

CITY OF OAKWOOD  
COUNCIL AGENDA  
JUNE 1, 2020

7:30 P.M.

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. MINUTES OF MAY 4 REGULAR SESSION AND MAY 18 WORK SESSION & EXECUTIVE SESSION
- V. STATUS REPORTS
- VI. VISITORS
- VII. LEGISLATION
  - A Resolution authorizing the City Manager to take action promoting local business, Mayor Duncan
  - An Ordinance to prohibit the use of shared mobility devices, Mr. Stephens
  - An Ordinance to add an administrative search warrant procedure to the Property Maintenance Code, Vice Mayor Byington
- VIII. CITY MANAGER'S REPORT
- IX. COUNCIL COMMENTS
- X. ADJOURN

NEXT REGULAR SESSION SCHEDULED FOR JULY 20, 2020

A RESOLUTION

BY: \_\_\_\_\_ NO. \_\_\_\_\_

AUTHORIZING THE CITY MANAGER TO ISSUE EXECUTIVE ORDERS IMPLEMENTING TEMPORARY WAIVERS TO CERTAIN REGULATIONS AND CERTAIN ENFORCEMENT ACTIVITIES IN ORDER TO PROMOTE LOCAL BUSINESS AND THE STATE'S RESPONSIBLE RESTART OHIO.

WHEREAS, on March 9, 2020, the Governor declared a State of Emergency in Executive Order 2020-01D; and

WHEREAS, on March 15, 2020, the Ohio Department of Health issued a Director's Order to limit the sale of food and beverages, liquor, beer and wine to carry-out and delivery only; and

WHEREAS, on April 30, 2020, the Ohio Department of Health issued a Director's Order that reopens businesses, with exceptions, and continues a stay healthy and safe at home order; and

WHEREAS, the Constitution of the State of Ohio, in Article XVIII, Section 3, grants municipalities the authority to exercise all powers of local self-government and to enforce local police, sanitary, and other similar regulations as are not in conflict with the general laws; and

WHEREAS, pursuant to this constitutional home rule authority, the people of the city of Oakwood, Ohio, have adopted a Charter and Codified Ordinances to exercise the powers of local self-government and enforce local police power regulations; and

WHEREAS, consistent with its home rule authority, and in order for the city of Oakwood to do its part in the reopening of Ohio's economy, Council finds it appropriate to authorize the City Manager to issue temporary waivers to certain local regulations and certain enforcement activities in order for Oakwood business to maximize the effectiveness of the Governor's and Ohio Department of Health's relaxation of the previously imposed COVID-19 restrictions;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OAKWOOD, MONTGOMERY COUNTY, OHIO, THAT:

SECTION I.

The City Manager is hereby authorized to issue temporary waivers of restrictions and certain enforcement activities set forth in the Codified Ordinances that would impose limits on the use of outdoor portions of private commercial property, or of adjacent public property such as a closed street, alley, or municipal parking lot, for dining or service, including provisions that prohibit the use of parking spaces for such activity, and local provisions that restrict the ability of local businesses to erect temporary shade structures to support such activity.

SECTION II.

In exercising the authority granted by Section I, the City Manager may develop application forms, waiver/temporary permit forms, and other documents as needed, and shall develop criteria for evaluating applications in a uniform manner that (a) protects the predominantly residential character of Oakwood's neighborhoods, (b) minimizes congestion and negative impact on traffic patterns, and (c) provides opportunity for local businesses to restart safely.

SECTION III.

This resolution and the authority granted herein shall be in effect for a period of one hundred and eighty (180) days from the date of its approval unless terminated earlier by action of the City Council.

SECTION IV.

If the State of Emergency declared by Executive Order 2020-01D expires or is terminated, this resolution and the authority granted herein shall terminate immediately and all outdoor facilities permitted hereunder shall cease within 96 hours.

SECTION V.

Any provision within this resolution which conflicts with any State or Federal law or constitutional provision or conflicts with or is superseded by any Executive Order of the Governor of the State of Ohio or President of the United States shall be deemed inapplicable and deemed severed from this Resolution with the remainder of the Resolution remaining in full force and effect.

SECTION VI.

Council hereby finds and determines that all formal actions taken relative to the passage of this Resolution were taken in an open meeting of this legislative authority, and that all deliberations of this legislative authority and of its committees, if any, which resulted in formal action were taken in meetings open to the public, in full compliance with applicable legal requirements, included Section 121.22 of the Ohio Revised Code.

SECTION VII.

This resolution shall become effective immediately upon passage.

PASSED BY COUNCIL OF THE CITY OF OAKWOOD, this \_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

\_\_\_\_\_  
Clerk of Council

TO THE CLERK:

No publication is required.

\_\_\_\_\_  
Mayor William D. Duncan

\_\_\_\_\_  
City Attorney Robert F. Jacques

AN ORDINANCE

BY: \_\_\_\_\_

NO. \_\_\_\_\_

AMENDING SECTION 375.10, *SHARED MOBILITY DEVICES*, OF THE OAKWOOD TRAFFIC CODE TO MAKE PERMANENT A BAN ON THE USE OF SHARED MOBILITY DEVICES, INCLUDING THE PLACEMENT OR OPERATION THEREOF IN ANY PUBLIC RIGHT-OF-WAY OR ON PUBLIC PROPERTY, AND OFFERING THE SAME FOR USE ANYWHERE IN THE CITY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OAKWOOD, STATE OF OHIO, THAT:

Section I.

Dockless electric scooters and bicycles, available to be rented on demand from unstaffed locations, have arrived in many cities suddenly and unexpectedly, and have since proliferated rapidly. These shared mobility devices are largely unregulated. They exist in a kind of legal limbo where, despite some level of public demand, they cannot be used legally on sidewalks due to their status as “motor vehicles” under state law nor can they be used legally on streets due to equipment limitations and the lack of adequate mechanisms for titling, registering, and insuring them. As a result, there are several lawsuits pending around the nation and the Ohio General Assembly and a number of other state legislatures are considering possible frameworks for regulation of shared mobility devices.

Until the General Assembly determines a path forward for our state, the problems inherent with shared mobility devices must be addressed by local government. In cities where shared mobility devices are available, they are frequently abandoned by users in streets, sidewalks, and other public places, creating visual clutter and serious safety concerns, especially for the most vulnerable pedestrians. Moreover, due to the spontaneous nature of these rentals and their appeal to young people, shared mobility devices are nearly always operated by users—often minors—without helmets.

For the immediate preservation of the public peace, health, and safety, Council previously enacted a moratorium to address the hazards posed by shared mobility devices placed in and operated on public property, with the intent to revisit the issue in one year when the legal landscape may have become more firmly settled. However, no state regulation has been forthcoming, and Council now seeks to make its previous one-year moratorium permanent.

Section II.

Section 375.10, *Shared Mobility Devices*, of the Oakwood Traffic Code, is hereby amended to read as follows, with new text in **bold** font and deleted text in ~~striketrough~~ font.:

Sec. 375.10 SHARED MOBILITY DEVICES

- A. Purpose. The purpose of this chapter is to prohibit Shared Mobility Devices from being placed in the public right-of-way or on public property, operated in the public right-of-way or on public property, or offered for use anywhere in the City, so as to allow for adequate vehicle and pedestrian traffic flow and to promote public safety.
- B. Definition. For purposes of this chapter, “Shared Mobility Device” means any wheeled device, other than an automobile or motorcycle, that is powered by a motor; is accessed via an on-demand portal, whether a smartphone application, membership card, or similar method; is operated by a private entity that owns, manages, and maintains devices for shared use by members of the public; and is available to members of the public in unstaffed, self-service locations.
- C. Prohibitions.
  - 1. No person shall park, leave standing, leave lying, abandon, or otherwise place a shared mobility device in a public right-of-way or on public property anywhere within the City.
  - 2. No person shall operate a shared mobility device in a public right-of-way or on public property anywhere within the City.
  - 3. No person shall provide or offer for use a shared mobility device anywhere within the City.

D. Violations.

1. Violation of this Section shall be punishable as an unclassified misdemeanor. In addition, any violation of Section 375.10(C)(3) shall constitute a public nuisance, and the Law Director is authorized to file for injunctive and/or other relief on the city's behalf as necessary to abate the nuisance.
2. Public Safety Officers, Code Enforcement Officers, other city officials designated by the City Manager, and any party contracted by the City to specifically impound shared mobility devices are authorized to impound any shared mobility device that has been offered for use, placed in a public right-of-way or on public property, or operated in a public right-of-way or on public property in violation of this Section. Impounded devices shall be subject to impound and storage fees established by the City Manager in the same manner as other city fees.

~~E. Sunset Provision. This Section shall remain in full force and effect until August 14, 2020, at which time it shall become ineffective and shall be removed from the Codified Ordinances of the city of Oakwood, Ohio, unless Council acts to readopt or otherwise continue the provisions herein.~~

Section III.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this ordinance shall be and remain in full force and effect.

Section IV.

This ordinance shall be and remain in force from and after the earliest date permitted by law.

PASSED BY COUNCIL OF THE CITY OF OAKWOOD, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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Mayor William D. Duncan

ATTEST:

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Clerk of Council

TO THE CLERK:

Please publish by incorporating into the Codified Ordinances of the city.

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City Attorney Robert F. Jacques

AN ORDINANCE

BY: \_\_\_\_\_

NO. \_\_\_\_\_

TO AMEND EXISTING SECTION 17-104.4, *RIGHT OF ENTRY*, OF THE OAKWOOD PROPERTY MAINTENANCE CODE BY ADDING PROCEDURES FOR THE ISSUANCE OF AN ADMINISTRATIVE SEARCH WARRANT.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OAKWOOD, STATE OF OHIO, THAT:

SECTION I.

Section 17-104.4, *Right of Entry*, of the Oakwood Property Maintenance Code, is hereby amended to read as follows, with new text in **bold** font and deleted text in ~~strike through~~ font:

17-104.4      **RIGHT OF ENTRY.**

~~The following sentence is added at the end of this section~~ **International Code Section 104.4 is hereby modified and expanded. Paragraph A includes all of International Code 104.4. In addition, the following material shall be added to and at the end of paragraph A:**

A. The code official shall be deemed to be an agent of the owner or operator to the extent the owner or operator has agreed to allow the code official access to the structure or premises.

**Paragraph B is hereby added to Section 104.4, as follows:**

**B. In addition to any other remedy provided by law, if the owner, occupant, or agent thereof does not consent to the proposed inspection, the code official may appear before any judge in a court of competent jurisdiction and seek an administrative search warrant to allow an inspection. Any such application shall be made within ten (10) calendar days after the nonconsent. The application for the warrant shall specify the basis upon which the warrant is being sought and shall include a statement that the inspection will be limited to a determination whether there are violations of the code provisions identified in this section, or any other zoning, housing, or building code under the jurisdiction of the code official.**

**The court may consider any of the following factors along with such other matters as it deems pertinent in its decision as to whether a warrant shall be issued:**

- 1. Eyewitness account of violation;**
- 2. Citizen complaints;**
- 3. Tenant complaints;**
- 4. Plain view violations;**
- 5. Violations apparent from city records;**
- 6. Property deterioration;**
- 7. Age of property;**
- 8. Nature of alleged violation;**
- 9. Condition of similar properties in the area;**
- 10. Documented violations on similar properties in the area;**
- 11. Passage of time since last inspection;**
- 12. Previous violations on the property.**

**If a warrant is issued, no owner, occupant, or agent thereof shall fail or neglect, upon presentation of a warrant, to properly permit entry therein by the code official or his/her duly authorized designee for the purpose of inspection and examination pursuant to this section and consistent with the terms of the warrant. If the court declines to issue a warrant, or if no warrant is sought, the inspection may still take place but the scope thereof shall be limited to such areas as are in plain view. No criminal penalty shall attach, nor shall any certificate of occupancy be denied, solely by reason of the owner's, occupant's, or agent's refusal to consent to an inspection.**

SECTION II.

It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in compliance with all legal requirements including § 121.22, Ohio Revised Code.

SECTION III.

This ordinance is hereby declared to be an emergency measure and as such takes effect immediately on the basis that it is necessary for the preservation of the public peace, health and safety of the City and its inhabitants.

PASSED BY COUNCIL OF THE CITY OF OAKWOOD, this \_\_\_\_ day of \_\_\_\_\_, 2020.

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Mayor William D. Duncan

ATTEST:

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Clerk of Council

TO THE CLERK:

Please publish the foregoing by incorporating the same into the Codified Ordinances of the city.

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City Attorney Robert F. Jacques