

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE ADDING A
NEW CHAPTER 11.92 TO TITLE 11 OF THE SAN JOSE
MUNICIPAL CODE RELATING TO THE REGULATION OF
SHARED MICRO-MOBILITY DEVICES FOR PUBLIC USE**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Whereas, **WHEREAS**, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment; and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW THEREFORE,

A new Chapter 11.92 is added to Title 11 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

**Chapter 11.92
SHARED MICRO-MOBILITY DEVICES**

11.92.010 Purpose

Consistent with the City's goals of enhancing mobility and access, easing traffic congestion, and promoting sustainability, this Chapter creates a permit program to facilitate shared micro-mobility devices offered for public use. The purpose of this permit program is to ensure the protection of public health and safety, including the safety of the public traveling by foot, bicycle, or vehicle on public sidewalks, streets, and other public rights-of-way.

11.92.020 Definitions

The definitions set forth in this Chapter shall govern the application and interpretation of this Chapter.

11.92.030 Administrative Regulations

"Administrative Regulations" shall mean the regulations adopted pursuant to Section 11.92.110.

11.92.040 Director

"Director" shall mean the Director of Transportation or designee.

11.92.050 Operator

"Operator" shall mean any person that is issued a permit under this Chapter to operate a Shared Micro-Mobility Device System in the Public Right-of-Way or in a Public Area.

11.92.060 Public Area

“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.

11.92.070 Public Right-of-Way

“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.

11.92.080 Shared Micro-Mobility Device

“Shared Micro-Mobility Device” 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, except that a “Shared Micro-Mobility Device” does not include vehicles that are made available for rent, including, but not limited to, taxis or any other device excluded pursuant to the Administrative Regulations.

11.92.090 Shared Micro-Mobility Device System

“Shared Micro-Mobility Device System” shall mean all of the Shared Micro-Mobility Devices that an Operator offers to the public for use either to rent or for free in the Public Right-of-Way or in a Public Area.

11.92.100 Shared Micro-Mobility Operator Permit Application Procedure, Fees and Requirements

- A. The procedures set forth in Chapter 6.02 for permits and licenses shall govern the application for, investigation, approval, denial, suspension and revocation of a permit to operate a Shared Micro-Mobility Device System issued pursuant to this Chapter, except as specifically provided in this Chapter.
- B. Any person seeking to obtain a permit for the operation of a Shared Micro-Mobility System shall pay the City of San José a property repair and maintenance deposit totaling Ten Thousand Dollars (\$10,000) prior to permit issuance to ensure adequate funds are available to reimburse the City for future public property repair and maintenance costs that may be incurred, including but not limited to any costs of repairing or maintaining public property damaged by the Operator or its customers, administrative fines, removing Shared Micro-Mobility Devices improperly parked and addressing and abating any other violations.
- C. The Director may specify the information that must be provided in connection with an application and the form in which the information is to be provided. In addition to the information set forth in Chapter 6.02, the application shall contain, at a minimum, the following information:
1. The name and business address of each person or entity that: (i) has more than a ten percent (10%) equity, participation, or revenue interest in the applicant; or (ii) is a trustee, director, partner, or officer of that entity or of another entity that owns or controls the applicant, excepting persons serving in those capacities as volunteers, without compensation, for

organizations exempt from income taxes under Section 501(c)(3), (4), or (6) of the United States Internal Revenue Code;

2. The name and business address of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling the applicant in whole or in part, or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity;
3. Information sufficient to show that the applicant is technically and legally qualified to operate and maintain a Shared Micro-Mobility Device System;
4. A description of the proposed plan of operation, including, at a minimum, a detailed description of:
 - a. The applicant's current operations in the City and other jurisdictions;
 - b. The applicant's proposed operations in the City including the plan for balancing Shared Micro-Mobility Devices for Citywide coverage, the plan for Shared Micro-Mobility Device maintenance, levels of staff for operations and administration, and the plan for customer service;
 - c. The applicant's regulatory compliance program;
 - d. The applicant's history of and ability to comply with state and local law;

- e. The applicant's plans to implement safety programs, including, for example, a program by which the applicant will receive information about and notify users of unlawful use of a Shared Micro-Mobility Device;
 - f. The applicant's plans to educate users of Shared Micro-Mobility Devices about applicable California Vehicle Code provisions and other applicable laws and regulations;
 - g. The applicant's plan to comply with the operating requirements in the Administrative Regulations;
 - h. The applicant's plan to comply with the low-income discount and Communities of Concern requirements in the Administrative Regulations;
 - i. The applicant's plan to comply with the data sharing requirements in the Administrative Regulations;
 - j. The applicant's plans to comply with applicable federal, state, and local data privacy laws and otherwise to protect the privacy of personal information provided by users; and
 - k. Any other requirements set forth by Administrative Regulations.
- D. Notwithstanding any other requirement, the Director has the authority to deny a permit to the extent that issuing a permit would conflict with existing contractual agreements or permits issued to other Operators, lead to an overconcentration of

Shared Micro-Mobility Devices in the Public Right-of-Way, or otherwise adversely impact an existing Shared Micro-Mobility Device System.

11.92.110 Administrative Regulations

The Director shall adopt Administrative Regulations, and update as the Director determines is necessary, to implement the provisions of this Chapter, including, but not limited to, permit application procedures, permit standards and permit conditions, which may include regulations relating to lawful conduct, operating standards for public safety, data sharing, data privacy, area of the program, number of Operators, number of devices, maintenance of devices, customer service, user discounts and the timely removal of hazards.

11.92.120 Prohibited Conduct

Notwithstanding any other provision of this Code, no person shall:

- A. Display, offer or make available for rent any Shared Micro-Mobility Device within the City, unless the person has first obtained a valid permit for the operation of a Shared Micro-Mobility System;
- B. Leave a Shared Micro-Mobility Device not permitted by this Chapter in the Public Right-of-Way or in a Public Area in such a way that the device is available for rent; or
- C. Leave a Shared Micro-Mobility Device in either the Public Right-of-Way or in a Public Area in a manner that: (1) obstructs travel upon or blocks access to a Public Right-of-Way; (2) poses an immediate public safety hazard; or (3) is otherwise prohibited by applicable laws or the Administrative Regulations.

- D. No person shall fail to comply with the Administrative Regulations or any provision of this Chapter. Any violation of any Administrative Regulation or this Chapter shall constitute a violation of this Code.

11.92.130 Maximum Number of Shared Micro-Mobility Operator Permits and Shared Micro-Mobility Devices Permitted

The Director is authorized to define in the Administrative Regulations the minimum and maximum number of Shared Micro-Mobility Devices within a specified geographic area and the minimum and maximum number of total Shared Micro-Mobility Devices citywide.

11.92.140 Limitations on City Liability; Permit Conditions

To the fullest extent permitted by law, the City shall not assume any liability whatsoever with respect to having issued a permit for the operation of a Shared Micro-Mobility System or otherwise approving the operation of any Shared Micro-Mobility Device. As a condition to the issuance of any permit for the operation of a Shared Micro-Mobility System , the Operator shall be required to meet all of the following conditions:

- A. The Operator must execute an agreement or agree to permit conditions, in a form approved by the City Attorney, agreeing to indemnify, defend (at applicant's sole cost and expense), and hold harmless the City, and its officers, officials, employees, representatives, and agents from any and all claims, losses, damages, injuries, liabilities or losses which arise out of, or which are in any way related to, the City's issuance of or decision to approve a permit for the operation of a Shared Micro-Mobility System, the process used by the City in making its

decision, or the alleged violation of any federal, state or local laws by the applicant or any of its officers, managers, employees or agents.

- B. Maintain insurance at coverage limits, and with conditions thereon determined necessary and appropriate from time to time, as determined by the City's Risk Manager, and name the City as additional insured and provide the City with a certificate of insurance evidencing the required coverage and identifying the City as an additional insured. If any insurance policy issued to an Operator in order for the Operator to comply with this Subsection is cancelled for any reason, the permit issued under this Chapter is automatically suspended. In order to reinstate the permit, the Operator shall provide a new certificate of insurance meeting the requirements of this Chapter to the City.

- C. Reimburse the City for all costs and expenses, including, but not limited to, attorney fees and costs, which it may be required to pay as a result of any legal challenge related to the City's approval of or activities conducted pursuant to the Operator's permit for the operation of a Shared Micro-Mobility System. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve any of the obligations imposed hereunder.

11.92.150 Grounds for Revocation, Suspension, Reduction, or Denial

A. An Operator's permit may be revoked, suspended, or denied, by the Director based upon any of the grounds specified in Chapter 6.02 or any of the following grounds:

- 1. An applicant or Operator, including its employees, managers, officers, principals, directors, owners, contractors, representatives, or agents has:

- a. Made one or more false or misleading statements, or material omissions on the permit application, during the application process;
 - b. Failed to provide information requested or required by the City;
 - c. Operated or has proposed to operate in a manner that endangers public health or safety; or
 - d. Failed to comply with any requirement imposed by the provisions of this Code including any rule, regulation, condition or standard adopted pursuant to this Chapter, or any term or condition imposed on the permit for the operation of a Shared Micro-Mobility System, or any provision of California law.
2. Conviction of the Operator, to include any of its officers, owners or principals, of a criminal offense that is substantially related to the qualifications, functions or duties of the shared micro-mobility business or profession, including, but not limited to, any criminal conviction involving a violent or serious felony, fraud, deceit, or embezzlement.
- B. An Operator's fleet size may be temporarily, permanently or conditionally reduced by the Director for violation of any of the provisions of this Chapter or the Administrative Regulations.

11.92.160 Duration of Permits Issued

Permits issued pursuant to this Chapter shall be effective for up to one (1) year. An Operator who meets all requirements of this Chapter may apply for permit renewal.

11.92.170 Removal or Impoundment of Devices

- A. A Shared Micro-Mobility Device that is displayed, offered, or made available for rent, or abandoned, in the Public Right-of-Way or in a Public Area in violation of Section 11.92.120 shall be subject to immediate impoundment by the City or removal by the City under Chapter 13.24.

- B. The City Council may adopt impound fees as set forth in the schedule of fees and charges established by resolution of the City Council, which shall reflect the City's enforcement, investigation, storage and impound costs.

- C. No person shall retrieve any impounded Shared Micro-Mobility Device except upon demonstrating proper proof of ownership of the device and payment of applicable impound fees.

PASSED FOR PUBLICATION of title this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk