



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Margaret McCahan
John Ristow

**SUBJECT: SHARED MICRO-MOBILITY
PROGRAM AND REGULATORY
FRAMEWORK**

DATE: December 5, 2018

Approved

Date

12/6/18

RECOMMENDATION

- (a) Approve an ordinance amending Chapter 92 of Title 11 of the San José Municipal Code to establish a new permit system and require shared dockless micro-mobility companies to obtain an operating permit and comply with permit requirements to operate a shared micro-mobility business within City rights-of-way.
- (b) Adopt a resolution amending the 2018-2019 Schedule of Fees and Charges (Resolution No. 72737, as amended) to establish a Shared Micro-Mobility Annual Permit and Program Monitoring Fee in the amount of \$124.00 per shared micro-mobility device, and an Annual Permit Application Fee in the amount of \$2,500.
- (c) Adopt the following 2018-2019 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:
 - (1) Increase the Department of Transportation's Personal Services appropriation by \$101,530;
 - (2) Increase the Department of Transportation's Non-Personal/Equipment appropriation by \$16,000; and
 - (3) Increase the Revenue Estimate for Fees, Rates, and Charges by \$117,530.
- (d) Approve the addition of 1.0 Transportation Specialist position in the Department of Transportation.
- (e) Adopt a resolution amending the Administrative Citation Schedule of Fines to add fines for violations of Section 11.92.120 of Title 11 of the San José Municipal Code related to prohibited conduct for micro-mobility operators, and repealing Resolution 78478.

OUTCOME

The City will regulate the operations of shared micro-mobility programs and devices within City rights-of-way. Operators will be required to obtain a revocable operating permit and comply with all requirements outlined in the permit regulations.

Administrative Regulations will allow the City to monitor the shared micro-mobility programs to ensure safe and responsible use of devices; ensure compliance with state law; ensure that program size meets the needs of users, residents, and the City; and require operators respond in a timely manner to incidents resulting from program operations, including customer service requests and improperly parked devices. The ordinance gives the City flexibility to update the permit regulations, as needed. Additionally, City Council approval will ensure that operators carry proper insurance and indemnify the City from claims arising from shared micro-mobility operations.

A Shared-Micro Mobility Annual Permit and Program Monitoring Fee will be established to develop a revenue-neutral cost-recovery program. The fees will fund 1.0 Transportation Specialist position to review permit applications, issue permits, monitor companies' operations for compliance, coordinate any necessary enforcement, and perform other duties related to the administration of this permit program. Additionally, an administrative citation will be established to fine companies for violating the ordinance.

EXECUTIVE SUMMARY

Innovative micro-mobility options, such as shared bicycles and electric scooters, advance the City's transportation, land use, and environmental goals. These new mobility options are environmentally sustainable, convenient mobility options that support access to dense land uses and promote space efficient use of the right-of-way. The devices also bring challenges such as sidewalk obstructions, unsafe user behaviors, and geographic equity concerns.

This memorandum describes the City's recommended plan to address shared micro-mobility in San José's rights-of-way, including staffing necessary to administer the program. Staff recommends an ordinance that regulates micro-mobility operators through a permitting system. The regulations require micro-mobility operators to meet the needs of users, San José residents, and the City, support City goals, and preserve public safety. The regulations will at first only apply to shared electric scooter operations, but are written with a future proofing perspective intended to incorporate future and yet unknown additional shared micro-mobility devices and systems.

If approved by the City Council, the recommendations in this memorandum will:

- Require a permit for shared micro-mobility operations
- Establish administrative regulations for the safe operations of these programs, including parking requirements, education, and technology to promote safety on city sidewalks

- Give the City the ability to enforce the conditions of the permit through such methods as fleet size reduction, device removal, administrative citation, permit suspension, and/or permit revocation
- Establish a cost-recovery fee to support program operations
- Establish an administrative citation and fine for violations of the ordinance and regulations
- Give the Director of Transportation the authority to update the administrative regulations as needed
- Create one (1) staff position to administer the permit program

Staff developed the proposed regulations based on extensive outreach and research involving coordination with stakeholders including the Valley Transportation Authority, San José Downtown Association, and public safety agencies, such as the San José Police Department, San José Fire Department, and San José State University Police Department. Staff is also a part of the National Association of City Transportation Officials (NACTO), a national organization developing emerging best practices for shared micro-mobility management. The resulting proposed regulations reflect a wide range of public and stakeholder input through community meetings and scooter vendor demonstrations, as well as the state of practice from around the country.

BACKGROUND

This memorandum and recommendations seek to address the recent proliferation of dockless shared bicycles, electric-assist bicycles (e-bikes), and electric scooters (e-scooters) in and around Downtown San José. Currently, an estimated 200 dockless shared bikes and 1,700 e-scooters provided by four companies are operating within the City limits without regulations to guide their use.

Shared Micro-Mobility and San José City Policy

Shared micro-mobility is a service or program which provides small mobility devices for shared use to individuals on a short-term basis. Bike share such as Ford GoBike and e-scooters are forms of shared micro-mobility.

Shared micro-mobility supports City goals. *Envision San José 2040 General Plan* and *Bike Plan 2020* set ambitious goals for shifting automobile trips to all other transportation modes. As part of an effort to create a balanced transportation system, the City's goal is to increase the share of commute trips made by bike from 1.1% to 5% by 2020 and to 15% by 2040. Strategies discussed in *Bike Plan 2020* to increase bicycle trips include implementation and expansion of a public bicycle share system. Strategies in *Climate Smart San José* include creating "clean personalized mobility choices." Shared micro-mobility devices help progress many City goals by making biking and similar devices more accessible.

The Bay Area's Ford GoBike program is already regulated through an agreement with the system owner, Bay Area Motivate, LLC (currently under acquisition by transportation network company Lyft). The City and other municipalities' agreement with Motivate/Lyft gives the exclusive right to Motivate to operate bike share in public rights-of-way.

Dockless Micro-Mobility

Recently, dockless bike share has emerged as an alternative to station-based bike sharing. Dockless bike share is a form of bike share that does not require riders to park bikes at stations. In this free-floating system, riders can leave rented bikes in locations most convenient to them. Dockless bikes allow users access to a wider geographic area than station-based systems. This adds to the attractiveness of the service by allowing riders to choose where to leave the devices and removes worries about not finding a free parking spot at popular stations. Dockless shared bikes are accessed through a mobile app and typically charge users per minute or require a membership.

Newer developments in shared micro-mobility technology include dockless e-bikes and e-scooters, both of which can serve even larger geographic areas than traditional docked bike share and can also serve residents with mobility issues. The free-floating nature of dockless technology also presents challenges because bikes and other devices have the potential to be parked anywhere, demanding increased monitoring and staffing resources when compared to dock-based programs.

In response to the emergence of dockless technology, Ford GoBike recently began operating a 200-bike dockless pilot program in North San José.

Current Dockless Micro-Mobility Operations in San José

San José currently has four companies operating shared micro-mobility businesses in San José – Motivate/Lyft's Ford GoBike, Lime, BIRD, and Skip. Additional companies have expressed interest in operating in San José, including Ofo, Jump, Spin, and Pace. The City has no existing ordinances or other codes to regulate these companies beyond the required business tax license from the City and City rules regarding obstructions of the public rights-of-way. However, staff regularly communicate with these operators to discuss safety and operational issues, including concerns raised by Council Offices and the public.

The estimated size of each company's dockless fleet currently operating on City public rights-of-way, along with their initial deployment date, are below. These figures are current as of September 2018.

- BIRD – 800 e-scooters launched in April 2018, primarily in Downtown and Central San José
- Ford GoBike – 200 manual pedal bikes launched in June 2018 and operating in North San José

- Lime – 600 e-scooters launched in February 2018, primarily in Downtown and Central San José
- Skip – 300 e-scooters launched in June 2018, primarily operating in Downtown

Since the deployment of shared e-bikes and e-scooters in San José, the City has received over one hundred emails from residents expressing both support and concern for these devices. Support has primarily been over the devices' utility as a transportation option, especially to connect with local and regional transit. Concerns have included improperly parked devices, large numbers of devices concentrated in small areas, slow response from companies for customer service inquiries and incidences, and the use of devices on sidewalks. The vast majority of concerns received by the City over shared micro-mobility have been about e-scooters.

To better understand how these devices are being used, staff conducted surveys in spring 2018, focusing on e-scooter use. Surveys looked at where e-scooters were being ridden and how scooters were being parked. Survey results show that 76% of parked e-scooters are not causing obstructions, whereas half of e-scooter use occurs on sidewalks when a bike lane is present and nearly all use occurs on sidewalks when no bike lanes are present. A survey of 530 e-scooters conducted by the Mineta Transportation Institute in summer 2018 and published in November 2018 found that 90% of parked e-scooters were not blocking the sidewalk and 97% of e-scooters were found standing upright while parked.

Better BikewaySJ

Given the connection between infrastructure and user behavior, it is important to note that Better BikewaySJ - a safe, connected, all-ages bike route network - is currently under construction. Simple design changes like protected bike lanes on wide streets, protected intersections at busy crossings, and traffic diverters on small streets make it safer for all people using the road – pedestrians, drivers, and transit users, in addition to people on shared bicycles and e-scooters. Protected bike lanes provide more space between sidewalks and moving traffic. Narrower lanes reduce the number of cars traveling at excessive speeds. Additionally, the new street design helps to get people on bikes and e-scooters off the sidewalk and into the bike lane, freeing up sidewalk space for walking and reducing the risk of collisions.

ANALYSIS

For the City to promote the safe and responsible operation of shared micro-mobility devices in the City right-of-way, an ordinance establishing a new operating permit required for shared mobility operators is recommended to the City Council for consideration. The Department of Transportation will administer the permit. The purpose of the permit is to:

- Promote safe use of the City's public rights-of-way
- Ensure the safe and responsible operations of shared micro-mobility operations
- Work toward achieving *Envision San José 2040 General Plan* transportation goals

- Promote economic development and public life

Permit regulations developed by the Department of Transportation will ensure the effective implementation of the ordinance and will strive to work toward City goals and residents' needs while allowing for companies to operate successful micro-mobility companies in the public right-of-way.

Permit regulations include the following elements:

- Program scope
- Safe operations
- Parking and re-distribution of devices
- Equipment and maintenance
- Customer service, including a set response time to incidences
- Education requirements for users
- Equity requirements and Communities of Concern
- Data sharing and privacy
- Deposit and fees
- Insurance and indemnification
- Compliance with existing obligations
- Enforcement

The proposed ordinance accounts for the fast-moving nature of this new market. It allows the City to update the permit regulations to account for changes in state legislation, incorporate new types of shared micro-mobility devices, and address emergent needs of the City and community by simple action of the Director of Transportation.

This policy and the permit regulations have been created based on best practices developed by national organizations including NACTO, of which the City is a member, and the North American Bike Share Association (NABSA); the experiences of other US cities in developing and implementing regulations for shared micro-mobility; and input from community members, stakeholders, and other government agencies in San José. The transportation and economic development goals of *Envision San José 2040* guided the development of the policy.

Program Scope

The recommended ordinance gives the Director of Transportation the ability to make modifications to the regulations to meet the needs of residents, including placing limits on the program size.

The City may employ a variety of methods to limit the number of operators or devices. Examples of this include a fixed number of allowed devices per operator, or "dynamic capping," a market-based approach that limits devices based on usage rather than a total. Dynamic capping sets a performance standard or range of the number of "trips taken by device per day" to limit the number of devices deployed while simultaneously meeting user demand.

Compliance with any limitation placed on the size, area, or scope will be monitored through the data sharing requirements stipulated in the permit regulations (see Data Sharing section below).

Parking and “Rebalancing”

Parking and “rebalancing” of devices will be required as part of the regulations. Rebalancing is the method of re-parking devices to keep public rights-of-way clear of obstructions, to prevent clutter on City streets and sidewalks, and to place devices where they are convenient for users to access. Companies will be required to gather and re-park devices on at least a daily basis to conform to the parking regulations.

The permit regulations will specify the following parking regulations and require that companies respond to and address incidences of improperly parked devices within two hours:

- Shared micro-mobility devices must be parked upright in a way that does not impede ADA clearance or obstruct pedestrian traffic flow. Devices must be parked in the park strip adjacent to the sidewalk or in the furniture zone, as defined by the San Jose Complete Streets Design Standards and Guidelines, when present
- The devices may not block:
 - Fire hydrants or other emergency facilities
 - Above- and underground utilities
 - Sidewalks; curb ramps; ADA ramps; public or private driveways, pathways, or entryways
 - Handicapped parking zones, loading zones, and bus boarding zones
 - Transit access, ingress, or egress and light rail platforms
 - Bicycle racks, public restrooms, and newspaper racks
- Companies may not place devices in landscaped park strips in front of single family homes

The City will allow devices to be parked by companies and users at any destination in a way that complies with the permit requirements. Upon evaluation, the City may elect to establish designated parking zones in certain areas of the city to better manage the location of parked devices. Additionally, companies will be required to pay for any infrastructure required to operate their micro-mobility programs.

Requirements for Devices

Devices will be required to meet State codes, policies, and standards as well as local ordinances and rules.

The ordinance and permitting system will also enact a speed limit requirement for e-scooters of 12 miles-per-hour in areas specified by the Director of Transportation. The limitation on device speed is in direct response to concerns raised by many community members over sidewalk e-scooter use, which is currently prohibited under the California Vehicle Code. The three e-

scooter companies currently operating in the City have, voluntarily, limited their devices' top speed to 12 miles-per-hour.

Additionally, each operator will be required to develop and deploy technology capable of preventing the motorized use of e-scooters on sidewalks. Technology to prevent sidewalk use will be implemented in areas of high pedestrian activity, transit use, and other areas as determined by the Director of Transportation. The capability to prevent sidewalk use will be required as of July 1, 2019, as established in the Administrative Regulations. The City is currently researching technologies that can achieve this requirement and has coordinated with e-scooter companies to determine feasibility. Staff will evaluate each permittee's compliance with this requirement and will continue to track the industry's overall progress with sidewalk safety technology. The Director of Transportation may amend this requirement in the Administrative Regulations as needed to ensure a successful program.

Customer Service

Operators will be required to have highly-responsive customer service programs that are accessible 24 hours a day. Operators' customer service programs must be multilingual including English, Spanish, and Vietnamese. Operators will be required to respond to and address incidences of improperly parked devices within two hours of receiving a complaint.

Income Equity and Communities of Concern

Shared micro-mobility programs can offer much needed solutions to common mobility issues and improve access to public transit for low-income communities. Many micro-mobility programs throughout the United States address low-income community transportation needs through geographic coverage requirements and income-based discounts.

Currently, in San José, the Ford GoBike program is required to offer a low-income membership to individuals at or below 200% of the federal poverty level. This reduces the \$149 annual member fee to \$5 for the first year and \$5 a month after that. As of September 2018, over 60% of Ford GoBike members in San José have enrolled through the low-income discount program, well above the 19% total for the entire Bay Area Ford GoBike system. The Ford GoBike program is also required to place 20% of stations in Communities of Concern as defined by the Metropolitan Transportation Commission. At build-out, approximately 60% of Ford GoBike stations in San José will be placed in Communities of Concern.

Due to the success of Ford GoBike's equity efforts, the equity requirements included in San José's shared micro-mobility permit program mirror these requirements. The permit regulations include both the geographic coverage requirements for Communities of Concern and an income-based discount for those at or below 200% of the federal poverty level.

Data Sharing

GPS-enabled micro-mobility devices generate a wealth of transportation data that is useful for monitoring e-scooter companies' operations for permit compliance, providing users and mobility app developers with real-time information on the availability and location of shared devices, and contributing to City planning efforts. Required data reporting will be consistent with many other bike share and shared micro-mobility programs in the US, including Ford GoBike.

Data requirements will be listed in the permit regulations. Required data will include:

- Data in the Mobility Data Specification (MDS) which includes anonymized information on trips, rides, number of devices, and other system usage statistics to be used in planning efforts
- General Bike Feed Specification (GBFS) which allows system availability and status information to be shared with the public and third-party operators
- Anonymized reporting on system use, memberships, low-income programs, and other pertinent data.

Companies will be required to protect any personally identifiable information from unauthorized use.

Compliance with Existing Obligations

Currently, Motivate/Lyft has the exclusive right to operate bike share on the City's public rights-of-way per an agreement approved through Council resolution in 2015.

The proposed ordinance clarifies that no permits will be issued to any other bike share companies at this time, including dockless e-bike operators. City staff is currently working with the Metropolitan Transportation Commission to pursue a dockless bike share system with Motivate/Lyft that would be compatible with and significantly increase the size of the Ford GoBike program in San José. The ordinance, however, would still allow the City to issue permits to bike share operators that do not conflict with Motivate/Lyft's exclusive right if the City decides that doing so is necessary and beneficial to City.

Education

User education and community outreach are important to ensure public safety for shared device users and non-users alike. Under these regulations, operators will be required to educate their users and to post state and local laws regarding legal and safe use of their devices on their website, mobile app, and the devices themselves in a manner that is accessible and legible to all users. Operators will be required to ensure compliance with the following laws and restrictions including, but are not limited to:

- Age restrictions for use (18 yr+)
- Sidewalk use restrictions

- Device parking instructions
- Code of Conduct for users

City staff – funded through the per-device fee discussed below – will also conduct in-field education activities, in coordination with operators and partner organizations.

Enforcement

Operators will be monitored for compliance with permit regulations related to safety and customer service responses to incidences and complaints. The permit sets penalties levels based on the severity and number of violations. Operators that do not comply with the requirements established by this ordinance will be at risk having their permit suspended or revoked, their fleet size reduced, receiving administrative fines, or having their devices removed.

A new administrative citation will be established to enforce the ordinance, giving the City the authority to fine companies for violating the ordinance or administrative regulations. The fine will be \$100 for the first violation, \$200 for the second, and \$500 for the third and any subsequent violations.

Under Section 13.24 of the San José Municipal Code, the City currently has the authority to remove objects from the public right-of-way if such objects are found to cause an obstruction to the street or sidewalk or if they are found to be a public nuisance. Under existing City code, shared micro-mobility devices are subject to removal if deemed to violate the Municipal Code. Additionally, the owner of the device is subject to an administrative citation and a fee to retrieve their confiscated device. This existing language in the City's Municipal Code will be used to remove shared micro-mobility devices, as necessary. City staff will monitor this process and, upon evaluation, may create an additional impound program and fee to shared micro-mobility devices if it is deemed necessary to do so.

City staff are currently working with the San José Police Department to coordinate targeted enforcement of existing state laws and city ordinances regarding shared micro-mobility devices once this ordinance goes into effect. Enforcement will focus on e-scooter use on sidewalks. Enforcement will include either a citation for illegal sidewalk use or as warnings to spread public awareness about the prohibition of e-scooters on sidewalks.

As described earlier in the memorandum, the requirement for e-scooter technology to prevent sidewalk use will help to address sidewalk safety issues as well as the challenge of enforcing state law for sidewalk e-scooter use.

Deposit and Fees

Annual fees will cover staff time and program monitoring software to administer the permit program, including permit application review and issuance, ongoing program monitoring for compliance with permit requirements, reporting on permit program implementation, recommendations for improvement of the system, and any other activities necessary to

administer the shared micro-mobility program. The Department of Transportation will manage permit administration.

In developing the fees, the City has ensured that all expenses to the City will be 100% cost-recovery through this program. The fees are split between a flat fee and a per-device fee. The flat fee is an application fee that applies to any company with any size fleet and will cover staff costs to review the application. The per-device fee covers staff time for all other activities related to administering this permit program, including issuing permits and compliance monitoring and in-field education activities, as discussed above. To maintain cost-recovery for expenses, these fees will be adjusted annually when the City updates its Proposed Fees and Charges Report, based on the number of operators and devices permitted for operation in the city.

Additionally, a deposit held by the City will cover potential damages resulting from the activities of shared micro-mobility operators and their users.

New Transportation Specialist Position

To administer this permit program, a new Transportation Specialist position will be created in the Department of Transportation, funded by the permit fees. This position will:

- Review permit applications
- Issue permits
- Monitor the activities of permittees for compliance with permit requirements, including
 - Responding to complaints alleging non-compliance
 - Responding to community needs
 - Coordinating with public safety and law enforcement agencies, as needed
- Educate riders, partners, and the public about safe and legal riding
- Evaluate and provide annual reports on the program, including recommended improvements

Administrative Citations

As part of this recommendation, a new fine would be established under the City's Administrative Citation Schedule of Fines. This fine would be used to penalize companies who violate the ordinance or the administrative regulations. The fines are:

- \$100 for the first violation
- \$200 for the second violation
- \$500 for the third and subsequent violations

The Department of Transportation will administer the fine. Fines will also apply to companies who deploy shared micro-mobility devices without first obtaining a permit.

Timing

The ordinance and regulations will be effective 30 days after City Council approval. The Department of Transportation expects to issue the first permits in February 2019.

EVALUATION AND FOLLOW-UP

The permit program will be monitored and continuously evaluated by the Department of Transportation to determine the effectiveness of the permit regulations. The elements that will be monitored include:

- Number and type of collisions
- Compliance with device parking requirements
- Location of device use, including the street, sidewalk, and bike lanes
- Response time to incidences, complaints and requests
- Customer service

Permit monitoring will be accomplished through coordination with public safety agencies and City Council offices; field observations; data monitoring software; and user surveys.

Staff will provide a status update to the Transportation and Environment Committee on an annual basis during the Department of Transportation's Bike Program update in April. Staff will also prepare a report after the first twelve months of Shared Micro-Mobility Permit operations.

PUBLIC OUTREACH

Shared micro-mobility in San José has been discussed at length with a variety of public groups, stakeholders, and government agencies. Outreach was conducted with the intention of

- Informing the public
- Receiving and incorporating public and stakeholder input
- Coordinating with law enforcement and transit operations for any future shared mobility operations that may result from approval of this permit system
- Understanding the viability of shared micro-mobility companies' ability to comply with the proposed regulations in this regulatory framework

Community

The City has received several dozen emails from San José residents, mostly about e-scooters. The emails have been split between support for and concern over e-scooters.

On June 20, 2018, City staff participated in a public panel hosted by the American Planning Association. Approximately twenty-five people attended. Panelists included the Department of

Transportation, California Walks pedestrian advocacy organization, and representatives from Lime and BIRD.

On June 21, 2018, the Department of Transportation held a community meeting to discuss shared micro-mobility policy with the public and to take questions and feedback. The meeting had two parts: (a) a demonstration where residents could try out shared bikes and e-scooters in City Hall Plaza, and (b) a formal community meeting inside City Hall, where City staff shared information about shared micro-mobility devices and provided an overview of the proposed regulations contained in this memorandum. Outreach for the meeting was conducted on the City's website, and through social media on Facebook and Nextdoor.

Approximately 100 people attended the demonstration, where five companies (Ford GoBike, Lime, BIRD, Ofo, and Skip) allowed attendees to test ride their products. Seventy-four people attended the formal meeting. The vast majority of attendees publicly commented, offering a wide range of thoughts and experiences with shared bikes and e-scooters. Despite varying concerns among the public, the consensus among attendees was to allow these devices and to create enforceable regulations governing their use.

On September 13, 2018, staff presented the recommendations contained in this memorandum during a public presentation at SPUR San José. Approximately 30 people attended the event and asked general questions about the proposed ordinance and regulations.

On October 18, 2018, staff participated in a public panel hosted by California Walks pedestrian advocacy organization at their Biennial PedsCount! Summit at San José State University. Approximately 25 people attended the panel and asked questions related to public health and environmental sustainability and expressed concerns over outreach for shared micro-mobility programs and equity in cities' transportation networks.

Stakeholders

Many stakeholders have been consulted during the development of this policy, including:

- Silicon Valley Bicycle Coalition
- California Walks
- San José Downtown Association
- SPUR
- Micro-mobility companies
 - Ford GoBike/Lyft
 - Lime
 - BIRD
 - Ofo
 - Skip
 - Lyft

The micro-mobility companies listed here have had the opportunity to comment on the draft regulations for the proposed permit system.

Government Agencies

City staff consulted with other government agencies to coordinate on current shared micro-mobility operations, to receive input on future operations permitted under the regulatory framework in this memorandum, and to learn best practices.

- Valley Transportation Authority (VTA) - Consulted with VTA to better understand their needs and concerns about shared micro-mobility devices parked at transit stops, on light rail platforms, and along the Downtown Transit Mall.
- San José State University: Development and Operations, Transportation Solutions, and Police Department - Consulted with the university to discuss concerns regarding the use of devices on their campus along with the benefits that such devices can bring to students and to the university, including meeting increased demand from students for automobile parking and for travel between the main and south campuses.
- Metropolitan Transportation Commission (MTC) - Consulted with MTC's Ford GoBike Program Administrator to discuss compliance with the exclusive right granted by the City to Motivate/Lyft to operate Ford GoBike within City rights-of-way. The City and MTC also discussed how shared micro-mobility in San José and other Bay Area cities could potentially work toward meeting regional transportation needs.
- Bay Area Bike Share/Ford GoBike and Partner Cities - As part of the Ford GoBike program, the City is in regular coordination with the other participating cities to implement the regional Ford GoBike program. These cities are Berkeley, Emeryville, Oakland, and San Francisco. These cities are working with San José, Motivate/Lyft, and MTC to fully implement regional bike share in the Bay Area, making regional coordination of shared micro-mobility important. City staff have been in regular communication with each city to understand their approach to shared micro-mobility in their jurisdictions.
- U.S. Cities Best Practices - The City has also been looking carefully at the efforts of other US cities to regulate shared micro-mobility and has been communicating with staff in other cities on their experience with regulation. Looking at the experience of others has helped inform the City on a wide range of permit requirements, including data sharing, program size, speed limits, equity, and permit fees. Cities that San José has been communicating with and/or studying include Palo Alto, San Francisco, Santa Monica, Dallas, Seattle, and Washington, DC. The City has also looked at NACTO recommendations for shared mobility.

Public Safety

The City has been coordinating with a number of local public safety agencies to understand the needs and perspectives of public safety agencies, to document the number of incidences as recorded by these agencies, and to establish future coordination protocol following the adoption of this ordinance.

City staff have met with the San José Police Department's Traffic Enforcement Unit, San José State University's Police Department, and the San José Fire Department. Additionally, City staff have been coordinating with the Office of Council District 3, who have also been in communication with public safety and law enforcement over this issue. City staff have also presented to the Downtown Safety Coordination Roundtable.

As of November 2018, there have been fourteen recorded injuries on e-scooters in the Downtown area, two of which were solo major injuries. Department of Transportation staff are coordinating with SJPd on a targeted enforcement effort for after adoption of this ordinance. The effort will focus on unlawful sidewalk e-scooter use. In July 2018, the Santa Clara County Sheriff's Office issued citations to e-scooter users riding on sidewalks along the Downtown Transit Mall.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the Office of Economic Development.

COMMISSION RECOMMENDATIONS/INPUT

City staff provided an update to the Rules and Open Government Committee on May 2, 2018. The Committee requested that staff bring back a recommendation to regulate shared micro-mobility for consideration by City Council in Fall 2018.

City staff presented background and preliminary policy and permit regulations to the Senior Citizen's Commission on June 14, 2018. Commissioners expressed general support for the City's efforts to regulate these types of devices and businesses; however, they expressed concerns over sidewalk use of e-scooters and the speeds at which they can travel. Commissioners also expressed concerns over improperly parked e-scooters creating ADA clearance obstructions. Staff gave a follow-up presentation to the Commissioners on November 8, 2018. Commissioners reiterated concerns over sidewalk e-scooter use, including enforcement of users on sidewalks; however, they continued to be generally supportive of the direction the City is taking. The Commission requested quarterly updates on the program following Council approval.

City staff provided background and policy to the San José Bicycle and Pedestrian Advisory Committee on May 14, 2018, and August 13, 2018. BPAC members showed general support for the proposed regulations. Members of the public in attendance expressed concern over privacy issues related to data sharing requirements in permit regulations.

City staff presented this topic to the Transportation and Environment Committee on August 13, 2018. The presentation's focus was on the history of shared micro-mobility in San José and the activities that have lead the City to consider recommending the regulatory framework contained in this memorandum. Committee members expressed the desire to limit restrictions placed on shared micro-mobility operators and to allow market forces to guide their operations. Committee members also expressed the desire for shared micro-mobility programs to serve all districts of the city.

Additionally, City staff presented this topic to the City's Youth Commission on October 22, 2018. Staff provided general background on shared micro-mobility in San Jose along the recommendations detailed in this memorandum, focusing on e-scooters and on the elements contained in the administrative regulations. The Commissioners were familiar with various transportation goals adopted by the City Council and viewed micro-mobility devices as potential solutions to transportation challenges faced by the City. At the same time, they expressed safety concerns posed by these devices, both for pedestrians on sidewalks as well as for users on streets with high speeds and no dedicated infrastructure, such as bike lanes.

This memorandum will be posted on the City's Council Agenda website for the December 18, 2018, City Council Meeting.

COST SUMMARY/IMPLICATIONS

The cost to administer, manage and monitor the permit program is designed to be revenue neutral with 100% cost recovery through collected permit fees. A required deposit of \$10,000 from vendors operating shared-mobility devices in San José will be held in a depositor's account and will be used to address damage resulting from device use. Remaining depositor funds will be returned if/when the vendor ceases operating devices in San José.

To administer this permit program, a new Transportation Specialist position is recommended to be added in the Department of Transportation, funded by the cost-recovery permit fees required for shared micro-mobility operators. Permit fees will also fund a portion an Associate Transportation Specialist and a Senior Transportation Specialist that will support the program. Program monitoring software is also required which will allow staff to track all devices deployed in San José. The annual subscription costs for this software will be funded by required permit fees. Additionally, permit fees will cover the overhead cost for the fee program. Budget actions are recommended in this memorandum to appropriate funds for the additional direct program costs and recognize revenue to cover those costs, resulting in a net zero impact to the General Fund.

No revenue from the new fines is recommended to be recognized because of the difficulty in predicting how many fines will be issued. Budget actions may be brought forward later in the fiscal year based on actual collections.

BUDGET REFERENCE

The table below identifies the fund and appropriation actions recommended as part of this memorandum.

Fund #	Appn #	Appn. Name	Total Appn	Recommended Budget Action	2018 -2019 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	0511	Department of Transportation Personal Services	\$20,363,772	\$101,530	VIII-387	10/16/18, 30172
001	0512	Department of Transportation Non-Personal/ Equipment	\$16,189,838	\$16,000	VIII-387	10/16/18, 30172
001	R120	Fees, Rates, and Charges	\$55,410,013	\$117,530	III-1	10/16/18, 78825

CEQA

Not a Project, PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.


MARGARET MCCAHAH
Budget Director

/s/
JOHN RISTOW
Acting Director, Transportation

Attachment: Shared Micro-Mobility Permit Administrative Regulations

HONORABLE MAYOR AND CITY COUNCIL

December 5, 2018

Subject: Shared Micro-Mobility Regulations

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I hereby certify that there will be available for appropriation in the General Fund in the Fiscal Year 2018-2019 monies in excess of those heretofore appropriated there from, said excess being at least \$117,530.



MARGARET MCCAHAH
Budget Director

For questions, please contact Jessica Zenk, Interim Deputy Director in the Department of Transportation, at (408) 535-3543.

PART 1 – GENERAL PROVISIONS

Section 1-1. Purpose and Authority

Chapter 11.92 of the San José Municipal Code (“Code”) sets forth the requirements and procedures for permits issued for the operation of Shared Micro-Mobility Device Systems in the City of San José (“City”). These regulations implement the provisions of Chapter 11.92 and are issued by the Director of Transportation (“Director”) under the authorization granted pursuant to Section 11.92.110 of the Code. These regulations are not intended to be exhaustive and may be amended at any time by the Director.

These regulations shall be referred to as the “Shared Micro-Mobility Permit Administrative Regulations.”

Section 1-2. Definitions and Construction

The definitions set forth in Chapter 11.92, and herein, shall govern the application and interpretation of these regulations. Any reference to federal, state or local statutes and ordinances includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute, ordinance or regulatory provision.

PART 2 – PERMIT PROCEDURES AND OPERATING REQUIREMENTS

Section 2-1. Permit Issuance

- 1) Permits must be renewed annually. Permits are revocable by the Director for failure to meet the requirements set forth in the Code or in the Administrative Regulations.
- 2) Programs, systems, devices, or operations that conflict with existing contracts, agreements, or other obligations of the City of San Jose will not be issued a permit.
- 3) Shared electric-assist bicycle programs will currently not be issued a permit under these regulations.

Section 2-2. Shared Micro-Mobility Device Requirements

- 1) **Device Identification** – Each Shared Micro-Mobility Device must have a unique identifying number printed on it, along with the company’s name, customer service telephone number, and website address.
- 2) **Vehicle Code Standards** – Each Shared Micro-Mobility Device must conform to the equipment, lighting, and safety standards as defined under applicable sections of the California Vehicle Code, including but not limited to the provisions in section 21223 for electric scooters.

SHARED MICRO-MOBILITY PERMIT ADMINISTRATIVE REGULATIONS

Department of Transportation
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- 3) **Display of Applicable Laws** – Each Shared Micro-Mobility Device must display state and local laws applicable to their use in the public right-of-way.
- 4) **Data Compliance** – Each Shared Micro-Mobility Device must comply with the Data Sharing section of these regulations.
- 5) **Speed Limit** – Operators must ensure that all electric scooters deployed can be limited to a maximum speed in areas of the City's public right-of-way determined by the Director. In the Downtown Core, electric scooters must be capped a maximum speed limit of twelve miles-per-hour.
- 6) **Prevention of Illegal Sidewalk Use** – By June 2019, operators of electric scooters must prevent motorized use on sidewalks; satisfaction of this requirement will be determined by the Director.

Section 2-3. Program Size, Area, and Distribution

- 1) **Total Maximum Number** – The Director may set the total maximum number of Operators and Shared Micro-Mobility Devices, as needed, by amendment of the regulations.
- 2) **Minimum Number** – Each Operator must operate a minimum of 50 Shared Micro-Mobility Devices available for public use; the minimum number of Shared Micro-Mobility Devices may be amended by the Director.
- 3) **Program Area** – At any time, the Director may amend the regulations to establish program areas or boundaries where the number of Shared Micro-Mobility Devices is restricted or where separate parking requirements are established.
- 4) **Re-Balancing Requirements** – Shared Micro-Mobility Devices must be re-parked/re-distributed regularly to ensure daily compliance with the regulations.
- 5) **Obstructions** – Shared Micro-Mobility Devices in the public right-of-way that are found to create right-of-way obstructions or public nuisances are subject to removal per San Jose Municipal Code section 13.24.
- 6) **Communities of Concern** – To address equity needs, 20% of an Operator's operations must occur in a "Community of Concern" as defined by the Metropolitan Transportation Commission.

Section 2-4. Operating Regulations

1) Shared Micro-Mobility Device Parking

- a) Shared Micro-Mobility Devices parked in the public right-of-way shall be parked upright without leaning on any object in the furnishing zone of a sidewalk, as defined in the San Jose Complete Streets Design Standards and Guidelines, in a way that complies with the Americans with Disability Act clearance standards and does not impede upon pedestrian traffic flow.
- b) Shared Micro-Mobility Devices shall not be parked in a manner that prevents access to a fire hydrant or other emergency facility, or to any under- or above-ground utility.
- c) Shared Micro-Mobility Devices shall not be parked in a manner than blocks curb ramps, public or private pathways, public or private driveways, public or private entryways and exits, handicapped parking zones, loading zones, or bus boarding zones.
- d) Shared Micro-Mobility Devices shall not be parked in a manner that restricts access, ingress, or egress to transit, including bus stops and light rail platforms, or prevents the reasonable use of bicycle racks, news racks, or public restrooms.
- e) When a sidewalk lacks a furniture zone, Shared Micro-Mobility Devices shall be parked in a way that complies with the Americans with Disability Act clearance standards and does not impede upon pedestrian traffic flow, or violate any paragraph in this section.
- f) No Shared Micro-Mobility Device may lie on its side, whether placed on its side or fallen over.
- g) Operator and/or their agents/contractors may not park Shared Micro-Mobility Devices in the landscaped areas of park strips.
- h) Operator must respond to and address requests from the City or from the public to re-park or remove Shared Micro-Mobility Devices that are parked in violation of the regulations within two hours of the request.
- i) The Director may establish designated parking zones to manage parking and distribution of Shared Micro-Mobility Devices.
- j) Operators shall not park Shared Micro-Mobility Devices within the area of any Community Special Event permitted under Chapter 13.14 of the San Jose Municipal Code.

2) Infrastructure Requirements

- a) An Operator shall be responsible for the cost and maintenance of any infrastructure required for operation of any Shared Micro-Mobility Device System. Operator shall obtain all required permits prior to installing any infrastructure.

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- b) The regulations set forth here apply to the public rights-of-way in the City of San Jose. For locations outside the City right-of-way, Operator must obtain permission from the appropriate property owner.

3) **Customer Service**

- a) Operator shall maintain a staffed operations center within the nine-county San Francisco Bay Area.
- b) Operator shall maintain a 24-hour customer service telephone number for customers and members of the public to report safety concerns, complaints, or to ask questions. The customer service number shall be clearly displayed on all Shared Micro-Mobility Devices in service.
- c) Operator shall respond to and address requests to re-park or remove Shared Micro-Mobility Devices that are parked in violation of the regulations within two hours of the request.
- d) Within six months of permit issuance, Operator shall use English, Spanish, and Vietnamese in its customer service and low-income discount program materials, including in its website, mobile app, and phone services.

4) **Maintenance**

- a) Operator must ensure that all Shared Micro-Mobility Devices in their fleet are in good working order, are clean, and are safe to operate for a wide range of users.
- b) Operator must promptly remove Shared Micro-Mobility Devices that are not properly operating.
- c) Operator must maintain a record of all maintenance performed for each Shared Micro-Mobility Devices and make such record available to the City upon request.

5) **Education and Outreach**

- a) Operator shall educate its users on state and local laws pertaining to the use of Shared Micro-Mobility Devices.
- b) Operator shall post applicable state laws and City ordinances on each Shared Micro-Mobility Device in a clear and concise manner and indicate requirements regarding sidewalk riding, age, drivers' license, speed, and other applicable laws.
- c) Operator shall include on its website and mobile app a "Code of Conduct" that, at a minimum, encourages and promote the safe and responsible conduct of Shared Micro-Mobility Device users.

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- d) Operator shall ensure that their users comply with all state laws and local ordinances regarding parking and use of Shared Micro-Mobility Devices.
- e) During the first seven days of an Operator's deployment(s), representatives from the company must be on-hand in the deployment area to answer questions and distribute information regarding safety and proper use of Shared Micro-Mobility Devices. These activities must be coordinated with City staff. Operators are encouraged to continue this practice throughout the duration of their permitted activities.

6) Low-Income Discount

- a) Operator shall establish a low-income discount program that offers discounted memberships to individuals at or below 200% of the federal poverty level. Membership in public assistance programs such as SNAP, CalFresh, or PG&E Care may be used for discount eligibility, or some other metric consistent with this requirement and approved by the Director.
- b) The low-income discount program shall waive any applicable customer deposit fees.

7) Data Sharing

- a) Within 30 days of permit issuance, each operator must have an application program interface (API) or other automated mechanism that allows their services to be integrated into third-party mobility applications so that users can see data about and procure services through third-party Mobility-as-a-Service applications.
- b) Data for all Shared Micro-Mobility Device types must be provided to the City, and partners, in the General Bike Feed Specification (GBFS) and Mobility Data Specification (MDS) formats, or some other format as specified by the City on its website, each through an API. MDS data must be processed using the most current version of the MDS Shared Streets plugin by the Operator before it is shared with any entity, including the City. The City maintains links to the full specification of these required data formats on the City's Shared Micro-Mobility Program webpage.
- c) GBFS must be made available to the public through the Operator's website. The MDS feed must be available to City specified partners. These feeds must be consumable by third-party software.
- d) Data required beyond the GBFS and MDS specifications are:
 - 1. Number of incidences by type (complaints, requests for improperly parked Shared Micro-Mobility Devices, collisions, [and so on](#)). Type of collision must be detailed to include location, number of parties, severity, response to collision, [and so on](#).
 - 2. Number of inquiries by type and method by which Operator received such inquiries
 - 3. A maintenance log, including date and type of maintenance performed
 - 4. Response time, including time of request and time of resolution



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- e) Data shall be made available to the City for the duration of the permitted program.
 - f) Operator shall comply with all state and federal laws related to personally-identifiable information including but not limited to California Civil Code Section 1798 et seq.
 - g) Non-GBFS data consumed through the API by City specified third-party software providers shall not be publicly available without consent from the Operator.