

ORDINANCE # 2019-26

A TEMPORARY ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, AMENDING THE SURPRISE MUNICIPAL CODE, BY ADDING CHAPTER 54, ARTICLE III, SECTION 54-58, TEMPORARY SHARED ACTIVE TRANSPORTATION VEHICLE (SATV) PILOT PROGRAM; INCLUDING SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND TEMPORARILY SUPERSEDING CONFLICTING ORDINANCES.

WHEREAS, Arizona law expressly provides municipalities with exclusive control over their respective streets, sidewalks, and rights-of-way;

WHEREAS, the City of Surprise exercises this authority to protect its rights-of-way by regulating all commercial activities and enterprises therein;

WHEREAS, Arizona law also expressly grants municipalities the authority to regulate or prohibit, among other vehicles, Electric bicycles and Stand-up electric scooters within its corporate boundaries;

WHEREAS, in August 2019, Shared Active Transportation Vehicles ("SATV") appeared in the City's public rights-of-way and on public property;

WHEREAS, the rapid introduction and implementation of a Shared Active Transportation Vehicle System, when unregulated, may create serious public health and safety concerns for pedestrians, bicyclists, drivers, and users of SATVs;

WHEREAS, SATVs are also considered a nuisance, when they are improperly parked or abandoned on City streets, sidewalks or other public rights-of-way;

WHEREAS, a properly implemented SATV system may contribute to the City both as a short-distance transportation option and an activity that stimulates the economy;

WHEREAS, without immediate regulatory action to manage the use and operation of SATVs, the safety and well-being of users of City rights-of-way will be at risk and serious accidents may occur;

WHEREAS, it would be in the best interest of the City of Surprise and the general public to study the use and operation of SATVs to determine how best to regulate this proposed new transportation system in the City of Surprise;

WHEREAS, a one hundred and eighty (180) day Pilot Program for a SATV System (the "Pilot Program") will be utilized to study and understand the proper use and safe Deployment of SATVs on the City streets and rights-of-way; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Surprise, Arizona, as follows:

Section 1. Chapter 54, Article III, of the Surprise Municipal Code is amended by adding Section 54-58 pertaining to Temporary Shared Active Transportation Vehicle System Pilot Program to read as follows:

Sec. 54-58. Purpose and Intent; Temporary Shared Active Transportation Vehicle Pilot Program.

(a) Introduction.

The State of Arizona has granted municipalities express authority to regulate or prohibit the operation of Electric bicycles and Stand-up electric Scooters. It is the purpose and intent of this Section to provide for regulation to protect the safety of pedestrians, bicyclists, and users of Shared Active Transportation Vehicles. It is in the public interest to regulate the use of Shared active transportation vehicles within public rights-of-way, including but not limited to, public sidewalks.

The purpose of this Pilot Program is to permit and govern a temporary program to test the deployment and use of a Shared Active Transportation Vehicle System within the City of Surprise.

This Pilot Program will allow the City of Surprise to learn and gain knowledge about Shared Active Transportation Vehicle Systems and the unique issues created by their implementation in the City of Surprise, to ensure that such mobility-sharing systems are consistent with the City's policies, objectives and the City's general plan goals; and account for the safety and well-being of bicyclists, pedestrians, business owners, and all other users of the public property and rights-of-way within the City.

The Pilot Program will allow the City to explore a new multi-modal transportation option and assess whether this new option is beneficial or detrimental to achieving the City's goals.

(b) Definitions.

- (1) *City*: City of Surprise.
- (2) *Deployment*: Placement of an SATV by the Operator at a location within the City of Surprise.
- (3) *Electric bicycle*: A two- or three-wheeled vehicle with fully operable

pedals and an electric motor of no more than 750 watts (1 H.P.), the maximum speed of which on a paved level surface, when powered solely by such motor, is 20 MPH.

- (4) *Fleet*: All of the Operator's SATVs in operation within the City's corporate boundaries at any one time.
- (5) *Nighttime*: That period between sunset and sunrise.
- (6) *Operator*: The entity participating in the Pilot Program by entering into the Temporary Operating Agreement with the City, and owning the Shared active transportation vehicles, its agents and contractors (including independent contractors) and every person, agent, or entity retained or employed by the entity to maintain the entity's Shared active transportation vehicles.
- (7) *Parking surface*: Concrete, asphalt bricks or pavers. A parking surface does not include a parking space utilized by motor vehicles or any area of a street between face of curb and face of curb unless otherwise designated.
- (8) *Residential street*: A street with a lawful speed limit of 25 MPH or less.
- (9) *Rider*: Any person who operates or is in actual physical control of a SATV.
- (10) *Rights-of-way*: Any area dedicated for public use as a public street, pedestrian way or other thoroughfare, including but not limited a street, sidewalk, parkway, alley, public transportation path or easement.
- (11) *Shared Active Transportation Vehicle ("SATV")*: A commercially-rented, scooter, bike, or any other mobile vehicle, including but not limited to Stand-up Electric Scooters and Electric Bicycles, excluding motor vehicles as defined by A.R.S. § 28-101, with a self-contained locking mechanism that does not require locking to a bicycle rack, docking system or other structure.
- (12) *Stand-up electric scooter*: A device which weighs less than seventy-five pounds, has two or three wheels, has handlebars, has a floorboard on which person may stand while riding, is powered by an electric motor or human power, or both, has a maximum speed that does not exceed twenty miles per hour, with or without human propulsion.

- (13) *Shared Active Transportation Vehicle ("SATV") System*: One or more SATV deployed within the corporate boundaries of the City of Surprise.
- (14) *Temporary operating agreement*: An agreement entered into between the City of Surprise and an Operator setting forth additional terms and conditions of implementing a temporary SATV system within the City's public rights-of-way, which shall include, but not be limited to, insurance, indemnity, costs, and any other terms and conditions the City deems necessary to protect its rights-of-way and ensure safe implementation of SATV Systems.

(c) Term.

The Term of the Pilot Program, shall commence on the Effective Date of this Ordinance and shall expire one hundred eighty (180) days thereafter. Notwithstanding the foregoing, the Pilot Program shall be terminated upon creation and adoption of a City ordinance governing the operation of SATV Systems.

After the one hundred eighty (180) day Pilot Program, the City may, in its sole and absolute discretion, establish an ordinance governing the operation of SATV Systems. This Pilot Program does not obligate the City, in any way, to allow use of SATV Systems within the City boundaries. If the City adopts a permanent operating ordinance for SATV systems, any Operator that is a participant in the Pilot Program shall be required to comply with the adopted ordinance.

(d) Scope.

This Pilot Program applies to any and all proposed Deployment(s) of SATV Systems within the City's jurisdictional boundaries. Any Operator wishing to deploy SATVs in the City must participate in the Pilot Program and shall sign a Temporary operating agreement that will allow the Operator to participate in the Pilot Program for a period of ninety (90) days. If an Operator has not entered into a Temporary operating agreement, the Operator shall not be permitted to deploy SATVs within the City's rights-of-way or on public property. Deployment of any SATV on City owned property or in the City's rights-of-way without a Temporary operating agreement shall constitute a trespass.

The City reserves the right to terminate the Temporary operating agreement at any time and require the Operator to remove its entire Fleet from within the City's boundaries. If the City exercises its right to terminate a Temporary operating agreement the Operator will have 48 hours, after written notification from the City, to remove its entire Fleet from the City.

(e) Minimum Pilot Program Eligibility Requirements:

- (1) SATV that integrate on-board technology allowing a Rider to check out a vehicle remotely from public rights-of-way will be required to be registered as part of this Pilot Program.
- (2) Electric bicycles and Stand-up electric scooters that have been technically or mechanically restricted by the Operator to not exceed a speed of twenty (20) MPH or twelve (12) MPH, respectively.
- (3) SATVs equipped with an on-board GPS device capable of providing real-time location data so that the Operator knows where each SATV of their Fleet is located at all times.
- (4) Stand-up electric scooters that comply with A.R.S. § 28-819 (F) by having a unique identification that consists of letters or numbers, or both, that is visible from a distance of at least five (5) feet.
- (5) This Pilot Program applies to operations within the City's public rights-of-way.
- (6) The City will offer one form of Temporary operating agreement for all Operators of SATVs as part of the Pilot Program.
- (7) Operators will be allowed to participate for the first ninety (90) days of the Pilot Program per the terms of this Ordinance and Temporary operating agreement. This ninety days may be renewed in the sole discretion of the City.
- (8) There shall be a total Deployment cap of one hundred (100) SATVs within the City at any given time during the Pilot Program period.
- (9) Any SATV that is deployed on private property or property not owned by the City but within the corporate limits of the City will still count towards an Operator's total fleet number and total Deployment cap under the Pilot Program.
- (10) Upon the expiration or termination of the Temporary operating agreement, the Operator shall immediately immobilize their Fleet and remove the Fleet from the City's rights-of-way and public property within 48 hours.
- (11) Operators will provide the City with complete and accurate data as may be required by the Temporary operating agreement.

(f) Deployment.

- (1) Permissible geographic Deployment areas shall be identified with specificity in the Temporary operating agreement. Likewise, the Temporary operating agreement will require geo-fencing of prohibited area such as City parks.
- (2) Deployment of SATVs shall be strictly prohibited within the interior of any City park, in front of single-family residential properties, streets, alleys, medians, landscaping or greenbelts, public parking lots, on private property without consent of the property owner, loading zones, disabled parking zones, curb ramps, entryways and driveways.
- (3) SATVs shall be deployed upright, facing the same direction, in groupings of five. Groups shall be separated by at least 300 feet and only on Parking surfaces. If there is a bicycle rack or other area specifically designated for bicycle parking, SATVs may be deployed adjacent to these areas. Deployment of all SATVs shall be consistent with the American Disabilities Act, and other federal, state and local laws.
- (4) No other Deployment areas are permissible in the City during this Pilot Program except those set forth in this Ordinance and Temporary operating agreement.
- (5) SATVs shall not be deployed in such a manner as to block pedestrian traffic in any way, and shall be kept clear of any and all fire hydrants, call boxes, or other emergency facilities, bus benches, or utility poles or boxes. SATVs shall not be deployed in a manner which will impede or block sidewalks.
- (6) SATVs shall not be deployed in any manner that impedes or denies individuals with disabilities passage or access on any pathway, or to any building or structure, in compliance with the Americans with Disabilities Act. A clear width of 48 inches on a walking surface on any sidewalk or pedestrian path must be accessible at all times.
- (7) SATVs shall not be deployed in such a manner as to impede or interfere with the reasonable use of any commercial window display or access to or from any private or public building.
- (8) SATVs shall not be deployed in such a manner as to impede or interfere with the reasonable use of any bicycle rack or other

facilities or lawful commercial transactions within the City's rights-of-way.

- (9) Operators are required to pick up their respective Fleets every night, seven (7) days a week by 10 pm and shall not deploy to areas designated by this Ordinance earlier than 5 am.
 - (10) Operators are required to pick up immediately any and all SATVs deployed, parked, or abandoned, contrary to the terms and conditions of the Pilot Program. The City has the right and authority to pick up and impound any SATVs not deployed or parked according to the terms and conditions of the Pilot Program.
 - (11) Operators shall respond to reports of unlawfully deployed, parked, or abandoned SATVs, or reports of unsafe/inoperable SATVs by relocating, re-deploying, or removing the SATVs, as appropriate, within two (2) hours of receiving notice. Should a SATV be incorrectly deployed, parked or abandoned, unsafe/inoperable or in another condition which poses a health and safety risk or violates federal, state, or local law, the City may immediately impound the SATV prior to the expiration of the two hour period.
 - (12) Operators shall retrieve any SATVs impounded by the City within two (2) business days. If Operator does not retrieve any SATVs within two (2) business days, the City may dispose of any SATVs at Operator's expense.
 - (13) Operators shall only deploy SATVs that are technically or mechanically restricted by the Operator to have a maximum speed of 20 MPH for Electric bicycles and 12 MPH for Stand-up electric scooters.
 - (14) Operators shall have a customer service phone number for Users and the public to report safety concerns, mechanical problems, complaints, SATV removal requests or ask questions. The customer service phone number shall be displayed prominently on the exterior of each SATV.
 - (15) Operators shall implement a SATV operation and parking education plan to educate Riders on the operation and parking laws established by this Ordinance.
- (g) Rider Operation of SATVs.
- (1) A person operating an Electric bicycle or Stand-up electric scooter is granted all of the rights of and is subject to all of the duties

applicable to a bicycle rider under applicable state and local law.

- (2) A person may operate a bicycle or SATV, excluding Class 3 Electric bicycles as defined by A.R.S. § 28-101, upon a sidewalk where no bike lane is available and where the speed limit on the roadway is greater than 25 mph.
- (3) A person may operate a Stand-up electric scooter upon a sidewalk where the speed limit on the roadway is greater than 35 mph, whether or not a bicycle lane is available.
- (4) When accompanied by a parent or guardian, or with the consent of a parent or guardian, minors may operate a bicycle on a sidewalk at all times unless otherwise posted.
- (5) Whenever any person is permitted to operate a bicycle or SATV upon a sidewalk, such person shall yield the right of way to any pedestrian and shall slow to five (5) MPH and give an audible signal before overtaking and passing such pedestrian.
- (6) Whenever any person is permitted to operate a bicycle or SATV upon a sidewalk, such person shall travel at a rate of speed which is reasonable and prudent under the conditions at the point of operation, taking into account the amount and character of pedestrian traffic, grade and width of path, condition of surface, and any other relevant conditions. In any event, the Rider shall control speed as may be necessary to avoid colliding with other users of the sidewalk and not exceed 12 MPH regardless of the conditions.
- (7) No person shall ride or operate a bicycle or SATV in any direction except as permitted by vehicular traffic on the same side of the roadway where the sidewalk or bicycle lane exists; provided, that bicycles and SATVs may proceed either way where signs or pavement markings on the sidewalk or bicycle lane designate two-way traffic. Additionally, where no bike lane or sidewalk is available and the roadway speed limit is greater than 25 mph, a bicycle or SATV, excluding Class 3 Electric bicycles as defined by A.R.S. § 28-101, may proceed either way on the closest sidewalk when reasonably safe to do so.
- (8) A person operating a bicycle or SATV in bicycle lanes or in traffic lanes, shall comply with state traffic requirements, speed restrictions, official traffic control signals, signs and other traffic direction devices applicable to vehicles, unless otherwise directed by a peace officer.

- (9) Whenever any person is permitted to operate a bicycle or SATV upon a sidewalk and is about to enter or cross a roadway or driveway, that person shall yield the right of way to all traffic on such roadway or driveway.
- (10) No person may ride an Electric bicycle on sidewalks while the helper motor is engaged.
- (11) A person riding a bicycle or SATV on a roadway at less than the normal speed of traffic, at the time and place and under the then existing conditions, shall ride as close as practicable to the right-hand curb or edge of the roadway, except under the following conditions and when the movement can be made safely:
 - A. If overtaking and passing another bicycle or SATV proceeding in the same direction;
 - B. In preparing for a left turn at an intersection or into a private roadway or driveway;
 - C. If reasonably necessary to avoid hazardous conditions ahead in the roadway; or
 - D. If the lane in which the person is operating the bicycle or SATV is too narrow to travel safely side by side with another vehicle, bicycle or SATV.
- (12) No person shall operate a bicycle or SATV in any City parking structure or within any City park, unless the park has pathways or trails so designated.
- (13) No person shall operate a bicycle or SATV while carrying any package, bundle or article which prevents the operator from keeping both hands upon the steering mechanism at all times.
- (14) No person may operate a bicycle or SATV at Nighttime unless the bicycle or SATV is equipped with a lamp on the front that emits a white light visible from a distance of at least five hundred (500) feet to the front and a red lamp in the rear of a type that is visible from all distances from fifty (50) feet to three hundred (300) feet to the rear. An Operator shall immobilize at Nighttime any SATV not equipped with the fully operational equipment required by this Ordinance.
- (15) Whenever any person is permitted to operate a bicycle or SATV upon a sidewalk, that person must dismount and walk their bicycle or SATV across public streets as a pedestrian.

- (16) A Rider must be at least eighteen (18) years of age to ride or operate SATVs.
- (17) SATVs are restricted to one Rider at a time.
- (18) A Rider shall abide by all existing traffic and safety laws when picking up, riding, parking, or abandoning an SATV.
- (19) A Rider may not ride or leave an SATV where prohibited by official signs or designations, or where the curb is painted red (fire) or yellow (restricted) within the rights-of-way or in City owned or maintained parking lots.
- (20) It is unlawful for any Rider to operate a SATV within the City while under the influence of an alcoholic beverage or any drug or under the combined influence of an alcoholic beverage or drug.

(h) Rider Parking of SATVs

- (1) No person shall park or abandon a bicycle or SATV in any of the following places:
 - A) Where prohibited by official signs or where the curb is painted red;
 - B) On a sidewalk, except in such a manner that does not block or impede pedestrian traffic;
 - C) On the roadway, alley, designated bicycle lane, or public parking lot;
 - D) Within a designated disabled parking zone and all adjoining clear zones;
 - E) Within any portion of a sidewalk, roadway, path, or building entrance or exit that provides access to disabled persons pursuant to the Americans with Disabilities Act;
 - F) Within medians, landscaping, or greenbelts;
 - G) Within thirty feet of public art displays;
 - H) On private property without permission of the property owner. A private property owner of any non-residential property open to the public is presumed to have given permission unless such parking is otherwise restricted by federal, state, or local law or the property owner expressly indicates, either orally or by signage that parking is restricted.

Section 2. Notwithstanding any provision in the City Code to the contrary, the requirements, conditions, and authorized activities of this Ordinance shall supersede the City Code for the duration of the Pilot Program. This is a temporary Ordinance which shall automatically, by operation of law, expire and have no further legal force or effect one hundred eighty (180) days from its effective date. Upon expiration or termination as

provided for herein, all superseded ordinances, whether codified or not, shall automatically be reinstated.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of these amendments to the municipal code adopted herein is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision will not be read to affect the validity of the remaining portions thereof.

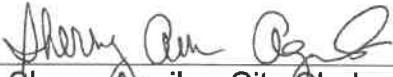
Section 4. Pursuant to Surprise Municipal Code Sec. 2-64, this Ordinance shall become effective thirty (30) days after adoption.

PASSED AND ADOPTED this 1st day of October, 2019.



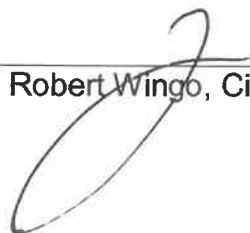
Skip Hall, Mayor

Attest:



Sherry Aguilar, City Clerk

Approved as to form:



Robert Wingo, City Attorney