CITY OF SANIBEL

ORDINANCE 13 – 007

AN ORDINANCE AMENDING CITY OF SANIBEL ORDINANCE NO. 05-011, AS AMENDED, RELATING TO ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES ("EPAMDs"); APPROVING ADDITIONAL AREAS OF THE SHARED USE PATH, ROADS AND ROAD RIGHTS-OF-WAY FOR AUTHORIZED TOUR OPERATIONS; PROVIDING FOR AMENDMENTS TO SEVERAL MINIMUM CONDITIONS AND REQUIREMENTS FOR THE USE OF EPAMDs IN AUTHORIZED AREAS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, City of Sanibel Ordinance No. 05-011, as amended, sets forth a general prohibition on the use and operation of Electric Personal Assistive Mobility Devices (sometimes referred to herein as "EPAMDs") as defined in Section 316.003, Florida Statutes, and currently marketed commercially under the brand name "Segway"; and

WHEREAS, Ordinance No. 05-011, as amended, prohibits the use of EPAMDs, based upon the interest of safety, in all public and quasi-public areas of the City of Sanibel except as specifically authorized by the provisions of such Ordinance; and

WHEREAS, a specific and limited use of EPAMDs was authorized for tour operations, one of which currently exists in the City, and which is more specifically described and set forth in Ordinance No. 05-011; and

WHEREAS, the City Council finds that the successful operation of an EPAMD tour business since 2005 warrants the approval by the City Council of a limited expansion of the Shared Use Paths and road right-of-way upon which such tour operation may be conducted;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Sanibel, Florida, that:

SECTION 1. City of Sanibel Ordinance No. 05-011, as amended, Section 1, "Findings" shall not be amended and shall continue to read as follows:

SECTION 1. FINDINGS.

The City Council hereby finds as follows:

1. The recitals set forth above are true and correct and are set forth as additional findings for this ordinance.

2. It is necessary that EPAMDs be prohibited in all public and quasi-public areas within the City of Sanibel in the interest of safety, except as specifically authorized by the terms of this Ordinance.

3. The City finds that there is a limited "track record" with regard to matters of safety of EPAMDs nationally and no "track record" at all within the City of Sanibel for use by individual operators on the City's shared use paths, sidewalks, roads and streets.

4. Except for the limited use of EPAMDs authorized for tour operations pursuant to Section 3 and for use by persons who are disabled for mobility purposes as defined and set forth in Section 4 of this Ordinance, the City Council specifically finds that the use of EPAMDs are unsafe on the City's sidewalks, shared use paths, streets and roads, in part due to the heavy use of such public areas by pedestrians, bicylists, inline skaters, pet owners who are walking dogs, and similar public use of such areas.

5. Except for the limited use of EPAMDs authorized for tour operations pursuant to Section 3 and for use by persons who are disabled for mobility purposes as defined and set forth in Section 4 of this Ordinance, the potential speed of EPAMDs, together with their virtually silent use and operation, coupled with the unique operational functions to inexperienced users, make EPAMDs incompatible, from a safety perspective, with motor vehicles on the City's streets and roads and imcompatible with the congestion and types of users and uses found on the City's shared-use paths, bicycle path and sidewalks.

6. The City Council has not only the right, but the obligation, to analyze potential safety problems in a conservative manner to protect the health, safety and welfare of the citizens of the City of Sanibel.

7. The City Council determines that the limited use of Segways, under the operational and safety considerations outlined in this Ordinance, is a reasonable accommodation to interested parties and the general public in order to further analyze the use and operation of EPAMDs without opting for either an absolute prohibition or the unlimited use of such devices.

8. The City Council specifically finds and determines that the City Council is not required by the Americans With Disabilities Act (ADA) or any other federal, state or local law, regulation or rule to permit or provide for the use of an EPAMD by any physically or mobility challenged person. The Sanibel City Council is providing a limited and defined exception to the general prohibition on the use of EPAMDs within the City of Sanibel at City Council's sole and voluntary discretion and City Council reserves the right to withdraw or delete such exception at any time in City Council's sole discretion based upon the interest of safety as determined by the City Council at any time in the future.

SECTION 2. City of Sanibel Ordinance No. 05-011, as amended, Section 2, "Prohibition of EPAMDs" shall not be amended and shall continue to read as follows:

SECTION 2. PROHIBITION OF EPAMDs.

The use of EPAMDs are hereby prohibited, based upon the interest of safety, in all public and quasi-public areas of the City of Sanibel except as specifically authorized by the provisions of this Ordinance. Such public or quasi-public areas shall specifically include any and all public roads, streets, sidewalks, bicycle paths and shared use paths within the City of Sanibel.

SECTION 3. City of Sanibel Ordinance No. 05-011, as amended, Section 3, "Limited Use of EPAMDs Authorized" shall be amended as follows with underlining indicating additions and strikethrough indicating deletions:

SECTION 3. LIMITED USE OF EPAMDs AUTHORIZED FOR TOUR OPERATIONS WITH A CITY CONDITIONAL USE APPROVAL.

An EPAMD may be used and operated on a marked bicycle path, shared use path and/or sidewalk, and at an intersection to cross a road or street even if the road or street has a posted speed limit of more than 25 miles per hour, provided such EPAMD is operated by the owner or employees of a tour business, or the customers or users of such tour business, where such tour has received a conditional use approval by the City of Sanibel Planning Commission, or that receives such approval in the future, and operates under minimum conditions and requirements as set forth in this section. Such minimum conditions and requirements shall be as follows:

(a) The tour business shall provide an approved site for education and instruction on the operation and use of EPAMDs by its employees and customers. For purposes of this Ordinance, customers shall include all tour patrons and users, whether or not consideration is paid for such use.

(b) The maximum number of EPAMD users that can be included in any single tour is 10, plus tour leaders.

(c) No rider shall be allowed on any tour under 14 years of age and/or 100 pounds in weight, and/or as limited by the tour operator's insurance company requirements, and/or pursuant to the Segway manufacturer's specifications.

(d) There shall be a minimum of one tour leader for every ~~five~~ six users of EPAMDs, and two tour leaders for more than ~~five~~ six users.

(e) Only leaders/operators experienced in the use and operation of EPAMDs shall give tours. Tour leaders or operators shall wear safety reflector vests.

(f) When two leaders/operators are present on the same tour, they must be able to communicate with each other through the use of private communication devices (two-way radios, cellular phones or similar devices) and have available the use of rearview mirrors.

(g) No EPAMD shall be used or operated by any tour rider (other than a tour operator) in excess of a maximum speed of 8 miles per hour. A tour operator while conducting a tour shall not be limited to 8 miles per hour.

(h) No tour shall use the public streets or roads of the City, except at intersections for crossing or as specifically authorized in this Section 3.

(i) All users or customers shall be ~~must be shown a safety video and~~ provided with "hands on" EPAMD training by an experienced operator in a controlled area prior to such user physically operating an EPAMD in any public area of the City.

(j) No tour will be conducted or operate after dusk.

(k) Tours shall not enter any private property without prior permission from the owner.

(l) Every EPAMD shall be equipped with a sounding device and all customers or users shall be trained in the use of such sounding device.

(m) An EPAMD user shall yield the right-of-way to pedestrians and shall give an audible signal with a sounding device before overtaking and passing a pedestrian.

(n) All users or customers shall wear helmets during training and at all other times during the tour or at any time while on or operating an EPAMD.

(o) Users or customers shall not be permitted to operate an EPAMD while under the apparent influence of alcohol or drugs, including prescription drugs that impair the user's ability to operate machinery, or in the event that the tour operator or employees have actual knowledge of the fact that such user or customer is under the influence of alcohol or drugs, including prescription drugs that impair the user's ability to operate machinery.

(p) ~~In addition to any police report that may be required,~~ A police report shall be filed where warranted for any accident that occurs during the training and/or tour involving any personal injury to a user or customer of the tour or any other person, and/or anything other than minor and insignificant property damage to the EPAMD, the user or customer, or any other person or entity.~~, must be reported to the office of the City Manager, in writing, within two business days after such event.~~

(q) All of the above requirements and conditions shall be explained and specifically described by the tour operator or employees to each user or customer prior to the use of an EPAMD by such user or customer.

(r) The City's Shared Use Paths in the following areas and limited use of roads and road right-of-ways described in the following areas may be used for approved EPAMD tour routes:

(1) Historical Cemetery tour route: Tour beginning at 1509 Periwinkle Way, proceeding east on the Shared Use Path to Donax Street, then south to Middle Gulf Drive, then generally west to the Historical Cemetery, then southwest on the Shared Use Path to Algiers Lane, then south to Gulfside City Park. Return via Algiers Lane to Casa Ybel Road, north to Periwinkle Way, then east to the point of tour beginning.

(2) Historical Village and Museum tour route: Tour beginning at 1509 Periwinkle Way, proceeding west on the Shared Use Path to the crosswalk at Sanibel Community Association, cross to the north side of Periwinkle Way, proceeding east to Dunlop Road Shared Use Path, north then west to a point across Dunlop Road from the Historical Village and Museum, then crossing Dunlop Road to the Historical Village and Museum main entrance. Return to the point of tour beginning by reversing the route.

(3) Bailey Road tour route: Tour beginning at 1509 Periwinkle Way, proceeding east on the Shared Use Path to Donax Street, south along Donax Street crossing at Junonia Street, proceeding on Junonia Street to and through Periwinkle Park (private property), exiting onto Periwinkle Way Shared Use Path, proceeding east to Bailey Road crosswalk, north along Bailey Road Shared Use Path and then Bailey Road to northernmost point.

Return of tour via Bailey Road Shared Use Path, crossing Bailey Road and proceeding through the gate opposite the Dunes subdivision entrance, then proceeding east to Chamber of Commerce (privately owned and leased property) parking lot, proceeding north to terminus of Shared Use Path at causeway. Return via Causeway Boulevard Shared Use Path to Chamber of Commerce, then crossing to Bailey Road through the gate opposite Dunes subdivision to Bailey Road, then crossing to Periwinkle Way, and then west to point of tour beginning.

Any or all of the tour routes above may be reversed provided that no additional Shared Use Path areas or roads or road rights-of-way are used.

Except for the routes described above, no Shared Use Path or road or road right-of-way shall be used by or as part of any tour or by any EPAMD rider. For all portions of the areas described above, the Shared Use Path shall be used where available and the road or road right-of-way shall only be used where a Shared Use Path does not exist or is not available.

~~(r) No tour shall be permitted on or along the Periwinkle Shared-Use Path, except on or along that portion of such Shared-Use Path extending West from Lindgren Blvd. to a point directly across from Dixie Beach Road.~~

SECTION 4. City of Sanibel Ordinance No. 05-011, as amended, Section 4, "Limited use of EPAMDs authorized for persons disabled for mobility purposes" shall not be amended and shall continue to read as follows:

SECTION 4. LIMITED USE OF EPAMDs AUTHORIZED FOR PERSONS DISABLED FOR MOBILITY PURPOSES.

(a) An EPAMD may be used and operated on a marked bicycle path, shared use path and/or sidewalk, and at an intersection to cross a road or street even if the road or street has a posted speed limit of more than 25 miles per hour, provided such EPAMD is operated by a person disabled for mobility purposes in accordance with all prerequisites and requirements established in this Ordinance.

(b) Persons who are disabled for mobility purposes; issuance of permit to persons disabled for mobility purposes.

(1) The City of Sanibel Police Department or its designee shall, upon completion of the City application form and receipt of the application fee, issue a permit for use of an electric personal assistive mobility device (also known commercially as a "Segway") by a person who is disabled for mobility purposes as defined in this Section for a period of up to two years in the case of long-term mobility impairment, or a temporary permit not to exceed six months to any person in the case of a temporary mobility impairment. Notwithstanding any other provision of this Ordinance, however, in the event that a disabled person's parking placard

is submitted in lieu of a medical certification as authorized in Section 4(b)(3)(ii), the permit shall expire no later than the state-issued parking placard/placard registration card.

(2) For purposes of this Ordinance, a "person disabled for mobility purposes" shall mean a person who can be certified, and is currently certified, as set forth below, as having any of the following disabilities that render him or her unable to walk 200 feet without stopping to rest as a result of one or more of the following:

(i) Inability to walk without the use of or assistance from a brace, cane, crutch, prosthetic device, or other assistive device, or without the assistance of another person.

(ii) The need to permanently use a wheelchair.

(iii) Restriction by lung disease to the extent that the person's forced (respiratory) expiratory volume for 1 second, when measured by spirometry, is less than 1 liter, or the person's arterial oxygen is less than 60 mm/hg on room air at rest.

(iv) Restriction by cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association.

(v) Severe limitation in the person's ability to walk due to an arthritic, neurological, or orthopedic condition.

(3) Permit application including medical certification; certain documentation accepted in lieu of medical certification

(i) Certification for a person disabled for mobility purposes

(1) A certification for a person disabled for mobility purposes must be provided as part of the permit application from a physician licensed under Chapter 458, Florida Statutes, Chapter 459, Florida Statutes, or Chapter 460, Florida Statutes, by a podiatric physician licensed under Chapter 461, Florida Statutes, by an optometrist licensed under Chapter 463, Florida Statutes, by an advanced registered nurse practitioner licensed under Chapter 464, Florida Statutes, under the protocol of a licensed physician as stated in this subparagraph, by a physician assistant licensed under Chapter 458, Florida Statutes, or Chapter 459, Florida Statutes, or by a similarly licensed physician from another state if the application is accompanied by documentation of the physician's licensure in the other state and a form

signed by the out-of-state physician verifying his or her knowledge of the eligibility guidelines set forth in this Section.

(2) The certification must include, but need not be limited to:

(a) The disability of the applicant; the certifying practitioner's name and address; the practitioner's certification number; the eligibility criteria for the permit; a notice citing the penalty for falsification by either the certifying practitioner or the applicant; and the duration of the condition that entitles the person to the permit.

(b) The signatures of the applicant's physician or other certifying practitioner, the applicant or the applicant's parent or guardian, and the employee of the City of Sanibel who processes the application.

(ii) In lieu of the medical certification required in subsections 3(i)(1) and 3(i)(2) above, an applicant may submit an original State of Florida Disabled Person's Parking Placard and the original Parking Placard Registration Card identifying the permittee as the owner of the Parking Placard, both of which shall be copied by the City representative processing the permit application and attached to the final application form. In lieu of the medical certification required by subsection 3(i)(1) and 3(i)(2), the City of Sanibel will accept such documenation issued by the State of Florida or equivalent documentation issued by any other state or district subject to the laws of the United States. In the event that a disabled person's parking placard is submitted in lieu of a medical certification as authorized in Section 4(b)(3)(ii), the permit shall expire no later than the state-issued parking placard/placard registration card.

(c) An issued permit shall be prominently displayed (so as to be visible from the street) on the front of any EPAMD used by a permittee, or prominently displayed (so as to be visible from the street) on the front of the permitted person while operating the EPAMD within the City of Sanibel.

(d) Any permit issued is non-transferrable and authorizes only the named permittee to use an EPAMD in accordance with the provisions of this Ordinance.

(e) An EPAMD shall not be used or operated at a speed in excess of 8 miles per hour at any location authorized by this Ordinance.

(f) A person disabled for mobility purposes who is operating an EPAMD which prominently displays the required permit may operate an EPAMD on a marked bicycle path, shared use path and/or sidewalk and at an intersection to cross a road or street even if the road or street has a posted speed limit of more than 25 miles per hour, and in City-owned parking lots. An EPAMD permit shall not authorize the use or operation of an EPAMD on any beach, within any City park or on any other City property except as specifically authorized in this Section. An EPAMD permit does not authorize the use of an EPAMD on any private property (or quasi-public property such as a shopping center parking lot) provided, however, a permittee may operate an EPAMD in such private or quasi-public areas with any legally required consent or permission of the private or quasi-public property owner.

(g) Any person who knowingly makes a false or misleading statement or provides false or misleading information in any part of the application process for an EPAMD permit or in the use or display of an issued EPAMD permit commits a violation of this Ordinance and of the Sanibel Code of Ordinances and such violation shall be punishable as provided in Section 1-15 of the Sanibel Code of Ordinances.

SECTION 5. City of Sanibel Ordinance No. 05-011, as amended, Section 5, "Violations" shall not be amended and shall continue to read as follows:

SECTION 5. VIOLATIONS.

(a) A violation of the provisions of this Ordinance shall constitute a violation of this Ordinance and of the Code of Ordinances of the City of Sanibel and shall be punishable in accordance with the penalty provisions of the Sanibel City Code (Section 1-15).

(b) A violation by any tour owner or operator, any employee, agent or subcontractor of such tour owner or operator, any user or customer associated with such tour operation, or any other person, of the provisions of this Ordinance shall constitute a violation of this Ordinance and shall be punishable in accordance with the penalty provisions of the Sanibel City Code (Section 1-15).

(c) It shall be a violation of the provisions of this Ordinance:

(1) For any person to knowingly make a false or misleading statement or provide false or misleading information in any part of an application process for an EPAMD permit; and/or

(2) For any person other than the permittee to use or display an EPAMD permit or to represent that any such person using an EPAMD possesses a City of Sanibel issued permit when such statement is not true; and/or

(3) For a permittee to use an EPAMD without display of an EPAMD permit as required by this Ordinance; and/or

(4) For any permittee to transfer or knowingly allow the use of an EPAMD permit by another person; and/or

(5) For an EPAMD permittee to use an EPAMD or an EPAMD permit in any way or in any location except as specifically authorized by the provisions of this Ordinance; and/or

(6) For any certifying person or entity to certify an individual as a person disabled for mobility purposes who does not meet the criteria set forth in this Ordinance.

SECTION 6. CODIFICATION. This Ordinance shall be deemed to be an amendment to the Code of Ordinances of the City of Sanibel.

SECTION 7. CONFLICT. All ordinances and parts of ordinances in conflict herewith shall be and the same are hereby repealed. If any part of this ordinance conflicts with any other part, it shall be severed and the remainder shall have full force and effect and be liberally construed to effectuate the purpose and intent of the City Council.

SECTION 8. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

SECTION 9. EFFECTIVE DATE. This Ordinance shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Florida, this _____ day of _____, 2013.

AUTHENTICATION:

Kevin Ruane, Mayor

Pamela Smith, City Clerk

APPROVED AS TO FORM: Kenneth B. Cuyler, City Attorney

Date 9/26/13

First Reading: September 17, 2013
Publication Notice: _____
Second Reading: _____

Vote of Council Members:

Ruane _____
Congress _____
Denham _____
Harrity _____
Jennings _____

Date Filed With City Clerk: _____