

ORDINANCE NO. 19-109

AN ORDINANCE AMENDING ARTICLE IV OF CHAPTER 102 OF THE CITY CODE BY REDEFINING PEDAL BUSES AS COMMERCIAL MEGACYCLES AND REVISING CERTAIN REGULATORY PROVISIONS; PROVIDING FOR CONFLICTS, CODIFICATION AND SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 316.2069, Florida Statutes, provides that the governing body of a municipality may authorize the operation of commercial megacycles on its roads or streets if:

(a) prior to authorizing such operation, the municipality first determines that commercial megacycles may safely travel on or cross the public road or street, considering factors including, but not limited to, the speed, volume, and character of motor vehicle traffic using the road or street, and posts appropriate signs to indicate that such operation is allowed; (b) the authorization by the governing body clearly identifies the roads or streets on or across which operation of commercial megacycles is permitted; and (c) the governing body's authorization, at a minimum, requires that a commercial megacycle be (i) operated at all times by its owner or lessee or an employee of the owner or lessee, (ii) operated by a driver at least 18 years of age who possesses a Class E driver license, (iii) occupied by a safety monitor at least 18 years of age, who shall supervise the passengers while the commercial megacycle is in motion, and (iv) insured with minimum commercial general liability insurance of not less than \$1,000,000, prior to and at all times of operation; and

WHEREAS, Article IV of Chapter 102, City Code, provides for permitting and regulation of vehicles described as "pedal buses," and it is deemed to be advisable to redefine pedal buses as commercial megacycles and amend certain other provisions, all for greater consistency with state laws relating to such vehicles.

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF DAYTONA BEACH, FLORIDA:

SECTION 1. The City Commission, having considered the speed, volume, and character of motor vehicle traffic using the roads or streets identified below, as well as other factors relating to public safety, finds that commercial megacycles may safely travel on the following specified roadways, and hereby authorizes the operation of commercial megacycles on the following specified roadways:

Beachside: All roads within the area bordered by Atlantic Avenue (to the East), Peninsula Drive (to the West), Plaza Boulevard (to the North), and Frazar Road (to the South), the Main Street Bridge. Mainland: All roads within the area bordered by Beach Street (to the West), Fairview Avenue / Main Street (to the North) and Orange Avenue (to the South). One Daytona Development: on Victory Circle, Pit Road, Tri-Oval Road, Legends Lane, Checkered Flag Boulevard, Highbanks Boulevard and Daytona Boulevard. The Daytona International Speedway: on NASCAR Drive, to include crossing West International Speedway Boulevard from NASCAR Drive to Daytona Boulevard, and vice versa.

Signs shall be posted in appropriate locations on each of said streets indicating that operation of commercial megacycles is allowed. Such signs shall conform to applicable state and local laws and regulations, if any, relating to size, content and placement of such signs, and shall otherwise be subject to determination and approval of the city traffic engineer.

SECTION 2. Article IV, "Pedal Bus Tour Services for Hire," of Chapter 102 of the City Code of Ordinances, is hereby amended as follows [*deletions are indicated by ~~strike-through~~; additions are underlined*]:

Chapter 102

Article IV. – ~~Pedal Bus Tour Services for hire~~ Commercial Megacycles

Sec. 102-200. - Definitions.

Commercial ~~pedal bus~~ megacycle means a ~~pedal bus used or operated in connection with a commercial enterprise~~ vehicle defined as a “commercial megacycle” in Section 316.003(12), Florida Statutes, or any successor Florida statute.

Commercial ~~pedal bus~~ megacycle driver means an individual who drives or controls steering or braking of a commercial ~~pedal bus~~ megacycle operating on a city street.

Fiscal year means the period beginning on October 1 and ending on September 30 of the following calendar year.

Pedal bus means a wheeled vehicle designed to be propelled solely by passengers via pedaling, with brakes and steering operated by a non-pedaling driver.

Sec. 102-201. - ~~Commercial~~ Operation of pedal buses commercial megacycles restricted; permit required.

(a) ~~The use of city streets for~~ operation of a commercial ~~pedal bus~~ megacycle is restricted to guided tours and sight-seeing within the following areas:

- i. BEACHSIDE - Atlantic Avenue (to the East), Peninsula Drive (to the West), Plaza Boulevard (to the North), and Frazar Road (to the South), the Main Street Bridge, and
- ii. MAINLAND - Beach Street (to the West), Fairview Avenue / Main Street (to the North) and Orange Avenue (to the South), and
- iii. ONE DAYTONA DEVELOPMENT – On Victory Circle, Pit Road, Tri-Oval Road, Legends Lane, Checkered Flag Boulevard, Highbanks Boulevard and Daytona Boulevard, and
- iv. THE DAYTONA INTERNATIONAL SPEEDWAY – On NASCAR Drive, to include crossing West International Speedway Boulevard from NASCAR Drive to Daytona Boulevard, and vice versa.

(b) No person may operate a business involving the use of ~~pedal buses~~ commercial megacycles on the streets of the city without having first obtained a permit in accordance with this article.

(c) A permit issued under this article will be effective only for the fiscal year in which issued, unless suspended or revoked sooner pursuant to this article.

Sec. 102-202. - Permit application; application fee.

(a) Application for a permit to operate a commercial ~~pedal bus~~ megacycle or ~~buses~~ megacycles must be made on forms provided by the city and include such information as the city may require, including the following:

- (1) The name of the applicant.
 - (2) The proposed fixed place of business as required by this article.
 - (3) The make, model, serial number, color, and passenger capacity of each ~~pedal bus~~ megacycle to be used in the business.
 - (4) If the applicant is an individual, his or her residence address.
 - (5) If the applicant is a partnership, the names and residence addresses of each co-partner, and the name of the partnership.
 - (6) If the applicant is a corporation or limited liability company, the names and addresses of all current officers or members.
 - (7) The business trade name under which the ~~pedal-buses~~ megacycles will be operated.
 - (8) The names and addresses of all commercial ~~pedal-bus~~ megacycle drivers who will be driving the applicant's ~~pedal-buses~~ megacycles.
 - (9) The proposed schedule of dates and hours of operation of ~~pedal-buses~~ megacycles.
 - (10) The proposed ~~pedal-bus~~ megacycle route or routes, including all locations proposed for passenger loading and unloading and all temporary stopping locations.
 - (11) A description of the applicant's proposed commercial ~~pedal-bus~~ megacycle driver dress code, including a depiction of the trade name identification or logo to be included on the driver's uniform. The dress code must meet the minimum dress requirements set forth below.
 - (12) The name and address of the person designated by the applicant to receive notices for the applicant, if the applicant is a corporation or partnership.
 - (13) Proof of insurance meeting the requirements of this article.
- (b) The applicant must submit an application fee of \$100.00 for the administrative costs of processing the application. The application fee is nonrefundable.

Sec. 102-203. - Review and approval.

- (a) The city will review the completed application to ensure compliance with this Code and the Land Development Code, including as to place of business.
- (b) No permit will be issued unless the city is able to verify compliance with all applicable regulations, and the applicant has paid the fees required by this article and the appropriate business tax for each ~~pedal-bus~~ megacycle to be placed in service.
- (c) A permit issued under this article will state the approved trade name, the name and address of the person designated to receive notices, the make and model of each ~~pedal bus~~ megacycle authorized to be used by the permittee, the route or routes approved, and the approved dates and hours of operation. The permit will include any additional conditions the city may impose to ensure compliance with the requirements of this article.

(d) Concurrent with the issuance of a permit, the city will issue one decal for each ~~pedal-bus~~ megacycle authorized by the permit. The decals must be placed on the ~~pedal buses~~ megacycles as provided below.

Sec. 102-204. - Permit fees.

The annual permit fee is \$100.00 for each ~~pedal-bus~~ megacycle authorized.

Sec. 102-205. - Trade name required.

No person may conduct a commercial ~~pedal-bus~~ megacycle business within the city unless the person has adopted and uses an approved, uniform trade name for the business, which must be prominently displayed on ~~pedal-buses~~ megacycles operated by or in connection with the business. No trade name will be approved if the name contains language, references, or symbols not suitable for minors, vulgar language, or has the potential to confuse the identity of the permittee with any other business or organization, including governmental organizations.

Sec. 102-206. - Fixed place of business required.

No person may operate a business involving the use of ~~pedal-buses~~ megacycles on the streets within the city unless the person establishes and maintains a fixed headquarters on private property for the operation of the company's business. If located within the city limits, the headquarters must conform to the ordinances of the city and provide adequate conforming off-street parking space for all ~~pedal-buses~~ megacycles stored at the site. No person will move the headquarters except through the approved transfer of the permit to another location.

Sec. 102-207. - General operating conditions.

Every commercial ~~pedal-bus~~ megacycle will be operated in accordance with the following requirements:

(1) Operation will be for the primary purpose of providing guided touring and sight-seeing of the city to ~~pedal-bus~~ megacycle passengers. A ~~pedal-bus~~ megacycle will not be operated to provide taxi service.

(2) ~~A commercial pedal-bus megacycle is prohibited from operating on public streets where the posted speed limit exceeds 35 miles per hour; provided, however, that such vehicles may cross public streets with posted speed limits in excess of 35 miles per hour incidental to travel along permitted public streets.~~

(3 2) A commercial ~~pedal-bus~~ megacycle will operate solely on those city streets included as part of the route approved in the permit issued. A permit may include provisions restricting locations for storage of ~~pedal-buses~~ megacycles, or requiring the use of transport vehicles to and from the assigned routes, when not in use. Under no circumstances will approved routes include the city boardwalk. In addition, the city may temporarily prohibit a commercial ~~pedal-bus~~ megacycle from operating on all or a portion of its assigned route when necessary for public health, safety, or welfare, such as street closings and major event periods.

(4 3) Except for emergencies, passenger loading and unloading will be confined to those locations designated in the permit.

(5 4) Except for emergencies, the temporary stoppage of the ~~pedal-bus~~ megacycle along the route will only be permitted for the purposes outlined in the permit.

(6 5) The ~~pedal-bus~~ megacycle will move to the edge of street pavement before loading or unloading passengers. No commercial ~~pedal-bus~~ megacycle will pause or stop for the sole purpose of narrating a tour.

(7 6) The decal provided by the city as part of the permit will be affixed to the ~~pedal-bus~~ megacycle at all times while the ~~pedal-bus~~ megacycle is in operation within the city.

~~(8) No alcoholic beverages will be allowed onboard the pedal bus.~~

Sec. 102-208. - Vehicle requirements.

Each commercial ~~pedal-bus~~ megacycle must meet the following requirements:

~~(1) A pedal-bus megacycle will have a fixed seating capacity for five or more passengers, a maximum length of 20 feet, a maximum width of six feet six inches, and a maximum height of 12 feet.~~

(2 1) The ~~pedal-bus~~ megacycle must be designed and used as a single unit. Any ~~pedal-bus~~ megacycle that consists of two separate units attached or connected by devices such as a hitch, ball and socket, noose, or chain, is prohibited.

(3 2) The ~~pedal-bus~~ megacycle must be equipped with a pair of battery operated headlights capable of projecting a beam of white light for a distance of 500 feet, and a pair of battery operated taillights each exhibiting a red light visible from a distance of 600 feet to the rear.

(4 3) The ~~pedal-bus~~ megacycle must be designed and used so that steering and braking is under the control of the ~~pedal-bus~~ megacycle driver and is not controlled in any manner by the passengers.

(5 4) The ~~pedal-bus~~ megacycle must be used as originally manufactured. Any ~~pedal-bus~~ megacycle that uses braking, seating, pedals, or steering other than those that are a part of the original manufacture, or that appear to be unsafe, will be prohibited.

~~(6) All pedal buses are deemed to be bicycles as that term is used in Florida Statutes. All pedal buses must comply with any and all regulations of the state applicable to bicycles, including F.S. § 316.2065.~~

(7 5) The ~~pedal-bus~~ megacycle must be painted in the color scheme approved in the permit, and must prominently display the permittee's trade name and telephone number in two-inch lettering or larger.

(8 6) The ~~pedal-bus~~ megacycle must be kept clean and sanitary throughout and maintained in sound operating condition. All safety devices and all other equipment must be kept in such condition as to ensure safe operation.

(9 7) No ~~pedal-bus megacycle~~ will contain advertising inconsistent with this article. Each permittee must submit to the city any proposed advertisement prior to installation of the advertisement on the ~~pedal-bus megacycle~~. The city will approve proposed advertisements only so long as they are in complete conformity with this article. Advertisements will be permitted only on the back or side panels of the ~~pedal-bus megacycle~~. No advertisement will be permitted ~~which references tobacco products or alcoholic beverages, or~~ which contains any profanity or sexual content.

Sec. 102-209. - Requirements for drivers and other personnel.

(a) A commercial megacycle shall be (i) operated at all times by its owner or lessee or an employee of the owner or lessee, (ii) operated by a driver at least 18 years of age who possesses a Class E driver license, and (iii) occupied by a safety monitor at least 18 years of age, who shall supervise the passengers while the commercial megacycle is in motion.

(a b) All commercial ~~pedal-bus megacycle~~ drivers and any other employees or agents of the permittee, while operating or assisting in the operation of a ~~pedal-bus megacycle~~ within the city, must meet the following additional requirements:

(1) ~~Be clean, well groomed, and neat in appearance, and clothed consistent with the permittee's approved dress code. Clothing bearing the name, logo, or other form of identification of any company other than the company whose color scheme is on the vehicle being operated, will not be deemed to be consistent with the approved dress code. All clothing will be maintained in a good, clean condition. Cut-offs, t-shirts, tank tops, body suits, swimwear, or jogging suit as outer garments, and sandals or other type of open footwear, and ball caps are prohibited.~~

(2) Carry and prominently display on his or her person a photo ID including the company trade name, phone number, address, city permit number, and such other information as the city may require.

(3) While the ~~pedal-bus megacycle~~ is in operation within the city limits, the following are prohibited and the driver and any other employees or agents of the permittee aboard shall be responsible for monitoring and enforcing these prohibitions:

a. The number of passengers aboard the ~~pedal-bus megacycle~~ must not exceed the number for which it was designed.

b. No passenger may stand in the vehicle while the vehicle is in motion.

c. Passengers are not permitted to sit anywhere in or on the vehicle, other than in the manufacturer's designed passenger seating.

d. Sitting, sleeping, loitering, or allowing others to sit, sleep, or loiter within the passenger compartment of the vehicle while on the public right-of-way is prohibited.

e. Use of indecent or profane language, or engaging in loud or boisterous talking, shouting, or disorderly conduct, or otherwise acting in a manner as to vex or annoy reasonable persons including passengers is prohibited.

f. Illegal use of controlled substances, consumption of alcoholic beverages, or possession of ~~either~~ controlled substances ~~or alcoholic beverages~~, by drivers or other employees either immediately before or while on duty is prohibited.

(~~b~~ c) Each commercial ~~pedal-bus~~ megacycle driver:

(1) Shall not have had more than three moving violations in the last three years and no more than two moving violations in the last year.

(2) Shall not have been convicted of careless or reckless driving or any violation of Florida Statutes regulating the driving of vehicles while impaired within the past three years.

(c) A commercial ~~pedal-bus~~ megacycle driver is prohibited from:

(1) Operating the ~~pedal-bus~~ megacycle on public rights-of-way within the city other than those specifically permitted herein.

(2) Standing or stopping the vehicle other than in an area designated in the permit as an authorized staging area, except in case of emergencies.

(3) Operating the ~~pedal-bus~~ megacycle so as to impede the flow of pedestrians, except in case of emergencies.

(4) Operating the ~~pedal-bus~~ megacycle in a manner that results in damage to public property.

(5) Creating, or materially contributing to, a parking problem or traffic congestion as a result of operation of the ~~pedal-bus~~ megacycle.

(6) Operating the ~~pedal-bus~~ megacycle in violation of any applicable state traffic laws. Drivers will comply with all applicable state traffic laws, including but not limited to F.S. §§ 316.2065 and 316.2122, respectively, as the same may be amended from time to time.

(7) Obstructing other vehicular traffic by unnecessarily weaving or changing lanes of travel.

(8) Operating, maneuvering, inclining, spinning, tilting, tipping, sloping, or positioning a ~~pedal-bus~~ megacycle in any manner that would unnecessarily place a passenger in any position other than seated upright.

(9) Operating the ~~pedal-bus~~ megacycle when the ~~pedal-bus~~ megacycle does not fully comply with all requirements of this article.

Sec. 102-210. - Liability insurance coverage required.

(a) No permit will be issued unless the applicant obtains liability insurance covering all ~~pedal-bus~~ megacycles used in the business operation. The insurance must be in a form approved by the city's risk manager and must be provided by an insurance company authorized to do business in the State of Florida.

(1) The required policy will be in the penal sum of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury or (including death) and property damage to any one person, \$2,000,000.00 for injury or death to all persons caused by one accident occurrence, and \$100,000.00 for damage to property resulting from any accident. If insurance is provided with a general aggregate, then the aggregate shall be in an amount of no less than \$2,000,000. In addition, the permittee shall maintain liquor liability insurance in the amount of \$1,000,000 per occurrence if alcoholic beverages are served or allowed on the megacycle.

(2) The permittee must obtain and maintain a separate policy of indemnity insurance for each separate ~~pedal-bus~~ megacycle used for permitted services, except where the permittee actually owns or holds legal title to more than such vehicle, in which event the permittee may obtain and maintain a single policy of indemnity insurance covering all ~~pedal-bus~~ megacycles actually owned. This latter provision, however, will not apply to any group of persons separately owning ~~pedal-bus~~ megacycles who may be jointly operating or doing business under a permitted company name.

(3) Each insurance policy must contain a provision obligating the insurance company to notify the city risk manager in writing at least 30 days prior to any amendment, modification, or cancellation of the policy.

(b) The permittee must at all times maintain the liability coverage required in this section.

Sec. 102-211. - Amendment to permit.

(a) If the permittee desires to change the name or address provided for receipt of notices in the permit, add additional ~~pedal-bus~~ megacycles to the ~~buses~~ megacycles listed in the permit, revise the approved routes or approved dress code, or make other material changes to the terms and conditions of the permit, the permittee must apply for an amendment to the permit using such forms and providing such information as the city may require.

(b) At the time of submitting an application for amendment the permittee must pay a non-refundable application fee of \$50.00. If the permittee is seeking to add ~~pedal-bus~~ megacycles to the number previously permitted, the permittee must also pay any increase in the business tax that may be required by chapter 90 of this Code.

(c) In determining whether to approve an application to amend a permit the city will generally use the procedures referenced above for applications for new permits.

Sec. 102-212. - Business tax receipts.

No permit will be issued or continued in operation unless the applicant or permittee, as applicable, has paid the annual business tax required by this Code each year for each ~~pedal-bus~~ megacycle authorized by the permit. All business tax receipts must be renewed before October 1 of the fiscal year as required by this Code for each ~~pedal-bus~~ megacycle covered by the permit.

Sec. 102-213. - Transferability.

(a) A permit may not be sold, assigned, mortgaged, or otherwise transferred, nor may corporate ownership or management be changed, without the approval of the city.

(b) The transferee of a permit must file an application in the same manner as an original application. A copy of the agreement to transfer the permit must be attached to the application.

(c) Upon approval by the city, the permit will be marked "Transfer Permit."

(d) Whenever a permit is issued jointly in the name of two persons and one person dies, the city is authorized to transfer the permit to the survivor alone.

Sec. 102-214. - Surrendering and canceling.

A permittee may voluntarily surrender the permit to the city. The permittee will immediately remove or cause to be removed the decals from all pedal buses covered by the surrendered permit. No permit fees will be refunded.

Sec. 102-215. - Permit suspension and revocation.

(a) The city may suspend or revoke a permit if any of the following occur:

(1) The permittee, or the permittee's principals, officers, employees, or agents, made willful false or misleading statement in an application for permit.

(2) The permittee, or any of his or her drivers or other personnel, have violated any provision of this article.

(3) The permittee has failed to obtain a current business tax receipt for each ~~pedal bus~~ megacycle or failed to maintain and display a valid decal on each ~~pedal bus~~ megacycle.

(4) The permittee has failed to pay any judgment which has been rendered in any court of competent jurisdiction against the permittee or his or her agents because of injuries to persons or property in connection with the operation of a ~~pedal bus~~ megacycle for which the permittee is required to have a decal.

(5) The permittee has failed to take proper precaution to prevent his or her drivers or other employees or agents from violating the terms of this article or any applicable traffic laws or criminal laws.

(6) The permittee, or any of the permittee's principals, officers, drivers, employees, or agents, have violated any ordinances of the city, laws of the State of Florida, or laws of the United States, which reflect adversely on the fitness of the permittee to offer public tours.

(7) Upon bankruptcy of the permittee.

(8) Upon the death of a permittee, or if the permittee is a corporation, limited liability company, or similar organization, upon the dissolution of the organization.

(b) The city will provide written notice to the permittee of an order suspending or revoking a permit. Notice will be valid if sent by U.S. Mail or if hand delivered to the person and address provided for receipt of notices in the permit.

Sec. 102-216. - Appeal procedure.

If the city denies an application for a permit required by this article, or issues an order of suspension or revocation, the applicant or permittee may file a written appeal within ten calendar days of notification. Appeals must be filed with the permit and licensing division administrator who will coordinate an appeal hearing. The appeal will be heard by the city manager whose decision will be final administrative action.

Sec. 102-217. – Civil Penalty for Violations.

Any person violating any provision of this section shall be punished by a civil fine not exceeding \$500.00.

SECTION 3. If any provision of this Ordinance shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatsoever.

SECTION 4. The provisions of this Ordinance shall be codified as a part of the Code of Ordinances of The City of Daytona Beach, Florida, such provisions may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" or similar words may be changed to "Section", "Article", or other appropriate word. The City Clerk is granted liberal authority to codify the provisions of this Ordinance as contemplated herein.

SECTION 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 6. This Ordinance shall take effect immediately upon its adoption.

A handwritten signature in black ink, appearing to read "Derrick L. Henry", written over a horizontal line.

DERRICK L. HENRY
Mayor

ATTEST:

A handwritten signature in black ink, appearing to read "Letitia LaMagna", written over a horizontal line.

LETITIA LAMAGNA
City Clerk

Passed: April 17, 2019
Adopted: May 1, 2019