AN ORDINANCE to amend Ordinance 20825 to extend the term of the shared Mobility Device pilot program.

BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska that the Public Right-of-way Shared Mobility Device Ordinance Pilot Program Ordinance 20825 is amended as follows:

Section 1. Definitions.

For the purpose of this ordinance, certain terms and words are hereby defined.

a) “Abandon” shall mean parking or otherwise leaving a Shared Mobility Device in the public right-of-way in a manner inconsistent with terms of a pilot permit issued pursuant to this ordinance.

b) “Director” shall mean the Director of the Lincoln Transportation and Utilities Department or his or her designee.

c) “Operator” shall mean any individual or business selected by the City to participate in the Shared Mobility Device Pilot Program pursuant to this title.

d) “Public property” shall mean any public alley, roadway, sidewalk, sidewalk space, or street as defined by Lincoln Municipal Code 14.10 as well as any park, trail, or other real property owned by the City.

e) “Shared Mobility Device” shall mean any self-service vehicle made available for shared use to individuals on a temporary basis that is displayed, offered, or placed for use on any public property, except that “shared mobility device” does not include a vehicle in service for a Transportation Network Company as defined by L.M.C. Section 5.50.010, a taxicab as regulated by L.M.C. Chapter 5.50, or a device authorized by the City bike share system. Shared Mobility Devices may include, but are not limited to, shared electric foot scooters.
f) “Shared Mobility Device Pilot Program” means a program whereby the City shall select one or more operators to make available shared mobility devices to the public for use within the pilot program area for the purpose of studying the utilization of such devices in the City.

Section 2. Prohibited Conduct.

Notwithstanding any other provision of the Lincoln Municipal Code, no person or entity may:

a) Display, offer, or make available for use any shared mobility device within the City, unless the person or entity has been issued a permit by the Director to participate in the Shared Mobility Device Pilot Program.

b) Abandon, park, deposit, or otherwise leave a shared mobility device in the public right-of-way or other public property in a manner that:

1) obstructs travel upon (whether by motor vehicle, bicycle, or on foot), blocks access to, or interferes with the intended use of public property;

2) poses an immediate public safety hazard;

3) violates the terms of any agreement with the City; or

4) is otherwise prohibited by applicable laws.

c) Operate a shared mobility device or shared mobility device company in a manner that violates state or local motor vehicle laws.

The City of Lincoln Parking Services Division shall enforce the terms of this provision of the ordinance.

Section 3. Minimum Rider Age and Operator’s License.

No person shall operate a shared mobility device unless that person is at least eighteen (18) years of age and has a valid motor vehicle operator’s license in his or her possession.
Section 4. **Use on Public Roadways, Sidewalks, and Bike Lanes.**

Shared Mobility Devices authorized for use under a pilot program permit may be operated on any public roadway, sidewalk, or bike lane where a person may lawfully ride a bicycle except that it shall be unlawful to operate a Shared Mobility Devices on any hiker-biker or multi-use trail as defined by L.M.C. Section 12.08.010.

Section 5. **Maximum number of shared mobility operator pilot permits, and shared mobility devices permitted; maximum speed; geographical areas of use.**

a) The Director may issue up to three (3) shared mobility operator permits authorizing deployment of shared mobility devices during the term of the Shared Mobility Device Program.

b) The Director shall establish the number of shared mobility devices authorized under each shared mobility operator pilot permit. The Director may adjust the maximum number of devices authorized by each shared mobility operator pilot permit. The Director shall take into consideration market needs, the number of devices deployed in the City, device utilization, and any other criteria the Director deems relevant. The Director’s determinations under this Section shall constitute the final decision of the City and are not subject to further administrative review.

c) Shared mobility devices deployed under the pilot program shall be restricted to devices that are not capable of exceeding a speed of fifteen (15) miles per hour.

a) For the purposes of the pilot program, the Director shall have authority to determine the geographical location(s) within the City where shared mobility devices may be operated.

Section 6. **Shared mobility operator pilot program permit - procedure, fees, and requirements.**
a) The shared mobility device pilot program shall be in effect from the date of enactment until January 1, 2021 until one year after the shared mobility device launch date, as established by Order of the Director.

b) Any person seeking to obtain a shared mobility operator permit shall respond to the City’s request for qualifications, to be issued by the City Purchasing Agent.

c) The request for qualifications (RFQ) shall be an invitation by the City for proposers to submit an offer, which may be subject to subsequent discussions and negotiations by the City and proposer(s). It shall not be a request for a competitive bid.

d) The Director shall specify the information and assurances that must be provided in the RFQ. At a minimum, the RFQ shall require the following information:

i. The name and business address of the applicant and each person or entity that: 1) has more than a ten (10) percent equity, participation, or revenue interest in the applicant; or 2) is a trustee, director, partner, or officer of that entity or of another entity that owns or controls the applicant.

ii. The name and business address of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling the applicant in whole or in part, or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity.

iii. Information sufficient to show that the applicant is financially, technically, and legally qualified to participate in the City’s shared mobility device pilot program.

iv. A commitment from the operator that, if selected for participation in the pilot program, it will pay a permitting fee for a permit for operations during the pilot term plus an additional per-trip use fee for the term of the pilot program. Fee amounts shall be approved by the Director.
v. A commitment from the operator that it will indemnify, defend, and hold harmless the City, its elected officials, officers, agents, and employees (collectively “the City”) from and against claims, damages, losses, and expenses, including but not limited to attorney fees, arising out of or resulting from responding to the RFQ or any activity arising out of operations under a shared mobility device pilot program permit, that results in any claim for damages. Operator shall not be required to commit to indemnify the City for loss or damage caused solely by the willful misconduct or negligence of the City.

vi. A commitment to share with the Director anonymized real time and historical information for their entire fleet operated in the City under the shared mobility device pilot program through a documented web-based application programming interface (API).

vii. The operator’s current shared mobility device operations in other jurisdictions, including copies of any operating permits held by the applicant for all such jurisdictions.

viii. A description of the proposed plan of operation, including, at a minimum, a detailed description of:

a. The operator’s proposed operations in the City including the maximum number of shared mobility devices anticipated during the duration of the pilot program, the plan for parking devices when not in use, the plan for balancing shared mobility devices to provide coverage throughout the pilot program area, the plan for shared mobility device maintenance, the plan for levels of staff to conduct the day-to-day operations and administration, and the plan for customer service.
b. The operator’s plans to implement safety programs, including, for example, a program by which the applicant will receive information about and notify users of inappropriate use.

c. The operator’s plan to educate users of shared mobility devices about safe and legal operation of the device.

d. The operator’s plan to provide the Director with real time and historical information for the entire fleet through a documented web-based API.

Section 7. **Shared mobility operator selection.**

a) The Shared Mobility Operator Selection Committee shall be established by the Director for the purpose of evaluating proposals submitted by those persons or entities who desire to participate in the Shared Mobility Device Pilot Program. The Committee shall consist of City staff and other community stakeholders identified by the City.

b) The Committee shall review all proposals and make written recommendations to the Director based on a ranking of each qualified applicant in accordance with objective criteria set forth in this chapter.

c) Each proposal shall be evaluated based on the following criteria: experience; proposed operations plan; financial stability; adequacy of insurance (as evidenced by a certificate of insurance); ability to begin operations in a timely manner; public education strategies; record of the operator’s observance of relevant federal, state, or local law and rules and regulations; and any other objective criteria established by the Director and included in the Request for Proposals.

d) The Director shall set forth, in writing, the reasons supporting his or her final determinations. The Director may request additional information from City staff, any operator, or any other source that would assist in determining the final qualifications and rankings.
e) The Director may grant a shared mobility operator pilot program permit to the three highest ranked operators that submit proposals.

f) The Director’s determinations under this section shall constitute the final decision of the City and shall not be subject to further administrative review.

g) The Director may impose, as part of any shared mobility pilot operator permit issued, any and all conditions that are necessary to effectuate the purposes of this Chapter, mitigate traffic impacts, ensure accessibility of the public right-of-way and availability of public space for shared use by all, and protect the health, welfare, and safety of the public. No person shall fail to comply with such pilot permit conditions.

h) As a condition of any shared mobility operator pilot program permit, Operators selected by the Director for participation in the pilot program shall pay a permitting fee for the pilot permit and a per-trip use fee under the permit.

Section 8. Reporting Requirement.

Ninety (90) days prior to the completion of the pilot program, the Lincoln Transportation and Utilities Director shall make a report to City Council on the results of the shared mobility device operators during the pilot period. The report shall include but need not be limited to the impact of shared mobility devices on the City’s overall transportation system and public safety.

Section 9. Limitations on City liability.

To the fullest extent permitted by law, the City shall not assume any liability whatsoever with respect to having issued a shared mobility operator pilot program permit or otherwise approving the operation of any shared mobility device. As a condition to the issuance of any shared mobility operator pilot program permit, the operator shall meet all of the following conditions:

a) Operator shall, in a form acceptable to the City Attorney, indemnify, defend, and hold harmless the City, its elected officials, officers, agents, and employees (collectively “the City”) from and against all claims, damages, losses, and expenses, including but not limited
to attorney fees, arising out of or resulting from the Shared Mobility Device Pilot Program, that results in a claim for damage, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, or any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of Operator, or anyone for whose acts any of them may be liable. This provision will not require Operator to defend, indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City. Additional terms, including but not limited to the apportionment of liability, shall be of a form acceptable to the City Attorney. Operators must maintain commercial general liability insurance at coverage limits and with conditions thereon determined necessary and appropriate by the Risk Manager, and name the City of Lincoln as additional insured. The insurance policy contemplated by this section shall not be cancelled unless thirty (30) days prior written notice by certified mail has been given to the City. If any insurance policy issued to the permittee is cancelled for any reason, the permit issued under this Chapter is automatically suspended. In order to reinstate the permit, the permittee shall provide a new certificate of insurance to the City.

b) Reimburse the City for all costs and expenses, including, but not limited to, attorney fees and costs, which it may be required to pay as a result of any legal challenge related to the City’s approval of or activities conducted pursuant to the applicant’s shared mobility operator pilot program permit.

Section 10. **Grounds for revocation, suspension, or denial.**

A shared mobility operator pilot permit may be revoked, suspended, or denied by the Director based upon any of the following grounds:

a) An operator, including its employees, managers, officers, principals, director, owners, contractors, representatives, or agents:
i. Making one or more false or misleading statement or material omission on the RFQ submission or during the pilot program;

ii. Failing to provide information requested or required by the City;

iii. Operating or proposing to operate in a manner that endangers public health or safety; or

iv. Failing to comply with any provision of this ordinance, federal, state, or local law, or any term imposed by the shared mobility operator pilot permit.

b) The City determines via resolution of the City Council that the shared mobility device pilot program is contrary to the health, safety, and well-being of the residents of the City and should be terminated.

i. Operator-provided data shall be monitored by the Director to assess the safety of device use during the pilot term. The Director shall bring evidence of harm to the health, safety, and well-being of City residents caused by the pilot program to the attention of the City Council as soon as practicable.

Section 11. Impoundment of devices.

a) A shared mobility device that is displayed, offered, or made available for use that is abandoned, deposited, parked, or otherwise left on public property in violation of this chapter shall be subject to immediate impoundment by the City.

b) The City Council may adopt impound fees by resolution, which shall reflect the City's enforcement, investigation, storage, and impound costs.

c) No person shall retrieve any impounded shared mobility device except upon demonstrating proper proof of ownership of the device and payment of applicable impound fees.

Section 12. Enforcement.
a) Any person who violates any provision of this Chapter, including any permit condition, shall be guilty of a misdemeanor, which shall be punishable by a fine not exceeding five hundred dollars per violation or imprisonment for a period not to exceed six months or by both such fine and imprisonment.

Section 13. This ordinance shall be published, within fifteen days after the passage hereof, in one issue of a daily or weekly newspaper of general circulation in the City, or posted on the official bulletin board of the City, located on the wall across from the City Clerk’s office at 555 S. 10th Street, in lieu and in place of the foregoing newspaper publication with notice of passage and such posting to be given by publication one time in the official newspaper by the City Clerk. This ordinance shall take effect and be in force from and after its passage and publication or after its posting and notice of such posting given by publication as herein and in the City Charter provided.

Approved as to Form & Legality:

Jeffery R. [Signature]
City Attorney

Approved this 22 day of June, 2020:

Mayor

PASSED

JUN 15 2020
BY CITY COUNCIL
ORDINANCE NO. 20931

AN ORDINANCE: To amend Ordinance 20825 to extend the term of the shared Mobility Device pilot program.

Read First Time June 1, 2020
Read Second Time June 8, 2020
Read Third Time June 15, 2020
Passed June 15, 2020
Published in Lincoln Journal Star on June 26, 2020

CERTIFICATE

State of Nebraska )
) ss
County of Lancaster )

I, the undersigned, Deputy City Clerk of the City of Lincoln, Nebraska, do hereby certify that the within ordinance is the original Ordinance No. 20931 as passed by the City Council of said City, as indicated above, and as approved by the Mayor of said City and as the same appears of record in my office and is now in my charge remaining as City Clerk aforesaid.

IN WITNESS WHEREOF, I have hereunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska this 15th day of June, 2020.

Interim City Clerk of Lincoln, Nebraska