



CITY OF KIRKLAND
Planning and Building Department
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MEMORANDUM

To: Planning Commission, City Manager

From: Adam Weinstein, AICP, Director of Planning and Building
Jeremy McMahan, Deputy Director of Planning and Building
Scott Guter, AICP, Senior Planner

Date: June 9, 2022

Subject: Public Hearing - Personal Delivery Devices, Amendments to the Kirkland Zoning Code, File No. CAM22-00195

RECOMMENDATION

Conduct a public hearing to receive public comments on proposed amendments to the Kirkland Zoning Code (KZC) to allow for the operation and storage of personal delivery devices (PDDs) on private and institutional properties. Following the public hearing, prepare a recommendation to City Council.

BACKGROUND

In late 2021, the City received four incomplete building permit applications to construct and maintain four Amazon PDD “dispensers”. City staff also discovered that an operator or operators had been testing PDDs in various locations in the City without any notice to the City and without any authorization or permission from the City.

On January 18, 2022, the City Council passed an emergency moratorium on the acceptance of applications and the issuance of building permits for PDDs and their dispensers within the City of Kirkland. This moratorium was intended to allow the City time to study and address concerns over the technology such as:

- Identify basic facts about the technology
- Address concerns over safety and privacy
- Identify the public benefits
- Study other cities regulating this technology

On March 1, 2022, City Council held a public hearing on the moratorium and adopted a preliminary scope of work to evaluate the use of PDDs with Resolution 5521. The Houghton Community Council approved the moratorium with the adoption of Resolution R-2022-3 on March 28, 2022.

Following Council’s adoption of the moratorium, an interdepartmental team met with representatives from Amazon and some of its subcontractors to gain a better understanding of the technology, its deployment in other locations, Amazon’s plans for Kirkland, and both current and potential operational issues. This was followed by small

group meetings with members of the Kirkland community and a demonstration of the technology at one of Amazon’s locations in Snohomish County.

PDDs and their dispensers relate to both land use and transportation issues. The Planning Commission advises City Council on zoning regulations and land use topics (such as the appropriate location and siting of PDD dispensers). All topics related to operation within the right-of-way are subject to City Council’s governing authority, subject to the Transportation Commission’s advisory role.

Planning and Building staff will coordinate the work of the Planning Commission, Transportation Commission, and City Council to ensure a comprehensive approach to regulating deployment on private property (e.g., location of dispensers, screening, parking impacts) and operation in the right-of-way.

On [April 28, 2022](#), the Planning Commission received a briefing on PDDs and their dispensers and provided input on potential regulations. The following is a summary of the Planning Commission’s feedback.

- Planning Commission expressed concern over the potential impacts of an unproven technology on vulnerable populations and their use of public sidewalks.
- Planning Commission was also concerned about idle devices on sidewalks and felt that the first step could be to allow PDDs on private property, then allow within right-of-way when the technology is proven and can better adapt to public use of sidewalks.
- Planning Commission feels that the benefits of the technology to the community need to be quantified and articulated so that they can be communicated to the public. Any benefits should be quantified so that the benefit justifies the risk.

On May 3, 2022, City Council was briefed on the input staff received from the Planning Commission, Houghton Community Council, Transportation Commission and the public. Staff proposed a potential regulatory framework (see Table 1).

Table 1: Regulatory Framework

Option 1: Do Not Allow	Option 2: Allow on Private Property	Option 3: Allow limited use in right-of-way
Prohibit operation of PDDs within the City (private and public property, including rights-of-way).	Allow only on Private property.	Allow within identified rights-of-way, assuming certain performance standards are met, and subject to a project-specific operational plan approved by the City.
Under this option, staff would draft code to prohibit the use of PDDs within the right-of-way. Staff would extend this prohibition to all public and private property. <u>Benefits:</u> This would give Amazon and other companies additional time to	Allow PDDs on large private properties such as school and business campuses where the technology has been operating elsewhere. <u>Benefits:</u> This would allow PDD technology to continue to develop in Kirkland-specific conditions in more	Allow PDDs within specific identified rights-of-way under a pilot program or temporary use permit. <u>Benefits:</u> This would allow companies to ask the City to use the right-of-way and continue to develop and

<p>test and improve PDDs before deploying them in Kirkland, avoiding the potential safety and access issues identified by staff. <u>Drawbacks:</u> Kirkland residents might not experience first-hand any potential benefits associated with the technology (e.g., incremental reductions in delivery traffic), although staff would note that these benefits have not been quantified by Amazon.</p>	<p>controlled environments, while avoiding most of the safety and access concerns identified by staff. <u>Drawbacks:</u> See Option 1.</p>	<p>provide services offered with this technology. Use would only be authorized if specific performance standards can be met (e.g., the technology can be operated safely around pedestrians, bikes, and persons with disabilities). <u>Drawbacks:</u> Could expose roadway/sidewalk users and the general public to some risk associated with the use of unproven technologies.</p>
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City Council did not support Option 1 and asked staff to draft regulations for Option 2 (Planning Commission purview) and Option 3 (Transportation Commission & Council purview). Below is a summary of staff’s proposed draft regulations for Option 2 to allow the operation of PDDs on private property.

SUMMARY OF PROPOSED ZONING AMENDMENTS

The proposed zoning amendments add a new section to the zoning code chapter 115 – Miscellaneous Use Development and Performance Standards. The following provides the draft amendments in Attachment 1, followed by a brief staff analysis.

1. Allowed Locations within the City

Proposed Regulation: 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.

Staff Analysis: Draft regulations utilize Washington State definitions established in Chapter 46.75 RCW (see Attachment 2) and would allow PDD operation and storage on private and institutional properties.

The draft regulations include zones where Amazon proposed its four test locations.

2. Decision Process

Proposed Regulation: 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 provision, as applicable, of Process I, KZC 145.60.

Staff Analysis: This decision mechanism provides the City process for review of an application prior to issuance of any permit and a means for an applicant or the public to appeal a decision by the City.

3. Notice

Proposed Regulations: Prior to any decision an 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.

Staff Analysis: The draft regulations require notification to all residents and tenants of a property where PDDs will operate and be stored.

4. Performance

Proposed Regulation: The operation and storage of PDDs shall not inhibit 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.

Staff Analysis: The draft code requires the operation and storage of PDDs to meet minimum code provisions required for uses and activities on a subject property.

5. Dispenser Standards

Proposal:

- a. PDD storage shall be located within existing structures or, if located within a separate structure, shall be consistent with the following standards:
 - i. If the storage area is located within a Design District, it shall conform with the design regulations in KZC 92.
 - ii. 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.
 - iii. 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.
 - iv. 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 over six (6) inches in caliper diameter at breast height (DBH) or greater, may be cut or 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).

- v. The required parking 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.
- vi. The storage area shall comply with the required landscape buffer for the primary use as established in KZC 95.42.
- vii. Storage area shall conform to lighting regulations of KZC 115.85.
- viii. Storage area shall conform to noise regulations of KZC 115.95.
- ix. All signage shall conform to the same sign category as the primary use and applicable requirements of Chapter 100 KZC.

Staff Analysis: Draft regulations for dispensers are similar to those regulating outdoor use, activity, and storage in KZC 115.105. Regulations for parking have been added based on staff observations and discussions with Amazon on PDD operations.

6. Liability

Proposed Regulation: The Eligible Entity shall maintain liability insurance consistent with the requirements of RCW 46.75.202(4).

7. Hold Harmless

Proposed Regulation: 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.

8. Licensing

Proposed Regulation: An Eligible Entity shall obtain a business license to operate and store PDDs in the City.

CRITERIA FOR AMENDING THE ZONING CODE

Amendments to the text of the Zoning Code must satisfy the following criteria contained in Chapter 135 of the Zoning Code.

1. The proposed amendment is consistent with the applicable provisions of the Comprehensive Plan; and
2. The proposed amendment bears a substantial relation to public health, safety, or welfare, and
3. The proposed amendment is in the best interests of the residents of Kirkland; and
4. When applicable, the proposed amendment is consistent with the Shoreline Management Act and the City's adopted shoreline master program.

A brief analysis of how the proposed changes meet the criteria is discussed below.

Staff Analysis: The proposed amendments to the Zoning Code for PDDs are consistent with the criteria listed above. The amendments are supported by the Comprehensive Plan's Economic Element policies including the following:

Policy ED-2.2: Foster a culture of creativity, entrepreneurship and innovation.

Policy ED-2.3: Make land use decisions that take into consideration the effects on businesses and the economic benefit to the community.

Policy ED-2.4: Provide a regulatory environment that is predictable, fair, responsive and timely.

The amendments provide the City with regulations that encourage innovative economic development in a manner that is consistent with established policy direction of the Economic Element of the Comprehensive Plan.

The amendments account for general public health safety and wellbeing of the community by requiring PDDs to safely operate on private and institutional property in accordance with City code on vehicular and pedestrian circulation and fire safety. The amendments are in the public interest because product delivery contributes to a large share of how the public receives goods. The amendments serve the interest of Kirkland residents by offering a means for an Eligible Entity to operate and further develop its technology to enhance product delivery to the community.

Criterion 4 above does not apply because these code amendments are not amending the City's adopted shoreline master program.

PUBLIC NOTICE

Zoning Code Chapters 135 and 160 describe the Process IV process for amendments to the Zoning Code. Per the code requirements, public notice was distributed 14 calendar days before the public hearing, notice of the amendment was published in the official newspaper, and posted on official notification boards of the City, and on the City's website.

ENVIRONMENTAL REVIEW

Environmental review is required for both KZC land use and KMC right-of-way code amendments. SEPA helps identify if proposed amendments will result in new environmental impacts beyond those identified in previous environmental review documents, such as the Environmental Impact Statement (EIS) prepared for the Comprehensive Plan. Staff will issue a SEPA determination after KMC regulations have been drafted and prior to adoption by City Council.

SUBMITTAL OF DRAFT PLANS TO THE DEPARTMENT OF COMMERCE

Under RCW 36.70A.106, the City is required to submit a Notice of Intent to Adopt along with any amendments to development regulations to the Washington Department of

Commerce (DOC) at least sixty days prior to final adoption. DOC may review the draft regulations to confirm that they are consistent with the GMA, and with multi-regional and region planning policies. The City submitted the Intent to Adopt the Draft amendments to the DOC on June 7, 2022.

NEXT STEPS

Following the public hearing, the Planning Commission will deliberate and forward a recommendation to the City Council. The Planning Commission recommendation for amendments to the Zoning Code are tentatively scheduled to be considered by the City Council on September 20, 2022.

ATTACHMENTS

1. Draft Zoning Amendments
2. Chapter 46.75 RCW – Personal Delivery Devices

cc: File Number CAM22-00195
John Starbard, Public Works Deputy Director

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.

Chapter 46.75 RCW**PERSONAL DELIVERY DEVICES****Sections**

- 46.75.010** Definitions.
 - 46.75.020** Operation—Requirements.
 - 46.75.030** Self-certification form.
 - 46.75.040** Restrictions.
 - 46.75.050** Violation—Traffic infraction—Notice.
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RCW 46.75.010**Definitions.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Department" means the department of licensing.
- (2) "Eligible entity" means a corporation, partnership, association, firm, sole proprietorship, or other entity engaged in business.
- (3) "Hazardous material" means any material that has been designated as hazardous under 49 U.S.C. Sec. 5103, and is required to be placarded under subpart F of 49 C.F.R. Part 172.
- (4) "Personal delivery device" means an electrically powered device to which all of the following apply:
 - (a) The device is intended primarily to transport property on sidewalks and crosswalks;
 - (b) The device weighs less than one hundred twenty pounds, excluding any property being carried in the device;
 - (c) The device will operate at a maximum speed of six miles per hour; and
 - (d) The device is equipped with automated driving technology, including software and hardware, enabling the operation of the device, with the support and supervision of a remote personal delivery device operator.
- (5)(a) "Personal delivery device operator" means an employee or agent of an eligible entity who has the capability to control or monitor the navigation and operation of a personal delivery device.
 - (b) "Personal delivery device operator" does not include:
 - (i) With respect to a delivery or other service rendered by a personal delivery device, the person who requests the delivery or service; or
 - (ii) A person who only arranges for and dispatches a personal delivery device for a delivery or other service.

[2019 c 214 § 1.]

NOTES:

Effective date—2019 c 214: "This act takes effect September 1, 2019." [2019 c 214 § 22.]

RCW 46.75.020

Operation—Requirements.

An eligible entity may operate a personal delivery device so long as all of the following requirements are met:

(1) The personal delivery device is 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;

(2) An eligible entity may operate a personal delivery device only upon:

(a) Crosswalks; and

(b)(i) Sidewalks; or

(ii) If a sidewalk is not provided or is not accessible, an area where a pedestrian is permitted to travel, subject to RCW 46.61.250, provided that the adjacent roadway has a speed limit of less than forty-five miles per hour;

(3) A personal delivery device operator is controlling or monitoring the navigation and operation of the personal delivery device;

(4) The eligible entity maintains an insurance policy that includes general liability coverage of not less than one hundred thousand dollars for damages arising from the operation of the personal delivery device by the eligible entity and any agent of the eligible entity;

(5) The eligible entity must report any incidents, resulting in personal injury or property damage that meets the accident reporting threshold for property damage under RCW 46.52.030(5), to the law enforcement agency of the local jurisdiction governing the right-of-way containing the sidewalk, crosswalk, or roadway where the incident occurred, within forty-eight hours of the incident;

(6) The eligible entity registers an agent located in Washington state for the purposes of addressing traffic infractions and incidents involving personal delivery devices operated by the eligible entity;

(7) The eligible entity submits a self-certification form to the department with the information required under RCW 46.75.030, both before operating a personal delivery device and on an annual basis thereafter;

(8) The personal delivery device is equipped with all of the following:

(a) A marker that clearly identifies the name and contact information of the eligible entity operating the personal delivery device, a unique identification number for the device, and the name and contact information including a mailing address of the agent required to be registered under subsection (6) of this section;

(b) A braking system that enables the personal delivery device to come to a controlled stop; and

(c) If the personal delivery device is being operated between sunset and sunrise, a light on both the front and rear of the personal delivery device that is visible on all sides of the personal delivery device in clear weather from a distance of at least five hundred feet to the front and rear of the personal delivery device when directly in front of low beams of headlights on a motor vehicle; and

(9) A delivery device may not be operated in Washington until it has been added to the list in the self-certification and the annual registration fee has been paid.

[2019 c 214 § 2.]

NOTES:

Effective date—2019 c 214: See note following RCW 46.75.010.

RCW 46.75.030

Self-certification form.

The department of licensing shall create a self-certification form for an eligible entity to submit prior to operating a personal delivery device and thereafter on an annual basis. Through the form, the department must obtain:

- (1) The name and address of the eligible entity and its registered agent within Washington, including the registered agent's name, address, and driver's license number, and any other information the department may require;
- (2) The name of the jurisdiction in which the personal delivery device will be operated;
- (3) An acknowledgment by the eligible entity that: (a) Each personal delivery device will display a unique identification number and other information specified in RCW 46.75.020(8); and (b) the registered agent is responsible for any infraction committed by its personal delivery device;
- (4) An affirmation by the eligible entity that it possesses insurance as required in RCW 46.75.020;
- (5) A list of any incidents, as described in RCW 46.75.020(5), and any traffic infractions, as described in RCW 46.75.050, involving any personal delivery device operated by the eligible entity in Washington state in the previous year; and
- (6) A list of each device identified by a unique identification number that the eligible entity intends to operate in the state during the year and payment of a fee of fifty dollars per personal delivery device listed. The fee must be deposited into the motor vehicle fund. The list must be updated and the fee paid prior to the eligible entity operating a device not listed in the annual self-certification.

[2019 c 214 § 3.]

NOTES:

Effective date—2019 c 214: See note following RCW 46.75.010.

RCW 46.75.040

Restrictions.

(1) A personal delivery device may not be operated to transport hazardous material, in a quantity and form that may pose an unreasonable risk to health, safety, or property when transported in commerce.

(2) A personal delivery device may not be operated to transport beer, wine, spirits, or other consumable alcohol.

[2019 c 214 § 4.]

NOTES:

Effective date—2019 c 214: See note following RCW 46.75.010.

RCW 46.75.05**Violation—Traffic infraction—Notice.**

(1) A violation of this chapter, or of chapter **46.61** RCW by a personal delivery device, is a traffic infraction. A notice of infraction must be mailed to the registered agent listed on the personal delivery device within fourteen days of the violation.

(2) The registered agent of the eligible entity operating a personal delivery device is responsible for an infraction under RCW **46.63.030**(1).

(3) Infractions committed by a personal delivery device are not part of the registered agent's driving record under RCW **46.52.101** and **46.52.120**. Additionally, infractions issued under this section shall be processed in the same manner as parking infractions, including for the purposes of RCW **3.50.100**, **35.20.220**, **46.16A.120**, and **46.20.270**(2). The amount of the fine issued for an infraction issued under this section shall not exceed the amount of a fine issued for other parking infractions within the jurisdiction.

[**2019 c 214 § 5.**]

NOTES:

Effective date—2019 c 214: See note following RCW **46.75.010**.