



## Agenda Report

21-1179

Agenda Date: 12/7/2021

### REPORT TO COUNCIL

#### **SUBJECT**

Action to Waive First Reading and Introduce Ordinance for the Regulation of Shared Mobility Devices (Bicycles and Motorized Scooters), and Adopt a Resolution to Establish Shared Mobility Permit and Impound Fees

#### **COUNCIL PILLAR**

Promote and Enhance Economic, Housing, and Transportation Development, Enhance Community Engagement and Transparency

#### **EXECUTIVE SUMMARY**

In early 2019, the City Council adopted a temporary moratorium on the operation of shared mobility devices (i.e., shared bicycles and scooters) in Santa Clara. The City Council also directed staff to return with a proposed permanent Shared Mobility Permit Program (Permit Program) to allow the City to properly regulate the use of shared mobility devices within the City. Staff developed and implemented a workplan for the establishment of a Permit Program as directed by the City Council and provided a detailed progress update on the development of regulations for a Permit Program at the June 4, 2019 City Council meeting. Additionally, at the June 24, 2019 Bicycle and Pedestrian Advisory Committee (BPAC) meeting, staff presented the proposed Permit Program and BPAC approved a recommendation that the City Council approve the Permit Program's draft Administrative Regulations (Administrative Regulations).

In July 2019, the City paused the development of the Permit Program based on pending Americans with Disabilities Act (ADA) litigation that had the potential to impact the proposed Permit Program and Administrative Regulations. Additionally, at the time staff was tracking two items of pending legislation (Assembly Bill 1112 and Assembly Bill 1286) that could affect the Permit Program.

In early 2021, staff restarted the development of the Permit Program as the relevant ADA litigation was resolved and Assembly Bill 1286 was approved by the Governor. Staff has updated the Administrative Regulations and has prepared a draft ordinance for City Council consideration to amend the City Code for regulation of shared mobility devices. Additionally, staff has also prepared a resolution related to annual shared mobility operator permits and impound fees.

#### **BACKGROUND**

In December 2018 and January 2019, the City Council discussed and acted on the operation of shared mobility devices in Santa Clara. The Council approved emergency and regular ordinances, which prohibited the operation of shared mobility devices in Santa Clara from December 20, 2018 to December 19, 2019. The City Council also directed staff to return with a proposed permanent Permit Program to allow the City to properly regulate the use of these new mobility options within City limits. Staff developed and implemented a workplan to help establish a Permit Program and provided a

detailed progress update at the June 4, 2019 City Council meeting. A summary of topics that received comments from Council is listed below:

- Outreach events
- Insurance coverage options for users
- Parking spaces for devices
- Data driven device placement
- Estimated staff time needed to ensure permit compliance
- Permit violations and permit revocation
- Information about first and last mile locations for users
- Council support for minimum number of devices per operator
- Regulation of scooters on private property
- Outreach to larger developers
- Research other funding sources to reduce 100% cost recovery operator fees

Based on feedback from that meeting, staff updated the Permit Program's Administrative Regulations and conducted additional outreach with the public, operators, and other stakeholders. On June 20, 2019, staff posted the updated Administrative Regulations to the City's website.

In addition, at the June 24, 2019 BPAC meeting, staff provided the BPAC with an update on the Permit Program and Administrative Regulations. After an extensive discussion focused on data-sharing and privacy rights under the Permit Program, the BPAC approved a recommendation that the City Council approve the Administrative Regulations with the following two amendments: 1) that the Administrative Regulations provide more clarity regarding which rules apply to bicycles, scooters, or both, and 2) that Operators not be allowed to share user data with third party vendors. Following the June 24, 2019 BPAC meeting, staff was preparing to return to City Council with a final proposed Permit Program and Administrative Regulations in August 2019.

In July 2019, staff was informed of ADA litigation that had the potential to impact the proposed Permit Program and Administrative Regulations. Additionally, there were two proposed State Assembly Bills (Assembly Bill 1112 and Assembly Bill 1286) that could affect the Program. Based on this, the City Attorney's Office recommended temporarily pausing the development of the Permit Program to allow the City sufficient time to determine how these new developments would impact the proposed Permit Program. On November 5, 2019, City Council adopted Ordinance 2010 to extend the City's temporary moratorium on shared mobility devices to December 19, 2020.

On September 18, 2020, Governor Gavin Newsom approved Assembly Bill 1286 (Muratsuchi), Shared mobility devices; agreements. AB 1286 requires that shared mobility service providers "*enter into an agreement with, or obtain a permit from, the city or county with jurisdiction over the area of use.*" AB 1286 also requires the following: 1) providers must maintain a specified amount of commercial general liability insurance and 2) that a city that authorizes a shared mobility device provider to operate within its jurisdiction on or after January 1, 2021, to adopt operation, parking, and maintenance rules, as provided, regarding the use of the shared mobility devices in its jurisdiction before the provider may offer shared mobility devices for rent or use. Effectively, AB 1286 requires that after January 1, 2021, shared mobility service providers in Santa Clara will be required to obtain a permit from the City prior to operation. The permit would be subject to the future rules and

regulations adopted by Santa Clara.

On November 17, 2020, staff provided an informational report to the City Council (Attachment 1) with an update on the proposed Permit Program and highlighted recent changes in state law. Staff informed City Council of a plan to return with a proposed Permit Program and Administrative Regulations for review and consideration by the end of 2021.

## **DISCUSSION**

During the past several months, staff spent considerable time reengaging with shared mobility operators and updating the proposed Administrative Regulations based on the following items:

1. Address feedback from the June 4, 2019 City Council discussion and the June 24, 2019 BPAC discussion on the proposed Permit Program.
2. Incorporate changes required based on recent State Law and the above-mentioned ADA litigation
3. Include any recent developments within the shared mobility operator industry (e.g., parking detection technology, etc.)
4. Ensure regulations are comparable with other cities that have similar programs. (San Jose, Oakland, San Francisco, and Sacramento)

Notable updates are included as Attachment 2.

The proposed Ordinance (Attachment 3) amends the City Code to include Chapter 10.35 and sets forth the requirements and procedures for permits issued for the operation of shared mobility devices in the City of Santa Clara. Regulations referenced as "Shared Mobility Permit Administrative Regulations" are issued by the City Manager or Designee under the authorization granted by Section 10.35.030 of the City Code. The Administrative Regulations (Attachment 4) are structured to bring consistency to the City's new Permit Program and to address topics that other cities have been experiencing where scooters or bike share has already been initiated.

Some of the key areas of the regulations are summarized in more detail below.

**Permit Issuance:** The City Manager may select up to three Operators based on proposals describing the plan to provide customer service, complete outreach and safety education, device technology, company experience and qualifications, and ability to comply with regulations. The permit application period will be from February 1 to March 31 each year (two-month period) and the Operators will be granted a one-year permit that is valid from July 1 to June 30 of the following year.

**Shared Mobility Device Requirements:** All shared mobility devices are required to comply with California State Law, California Vehicle Code, and industry standards. In addition, all shared mobility devices must display a permanent ID number, the Operator's business name, customer service phone number, and email address as well as be equipped with Global Positioning System (GPS) tracking technology.

**Parking:** Operators shall ensure that users are informed of State Laws and follow parking rules and limitations. Shared devices shall be parked upright and shall not obstruct public facilities, including sidewalks, light rail platforms, transit areas, on-street parking zones, curb ramps, entryways and driveways, vehicular lanes, bicycle lanes or associated buffers. Shared mobility devices shall be

parked so that a 48-inch clear space is provided on pedestrian rights-of-way. Once notified, Operators will have two hours to re-park improperly parked devices. In coordination with property owners, the City Manager may also designate “priority parking zones” that Operators should service.

Fleet Management and Balancing: Each Operator shall provide a minimum of 60 devices (bicycles, scooters, or both- whichever is applicable) to ensure service availability. The total size of the citywide device fleet shall not exceed 3,000 total devices consisting of 2,000 scooters and 1,000 bicycles. Any changes to the citywide maximum cap of 3,000 shared mobility devices will require approval from the City Council. Shared mobility devices must be re-parked/re-distributed daily to ensure compliance with the regulations and the Operator’s plan of operation. Operators shall be required to use geofencing or equivalent technology to prevent operation in public parks. Each operator must also deploy 5 percent of their devices in the City’s Equity Priority Community (formally called “Communities of Concern”). This is an area of the City defined by the Metropolitan Transportation Commission to have census tracts with a significant concentration of underserved populations, such as households with low incomes and people of color. The City’s Bicycle Plan Update 2018 and Pedestrian Masterplan included a discussion on Santa Clara’s Equity Priority Community and a map is included as Attachment 5. This area is in the central part of Santa Clara and is generally bounded by Highway 101 to the north and the Caltrain tracks to the south.

Customer Service: Operators will be required to provide 24-hour live customer service support through telephone. In addition, operations must provide additional options such as email, online forms, and text message. Operators will also need to provide status updates and follow up with the originator of the customer service issue, as appropriate. Once notified, Operators will have two hours to re-park any improperly placed devices. Operators will need to maintain a multilingual (English, Spanish and Chinese) website, call center and mobile app interface.

Maintenance: Operators must ensure that all shared mobility devices are clean, in good working order and are safe to operate. Any shared mobility device that is reported to be unsafe to operate shall be inspected in person by the Operator and removed within two hours after notification, if the issues cannot be remedied. In addition, Operators must maintain a record of all maintenance performed on each shared device and make such records available to the City upon request.

Education and Outreach: Education and outreach include requirements for the Operator to educate users about laws applicable to riding, operating, and parking shared mobility devices. Operators must submit an education and outreach plan for City review during the permit application process. Operators will also be required to notify users regarding applicable State laws via signage on the devices, through the website, and mobile application, including laws related to age, driver’s license requirements, speeds, and riding.

Data Sharing: Operators shall provide the City access to an Application Programming Interface (API) offering data about trip activity that meets the requirements of the Mobile Data Specification (MDS) and General Bike Share Feed Specification (GBFS) format. In addition, Operators shall be required to provide records of maintenance activity, customer service inquiries, collision data from users and age of users. The data shall be provided to the City monthly. Operators shall provide a dashboard for the City to view shared mobility device data. Operators shall also survey users every six months to provide information to the City for future planning, including asking questions about what mode of transportation was replaced with the use of a shared mobility device.

Membership and Enrollment: California law requires that users of motorized scooters have a driver's license. Additionally, all shared mobility operators currently require users to be at least 18 years of age. Operators are also required to conduct outreach and implement technology-based measures to verify ages of members during enrollment via mobile app and/or website. In addition, Operators shall establish a low-income discount program.

Levi's Stadium and Other Special Events: The Administrative Regulations allow the City Manager to waive the citywide maximum cap for shared mobility devices in relation to major/special events in the City (i.e. events at Levi's Stadium or other large special event days at the Great America Theme Park). Operators must comply with the most current Transportation Management and Operations Plan (TMOP) for Levi's Stadium, provide sufficient on-site staff to support the Levi's Stadium and other special event days, and deploy geofencing or comparable technology to ensure proper use of shared devices as determined by the City. Operators will be required to prepare and submit a detailed operations plan for the use of shared mobility devices for these events to the City for review and approval. City staff will ensure coordination of these operation plans with affected property owners (i.e. parking lot operators, San Francisco 49ers, Great America staff).

Enforcement: Enforcement is designed to promote and achieve compliance with local law and program guidelines. Enforcement measures include:

- Any improperly parked devices that are not relocated or re-parked within two- hours may be impounded and taken to a City facility for storage at the Operator's expense. The Operator shall be required to pay the impound fee
- In addition to the impounding fee, the Operator shall be fined as follows for failure to remove the devices within two hours:
  - \$100 for the first violation
  - \$200 for the second violation
  - \$500 for the third and subsequent violations
- Failure to retrieve shared mobility devices from the City facility within two working days of notification of impoundment may lead to permit suspension or revocation.

Denial, Suspension, or Revocation of Operating Permit: An Operator's permit may be denied, suspended, or revoked at the discretion of the City Manager. The key metrics and process for denial, suspension, and revocation of the operating permit are:

- Number of parking violations and impoundments, defined as failure to resolve parking complaints within two hours of notice
- Failure to retrieve shared mobility devices from the City facility within two working days of impoundment notification. If suspended, Operators will be allowed an opportunity to provide a plan for corrective actions to comply with regulations. The minimum suspension period will be two weeks.

Permit Application and Permit Operator Fees: Staff prepared a Shared Mobility Fee Study (Attachment 6) to establish a relationship between estimated staff time and permit costs. The study assumes three Operators will apply for permits and operate in the City. The proposed shared mobility application fee of \$3,470 per Operator is based on cost recovery for staff time and effort to review the permit applications. The proposed annual permit fee is \$27,430 per Operator plus \$70 per device over 60. The base fee of \$27,430 per Operator is based on staff time and effort related to the

operation of a minimum 180 devices citywide (60 devices per Operator). Additional costs to administer the inclusion of Operator devices beyond the 60-device minimum will be recovered based on an additional per-device fee of \$70. The first 60 shared mobility devices deployed per Operator will not be subject to the per-device fee. At the maximum of 3,000 devices, the total cost to be recovered is \$291,000, or approximately \$97,000 per Operator.

Impound Fee: The Shared Mobility Fee Study (Attachment 6) demonstrates the relationship between the fee and the Police Department time and cost for the removal and storage of shared mobility devices. Based on this study, the Electric Scooter/Bike Removal and Storage Fee (Impound Fee) is proposed to be \$305 per device.

Performance Bond: Operators shall always maintain in effect, a valid performance bond in the amount of \$20,000 during the term of the annual permit, starting at the time of permit issuance. The performance bond may be used for any future public property repair and maintenance costs incurred due to the shared mobility devices, removal and storage of devices, staff time related to these activities, unpaid fines or any future costs incurred related to the shared mobility permits.

Permit Application: Operators shall be required to provide a description of the proposed plan of operations, a detailed plan for outreach and education events, and a plan to comply with the Administrative Regulations. The Operator would be required to provide information of the number and type of shared mobility devices, a map of the deployment area including parking locations, the Operators' experience and ability to comply with regulations in other jurisdictions, the applicant's regulation compliance program, and the Operators' ability to comply with local and State laws.

On October 25, 2021, staff provided an update to the BPAC on the Administrative Regulations. Staff presented the changes described above and BPAC discussed the program. After an extensive discussion, the BPAC approved a recommendation that the City Council approve the updated Administrative Regulations and emphasized that Operators are not allowed to share user data with third party vendors.

If the City Council approves staff recommendations, then the attached Resolution (Attachment 7) will create the Permit and Impound Fees in the City's Municipal Fee Schedule. Following Council approval, Operators may apply for a Shared Mobility Permit in February 2022. Staff will review applications and issue permits by June 2022 for an effective date of July 1; the permits will align with the City's fiscal year cycle (July 1 through June 30). Following permit issuance, the first education/outreach event will be organized prior to deployment of shared bicycles and scooters. The Permit Program will be monitored and evaluated by City staff continuously to determine the effectiveness of the Administrative Regulations. The ordinance provides the City's administration the flexibility to update the permit regulations, as needed.

## **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378(b)(5) in that it is governmental organization or administrative activity that will not result in direct or indirect changes in the environment. Actions such as installation of bicycle racks or any other physical infrastructure for shared mobility devices will be analyzed as part of the development review or encroachment permit processes but are expected to be a categorical exemption pursuant to CEQA section 15301(c):

Existing Facilities.

### **FISCAL IMPACT**

The cost to administer and manage the Permit Program is designed to be revenue neutral with 100 percent cost recovery through collected permit and impound fees. The annual estimated revenue assumes three Operators apply and receive permits to operate 1,000 shared mobility devices citywide. The application fee is projected to generate revenue of \$10,410 in FY 2021/22 to offset City costs. The annual permit fee is projected to generate revenue of approximately \$140,000 in FY 2022/23 as the permit will be effective from July 1, 2022 through June 30, 2023. This revenue estimate assumes 1,000 devices are deployed in the first year. While the proposed Permit Program allows a maximum of 3,000 shared mobility devices citywide, staff assumes that operators will deploy devices in a phased manner. At the maximum of 3,000 devices, the total cost to be recovered for the program, including the permit and application fee, is \$291,000, or approximately \$97,000 per Operator.

The adopted Fiscal Year 2021/22 operating budget for the existing Public Works Traffic Division staffing level will be used to process the applications in FY 2021/22 and to support any Permit Program work this fiscal year. A budget amendment to recognize the permit application fees may be brought forward later in the fiscal year based on actual receipts. The new Permit Program, effective July 1, 2022, is anticipated to require up to 1,100 hours of combined time from the existing staff in the Traffic Division. The revenues and associated costs for this Permit Program will be factored into the FY 2022/23 General Fund Operating Budget. Staff will be temporarily absorbing the additional work effort during the first year by reprioritizing projects and assignments. This will be monitored and depending on the success of the program, it is anticipated that additional staffing of 0.5 - 1.0 FTE's may be necessary to support it. Staff will return to Council as necessary for any additional positions required for the Permit Program.

### **COORDINATION**

This report has been coordinated with the Finance Department and the City Attorney's Office. Staff also notified stakeholders (i.e. businesses, Valley Transportation Authority, Santa Clara University, etc.) of staff's proposed updates to the Permit Program and posted the Administrative Regulations on the City's website on October 20, 2021. In addition, at the October 25, 2021 BPAC meeting, staff provided the BPAC with an update on the City's proposed Permit Program and the Administrative Regulations.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

Staff notified potential operators via electronic mail and posted information about the Permit Program on the City's web page.

### **ALTERNATIVES**

1. Introduce and waive first reading of an Ordinance establishing Chapter 10.35 of the Santa Clara

Municipal Code instituting Shared Mobility Regulations.

2. Adopt the Resolution establishing the Shared Mobility Permit and Impound Fees and integrate these fees into the Municipal Fee Schedule.
3. Do not approve the Introduction of an Ordinance establishing Chapter 10.35 of the Santa Clara Municipal Code instituting Shared Mobility Regulations.
4. Do not adopt the Resolution establishing the Shared Mobility Permit and Impound Fees and integrate these fees into the Municipal Fee Schedule.

### **RECOMMENDATION**

Alternatives 1 and 2

1. Waive First Reading and Introduce an Ordinance establishing Chapter 10.35 of the Santa Clara Municipal Code instituting Shared Mobility Regulations; and
2. Adopt the Resolution establishing the Shared Mobility Permit and Impound Fees and integrate these fees into the Municipal Fee Schedule.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Report to Council, November 17, 2020, Agenda Item 2T, Note and File Informational 2. Report on a Proposed Shared Mobility Permit Program and Updates to State Law
3. Notable Updates to Shared Mobility Permit Program Administrative Regulations
4. Ordinance
5. Shared Mobility Permit Program Administrative Regulations
6. Equity Priority Community Map
7. Shared Mobility Fee Study
8. Resolution