

BILL NO. BL2018-1441 (ELROD & O'CONNELL) – This ordinance, as revised by a second substitute and amendments, would amend the Metropolitan Code regarding shared urban mobility devices (SUMDs).

On August 21, 2018, the Metropolitan Council adopted Ordinance No. BL2018-1202 which amended Title 12 of the Metro Code to regulate shared urban mobility devices or SUMDs (e.g., scooters, bicycles, etc.). The regulatory provisions established therein created a permitting system for SUMD operators overseen by the Metro Transportation Licensing Commission (MTLC). (See, Section 12.62.020 of the Metro Code).

Under the proposed Second Substitute ordinance, several changes would be made to the SUMD ordinance in comparison to the previous Substitute. Section 1 would add that a certificate of public convenience and necessity could not be transferred or sold without approval of the MTLC, and would further require a SUMD operator who fails to apply for a certificate renewal prior to its expiration to be treated as a new applicant.

This ordinance would also authorize the MTLC to determine whether SUMD parking is prohibited. Currently, the Traffic and Parking Commission is authorized to make this determination. Under the proposed ordinance, the MTLC would determine certain block faces or areas where free-floating SUMD parking is prohibited within 45 days of the ordinance's enactment. The ordinance further provides generically that "[t]he Metropolitan Government" would be required to establish a program of assigning and marking dedicated and preferred areas for SUMD parking where a SUMD could park without penalty. That program would be required to be implemented in its initial phase within sixty days of the enactment of this ordinance. As proposed, the ordinance would also allow dedicated and preferred parking areas for dockless SUMDs to be located where parking for dockless SUMDs is otherwise prohibited "pursuant to Section 12.62.040.E.1.c." (There is no known subsection E.1.c.)

As further proposed in the ordinance, Section 12.62.040.M would provide for a \$25 fine for violations by a user "in the operation or parking of a SUMD", to be assessed on the SUMD and paid by the owner. Under Section 12.62.040.Q, improper parking of a SUMD would result in a \$10 fine, collected from the user by the operator and remitted to Metro. The Council office is unaware of any precedent in Tennessee law for collection and payment by private third parties of fines incurred for other's violations.

The MTLC would be directed to establish limits on the hours of operation of SUMDs, the streets where SUMDs can or cannot operate, and the streets and areas where SUMDs would be "slowed down" remotely by the operator. These limitations would be made no later than 45 days from the enactment date of the ordinance and reported to the Metro Council. SUMD operators would be required to purge duplicate user accounts on a regular basis according to rules established by the MTLC.

The MTLC would further be required to establish regulations to reduce the clustering of SUMDs. The MTLC would also be authorized to establish caps for additional SUMD operators and/or the number of SUMDs which may be added to a fleet. These limitations would need to be based upon the need to promote and protect the health, safety, and well-being of the public.

The establishment of new rules regarding parking restrictions, operating rules and regulations, hours of operation, remote “slow down” provisions, and related mapping and reporting requirements all within 45 days may pose challenges for the MTLC. Per section 2.100.030 of the Metro Code, rules and regulations adopted by the MTLC, as well as amendments thereto, must be preceded by a public hearing and approved by the Metropolitan Department of Law. The MTLC regularly meets only on a monthly basis. The MTLC was previously tasked, under Second Substitute BL2018-1202, with (1) establishing utilization thresholds for expansion, as well as a threshold number of violations to allow before granting expansion requests; (2) establishing protocols for extreme weather, emergencies, and special events, (3) designating square mile locations for anti-clustering purposes; and (4) completion of a study by July 1, 2019 regarding revenues and costs, the overall impact of SUMDs, and proposed legislative changes.

The Metropolitan Nashville Police Department would be given explicit authority to enforce the SUMD regulations set out in Chapter 12.62 of the Metropolitan Code of Laws.

The ordinance would also create a sunset provision for the SUMD pilot program. The program would terminate one (1) year from the enactment date of this ordinance, but could be extended by a resolution of the Metro Council that states the length of the extension.

The ordinance would also require SUMDs to be operated only by individuals “over eighteen” years of age, prohibiting operation by any person “less than eighteen.” (Operation by an individual who is actually eighteen is not addressed.) Penalties related to this age requirement are set forth in Section 12.84.020.

The provisions within the original ordinance limiting the number of operators to four (4) have been removed in this Second Substitute. (According to the MTLC, six (6) companies currently possess SUMD certificates: Lime; Bird; Lyft; Jump; Spin; and Gotcha). However, this ordinance would now provide the MTLC the authority to limit the number of SUMD operators as well as the size of operators’ fleets “as allowed by law.” Additionally, the MTLC would be permitted to apply different restrictions upon (1) new SUMD operators (those who apply after enactment of this ordinance) and upon (2) “additional types” of SUMDs added to fleets of existing operators; but not upon existing fleets of existing operators. The Council Office would therefore note potential lingering legal concerns based upon these revisions.

The current Code provisions regulating SUMDs provide that “[t]he number of permitted operators shall not be limited by the metropolitan government.” (See, Section 12.62.020.D of the Metro Code). The proposed provisions authorizing the MTLC to apply restrictions that differ between existing and new operators could be construed as anti-competitive in effect. Otherwise, allowing the MTLC to limit the number of operators – even “as allowed

by law” -- may again run afoul of Article I, Section 22 of the Tennessee Constitution, which prohibits monopolies. (As set forth in previous Analyses, the Tennessee Attorney General issued an opinion in 2017 summarizing the Tennessee constitutional prohibitions against monopolies.)

Because the ordinance is on third reading, any amendment will require suspension of the rules. Nevertheless, amendments are recommended to address the concerns addressed above, as well as various minor section numbering errors, misspellings, and syntactical errors.