction about two considerations:

- First, staff welcomes comments and suggested changes to either or both the draft Zoning Code language related to operation on private property, and/or the draft Municipal Code language related to operation on rights-of-way; and
- Second, whether the Council would prefer to: a) disallow PDD operation in the City; b) allow it on private property only; c) allow it on rights-of-way only; d) allow it on both private property and rights-of-way; or e) provide other direction.

Staff will work with the Council's direction and return with any requested data and/or legislation.

Attachment A: Draft Regulations—KZC 115.106, "Personal Delivery Devices"

Attachment B: Draft Ordinance—Personal Delivery Devices

DRAFT**115.106 Personal Delivery Devices**

An Eligible Entity operating a Personal Delivery Device (PDD) as defined under [RCW 46.75](#) may operate on private property in commercial zones, office zones, and industrial zones, and on institutional property within the PLA 1, PLA 14 zones consistent with the following standards:

1. The operation and storage of PDDs shall be reviewed as a Planning and Building Director decision. An Eligible Entity must demonstrate that their proposal meets the standards established in this section.

The decision of the Planning and Building Director in approving or denying an application to operate and store PDDs under this section may be appealed using the appeal provisions, as applicable, of Process I, KZC 145.60.

2. Prior to any decision, the Eligible Entity shall submit to the Planning and Building Director a letter signed by the owner of the property approving the location, time, and manner to which PDDs will operate and be stored on said property. The application shall include an affidavit certifying that the applicant has notified all staff, students, and tenants (if any) on the subject property of the proposed PDD operation and storage.
3. The operation and storage of PDDs shall not inhibit the safe vehicular and pedestrian movement to, from and on the subject property in accordance with the requirements of the Zoning Code and standards of the Fire Department, Planning and Building Department, and the Public Works Department.
4. PDD storage shall be located within existing structures or, if located within a separate structure, shall be consistent with the following standards:
 - a. If the storage area is located within a Design District, it shall conform with the design regulations in KZC 92.
 - b. Storage areas located adjacent to nonresidential zones may be located in the required side and rear setback yards; except, that all storage areas located adjacent to residential zones, or adjacent to residential uses within nonresidential zones, must meet required setbacks for the primary use.
 - c. If the storage area is surrounded on all sides by property zoned for industrial use, then the height of the storage shall not exceed the height of the primary structure. In all other cases, the storage area shall not exceed 12 feet in height.
 - d. If located on an unimproved area of the site, the underlying ground must be improved as required by the Department of Public Works and Planning and Building Department, and no regulated trees, six (6) inches in diameter at breast height (DBH) or greater, may be removed. If impacts are proposed within the Critical Root Zone (CRZ) of existing regulated trees, a report prepared by a Qualified Professional Arborist is required and must meet the standards pursuant to KZC 95.30(3)(c).
 - e. The required parking and loading spaces for the primary use and the PDD storage and operation must be provided onsite. The parking area requirements for the PDD and

storage use will be reviewed pursuant to KZC 105.25 and a parking study may be required.

- f. The storage area shall comply with the required land use buffer for the primary use as established in KZC 95.42.
 - g. The storage area shall conform to lighting regulations of KZC 115.85.
 - h. The storage area shall conform to noise regulations of KZC 115.95.
 - i. All signage shall conform to the same sign category as the primary use and applicable requirements of Chapter 100 KZC.
5. The Eligible Entity shall maintain liability insurance consistent with the requirements of RCW 46.75.202(4).
 6. An Eligible Entity shall obtain a business license to operate and store PDDs in the City.
 7. The Eligible Entity shall file with the City an agreement, approved by the City, wherein the operator agrees to defend, save, and hold harmless the City of Kirkland.