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MEMORANDUM

TO: Mayor Jerry L. Demings
and
County Commissioners

FROM: Jeffrey J. Newton, County Attorney *JJM*
Joel D. Prinsell, Deputy County Attorney *JDP*

DATE: June 29, 2020

RE: July 7, 2020 Public Hearing – An Ordinance Repealing Ordinance No. 2020-10 Establishing a Moratorium on the Use of Micromobility Devices, including Motorized Scooters and Motorized Bicycles

Attached is a proposed ordinance that repeals the moratorium ordinance against micromobility devices adopted by the Board of County Commissioners on March 24, 2020, designated as Ordinance No. 2020-10.

The moratorium has been in effect for three months, and by its terms is due to expire when the Board adopts a new ordinance relating to micromobility devices, or January 15, 2021, whichever date comes first.

On May 19, 2020, an operator of a micromobility device company, known as Newt Mobility, sent a letter to the County stating that it would be filing a lawsuit to challenge the moratorium ordinance if it were not repealed within 60 days. Newt Mobility argued in the letter that the moratorium is preempted by the State of Florida's Uniform Traffic Control Law in Chapter 316, Florida Statutes, and asserted that if it were to prevail in the lawsuit, it would seek to recover attorney's fees, costs, and damages under the relevant law, Section 57.112, Florida Statutes.

Although our office believes that a lawsuit challenging the moratorium can be successfully defended, our office does recognize that, as with any lawsuit, the risk exists that the County may not prevail, in which event Newt Mobility could recover its attorney's fees, costs, and any damages under the applicable statute.

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It is worth repeating that the moratorium ordinance is only temporary in nature. If the moratorium ordinance were to be left in place and litigation were to ensue, the lawsuit would not be ultimately resolved until long after the moratorium had expired. In other words, we question whether it serves an important or overriding purpose to litigate the validity of an ordinance that we know is only transitory in nature, especially while recognizing that we will have to simultaneously focus our efforts on the ultimate objective --- a permanent ordinance regulating and/or prohibiting micromobility devices.

At the time the moratorium ordinance was being prepared by the staff and our office in late 2019 and early 2020, the local economy had not yet felt the severe effects of the Covid-19 pandemic. Stated another way, 4 to 6 months ago, pedestrian and vehicular traffic along International Drive, where most of the micromobility devices were being used, and other heavily travelled streets, was extremely busy, thereby justifying consideration of a moratorium ordinance to ensure the normal and safe movement of pedestrian and vehicular traffic while we developed a permanent ordinance. However, as we know, due to Covid-19, it is highly doubtful that the local economy and the pedestrian and vehicular traffic on International Drive will rebound to anywhere near the level it existed until late this year or early 2021, at the very soonest, which would be after the moratorium would have expired if it were left in place.

If the moratorium ordinance is repealed, nothing impedes the staff from continuing to move forward with drafting a permanent ordinance on the subject of micromobility devices. During the first three months of the moratorium, the staff and our office have already been meeting internally, and with stakeholders, the affected industry, and others, in starting to develop a framework for a new ordinance. In other words, regardless of whether a moratorium remains in place, the staff anticipates presenting its recommendations to the Board in the form of a permanent ordinance later this year.

For the various reasons set forth above, we recommend that the Board repeal the moratorium ordinance adopted several months ago with the understanding that the staff will continue to move forward with drafting permanent regulations and/or prohibitions related to micromobility devices.

If you have any questions, please contact either of us at extension 67320.

Attachment

Copy: Byron Brooks, County Administrator
Chris Testerman, Deputy County Administrator

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ORDINANCE NO. 2020-_____

AN ORDINANCE OF ORANGE COUNTY, FLORIDA,
REPEALING ORDINANCE NO. 2020-10 ESTABLISHING A
MORATORIUM ON THE USE OF MICROMOBILITY
DEVICES, INCLUDING MOTORIZED SCOOTERS AND
MOTORIZED BICYCLES; AND PROVIDING AN
EFFECTIVE DATE

Section 1. Repeal of Article VI ("Micromobility Devices") of Chapter 35
("Traffic"). Article VI of Chapter 35 of the Orange County Code that established a moratorium
on the use of micromobility devices is hereby repealed.

Section 2. Effective date. This ordinance shall become effective pursuant to general
law.

ADOPTED THIS 7th DAY OF JULY, 2020.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Jerry L. Demings,
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk