

1 ORDINANCE TO REGULATE THE OPERATION OF SHARED ACTIVE
2 TRANSPORTATION SYSTEMS
3

4 WHEREAS, the city desires to allow the use of portions of right-of-way and City real
5 property for use by privately owned shared active transportation systems; to promote the
6 integrity of the city’s transportation system; to maintain the rights-of-way clear of unnecessary
7 obstructions; and to protect the health, safety, and welfare of the citizens of the city.
8

9 NOW THEREFORE THE CITY COUNCIL OF THE CITY OF DURHAM ORDAINS:
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11 SECTION 1. The following definitions are deleted from Section 66-307 (Definitions) of the city
12 code:
13

14 *Bike share system* means providing bicycles for short-term rentals for point to point trips
15 where, by design of the bike share operator, the bicycles are intended to remain in the public
16 way, even when not being rented by a customer.
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18 *Bike share operator* is any entity that owns and/or operates a bike share system.
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20 *Customer* means a person that rents or uses a bicycle from a bike share operator.
21

22 *Department* means the city's transportation department.
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24 *Director* means the director of the city's transportation department.
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26 *Public way* means the definition provided in section 62-50.
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28 SECTION 2. Section 66-314 (Bike share system permitting) of the city code is deleted in its
29 entirety and reserved for future use.
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31 SECTION 3. The following article is added to Chapter 50 (PUBLIC TRANSPORTATION
32 AND AVIATION) in the city code:
33

34 ARTICLE VII. – SHARED ACTIVE TRANSPORTATION SYSTEMS
35

36 Sec. 50–461. – Adoption of definitions in General Statutes.
37

38 The definitions of the following words set out in G.S. 20-4.01, as amended from time to
39 time, are adopted as part of this article: electric assisted bicycle and vehicle.
40

41 Sec. 50–462. – Definitions.
42

43 The following words, terms and phrases, when used in this article, shall have the
44 meaning ascribed to them in this section, except where the context clearly indicates a different
45 meaning:
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47 *Bicycle* means a non-motorized vehicle with two or three wheels in tandem, a steering
48 handle, one or two saddle seats, and pedals by which the vehicle is propelled.

49
50 *Device operating area* means the right-of-way (for all shared devices) and greenway
51 trails (for bicycles only) where operation of a shared device is authorized by a permit.

52
53 *Customer* means a person that rents or operates a shared device from a shared active
54 transportation system permittee.

55
56 *Department* means the city’s transportation department.

57
58 *Director* means the director of the city’s transportation department.

59
60 *Greenway trail* means a pathway designated by signage as a public trail for bicycles
61 and pedestrians and not for motorized vehicular use by the general public. A greenway trail is
62 not located within the right-of-way of a street.

63
64 *Operate* means, when used in direct reference to a shared device, to use the shared
65 device for transportation. *Operate* includes to park a shared device.

66
67 *Permit* means a permit issued by the department pursuant to this article for a permittee
68 to conduct a shared active transportation system.

69
70 *Permittee* is any person that conducts a shared active transportation system.

71
72 *Rebalance* means to move shared devices from one location to another, generally for the
73 purpose of avoiding having too many devices in one location.

74
75 *Right-of-way* means the area in the city in which the public, the city, or the state owns a
76 property interest and which includes areas open for use by the public for vehicle or pedestrian
77 travel. *Right-of-way* includes the following, if they satisfy the foregoing definition: public
78 street, highway, bridge, alley, bike lane, sidewalk, trail, median, gutter, or shoulder.

79
80 *Motorized scooter* means a vehicle that is steered by a steering handle, designed to be
81 stood upon by the operator while the vehicle is in operation, and powered by a motor capable
82 of propelling the vehicle at a speed no greater than 18 miles per hour on a level surface; and
83 whose wheels have diameters of ten inches or less.

84
85 *Shared active transportation system (SATS)* means a business that provides one or more
86 shared devices for rentals where, by design of the permittee, the shared devices are intended to
87 be parked in a device operating area, but not connected to a dedicated docking station, when
88 not rented by a customer.

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90 *Shared device* means bicycle, electric assisted bicycle, or motorized scooter rented by a
91 permittee to customers through a SATS.

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Sec. 50–463. – Authorization.

Unlawful to operate SATS without authorization. It is unlawful for any person to conduct a shared active transportation system within the city except pursuant to this article.

Sec. 50–464. – Permits required; issuance; nature of permits.

- (a) No person may conduct a SATS in the city who does not hold a valid permit. A permit will be issued if the department finds that the application meets the requirements of this article for issuance of the permit, including payment of applicable fees, which shall be set from time to time by city council. Permits will be effective for a period of one year and are renewable subject to the same standards of review as for the initial permit. The director is authorized to write terms and conditions in permits as appropriate to effectuate this article, including limiting the shared device fleet size of a permittee to improve permit compliance.
- (b) A permit does not grant exclusive rights to operate a shared active transportation system in device operating areas.
- (c) Each permittee shall comply with its permit.

Sec. 50–465. – Equipment and shared devices requirements.

- (a) When used in a shared active transportation system, bicycles and electric assisted bicycles shall meet the standards in (i) the Code of Federal Regulations (CFR) under Title 16, Chapter II, Subchapter C, Part 1512 – Requirements for Bicycles, as amended; and (ii) the standards in ISO 43.150 – Cycles, subsection 4210, as amended.
- (b) All shared devices shall comply with the applicable equipment and vehicle registration requirements of Chapter 20 of the General Statutes.
- (c) Permittees shall provide, on every shared device, contact information of the permittee including the website and phone number.
- (d) All shared devices must be equipped with technology, such as GPS, that allows the shared device to be located and tracked by the permittee at all times.
- (e) Permittees shall see that every shared device prominently displays a unique and easily read serial number or other identifier.

Sec. 50–466. –Operation of SATS.

- (a) A permit is valid for conducting a SATS within device operating areas only, and with the consent of the owner or lawful occupant on other real property. It is unlawful to operate a shared device on any real property outside device operating areas without consent of the property’s owner or lawful occupant. Each permittee shall have at all times the ability to discover when its shared devices are operated outside device

139 operating areas and to communicate electronically that information to customers who
140 have operated a shared device outside device operating areas. Permittees shall
141 communicate to customers at the end of a trip when the shared device has been
142 operated outside device operating areas.

- 143
- 144 (b) Permittees shall not restrict the operation of shared devices to only certain
145 geographical areas of the city unless approved by the city.
- 146
- 147 (c) Permittees shall not discriminate against low and moderate income persons in
148 connection with permitted activities and conducting its SATS in the city. Permittees
149 must deploy and maintain a sufficient number of shared devices to satisfy customer
150 demand within census tracts of low and moderate income areas of the city as defined
151 in the permit.
- 152
- 153 (d) Each permittee shall implement programs to reduce barriers to low-income persons to
154 rent its shared devices by providing diverse payment options, including options for
155 persons with neither a smart phone nor a credit card to rent its shared device. These
156 options shall be made accessible to low-income persons at multiple locations within
157 the permittee's area of operation.
- 158
- 159 (e) The director is authorized to limit the total number of shared devices, including the
160 mix of shared devices, within device operating areas in order to (1) maintain the
161 integrity of the city's entire transportation system; (2) keep rights-of-way free and
162 clear of unnecessary obstructions; and (3) protect the health, safety, and welfare of
163 the citizens of the city.

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165 Sec. 50-467. – Permittee communication with customers.

- 166 (a) Permittees shall include substantially the following information for prospective
167 customers on the permittee's mobile app and web site, and also displayed on the
168 shared device for which the information is applicable:
- 169 (1) Persons operating bicycles and electric assisted bicycles are encouraged to
170 wear helmets.
- 171 (2) Persons operating motorized scooters must be at least 16 years old and wear a
172 helmet.
- 173 (3) NC law requires persons operating the device to follow applicable traffic laws.
- 174 (4) City ordinance prohibits operating the device on sidewalks.
- 175 (5) Operating electric assisted bicycles and motorized scooters is prohibited on
176 greenway trails.
- 177
- 178 (b) Permittees shall adopt and implement programs to educate customers on how to
179 safely operate shared devices, including knowledge of laws applicable to operating a
180 shared device in the city.
- 181
- 182 (c) Permittees shall communicate to prospective customers sufficient information on
183 charges that may be made, including rates and dollar amounts of fees, including rental
184 charges, minimum charges, maximum charges, charges for additional time, and

185 charges for overage periods. If charges may be based on time or distance,
186 information on the rate per minute, hour, mile, or other applicable time period or
187 distance shall also be provided.

188

189 (d) Permittees shall have a 24-hour phone number for customers to report safety concerns
190 and complaints, and to ask questions.

191

192 (e) All communications required by this article to be made by a permittee to prospective
193 customers and customers shall be in clear, plain English and displayed in a
194 sufficiently prominent way that the communication is obvious.

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196 Sec. 50–468. – Insurance, indemnification, security, and liability.

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198 (a) At all times when conducting a SATS, a permittee shall maintain insurance in effect
199 and provide proof of such insurance, both as required by the department.

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201 (b) Every permittee shall defend and indemnify the city from and against all claims and
202 liabilities that arise from the acts and omissions of the permittee and its customers
203 in device operating areas, to the extent the acts and omissions relate to the operation
204 of shared devices.

205

206 (c) Permittees shall provide the city with a performance bond, or other security
207 acceptable to the director, in an amount determined by the director to be sufficient to
208 cover the obligations of the permittee under the permit. The form of the bond is
209 subject to approval by the department after it consults the city attorney, and shall be
210 executed by one or more surety companies legally authorized to do business in the
211 State of North Carolina. The bond shall guarantee the performance of all the
212 obligations of the permittee under its permit. If the amount of the bond is set
213 according to the number of deployed shared devices, when a permittee intends to
214 increase the number of deployed devices, the permittee shall submit a revised
215 performance bond, or other security acceptable to the director, before the additional
216 shared devices may be deployed.

217

218 (d) Each permittee shall be responsible for the costs of repair to public property damaged
219 by its customers’ use of its shared devices.

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221 Sec. 50–469. – Parking, placement, rebalancing, and removing of shared devices.

222

223 (a) Shared devices shall not be parked in a way that may impede the regular flow of
224 vehicular and pedestrian travel in device operating areas or otherwise cause a
225 violation of the City Code, including this article. Permittees shall inform customers
226 how and where to park a shared device in the manner required by this article. Shared
227 devices shall be upright when parked. The permittee shall remove or re-park every
228 one of its shared devices that is parked in violation of the permit or the City Code in
229 accordance with the following:

- 230 (1) During the time period of 6:00 a.m. to 6:00 p.m. on weekdays, not including
231 legal holidays, the permittee shall remove or re-park within two hours of
232 receiving notice from any person via mobile or other web application or phone
233 number.
234 (2) During all other times, the permittee shall remove or re-park within 12 hours
235 of receiving notice from any person via mobile or other web application or
236 phone number.
237
- 238 (b) At any time the city may make it unlawful to park shared devices in specific locations
239 or portions of device operating areas or public property by action of the City Council
240 or as provided in Division 2 (Powers and Duties of City Manager) of Article II of
241 Chapter 66 (Traffic and Parking) of the City Code.
242
- 243 (c) Permittees shall remove every bicycle and electric assisted bicycle before it is parked
244 in the same location for more than seven consecutive days.
245
- 246 (d) Permittees shall remove every motorized scooter before it is parked in the same
247 location for more than seventy-two consecutive hours.
248
- 249 (e) Permittees shall not deploy a shared device that is inoperable or unsafe to operate.
250 Permittees shall remove from device operating areas within 24 hours of notice any
251 inoperable shared device or any shared device that is not safe to operate.
252
- 253 (f) Each permittee shall remove and secure its entire fleet of shared devices from device
254 operating areas for all time periods for which the National Weather Service or its
255 successor agency forecasts (i) sustained winds of 40 mph or higher for one hour or
256 more, or (ii) wind gusts of 58 mph or higher for any duration in the city.
257
- 258 (g) Each permittee shall compensate the city for the costs incurred by the city in
259 removing and storing its shared devices that have been improperly parked or
260 rebalanced, including under the circumstances where a permittee fails to remove its
261 shared devices in violation of its permit or in case its permit is terminated or
262 otherwise not in effect.
263
- 264 (h) Permittees shall provide the department with contact information so that it can order
265 rebalancing. The city has the right to determine specific locations for rebalancing
266 shared devices, as well as times when the shared devices must be removed from
267 device operating areas.
268
- 269 (i) If the city relocates or removes a permittee's shared devices because of a violation of
270 a permit or this article, the permittee shall pay a fee in an amount set from time to
271 time by city council.
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273 Sec. 50-470. -Reporting.
274

275 (a) Each permittee shall provide the city, or to such other persons that the city may
276 specify, with data regarding customers and shared device trips, in the format and
277 timeline specified by the director. The data shall include real-time availability data
278 for all devices, archival trip data for all devices including the frequency and location
279 of shared device trips during the permit period, including identification of the shared
280 device by type. This data will be used to support safe, equitable, and effective
281 management of the shared active transportation system throughout the city. The
282 permittee shall communicate to prospective customers that this data will be collected
283 and shared with the city.

284
285 (b) Each permittee shall compile, for all of its shared devices deployed in the city,
286 records of collisions or accidents reported to the permittee, the police, or the NC
287 Department of Motor Vehicles, and records of maintenance and repair. Records shall
288 be shared with the city when and in the manner required by the permit.
289

290 Sec. 50-471. - Revocation or Non-renewal of permit; review of decisions.
291

292 (a) *Revocation or Non-renewal; grounds and procedure for revocation or non-renewal.*

293 The director may, (i) at any time, revoke any permit issued to a permittee or (ii)
294 refuse to renew a permit issued to a permittee under this article and require that
295 permittee remove its entire fleet of shared devices from city designated areas, if the
296 director finds:

- 297 (1) fraud, misrepresentation, or a knowingly false statement with respect to a
298 material fact in the permit application or permit renewal application;
- 299 (2) the permittee or the permittee's agent or employee violated this article or the
300 terms of the permit;
- 301 (3) the permittee's customers operate the shared devices in such a manner as to
302 create unsafe traffic conditions, cause a breach of the peace or public
303 nuisance, violate any applicable law, or interfere with the rights of property
304 owners abutting the right-of-way, and such operation is done to such an extent
305 that the health, safety, and welfare of the citizens or their property is at
306 substantial risk if the permit is allowed to continue in effect;

307 Except in case of emergency or impracticality, before revoking the permit or denying
308 renewal of a permit, the director shall give reasonable notice to the permittee and an
309 opportunity to be heard. A permit may be revoked or permit renewal denied pursuant
310 to this section even if the person making the findings pursuant to this section had
311 made a contrary finding before the permit was issued or renewed, regardless of
312 whether the facts upon which the finding is made had changed.
313

314 (b) *Notice.* (i) The director shall cause a written notice of the revocation or denial of
315 renewal to be served on the permittee by first-class mail, email or other electronic
316 means, or fax, to the address or number shown on the permit application, or by any
317 method allowed by law for service of a summons in a civil action. The person
318 serving the notice may be any person who is 18 years or older, including the director.
319 (ii) If the director finds that time before a proposed hearing is insufficient to allow
320 service in accordance with subsection (i), the director may, as an alternative to the

321 means listed in subsection (i), notify the permittee by telephone of the grounds for
322 revocation or denial of renewal and of the right to appeal, provided a written notice is
323 also sent in accordance with subsection (i) on or before the next day that is not a
324 holiday. (iii) The notice described in subsection (i) shall set forth a brief statement of
325 the grounds for revocation or denial of renewal and of the right to appeal. (iv) The
326 director shall see that a written record is made to show compliance with this section
327 (b).
328

329 (c) *Retention of fees; waiting period.* If the city revokes a permit, the city shall retain the
330 fee, if any, paid for the permit. In the case of a denial of a permit renewal, the city
331 shall either not accept the renewal fee or return the renewal fee to the permittee. The
332 person whose permit is revoked or renewal denied for grounds stated in subsection
333 (a)(1), (a)(2), or (a)(3), regardless of whether additional grounds existed, shall not be
334 issued a permit under the same section of this article for the remainder of the time for
335 which the revoked permit had been issued or, in the case of a denial of a permit
336 renewal, for the term of the renewal period. The director shall use reasonable
337 judgment in deciding whether two applicants are the same so that, for example,
338 technical changes in the applicant, or where the applicant one year is a corporation
339 and the next year it is an affiliate or subsidiary of the same corporation, may be
340 disregarded.
341

342 (d) *Review of decisions.* If the director denies the issuance of a permit, revokes a permit,
343 denies renewal of a permit, issues a permit with terms deemed unacceptable to the
344 permittee, or makes any other decision pursuant to this article with respect to a
345 permit, the applicant or permittee may have that decision reviewed by filing a written
346 request in the office of the director within ten days of the date of the notice of
347 decision. The director or a person designated by the city manager for this purpose
348 who is neither the person who made the decision complained of nor that person's
349 subordinate, shall be named as the hearing officer to conduct a hearing in order to
350 review the decision. The director shall cause a written notice of the time and place of
351 the hearing to be given or sent to the person seeking review. The failure of the
352 hearing officer to set a hearing within 15 days of the filing of the written request for
353 review, or to deliver a decision within 10 days after the hearing, or within any
354 shortened periods set by the director, shall be deemed a denial of the relief sought and
355 affirmance of the action for which review was sought. The permittee and the director
356 may appear in person or through counsel and may present evidence, provided,
357 however, that the hearing officer shall have the authority to conduct the hearing in the
358 manner and for the period of time that he or she deems appropriate to make a
359 decision. The hearing officer may affirm, deny, or modify the decision complained
360 of, and the hearing officer's decision shall be final. Failure to request a review within
361 the time and in the manner provided for in this subsection shall constitute a waiver of
362 the right of review. The permit may be used during the review process only if the
363 director determines that its use would not constitute a substantial threat that the
364 grounds described in subsection (a)(2) or (a)(3) will occur, re-occur, or continue
365 during the review process.
366

367 (e) *Certiorari*. A decision by the hearing officer is subject to review by the Durham
368 County Superior Court by proceedings in the nature of certiorari. The petition for
369 review shall be filed with the clerk of Superior Court within the earlier of 30 days
370 after the denial and affirmance are deemed to occur pursuant to subsection (d), or
371 within 30 days after the decision is delivered to the applicant. Delivery is made by
372 hand-delivery of the decision to the applicant, or by first-class or certified mail to the
373 address provided on the application. Delivery by mail is complete when placed in the
374 custody of the U. S. Postal Service.

375
376 Sec. 50-472. - Penalties for violations.

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378 (a) *Assessment of civil penalties*. The director shall assess civil penalties for violation of
379 this article, including the terms of a permit. The director shall give the offender
380 written notice of the nature of the violation and the amount of the civil penalty. The
381 notice shall be served by any method allowed by law for service of a summons in a
382 civil action, provided that the person delivering the notice may be any person who is
383 18 years or older, including the director. The civil penalty shall be \$200.00 per
384 violation plus the costs incurred by the city resulting from the violation, including
385 costs of removing shared devices from the right-of-way.

386
387 (b) *Review of assessment of civil penalties*. Any person who has been assessed a civil
388 penalty under this article may have that assessment reviewed by filing a written
389 request in the office of the director within ten days of the date of service of the notice
390 of the civil penalty. A person designated by the city manager for this purpose who is
391 neither the person who assessed the civil penalty nor that person's subordinate shall
392 be named as the hearing officer to conduct a hearing in order to review the
393 assessment. The director shall cause a written notice of the time and place of the
394 hearing to be given or sent to the person seeking review. The person assessed the
395 penalty and the director may appear in person or through counsel and may present
396 evidence, provided, however, that the hearing officer shall have the authority to
397 conduct the hearing in the manner and for the period of time that he or she deems
398 appropriate to make a decision. The hearing officer may affirm, deny, or modify the
399 decision complained of, and the hearing officer's decision shall be final. Failure to
400 request review within the time and in the manner provided for in this subsection
401 constitutes a waiver of the right of review.

402
403 (c) *Collection of civil penalties*. If the offender does not pay the civil penalty within ten
404 days after having been served with the notice of the civil penalty, the director may
405 collect the civil penalties by causing to be commenced civil actions in the nature of
406 debt. The director may compromise such claims, before or after commencement of
407 the civil action, if the director finds there is a reasonable probability that the city will
408 be unable to collect the entire amount of the claim, that the amount offered in
409 compromise of the claim reasonably reflects either the amount of money available
410 from the offender or the amount the city is likely to recover in the civil action, taking
411 into account the resources required to pursue the civil action, and that the facts and
412 circumstances of the events giving rise to the claim, taken as a whole, indicate that

413 the amount offered in compromise is fair and reasonable. Using the foregoing
414 standards, in an appropriate case, the director may abandon a claim.

415

416 (d) *Criminal remedies.* Except for provisions, if any, of this article that regulate the
417 operation of shared devices, each violation of this article, including the terms of a
418 permit, is a misdemeanor punishable by a maximum fine of \$500.00.

419

420 (e) *Available remedies.* This article and the provisions of permits issued under this article
421 may be enforced by an appropriate equitable remedy, including abatement orders and
422 mandatory or prohibitory injunctions, issuing from a court of competent jurisdiction.

423

424 The general court of justice shall have jurisdiction to issue such orders as may be
425 appropriate, and it shall not be a defense to the application of the city for equitable
426 relief that there is an adequate remedy at law. In applying City Code section 1-9(e),
427 the city council intends that revocation of a permit be deemed to be a remedy among
428 other authorized remedies.

428

429 SECTION 4. This ordinance is effective upon adoption by the city council.

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