

ORDINANCE O-4826

AN ORDINANCE OF THE CITY OF KIRKLAND ENACTING A NEW CHAPTER 19.29 OF THE KIRKLAND MUNICIPAL CODE ENTITLED "PERSONAL DELIVERY DEVICES"; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND APPROVING A SUMMARY ORDINANCE FOR PUBLICATION.

1 WHEREAS, the City of Kirkland is a municipal corporation
2 organized under Ch. 35A.13 RCW; and
3

4 WHEREAS, among other authorizations, the City has all powers
5 possible for a city to have relating to the rights and powers to improve,
6 maintain, protect, regulate, and use its public ways, as authorized by
7 RCW 35A.11.020; and
8

9 WHEREAS, over several decades, the City has taken many
10 strategic actions and invested considerable funds to develop a
11 multimodal transportation system; and
12

13 WHEREAS, the City's *Transportation Master Plan*, in support of
14 the continued development of a multimodal transportation system,
15 states, "Safe and approachable interconnected walking and biking
16 networks designed for 'all ages and abilities' can offer everyone options
17 for all kinds of trips;" and
18

19 WHEREAS, the package, grocery, and prepared food delivery
20 industries are looking for ways to make more efficient provision of their
21 services through new technologies, particularly for "last mile" deliveries;
22 and
23

24 WHEREAS, one of those technologies is Personal Delivery
25 Devices ("PDDs"); and
26

27 WHEREAS, the City is aware of a variety of current personal
28 delivery devices that operate—or wish to operate—on public streets and
29 sidewalks, as well as private property; and
30

31 WHEREAS, State law has adopted minimum regulations for the
32 use of PDDs anywhere in the State, which includes the requirement that
33 the devices must be "operated in accordance with all ordinances,
34 resolutions, rules and regulations established by the jurisdiction
35 governing the rights-of-way within which the personal delivery device is
36 operated;" RCW 46.75.020; and
37

38 WHEREAS, the City wants to ensure that PDDs that operate
39 within the City do so in a manner that does not greatly diminish the
40 public's ability to enjoy the City's rights-of-way and facilities, nor
41 endanger the public health, safety, or welfare; and

42 WHEREAS, the City has a particular obligation to help guarantee
43 that people with disabilities have the same opportunities as everyone
44 else to participate in the mainstream of American life; and
45

46 WHEREAS, in late 2021, the City received four incomplete
47 building applications for PDD operation in the City; and
48

49 WHEREAS, because the City did not have any regulations
50 concerning PDDs, the City established a six-month emergency
51 moratorium via Ordinance O-4779 on January 18, 2022, prohibiting,
52 among other things, the acceptance, processing, or issuance of permits
53 related to PDDs; and
54

55 WHEREAS, the City began research and analysis aimed at
56 crafting legislation, rules, and regulations applicable to PDDs in the City,
57 and conducted several public hearings and public informational
58 meetings about the proposed operation of PDDs on private property
59 and/or public rights-of-way within the City; and
60

61 WHEREAS, on July 5, 2022, the City Council extended the
62 moratorium for an additional six months via Ordinance O-4806; and
63

64 WHEREAS, on December 13, 2022, the City Council extended
65 the moratorium again for an additional six months via Ordinance O-
66 4833; and
67

68 WHEREAS, staff has worked diligently to conduct research and
69 to craft proposed legislation concerning PDDs; and
70

71 WHEREAS, the City desires to establish performance-based
72 regulations for the operation of PDDs that respect federal ADA rights,
73 assure public safety, reduce greenhouse gas emissions, and do not
74 overly burden emergency responders.
75

76 NOW, THEREFORE, the City Council of the City of Kirkland do
77 ordain as follows:
78

79 Section 1. Creation of New Municipal Code Chapter Providing
80 for the Regulation of Personal Delivery Devices. A new chapter is added
81 to the Kirkland Municipal Code as follows:
82

83 **Chapter 19.29 Regulation of Personal Delivery Devices**
84

85 **19.29.010 Purpose**

86 The purpose of this ordinance is to establish local regulations for
87 the operation of personal delivery devices by private entities in and on
88 all public rights-of-way within the corporate limits of the City of Kirkland,
89 as authorized by RCW 46.75.020(1).
90

91 **19.29.020 Defined Terms**

92 (a) City. The City of Kirkland, Washington, a municipal
93 corporation.
94

95 (b) Cross Kirkland Corridor. The portion of the Eastrail
regional rails-to-trails corridor that is owned by the City in fee simple.

- 96 (c) Delivery Route. A complete round trip from and to a
 97 Dispenser during which a PDD may make one or more delivery stops.
 98 (d) Director. The Director shall be the City's Director of
 99 Public Works, or the Director's designee.
 100 (e) Dispenser. A physical structure permitted by the City
 101 used by the Eligible Entity for the storage, electrical recharging, package
 102 loading, and/or minor maintenance of PDDs.
 103 (f) Eligible Entity. A corporation, partnership, association,
 104 firm, sole proprietorship, or other entity engaging in business.
 105 (g) Greenway. A designated and completed transportation
 106 segment that promotes higher volumes of walking and biking and
 107 encourages or causes lower volumes and speed of motorized vehicles.
 108 Greenways feature special signage, and pedestrian and bicycle
 109 amenities.
 110 (h) Personal Delivery Device or PDD. An electrically powered
 111 devices to which all of the following apply:
 112 1. The device is intended primarily to transport
 113 property on sidewalks and crosswalks;
 114 2. The device weighs less than one hundred twenty
 115 pounds, excluding any property being carried on the device;
 116 3. The device will operate at a maximum speed of
 117 six miles per hour; and
 118 4. The device is equipped with automatic driving
 119 technology, including software and hardware, enabling the operation of
 120 the device, with the support and supervision of a remote personal
 121 delivery device operator.
 122 (i) Personal Delivery Device Right-of-Way Use Permit ("PDD
 123 Use Permit"). The permit required under this chapter for use of the
 124 City's designated rights-of-way by Personal Delivery Devices.
 125 (j) Pilot Project. A limited term period during which an
 126 Eligible Entity may operate in the City for the City to evaluate the
 127 performance of the Eligible Entity's equipment, services, interactions
 128 with the public, compliance with applicable rules and regulations, and
 129 achievement of identified goals.
 130 (k) Pilot Project Areas. The defined area or areas in the City,
 131 as determined by the City with input from the Eligible Entity, where the
 132 Eligible Entity may conduct its Pilot Project.
 133

134 **19.29.030 Basic Requirements of Operation**

- 135 Before the operation of any PDD shall occur within the City, all
 136 of the following provisions of this subsection must be provided to the
 137 City and evaluated by the Director. These materials shall be required
 138 before the commencement of a Pilot Project and shall be provided, if
 139 ongoing permission is granted by the City, on an annual basis.
 140 a. Application materials.
 141 1. An application form and indemnification
 142 agreement as provided by the City.
 143 2. Proof of having obtained a City business license.
 144 3. Proof of insurance in an amount and form
 145 acceptable to the City. This shall include a certified copy or original of
 146 a comprehensive liability insurance policy naming the City as an
 147 additional insured. Such insurance policy shall be maintained and in full
 148 force as a condition of ongoing PDD operations. Such insurance shall
 149 contain or be endorsed to reflect that the applicant's insurance coverage

150 is primary with respect to the City. Any additional insurance, self-
 151 insurance, or self-insured pool coverage maintained by the City shall be
 152 excess of the applicant's insurance and shall not contribute with it.

153 4. A copy of the Washington State Department of
 154 Licensing Self-certification Form as described in RCW 46.75.030.

155 5. The sworn affidavit described in KMC
 156 19.29.030(d).

157 6. Identification of the sites from which PDDs will
 158 begin and conclude their Delivery Routes; City staff will verify the sites
 159 for that proposed activity comply with KZC 115.106.

160 7. A list providing the identifying numbers for each
 161 PDD used within the City.

162 8. If the Eligible Entity has successfully completed a
 163 Pilot Project, then the Eligible Entity must provide a list of any incidents
 164 or traffic infractions, as identified in RCW 46.75.030(5).

165 9. Proof that the Eligible Entity has cyber security
 166 programs and protocols in place such that the information they receive
 167 from customers for deliveries is protected; and that operation and
 168 control of the PDDs cannot be accessed or interfered with in any manner
 169 by anyone other than the Eligible Entity.

170 10. An application fee in the amount set forth by the
 171 Director before commencement of the Pilot Period; and, if approved to
 172 operate on an ongoing basis, annually thereafter.

173 b. All PDDs operating within the City, in addition to meeting
 174 the requirements of RCW 46.75, shall meet the following requirements.

175 1. The operational requirements of KZC 115.106 on
 176 private property.

177 2. The sound requirements of KMC 19.29.070(c)

178 3. The signal activation requirements of KMC
 179 19.29.050(e).

180 4. Each PDD shall have identified on the outside of
 181 the PDD, in clearly legible typeface, the telephone number and e-mail
 182 address for contacting the City about customer service issues
 183 concerning the operation of the PDD, or compliance or non-compliance
 184 with the provisions of this Chapter. The City shall maintain these
 185 records of operational concerns filed by telephone or e-mail.

186 c. Annual Fee. Each Eligible Entity shall pay the City an
 187 annual personal delivery device right-of-way use fee ("annual fee") in
 188 an amount determined by the Director. The annual fee shall be
 189 assessed per PDD and shall be paid at the initial issuance of a PDD Use
 190 Permit and annually on the anniversary date of the PDD Use Permit.

191 d. Reasonable Expectation of Privacy. Each Eligible Entity
 192 shall provide to the City prior to the issuance of a PDD Use Permit a
 193 sworn affidavit from an authorized representative that the Eligible Entity
 194 shall respect all residents' reasonable expectations of privacy, and shall
 195 not gather or store any data beyond what is necessary for navigation
 196 and/or delivery related to PDD deliveries. By way of illustration and
 197 not limitation, "data" shall mean geospatial information, facial
 198 recognition data, photos, purchasing history, demographic data, or any
 199 other data.

200 e. Indemnification. An Eligible Entity must provide the City
 201 with a written indemnification agreement that provides, at a minimum,
 202 the Eligible Entity's agreement to indemnify, defend, and hold the City
 203 harmless from any and all claims or causes of action for injury to persons

204 or property resulting from the Eligible Entity's operation of PDDs within
205 the City, including injuries to persons and property, both real and
206 personal, and including injuries to both public and private properties.
207 This agreement shall be in a form approved by the City.

208 f. If all provisions above have been met to the City's
209 satisfaction, then a PDD Use Permit may be issued by the Director, as
210 set forth in KMC 19.29.040. The Terminable Right-of-Way Use permit
211 may have conditions attached to it.

212
213 **19.29.040 Limited Initial Authorization**

214 a. After an Eligible Entity has obtained the necessary
215 approvals required in KMC 19.29.030, it may operate on designated
216 portions of the City's rights-of-way as a Pilot Project for a period of six
217 months from the date of issuance of the PDD Use Permit. At the end of
218 the Pilot Project, the Eligible Entity must cease operations and the
219 performance of the Eligible Entity during the Pilot Project shall be
220 reviewed by the Director.

221 b. The City, with input from the Eligible Entity, may
222 establish up to four Pilot Project Areas in which the PDDs may operate
223 during the Pilot Project. Each Pilot Project Area shall not be greater
224 than five percent of the land area of the City, shall be differentiated
225 from each other in terms of land uses and street types, and shall not be
226 contiguous.

227 c. No more than one Dispenser shall be permitted in each
228 Pilot Project Area.

229 d. During the Pilot Project, PDD hours of operation shall be
230 9:00 a.m. to 8:00 p.m.

231 e. The provisions of KMC 19.29.080(a) shall apply during
232 the Pilot Project.

233 f. The PDD Use Permit shall be revokable for non-
234 compliance with these regulations, the degree of intervention that has
235 been required by the Police department or other City departments,
236 frequency of complaints, and/or serious safety concerns that arise, as
237 determined by the Director. The Director shall consult with other City
238 departments as determined.

239 g. At the conclusion of the Pilot Project, the Director shall
240 review the performance of the Eligible Entity during the Pilot Project
241 based upon, but not limited to, the following factors.

242 1. The quantity and nature of complaints received
243 by the City.

244 2. The quantity and nature of interventions required
245 by City departments.

246 3. The quantity and nature of accidents involving a
247 PDD.

248 4. The quantity and type of infractions issued
249 related to PDD operation.

250 5. An evaluation of the data required in KMC
251 19.29.080.

252 h. Based upon the outcome of the Director's review under
253 this section, an Eligible Entity may apply for an annual permit, as
254 provided in KMC 19.29.030. The Director shall issue a written
255 determination that includes explanatory support.

256
257 **19.29.050 Right-of-Way Restrictions**

258 Any operation of a PDD shall have the following restrictions on
259 or in the rights-of-way or other City property:

- 260 a. A PDD may not operate on the shoulders of rights-of-
- 261 way.
- 262 b. A PDD may not operate on a designated and established
- 263 Greenway.
- 264 c. A PDD may not operate on the Cross Kirkland Corridor.
- 265 d. A PDD may not operate on a school walk and/or bike
- 266 route designated by the Lake Washington School District located within
- 267 the City, within 30 (thirty) minutes prior to the school start time, or the
- 268 30 (thirty) minutes following the school end time when such schools are
- 269 in session.
- 270 e. A PDD may not operate in a controlled intersection or in
- 271 a crosswalk improved with Rectangular Rapid Flashing Beacons unless
- 272 the PDD is able to activate both a pedestrian walk signal and
- 273 Rectangular Rapidly Flashing Beacon signal and unless proper
- 274 equipment is installed to receive the activation. It shall be the financial
- 275 responsibility of the Eligible Entity to cause all related technology to be
- 276 installed.
- 277 f. All PDDs must adhere to Ch. 46.61 RCW, "Rules of the
- 278 Road."
- 279 g. No Dispenser shall be located on right-of-way or on City-
- 280 owned property.

281
282 **19.29.060 Package Delivery Restrictions**

283 Any operation of a PDD shall be prohibited from transporting or
284 delivering the following:

- 285 a. Beer, wine, spirits, or other consumable alcohol.
- 286 b. Prescription drugs.
- 287 c. Marijuana or marijuana-related products.
- 288 d. Fireworks.
- 289 e. Products regulated by the federal Bureau of Alcohol,
- 290 Tobacco, Firearms, and Explosives.

291
292 **19.29.070 Americans with Disabilities Act (ADA)**
293 **Accommodations**

294 To address the federal requirement that people with disabilities
295 have accessibility to civic life, and so that people with disabilities do not
296 encounter prolonged inconvenience or risk personal harm or property
297 damage because of the operation of PDDs on the public rights-of-way,
298 the following is required for any operation of PDDs.

- 299 a. A PDD may not operate on a sidewalk or other right-of-
- 300 way that is narrower than five feet.
- 301 b. When a PDD is operating outside a Dispenser, regardless
- 302 of the time of day, the PDD shall operate with lights on the front, rear,
- 303 and sides of the PDD.
- 304 c. PDDs shall be equipped with technology that detects
- 305 when a person is within twenty-five (25) feet of the PDD. When the
- 306 PDD is within 25 feet of a person:
- 307 1. It shall activate a signal or bell that warns the
- 308 person of the PDD's proximity.
- 309 2. It must move to the right side of the right-of-way
- 310 in the direction of travel within five (5) seconds.

311 3. If the PDD is on an ADA ramp, it must vacate the
312 ADA ramp within five (5) seconds.

313 d. If State or federal law require stricter standards than
314 those provided in this Section, they shall control.

315
316 **19.29.080 PDD Reports**

317 To assess the quantity of PDD deliveries in the City, the following
318 data shall be collected and reported.

319 a. At the conclusion of the Pilot Project period, the Eligible
320 Entity shall provide a report to the City that documents the following:

321 1. The total number of PDD delivery round trips
322 made in each Pilot Project Area during the Pilot Project, the total number
323 of individual deliveries made by the PDDs during the Pilot Project, and
324 the total number of miles traveled per week for all PDDs in each Pilot
325 Project Area.

326 2. The total number of aborted/unsuccessful
327 deliveries per week for each Pilot Project Area during the Pilot Project.

328 3. The number of PDD equipment failures.

329 4. The number of accidents in which a PDD was
330 involved.

331 b. Should the Eligible Entity obtain an annual permit, then
332 the Eligible Entity shall provide the data identified in 19.29.080(a) 1
333 through 4 annually.

334 c. The Director may determine annual reporting is no longer
335 required, or reporting is required on a less frequent basis.

336
337 **19.29.090 Additional Performance Standards**

338 In addition to other performance standards identified in this
339 Chapter, the following standards and requirements shall apply to any
340 operation of a PDD.

341 a. In the event a PDD becomes unable to move or move
342 safely, has become damaged, or has been relocated contrary to its
343 intended delivery route, the Eligible Entity shall cause a person(s)
344 employed by the Eligible Entity to remove or retrieve such PDD within
345 thirty (30) minutes of being made aware of the circumstance. In the
346 event of an emergency, or in the event a PDD is not removed or
347 retrieved in a timely manner as set forth in this section, then the City
348 shall have authority to remove or retrieve the PDD itself and recover
349 costs pursuant to KMC 19.29.100.

350 b. Whenever practicable, PDDs must move off the right-of-
351 way and wait in private driveways or on other non-public property until
352 the delivery item(s) have been retrieved by the customer.

353 c. The Eligible Entity shall be responsible for complying with
354 all applicable, nondiscrimination laws and regulations.

355 d. The Eligible Entity shall develop and enforce policies to
356 ensure safe operation of all PDDs that meet or exceed all applicable
357 industry, State, and federal standards.

358 e. The Eligible Entity and the City shall advertise complaint
359 lines that are accessible by telephone or e-mail. The lines shall be
360 directed to the City, and the City shall maintain the records of such
361 complaints, which shall identify the quantity, date and time, nature,
362 resolution, and time to resolve the complaints received. These data
363 shall be used at the conclusion on the Pilot Program as provided in

364 19.29.040(g)1, or as a factor or the cause for invoking the provisions of
365 19.29.110.
366

367 **19.29.100 City Response to Incidents**

368 In the event the City, including but not limited to employees of
369 the City Fire Department and the City Police Department, is required to
370 remove or retrieve one or more PDDs, the City shall assess the Eligible
371 Entity \$1,500 per occurrence, or the actual costs if they are greater than
372 \$1,500 per occurrence.
373

374 **19.29.110 City Reserves Right to Revoke Permission**

375 Whether during a Pilot Project or while operating on an ongoing
376 basis, the City reserves the right to revoke the Eligible Entity's
377 permission to operate on or in the rights-of-way at any time for any
378 violation of this Chapter or any other violation of law.
379

380 Section 2. Severability. If any provision of this ordinance or its
381 application to any person or circumstance is held invalid, the remainder
382 of the ordinance or the application of the provision to other persons or
383 circumstances is not affected.
384

385 Section 3. Effective Date. This ordinance shall be in force and
386 effect five days from and after its passage by the Kirkland City Council
387 and publication, as required by law.
388

389 Section 4. Publication. Publication of this ordinance shall be
390 pursuant to Section 1.08.017, Kirkland Municipal Code, in the summary
391 form attached to the original of this ordinance and by this reference
392 approved by the City Council.
393

394 Passed by majority vote of the Kirkland City Council in open
395 meeting this 21st day of February, 2023.
396

397 Signed in authentication thereof this 21st day of February,
398 2023.
399


Penny Sweet, Mayor

Attest:


Kathi Anderson, City Clerk

Approved as to Form:


Kevin Raymond, City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4826

AN ORDINANCE OF THE CITY OF KIRKLAND ENACTING A NEW CHAPTER 19.29 OF THE KIRKLAND MUNICIPAL CODE ENTITLED "PERSONAL DELIVERY DEVICES"; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND APPROVING A SUMMARY ORDINANCE FOR PUBLICATION.

SECTION 1. Creates a new Municipal Code Chapter 19.29 providing for the regulation of personal delivery devices.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. Provides an effective date for the ordinance.

SECTION 4. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 21st day of February, 2023.

I certify that the foregoing is a summary of Ordinance O-4826 approved by the Kirkland City Council for summary publication.



Kathi Anderson, City Clerk