

# DRAFT GUIDELINES FOR A SOUTH BAY SHARED MOBILITY PILOT PROGRAM

DRAFT (03/11/2019)

## 1. PURPOSE

This Program regulates Shared Mobility Devices, defined below, in the City of \_\_\_\_\_. The operation of a Shared Mobility Device (SMD) is a privilege, not a right. For a company to offer SMDs for commercial purposes in \_\_\_\_\_, the company owning or offering them must obtain a Program permit. Companies must certify to the City of \_\_\_\_\_ that all SMDs have met all applicable certifications and operating requirements. A failure to comply with the applicable City Code provisions, this Program, and all permit conditions is subject to an assessment of civil penalties and suspension or revocation of the company's permit by the City Manager or designee.

The City of \_\_\_\_\_ is planning a 12-month pilot for the regulation of Shared Mobility Devices beginning in 2019 ("the Pilot Period"). The Pilot Period will help the City determine whether SMDs can support the City's policy goals. While these Program requirements may remain in effect beyond the end of the Pilot Period, the City only intends to provide permits to companies for the Pilot Period. If a permanent permitting program is implemented, these requirements will be updated accordingly.

- a) For the duration of the Pilot Period, the City Manager or designee may issue multiple, independent permits and will determine the number of overall permitted SMDs and permitted SMDs per Permittee throughout the Pilot Period. Throughout the Pilot Period, Permittees will be expected to report on and mitigate impacts as described in this Program. The City Manager or designee may update the Program requirements or terminate the Program at his discretion at any time and shall give adequate notice of such updates.
- b) Policy Goals. SMDs should contribute to:
  - i. Reducing private motor vehicle use and congestion.
  - ii. Preventing fatalities and injuries on the transportation system.
  - iii. Expanding access for underserved communities.
  - iv. Reducing air pollution, including climate pollution.
- c) The provisions in this Program, but do not replace, any provisions in \_\_\_\_\_ Municipal Code. In case of a conflict, the Municipal Code will prevail over this Program.
- c) SMD fees, surcharges and penalties will be placed in a New Mobility Account to be used by the City for administration and enforcement; evaluation; safe travel infrastructure; and expanded and affordable access.

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## 2. AUTHORITY

These rules are authorized by, and implement, in relevant part, the following the Federal Law, State Law, and Municipal Code provisions, as may be amended from time to time:

- a) Under the California Constitution, a city has both the power and duty to keep its streets and other public property open and available for the purpose to which they are dedicated (*Tobe v. City of Santa Ana* (1995) 9 Cal. 4<sup>th</sup> 1069).
- b) Further, the City council may prohibit and prevent encroachments on, or obstructions in or to, any sidewalk, street, alley, lane, court, park, or other public place, and may provide for the removal of the encroachment or obstruction (Gov. Code, § 38775)
- c) Further, the City has obligations under the federal Americans with Disabilities Act to ensure that the City's sidewalks remain generally accessible to and usable by individuals with disabilities (*City of Sacramento v. Badern* (2003) 537 U.S. 1231).
- d) Municipal Code § 9-2-1 requires a permit for any work or encroachment in the public right-of-way.

## 3. DEFINITIONS

"Abandon" shall mean leaving an item unattended for 72 hours or longer.

"ADA Ramp" means a combined ramp and landing to accomplish a change in level at a curb in order to provide access to pedestrians using wheelchairs.

"Applicant" means an entity that formally applies for the Shared Mobility Device Pilot Program permit but has yet to obtain a permit.

"Charger" means an employee, agent or contractor of the Operator or Permittee that 1) collects SMDs daily for the purpose of inspecting and charging their batteries, and 2) redeploys the SMDs at designated locations according to the approved deployment plan.

"City" means the City of \_\_\_\_\_.

"Crosswalk" means any Crosswalks either "marked" or "unmarked". A "marked crosswalk" is any portion of a roadway at an intersection or elsewhere that is

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distinctly indicated for pedestrian crossing by lines or other markings on the surface of the roadway. An “unmarked crosswalk” is the imagined extension of a sidewalk or shoulder across a street at an intersection. An unmarked crosswalk exists at all intersections unless specifically marked otherwise.

“Customer” means a person or organization that buys a mobility service from an Operator.

“Director” shall mean the Director of Planning and Building Safety or designee.

“Landscaping/Furnishings Zone” means a linear portion of the Sidewalk Corridor, adjacent to the curb that contains elements such as street trees, signal poles, street lights, bicycle racks or other street furniture. This area does not include the width of the curb zone that can be as wide as 6 inches.

“Operator” shall mean any person or business entity selected by the City to participate in the Program pursuant to these rules.

“Pedestrian Plaza” means pedestrian areas designated by the City.

“Permittee” means the person or business entity that is the named holder of a permit issued pursuant to this Program.

“Program” means the Shared Mobility Device Pilot Program within the City

“Public Area” shall mean any outdoor area that is open to the public for public use, whether owned or operated by the City or a private party.

“Public Park” means and includes public parks, public playgrounds, public recreation centers or areas and other public areas created, established, designated, maintained, provided or set aside by the City for the purposes of public rest, play, recreation, enjoyment or assembly, and shall include all buildings and structures located thereon or therein.

“Public Right-of-Way” shall mean any public alley, parkway, public transportation path, roadway, sidewalk, or street that is owned, granted by easement, operated, or controlled by the City.

“Service Area” shall mean the Public Right-of-Way within the City’s boundaries, with the exception of areas the City specifically restricts or adds.

“Shared Electric Assist Bicycle (Shared E-Assist Bike)” means a “Class 1 or “Class 2 electric bicycle as defined in CVC Section 312.5.

“Shared Electric Scooter (Shared Scooter)” means a vehicle that:

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1. Is designed to be operated on the ground with a wheel diameter no greater than 16 inches;
2. Has handlebars and a foot support or seat for the User;
3. Can be propelled by an electric motor or human propulsion; and
4. Is made available for rental or public shared use in the public Right-of-Way by an Applicant or Permittee.

“Shared Mobility Device (SMD)” shall mean any transportation device by which a person can be propelled, moved or drawn, that is displayed, offered or placed for rent in any Public Area or Public Right-of-Way. This includes Shared Bicycles, Shared Electric Assist Bicycles (Shared E-Assist Bikes), Shared Electric Scooters, and similar devices as determined by the City. This definition excludes car share vehicles, taxicabs, and similar motor vehicles.

“Shared Mobility Parking Zone (SMP Zone)”, also called a “Drop Zone,” is a designated area in the approved deployment plan and parking plan where an Operator or Permittee may deploy and where Users may park SMDs. The City may designate SMP Zones in the Public Right-of-Way, Public Parks, other public property, and on private property, and require their physical demarcation through signage, pavement markings, charging stations and/or bike racks.

“Sidewalk Corridor” means a passageway typically located within the Public Right-of-Way between the face of the curb or roadway edge and the property line. The Sidewalk Corridor contains two distinct zones: the Furnishings/Landscaping Zone and the Through Pedestrian Zone.

“Street” means all that area dedicated to public use for public street purposes including, but not be limited to, roadways, parkways, alleys, and excluding the Sidewalks Corridor.

“Through Pedestrian Zone” means the minimum clear area on each Sidewalk Corridor intended exclusively for pedestrian use. The minimum width of the Through Pedestrian Zone is defined in this Program as a minimum of 4 feet on Sidewalk Corridors at least 8 feet in width and a minimum of 6 feet on Sidewalk Corridors at least 10 feet in width.)

“User” means the person who is in actual physical control of a SMD.

#### **4. DEPLOYMENT**

Applicant shall provide a Deployment Plan for each type of SMD to be deployed to the City for review and approval before permit issuance.

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### **a) Deployment Plan.** The plan must include at a minimum the following:

- i. The number and type of SMDs to be deployed initially.
- ii. A map of SMD deployment locations, including initial and subsequent daily deployments.
- iii. The number of SMDs to be deployed at each deployment location.
- iv. A map of the Service Area, including any restricted or prohibited operational/deployment zones.
- v. A description of the phasing/schedule of the initial and subsequent deployments.
- vi. The number of employees and contractors involved in deploying and retrieving SMDs (Chargers).
- vii. A description of policies and training of employees and contractors involved in deploying and retrieving SMDs. These policies and training must cover at a minimum the following:
  - Observance of vehicle code, traffic laws, and parking restrictions
  - Observance of City noise and nuisance regulations
  - Respect for private property
  - A schedule/hours of SMD deployment and retrieval operations.
  - Professional conduct with other employees/contractors and the public
  - Enforcement of the above policies/training
- viii. A description of the SMD transportation method to the deployment locations.
- ix. A schedule/hours of SMD deployment and retrieval operations.

### **b) Deployment rules**

- i. Parking. SMDs must be deployed in compliance with the parking requirements in this Program.
- ii. Service Area. SMDs must be deployed within the approved Service Area, excluding any restricted areas.
- iii. Daily Redeployment. The Operator must make a reasonable effort to redeploy the number of SMDs as per the approved Permit to the designated deployment locations on a daily basis. This includes SMDs that leave the City limits/Service Area during operations.
- iv. An Operator shall repair any inoperable or unsafe SMD before returning it into service.
- v. The Operator must accommodate City requests for surges or reductions in deployment during certain seasons and/or events. The City shall notify and coordinate with the Operator at least two weeks in advance.
- vi. Response Times. Operator shall respond to requests for rebalancing, reports of incorrectly parked SMDs, or reports of unsafe/inoperable SMDs

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by relocating, re-parking, or removing SMDs after receiving notice from the City, User, or the general public based on the following times:

- 7 am to 10 pm daily - within one hour of receiving notice
- all other times - no later than 8 am of the next service day

**c) Notifications and changes to the deployment plan.** The deployment plan is anticipated to change dynamically over the course of the pilot program. This subsection identifies the process to make such changes and the required notifications.

- i. At the time of permit issuance, the City shall designate the date of the initial deployment.
- ii. The City reserves the right to make changes to the deployment plan, including, but not limited to, the Service Area, deployment locations, and fleet size, at its discretion. It shall notify the Operator in writing and the Operator must implement the changes within one week, unless the City grants additional time for the Operator to comply.
- iii. The Operator may request changes to the deployment plan in writing by submitting an updated deployment plan. The City shall promptly review and approve the requests at its discretion.
- iv. The Operator may not increase the size of the deployed SMD fleet without notifying and receiving prior approval from the City.

**d) Evaluation of the deployment plan.** The City evaluation of the deployment plan will include, but not be limited to, the following factors:

- i. How the deployment covers the entire service area
- ii. How the deployment covers high priority areas designated by the City (high employment areas, transit areas, disadvantaged communities, etc.)
- iii. The extent to which deployment on sidewalks is avoided and deployment on private properties is emphasized.
- iv. The number of employees and contractors involved in deployment and retrieval.
- v. The scope of the policies and training of employees and contractors involved in deployment and retrieval operations.
- vi. How the schedule/hours of deployment and retrieval operations affect rush hour traffic and respect noise and nuisance regulations, particularly in residential areas.

## **5. PARKING**

Applicant shall provide a "Parking Plan" to the City for review and approval.

**a) Parking Plan.** The plan must include, but not be limited to, the following:

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- i. A map of the permitted parking locations for SMDs (such as the designated SMP zones or the “Landscaping/Furnishings Zone”);
- ii. The SMD capacity of each parking location;
- iii. Methods to incentivize Users to park safely and correctly in accordance with the Program requirements; and
- iv. The Parking Plan must comply with the General Parking Requirements and Parking Locations below.

### **b) General Parking Requirements.**

- i. SMDs shall be upright when parked;
- ii. SMDs shall not be parked in landscaped areas in the Public Right-of-Way. They may only be parked on hard surfaces (concrete, asphalt, etc.)
- iii. SMDs shall not be parked in such a manner as to:
  - Violate California Vehicle Code section 21235(i) or the City of \_\_\_\_\_ Municipal Code;
  - Impede the regular flow of travel in the Public Right-of-Way or the clearance on sidewalk needed for Americans with Disabilities Act (ADA) compliance;
  - Be parked at the corners of sidewalks nor at any crosswalk, curb ramp, or within any feature that serves as an accessible element such as landings, areas of refuge, detectable warning surfaces, or any other physical feature that may be required for mobility;
  - Impede or interfere with the access to parked vehicles, disabled parking zones, or any other accessible route that would otherwise create a barrier to accessibility;
  - Impede or interfere with the access to parklets, loading zones, or red curb zones;
  - Block or interfere with reasonable use of any fire hydrant, call box, or other emergency facility; or utility pole or box; traffic signal controller cabinet; news rack, or parking meters/pay stations;
  - Impede or interfere with the reasonable use of any commercial window display or access to/from any building or driveways;
  - Be parked on private property except as permitted by the property owner and the City’s rules and regulations; and
  - Block or interfere with the use of the following transit-related user infrastructure, such as: transit signs, bus stops, benches, shelters, passenger waiting areas, bus layover and staging zones, etc.

### **c) Private Property Locations:**

- i. It is the City’s goal to maximize SMD parking locations on private property. The City encourages the Operator to identify SMD parking locations on private property as part of its Parking and Deployment Plans. Operator



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must coordinate with the City and private property owners during permit process.

To the extent Operator desires to deploy or park SMDs on private property, the Operator must first obtain the right to do so from the property owner and shall communicate this right to Users through signage approved by the respective entity and/or through a mobile phone or web application.

### **d) City Property Locations:**

- i. Unless specifically stated on the permit and/or unless specific SMP Zones are designated, parking on City property (e.g. parks, plazas, parking lots, the Civic Center, or transit stations) outside the public right-of-way is prohibited.
- ii. The City may designate specific SMP Zones on public property where Operator's SMDs must be parked.
- iii. If the City authorizes SMD parking on City property, Operator shall communicate this right to Users through physical signage approved by the City and/or through a mobile phone or web application.

### **e) Sidewalk Corridor Locations:**

SMD parking is permitted on Sidewalk Corridors that are at least 8 feet in width.

- i. On Sidewalk Corridors at least 10 feet in width, SMDs may be parked within the Landscaping/Furnishings Zone provided that:
  - An 18-inch-wide clear space is maintained from the curb face
  - A 6-foot-wide clear Pedestrian Through Zone is maintained and
  - A 15-foot minimum distance is maintained from street corners and pedestrian ramps (from Begin Curve or End Curve points)
- ii. On Sidewalk Corridors at least 8 feet, but less than 10 feet, in width, SMDs may be parked within the Landscaping/Furnishings Zone provided that:
  - An 18-inch-wide clear space is maintained from the curb face
  - A 4-foot wide clear Pedestrian Through Zone is maintained and
  - A 15-foot minimum distance is maintained from street corners and pedestrian ramps (from Begin Curve or End Curve points).
- iii. SMD parking is prohibited on Sidewalk Corridors less than 8 feet wide.
- iv. The City reserves the right to entirely prohibit parking in the Landscaping/Furnishings Zone and instead designate specific SMP Zones.
- v. The City may designate specific SMP Zones where SMDs may be deployed or parked. SMP Zones may be distributed on individual blocks in the City (e.g. one on each block), or on specific streets;
- vi. The City reserves the right to prohibit SMD parking in large sections of the City beyond individual blocks or streets. The permitted and prohibited parking areas shall be identified in the approved Parking Plan. City and Operator will work in good faith to determine the permitted and prohibited



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parking areas and any SMP Zones so as to be convenient for public access and consistent with the purpose of the Program.

- vii. Permitted outdoor dining areas and/or retail display areas in the Sidewalk Corridor pursuant to properly issued encroachment permits shall take precedence over SMD parking locations and/or SMP Zones, to maintain the minimum required Through Pedestrian Zone.
- viii. Operator must abide and reasonably ensure that Users abide by the general parking requirements in this Program through User education about applicable regulations.

### **f) On-street Locations**

- i. Unless authorized by the City, Operator and Users shall not deploy or park SMDs on the street.
- ii. The City in its sole discretion may designate SMP Zones on the street.
- iii. If the City authorizes SMD parking on the street, Operator shall communicate this right to Users through physical signage approved by the respective entity and/or through a mobile phone or web application.
- iv. Operators shall ensure their SMDs are not parked in a way that impedes the regular flow of vehicular travel in the Public Right-of-Way.

## **6. FLEET SIZE AND MIX**

- a)** Applicant must indicate the proposed initial and maximum total fleet size and SMD mix (bicycles, E-assist bikes, scooters, etc.) on the Program application.
- b)** The City shall set the fleet minimum and maximum limits, the preferred mix of SMDs, and shall indicate them on the approved Permit.
- c)** Additional SMDs may be added to the fleet at the discretion of the City Manager or designee. Changes to the size of the fleet may be based on, but not limited to, ridership data, such as the average rides per day per device. The applicant shall provide regular reports indicating fleet usage levels and other data requested by the City (see section 10 regarding Data requirements).
- d)** Fees. If any changes in fleet size are approved, Operators will submit a permit addendum with revised fleet size and SMD mix and pay the required applicable fees per SMD.

## **7. EDUCATION**

- a) Education.** Operator must submit a General Public and User Education Plan ("Education Plan") to the City for review and approval before the City issues a permit. The Education Plan must include, but not be limited to, the following:

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- i. How the Operator will educate Users about the approved Service Area and any restricted areas.
- ii. How the Operator will educate Users about riding safety, roadway regulations, and local rules upon initial sign-up. This may include, but not be limited to, posting safety information on each SMD, on Operator's phone app and its website.
- iii. How the Operator will educate Users about riding safety, roadway regulations and local rules before a User begins a ride, such as displays of safety messages on Operator's phone app.
- iv. How the Operator will regularly educate Users about riding etiquette and parking rules. This may include phone notifications, education events, helmet giveaways, etc.
- v. How the Operator will educate to the general public regarding riding safety, roadway regulations, local rules, and ways the public can communicate with the Operator to offer suggestions and report problems.
- vi. How the Operator will offer English and Spanish communications as part of its outreach and education efforts.

### **8. ENFORCEMENT**

#### **a) Enforcement**

- i. Applicable Regulations. The City will enforce the California Vehicle Code, the Municipal Code, Program requirements and Permit conditions.
- ii. Enforcement Approach. The enforcement program will include an escalated enforcement strategy that in most cases will begin with a written warning/advisement to comply without being subjected to fines/penalties. In some cases, depending on the nature of the violation, enforcement could begin with the imposition of fines/penalties.
- iii. Ongoing Permit Review. The City will, on an ongoing basis, compile and review records of warnings, citations, accidents, complaints, calls for service, and other records related to this Program. Based on these records and data submitted by the Operator the City will evaluate Operator performance, impacts on City staffing and costs, and safety impacts on the community before continuing or renewing a Program Permit.
- iv. Repeated violations. Repeated violations of any of the operations, parking, education, or other requirements can be cause for permit revocation or program termination.
- v. Enforcement measures. Enforcement measures include, but are not limited to:
  - Written warnings and advisements to Operator and/or Users;

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- Citations. Authorized City personnel may issue citations to Users for violations of applicable regulations, such as riding on the sidewalk, not obeying stop signs, etc.;
  - Penalties/fines to Operators. Penalties/fines may be applied per violation in accordance with permit conditions;
  - Relocation. If an SMD is parked in violation of the parking requirements in this program, authorized City personnel may relocate it and notify Operator;
  - Impounding. If the Operator does not relocate, re-park, or remove an SMD within the timeframes specified in the approved Deployment Plan, or any SMD is parked in one location for more than 72 hours without moving, City crews may remove it and take it to a City facility for storage at the expense of the Operator;
  - Private Property Removal. Upon request, the City may, relocate or impound SMDs parked on private property improperly and/or without permission.
  - Permit suspension or revocation. Grounds for suspending or revoking permits include, but are not necessarily limited to:
    - Failure to meet the terms and conditions set forth in the Program permit;
    - Failure to put SMDs into service within 30 days after the City issues a permit or the launch window identified in the permit;
    - Failure to share data as agreed and outlined in this permit;
    - Failure to remove SMDs incorrectly parked within one hour; and
    - Failure to move SMDs located outside of the Service Area or located in prohibited or restricted areas; and
  - Program termination. The City may terminate permit without cause at any time by written notice to Operator. Operator will have 30 days to remove fleet from the City. Operator shall remit any outstanding fees to the City no later than 60 days from the written notice of termination or City shall deduct outstanding fees from Operators' performance bond.
- vi. Waiver. The City's decision not to insist upon strict performance by the Operator of any provision of the permit in every one or more instances shall not constitute a waiver of such provision by the City, nor shall, as a result, the City relinquish any rights that it may have under the terms of the pilot program/the permit.
- vii. Program Modifications. The City may modify any elements of the Program and Permit conditions at its discretion. Operators will immediately be notified of Program modifications. Operators must comply with Program modifications within one week, unless additional time to comply is granted by the City.

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- viii. Forfeiture of fees. If the City terminates a Program Permit, the applicant shall forfeit all Permit related fees and the City shall not issue any refund on a pro-rated or other basis.
- ix. User responsibility. Parking and operating violations of SMDs assessed against an Operator may be passed along to the responsible User.

### **9. SAFETY**

- a) Operator SMDs must meet all applicable Federal and State regulations, including lighting during operation in darkness.
- b) E-assist bikes shall be “Class 1” or “Class 2” as defined in CVC Section 312.5.
- c) E-assist bikes and E-scooters shall have a maximum speed of 15 mph.
- d) Helmets. Operator must encourage helmet use and offer free helmets to Users as part of its Education Plan and/or upon initial sign-up.
- e) Rider age and driver’s license. Operator must ensure that SMD Users must be at least 18 years of age and possess a valid driver’s license.
- f) E-assist systems shall have visible warning language including:
  - i. Helmet use is encouraged while riding a bicycle;
  - ii. Riders shall yield to pedestrians; and
  - iii. When riding on-street, follow the rules of the road, and City’s rules/regulations
- g) E-scooter systems shall have visible warning language including:
  - i. Helmet use is encouraged while riding an electric scooter;
  - ii. Riders shall yield to pedestrians;
  - iii. When riding on-street, follow the rules of the road, and City’s rules; and
  - iv. Riding on sidewalk is prohibited, except in order to access a permitted parking area.
- h) Operators must abide by the safety education requirements of the Program permit.

### **10. OPERATIONS AND MAINTENANCE**

#### **a) Specifications and standards**

- i. Operator must submit manufacturer’s Vehicle specifications to the City;
- ii. All SMDs shall have operational brakes, head light, tail and side reflector, and security hardware;
- iii. Operator shall certify that all SMDs in the fleet meet the standards outlined in the California Vehicle Code as applicable;
- iv. All motorized SMDs shall be propelled by electric motors/batteries. No combustion engines are allowed;
- v. All SMDs shall be equipped with GPS;
- vi. All SMD batteries shall be UL certified;
- vii. SMD Identification. All SMDs must have a unique identifier that is readily visible to the User or the public;

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- viii. All SMDs must be equipped with a locking mechanism to lock to a fixed object, or smart technology equipment to prevent theft;
- ix. All SMDs must have technology identifying that the SMD is upright and properly parked;
- x. The City reserves the right to require Operators to include a mechanism to lock SMDs to a fixed object at any time; and
- xi. Marketing/Advertising on SMDs. Third-party advertising on the SMDs is prohibited.

### **b) Communication**

- i. Operator must attend an on-site meeting with City staff to discuss the program and demonstrate the SMDs to be deployed before the City issues a permit;
- ii. Operator must provide City staff a list of key personnel that will be doing work under a Program permit and 24-hour contact information for the primary contact person (project manager) for City emergency removal requests and other Program related issues;
- iii. Operator must provide mechanisms for Users and members of the public to report safety concerns, malfunctions, maintenance issues, illegal parking, complaints, to ask questions, or make relocation requests, including, but not limited to, a toll-free customer service phone number, an email address, and a mobile phone or web application;
- iv. All SMDs shall have the toll-free 24/7 customer service phone number and e-mail address, for the Users or members of the public to use; and
- v. Operator shall provide a staffed operations center in or within a reasonable distance from the City to allow for prompt response to safety concerns, malfunctions, rebalancing, illegal parking, and other complaints.

### **c) Maintenance**

Operator must submit a Maintenance Plan to the City for review and approval. The Maintenance Plan shall include, but not be limited to, the following:

- i. Regular Maintenance. Operator shall perform regular, at a minimum monthly, maintenance on their SMDs.
- ii. Maintenance Schedule. Operator must submit a maintenance schedule including the required monthly maintenance to the City for review and approval.
- iii. Maintenance logs. Operator must maintain and make its maintenance logs and checklists available to the City upon request.
- iv. SMD storage/inspections. Operator shall retrieve and remove all of its SMDs from service every evening for inspection and to reduce street clutter.

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- d) Recharging Plan.** Applicants must submit a Recharging Plan for Shared Scooters and Shared E-Assist Bikes to the City for review and approval. The plan shall include, but not be limited to, the following:
- i.** An explanation of how Operator knows when an SMD needs to be recharged.
  - ii.** Whether independent contractors will be used to charge scooters.
  - iii.** The incentive structure for charging SMDs and any information provided to contractors, or employees concerning safe charging practices.
  - iv.** A description of the charging process and/or procedure.
  - v.** A description of policies and procedures the operator will use to minimize potential negative impacts (such as parking, noise, traffic, pollution, etc.), associated with practices related to collecting, redistributing, and recharging scooters.
- e) Hours of operation.** Applicants must indicate the proposed hours of operation (including any temporary or seasonal fluctuations) on their Program permit application for City review and approval. The City may at its discretion change the permitted the hours of operation and provide Operator adequate notice.

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### 11. DATA

Applicants must submit a Data Sharing Plan for review and approval by the City. The Data Sharing Plan shall include, but not be limited to, the following:

- a) Preferred Format/Specification. Operator must provide data for all device types to the City, and partners, in the General Bikeshare Feed Specification (GBFS), Mobility Data Specification (MDS) formats, or some other format as specified by the City, each through an application program interface (API).
- b) Application program interface. Operator must have an (API) or other automated mechanism that allows their services to be integrated into third-party mobility applications.
- c) GBFS must be made available to the public through the permittee's website. The MDS feed must be available to contracted city partners for the explicit purpose of program management. As such, these feeds must be consumable by third-party software.
- d) Dashboard. Permittee must maintain a dashboard for the City to use for program monitoring and compliance that displays MDS data.
- e) Data retention. Operator shall retain and make data available for the duration of the Program.
- f) Non-GBFS data consumed through the API by City specified third-party software providers shall not be publicly available without consent from the permittee.
- g) Format/Specification updates. The City may, in its sole discretion, release subsequent versions and/or updated versions of the Specification and require operators to use the most current version by releasing an automatic update and/or disabling support for the previous version.
- h) Monthly reports. Operator will additionally provide the City with monthly aggregated reports on system use, compliance, and other aspects of operations (including parking complaints, crashes, damaged or lost SMDs). In addition to report format, the aggregate data must also be provided in spreadsheet or comma-delimited format.
- i) In order to accurately convey scooter location, use patterns, and other information, all scooters shall ping, at a minimum every 90 seconds while in use. In order to ensure that scooter locations are known even when the scooter is not in use, all data shall be provided by GPS equipment that is affixed to the operator's scooter (e.g. not customer phones). This does not include phone-based location services information, used by customers, to locate a scooter or track their own personal route.
- j) Regional Partners. Operator shall share the same data and reports with designated regional partners, such as the South Bay Cities Council of Governments (SBCCOG).
- k) Non-compliance. If Operator is found to be misleading the City in any provided data, that operator's permit may be revoked.



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- l)** Confidentiality. Any raw data supplied by an Operator shall be held confidentially between the City and the Operator to the extent that is permitted by law. However, summaries, program utilization data, and trend data may be made public.
- m)** Personally identifiable Information on Customers collected by Operators may not be transmitted to, processed or stored at a destination outside of the United States.
- n)** The City is permitted to use all data the Operator provides in accordance with applicable law, including, but not limited to, displaying real-time data and real-time SMD availability data to the public. Third parties are permitted to republish any data the City publishes.
- o)** During the Program, Operator shall distribute to its Users a City-provided customer survey on a quarterly or less frequent basis.
- p)** Operator shall publish data summaries regarding service usage in the City through its website.
- q)** User Protections. Operator must ensure customer data privacy and that Operator policies are in accordance with city data privacy policies and/or applicable law.
  - i. Personally identifiable information shall not be shared with the City or any other entity; permittee shall ensure the privacy of its users.
  - ii. Operator must provide a clear, written justification for why they need access to each type of customer files (e.g. contacts, camera, photos, location, other apps etc.)
  - iii. Customers shall not be required to share personal data with 3rd parties (e.g. advertisers, investors etc.) in order to use the mobility services.
  - iv. Customers shall not be required to provide access to their contacts, files and other private data to use the mobility service.
  - v. Location services may be required to use the service for the purpose of locating nearby scooters, but not for providing trip-level data.
  - vi. Operator must provide customers with clear, prominent notification about what data will be accessed (e.g. location services, camera, contacts, photos etc.) and explain how and why data will be used. Notification must be active (e.g. affirmative confirmation-required to continue) and should not be concealed in larger terms-of-service notifications.
  - vii. Customers may opt-in (not opt-out) to providing access to their contacts, camera, photos, files, other private data and 3rd party data sharing.

## **12. EXPERIENCE AND QUALIFICATIONS**

Applicants for a permit under this program must submit a description of their experience and qualifications including, but not limited to, the following:

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- a) Describe applicant's qualifications and experience operating shared mobility programs in North America.
- b) Describe the benefits to the City and the community from the operation of the shared mobility service by applicant's company including, but not limited to, the Program goals stated in section 1 of these guidelines.
- c) Describe how applicant has complied with applicable laws, including efforts to ensure compliance by its Users with applicable laws, and efforts to work in good faith with staff from other agencies with similar active programs.
- d) Provide up to three agency references from cities with similar active programs.

### 13. INSURANCE AND INDEMNIFICATION

#### Insurance.

- a) Without limiting its obligations pursuant to Section 13.g, below and at all times during the term of this Program Permit and any use of the public right of way by Operator pursuant to this Program Permit, Operator shall procure and maintain the insurance coverage set forth below:
  - i. Commercial General Liability ("CGL") Insurance coverage, at least as broad as ISO Form CG 0001 11 85 or 88, or equivalent, in the minimum amount of Two Million Dollars (\$2,000,000) per occurrence, with not less than Four Million Dollars (\$4,000,000) in annual aggregate coverage. The CGL policy shall have the following requirements:
    - The policy shall provide coverage for personal injury, bodily injury, death, accident and property damage and advertising injury, as those terms are understood in the context of a CGL policy. The coverage shall not be excess or contributing with respect to City's self-insurance, commercial liability insurance, or any pooled risk arrangements;
    - The policy shall include coverage for liability undertaken by contract covering, to the maximum extent permitted by law, Operator's obligation to indemnify the Indemnitees as required under Section 13.f of this Program Permit;
    - The policy shall not exclude coverage for Completed Operations, Hazards or Athletic or Sports Participants; and
    - Additional Insured and Notification of Policy Changes. The City of \_\_\_\_\_, members of its City Council, its boards and commissions, officers, agents, and employees will be named as additional insureds in an endorsement to the policy, which shall be provided to the City and approved by the City Attorney.
  - ii. Auto Liability Policy with limits of at least \$1,000,000 combined single limit coverage for owned, hired and non-owned automobile liability;
  - iii. If this Program Permit will include Operator personnel (employees, agents, or contractors) working within the City limits, Operator shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's

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Liability insurance (with limits of at least one million dollars [\$1,000,000] per accident.) Operator shall submit to City a list of its officers, agents, employees and volunteers.

- b)** City may waive one or more of the coverages listed in Section 13.a, above. This waiver must be express and in writing, and will only be made upon a showing by the Operator that its operations in and with respect to City are not such as to impose liability within the scope of that particular coverage.
- c)** All insurance listed in Section 13.a, above, shall be issued by companies licensed to do business in the State of California, with a claims paying ability rating of "BBB" or better by S&P (and the equivalent by any other Rating Agency) and a rating of A-:VII or better in the current Best's Insurance Reports.
- d)** Operator shall provide City with at least thirty (30) days prior written notice of any modification, reduction or cancellation of any of the Policies required in Section 13.a or a minimum of ten (10) days' notice for cancellation due to non-payment.
- e)** City may increase the scope or dollar amount of coverage required under any of the policies described in Section 13.a, or may require different or additional coverages, upon prior written notice to Operator.
- f)** Technology Errors and Omissions; Cyber Liability. Permittees shall maintain liability insurance covering acts, errors, or omissions, including negligent acts, arising out of the performance or failure to perform professional services related to the Products and Services under the permit. The Permittee shall maintain insurance that shall cover any and all claims and losses with respect to data, network risks, and infringement of Intellectual Property Rights. Such insurance shall include limits of coverage of not less than \$2,000,000.00 (two million U.S. dollars) written on a per occurrence basis. If coverage is written on claims-made basis, coverage shall remain in effect for not less than three years following the date of termination or expiration of the permit. Evidence of coverage must be sent to the City for three years following termination or expiration of the permit.

### **Indemnification**

- g)** Operator shall defend (at Operator's sole expense, with legal counsel approved by City, with such approval not to be unreasonably withheld or delayed), indemnify and hold harmless the City, members of its City Council, its boards and commissions, officers, directors, employees, agents, servants, successors, assigns and subsidiaries (collectively "the Indemnified Parties"), from and against any and all losses, damages, liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs, expenses and

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reasonable attorneys' fees and judgments arising out of or in any manner related to this Program permit, including, but not limited to loss or damage to persons or property, arising out of or in any way related to Operator's use of the public space, public right-of-way, or public property . This indemnification includes, but is not limited to, tort liability to a third person for bodily injury and property damage.

Operator agrees that this obligation to indemnify, defend and hold harmless extends to liability and/or claims arising from Indemnified Parties' active or passive negligence. Notwithstanding the foregoing, nothing herein shall be construed to require Operator to indemnify an Indemnified Party from any claim arising from the sole negligence or willful misconduct of that Indemnified Party. The duty to defend referenced herein is wholly independent from the duty to indemnify, arises upon written notice by City to Operator of a claim within the potential scope of this indemnification provision, and exists regardless of any determination of the ultimate liability of Operator, City or any Indemnified Party.

### User Waiver of Liability

- h) Operator must include agency liability waiver language in its end-user agreement, which shall include the following terms and conditions of use:
  - i. User must be at least 18 years of age;
  - ii. User must be in possession of a valid driver license;
  - iv. User must agree to the liability waiver covering all SBCOG cities contained in the Operator's end-user agreement;
  - v. User must agree to comply with the California Vehicle Code and all applicable local regulations, which shall be provided by Operator to all Users, prior to use of SMDs.

**14. PERMIT APPLICATION REQUIREMENTS.** Operator must apply for a Program permit to operate in the City and must provide the following.

- a) Permit requirements:
  - i. Experience and qualifications
  - ii. Indemnification
  - iii. Insurance
  - iv. Business License
  - v. Contact information (phone and email)
  - vi. SMD fleet size and mix
  - vii. Deployment Plan
  - viii. Maintenance Plan
  - ix. Parking Plan
  - x. Education Plan
  - xi. Data sharing plan

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### xii. Fees

- b)** The City may modify Program Permit requirements at its discretion

## **15. FEES:**

The Program includes the following types of fees:

- a)** An application fee, due at the time of application submittal;
- b)** A permit fee, due before the City issues a permit;
- c)** A fee per SMD, payable monthly or less frequently for the duration of the pilot program; and
- d)** A performance bond/deposit, due before the City issues a permit.
- e)** Impound fee
- f)** Fines/penalties for violations of applicable rules and regulations

The City will publish a fee schedule before accepting Program applications.