

**DISTRICT DEPARTMENT OF TRANSPORTATION
NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the District Department of Transportation (Department), pursuant to the authority set forth in sections 3(b), 5(a)(3)(E), and 9j (authorizing the DDOT Director to issue rules to implement its delegated authority) of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02(b), 50-921.04(a)(3)(E), and 50-921.18 (2014 Repl. & 2017 Supp.)) and section 604 of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 10-1141.04 (2014 Repl.)); and Mayor’s Order 2018-075, dated October 2, 2018; hereby gives notice of the intent to adopt the following emergency and proposed rulemaking to amend Chapter 33 (Public Right-Of-Way Occupancy Permits) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (DCMR).

This emergency and proposed rulemaking is necessary to protect the health, safety, and well-being of the District of Columbia as it responds to the COVID-19 global pandemic by allowing for a demand and data-based fleet increase for dockless electric scooters during the public health emergency, and any period of social distancing or other actions required upon the expiration of any COVID-19 related declaration.

The Mayor has determined transportation services are essential, including dockless sharing vehicles. This emergency and proposed rulemaking establishes the threshold metrics that dockless vehicle operating companies with public permits must meet to be offered a fleet increase, as well as the regularity of such increases so that essential trips can be made. Due to the economic impact that COVID-19 has had on businesses and workers in the District of Columbia, particular attention is focused on low-income rider access and use.

The emergency rulemaking was adopted on June 11, 2020, became effective immediately, and will remain in effect for one hundred twenty (120) days, until October 9, 2020, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of his intent to take final rulemaking action to adopt the amendments in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**Chapter 33, PUBLIC RIGHT-OF-WAY OCCUPANCY PERMITS, of Title 24,
DOCKLESS SHARING VEHICLE, of the DCMR is amended as follows:**

Section 3314 is amended by adding new subsections 3314.10 through 3314.20 to read as follows:

- 3314.10 A permit issued under this section shall designate the maximum number of dockless vehicles the permittee may operate in the public right-of-way (the “maximum fleet size”).
- (a) The initial maximum fleet size for a permit for dockless bicycles shall be two thousand five hundred (2,500) bicycles and the initial maximum fleet size for a permit for dockless scooters shall be seven hundred and twenty

(720) scooters to ensure that applicants do not collectively oversaturate the District with dockless vehicles.

- (b) The maximum fleet size under a permit issued under this section for dockless scooters may be increased above the initial maximum fleet size, to up to two thousand five hundred (2,500) dockless scooters under the permit, to accommodate the demand for shared mobility in accordance with subsections 3314.11 through 3314.13.

3314.11

The Director may, upon application of a permittee, grant an increase to the permit's initial maximum fleet size if a permittee demonstrates that the dockless vehicle operating company:

- (a) Made, on average, at least six hundred (600) dockless sharing vehicles available for use in the public right-of-way during each of the seven (7) days prior to the submission of the application;
- (b) Served, on average, at least two hundred (200) trips of at least five (5) minutes in duration during each of the seven (7) days prior to the submission of the application;
- (c) Offers a low-income customer plan to customers with an income level at or below two hundred percent (200%) of the federal poverty guidelines that: (1) does not impose a vehicle deposit requirement; (2) offers an affordable cash payment option; (3) offers unlimited trips under thirty (30) minutes; and (4) is eligible for annual renewal;
- (d) Has at least five (5) customers who participated in the low-income customer plan described in section 3314.11(d) during the seven (7) days prior to the submission of the application;
- (e) Has at least one percent (1%) of trips provided pursuant to section 3314.11(b) taken by customers participating in the low-income customer plan described in section 3314.11(d);
- (f) Offers an essential workers customer plan that offers free or discounted trips to workers at essential businesses as that term is defined in Mayor's Order 2020-053, dated March 24, 2020, for so long as that Order (including any extension) remains in effect;
- (g) Has at least five (5) customers who have participated in the essential workers customer plan described in section 3314.11(g) during the seven (7) days prior to the submission of the application; and
- (h) Has a valid Public Right-of-Way Occupancy Permit issued pursuant to this section that:

- (1) Was issued at least seven (7) days prior to the submission of the application;
- (2) Has not expired, and will not expire within seven (7) days of the Director's grant of an increase in the maximum fleet size; and
- (3) Has not been suspended or revoked by the Director.

3314.12 A dockless vehicle operating company that meets the eligibility criteria in section 3314.11 may submit an application to the Director requesting an increase to the permit's maximum fleet size. The application shall be in writing and shall:

- (a) Include information sufficient to establish that the dockless vehicle operating company meets the eligibility criteria in section 3314.11;
- (b) Include information that establishes the dockless vehicle operating company's performance with respect to the criteria in section 3314.13;
- (c) Specify the number of dockless sharing vehicles that the dockless vehicle operating company is requesting permission to make available in the public right-of-way, and by what date such permission is requested to be granted; and
- (d) Be submitted no later than 12:00 noon on the Monday following the seven (7)-day period being evaluated to determine eligibility for the fleet increase.

3314.13 When making a determination whether to grant an increase in a maximum fleet size pursuant to section 3314.11, the Director shall use the following method:

- (a) Within two (2) weeks of receiving an application for an increase in maximum fleet size, the Director shall notify the dockless vehicle operating company that submitted the application of the Director's determination via email and shall notify the public via posting information on the Department's website.
- (b) A permitted increase in maximum fleet size shall take effect immediately upon the Director's notification of the applicant, unless otherwise specified by the Director.
- (c) The Director shall grant an increase in maximum fleet size of no more than two hundred (200) dockless sharing vehicles to a dockless vehicle operating company meeting the eligibility criteria in section 3314.11 who submits an application that meets the requirements of 3314.12.

- (d) In granting an increase in maximum fleet size pursuant to section 3314.13(d), the Director shall consider:
 - (1) The number of dockless sharing vehicles requested by the applicant;
 - (2) The impact of deploying additional dockless sharing vehicles on the District's public right-of-way and any other impacts on public health, safety, and welfare; and
 - (3) Performance criteria as specified in section 3314.13(e) through 3314.13(h).

- (e) A dockless vehicle operating company may be granted an increase of up to fifty (50) vehicles if its petition satisfies section 3314.12, the Director determines that the increase will not adversely affect the District's public space or any other factor identified in 3314.3(d), and, for the seven (7)-day period prior to the petition, the petition demonstrates any of the following:
 - (1) The percentage of trips meeting the criteria of section 3314.11(f) was between 1%-5.99% of all trips;
 - (2) The percentage of trips meeting the criteria of section 3314.11(g) that took place was between 1%-5.99% of all trips; or
 - (3) The combined percentage of trips meeting the criteria of section 3314.11(f) or 3314.11(g) that took place was a total of at least 4% of all trips.

- (f) A dockless vehicle operating company may be granted an increase of up to one hundred (100) vehicles if its petition satisfies section 3314.12, the Director determines that the increase will not adversely affect the District's public space or any other factor identified in 3314.3(d), and for the seven (7)-day period prior to the petition, the petition demonstrates any of the following:
 - (1) The percentage of trips meeting the criteria of section 3314.11(f) that took place was between 6%-7.99% of all trips;
 - (2) The percentage of trips meeting the criteria of section 3314.11(g) that took place was between 6%-7.99% of all trips; or
 - (3) The combined percentage of trips meeting the criteria of section 3314.11(f) or 3314.11(g) that took place was a total of at least 12% of all trips.

- (g) A dockless vehicle operating company may be granted an increase of up to one hundred and fifty (150) vehicles if its petition satisfies section 3314.12, the Director determines that the increase will not adversely affect public space or any of the other factor identified in 3314.13(d), and for the seven (7)-day period prior to the petition, the petition demonstrates any of the following:
 - (1) The percentage of trips meeting the criteria of section 3314.11(f) that took place was between 8%-10.99%;
 - (2) The percentage of trips meeting the criteria of section 3314.11(g) that took place was between 8%-10.99%; or
 - (3) The combined percentage of trips meeting the criteria of section 3314.11(f) or 3314.11(g) that took place was a total of at least 16% of all trips.

- (h) A dockless vehicle operating company may be granted an increase of up to two hundred (200) vehicles if its petition satisfies section 3314.12, the Director determines that the increase will not adversely affect the public space or any other factor identified in section 3314.13(d), and for the seven (7)-day period prior to the petition, the petition demonstrates any of the following:
 - (1) The percentage of trips meeting the criteria of section 3314.11(f) that took place was at least 11%;
 - (2) The percentage of trips meeting the criteria of section 3314.11(g) that took place was at least 11%; or
 - (3) The combined percentage of trips meeting the criteria of section 3314.11(f) or 3314.11(g) that took place was a total of at least 22% of all trips.

3314.14 The Director shall not authorize a dockless vehicle operating company to operate more than two thousand, five hundred (2,500) dockless electric scooters before January 2022.

3314.15 The Director may defer the payment deadline for all fees imposed under section 3314 that would otherwise be due between March 1, 2020 and ~~October 9, 2020~~, 2020, if the Director determines that the deferral is appropriate due to the closure of the office, or reduction in services, of the Department due to COVID-19. Such deferral shall be until no later than October 30, 2020, unless fees are waived pursuant to section 3314.16.

- 3314.16 The Director may waive per-vehicle fees that would otherwise be due between March 1, 2020 and October 9, 2020.
- 3314.17 To be eligible for a waiver of fees under section 3314.16, a dockless vehicle operating company shall demonstrate, no later than October 30, 2020, that at least one thousand (1,000) trips of at least five (5) minutes that took place between April 27, 2020 and October 9, 2020 were taken by a person who participated in the company's low-income customer plan, as described in section 3314.11(d), and that either:
- (a) At least ten percent (10%) of all trips during this period were taken by a person who participated in the company's low-income customer plan, as described in section 3314.11(d); or
 - (b) At least five hundred (500) trips during this period were taken under an essential worker customer plan, as defined in section 3314.11(g).
- 3314.18 All data submitted by dockless vehicle operating companies pursuant to section 3314.5(h) shall be treated as "Level 3, Confidential" information, as that term is defined in Mayor's Order 2017-115, issued April 27, 2017 (District of Columbia Data Policy).

All persons interested in commenting on the subject matter in this proposed rulemaking may file comments in writing, not later than thirty (30) days after the publication of this notice in the *D.C. Register*, with Dan Emerine, Manager, Policy and Legislative Affairs Division, Office of the Director, District Department of Transportation, 55 M Street, S.E., 7th Floor, Washington D.C. 20003. An interested person may also send comments electronically to publicspace.policy@dc.gov. Copies of this proposed rulemaking are available, at cost, by writing to the above address, and are also available electronically, at no cost, on the District Department of Transportation's website at www.ddot.dc.gov.