

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING SECTION 10.71 RELATING
TO A SHARED MICROMOBILITY DEVICE PROGRAM

The City Council of the City of Long Beach does hereby ordain as follows:

Section 1. Chapter 10.71 is added to the Long Beach Municipal Code to
read as follows:

Chapter 10.71

SHARED MICROMOBILITY DEVICE PROGRAM

10.71.010 Purpose.

Consistent with the City's goals of enhancing micromobility and
access, easing traffic congestion, and promoting sustainability, this Chapter
creates a program to facilitate the use of shared micromobility devices while
ensuring 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.

10.71.020 Definitions.

- A. "Abandon" shall mean leaving an item unattended for any
length of time.
- B. "City" shall mean the City of Long Beach, California.
- C. "Director" shall mean the Director of Public Works or
designee.
- D. "Operator" shall mean any person or businesses entity

1 selected by the City to participate in the Shared Micromobility Device
2 Program pursuant to this Chapter.

3 E. "Private property" shall mean real property owned by any non-
4 governmental legal entity.

5 F. "Public area" shall mean any outdoor area that is open to the
6 public for public use, whether owned or operated by the City or a private
7 party.

8 G. "Public right-of-way" shall mean any public alley, parkway,
9 public transportation path, roadway, sidewalk, or street that is owned,
10 granted by easement, operated, or controlled by the City.

11 H. "Shared micromobility device" shall mean any land
12 transportation device by which a single person can be propelled, moved or
13 drawn, that is displayed, offered or placed for rent in any public area or
14 public right-of-way, or placed on private property by agreement with the
15 private property owner, except that a "shared micromobility device" does
16 not include any device being vended or made available for rent exclusively
17 from a vehicle pursuant to a valid City vending permit; a car share vehicle,
18 as defined by California Vehicle Code section 22507; a device authorized
19 by the City bike share system or a private bike share or private e-scooter
20 system; a taxicab as regulated in Chapter 5.80 of this Code, a device
21 operated by the Los Angeles County Metropolitan Transportation Authority;
22 or any other device excluded pursuant to administrative regulations.

23 10.71.030 Administrative regulations.

24 A. The City may adopt administrative regulations to implement
25 the provisions of this Chapter, including, but not limited to, permit
26 application procedures and permit standards, which may include
27 regulations relating to lawful conduct, insurance, indemnification, public
28 safety, data sharing, data privacy, and/or the timely removal of hazards.

1 B. No person shall fail to comply with the City's administrative
2 regulations. Any violation of any administrative regulation issued pursuant
3 to this Section shall constitute a violation of this Code and shall subject the
4 violator to the penalties set forth in this Chapter.

5 10.71.040 Prohibited conduct.

6 Notwithstanding any other provision of this Code, no person may:

7 A. Display, offer or make available for rent any shared
8 micromobility device within the City, unless the person has first obtained:
9 (1) a valid shared micromobility operator permit; and (2) a business license
10 issued in accordance with Chapter 5.80 of this Code; and (3) insurance and
11 indemnification naming the City as required by the shared micromobility
12 operator permit.

13 B. Abandon a shared micromobility device not authorized by this
14 Chapter in the public right-of-way or a public area in such a way that the
15 device is available for rent; and

16 C. Abandon a shared micromobility device in the public right-of-
17 way or a public area in a manner that: (1) obstructs travel upon or blocks
18 access to a public right-of-way; (2) poses an immediate public safety
19 hazard; or (3) is otherwise prohibited by applicable laws or administrative
20 regulations.

21 10.71.050 Maximum number of shared micromobility operator permits and
22 shared micromobility devices permitted.

23 A. The City may issue up to six (6) shared micromobility operator
24 permits authorizing the deployment of a shared micromobility device within
25 the City, with both electric scooters and electric bikes, or other future
26 devices as shared micromobility devices. No shared micromobility operator
27 permits shall be issued to any operator that proposes to deploy a shared
28 micromobility device that is exclusively powered by the human body or

1 powered by combustion engine.

2 B. The City may establish the number of shared micromobility
3 devices authorized under each shared micromobility operator permit. No
4 more than on a weekly basis or within fourteen days following any City
5 Council action adjusting the number of permitted operators or devices
6 pursuant to Subsection (d), the City may adjust the maximum number of
7 devices authorized by each shared micromobility operator permit. The City
8 shall take into consideration market needs, the number of devices deployed
9 in the City, device utilization, and any other criteria set forth in
10 administrative regulations. The City shall first publish his or her tentative
11 adjustment decision under this Section, along with reasons supporting the
12 decision, and solicit comments prior to making a final determination. The
13 City's determinations under this Section shall constitute the final decision of
14 the City and are not subject to further administrative review. No person shall
15 fail to comply with the City's established device limitation.

16 C. No operator may be granted authorization for less than three
17 hundred fifty (350) shared micromobility devices.

18 D. At any time, in the City Council's discretion, the City Council
19 may reassess the number of shared micromobility operator permits
20 authorized for issuance. The City Council, in its discretion, may determine
21 by resolution that the number of shared micromobility operator permits or
22 the number of total authorized devices should be reduced or increased.

23 10.71.060 Shared micromobility operator permit application procedure, fees
24 and requirements.

25 A. Any person seeking to obtain a shared micromobility operator
26 permit shall submit a written application, signed under penalty of perjury,
27 using the form designated by the City for that purpose.

28 B. The City Council may establish permit fees and charges by

1 resolution, which shall:

2 1. Defray the City's costs in administering and enforcing
3 the provisions of this Chapter; and

4 2. Reflect charges associated with use of public property
5 pursuant to this Chapter.

6 C. The City may specify the information that must be provided in
7 connection with an application and the form in which the information is to be
8 provided. The application shall contain, at a minimum, the following
9 information:

10 1. The name and business address of each person or
11 entity that: (i) has more than a ten percent equity, participation, or revenue
12 interest in the applicant; or (ii) is a trustee, City, partner, or officer of that
13 entity or of another entity that owns or controls the applicant, excepting
14 persons serving in those capacities as volunteers, without compensation,
15 for organizations exempt from income taxes under Section 501(c)(3), (4), or
16 (6) of the Internal Revenue Code;

17 2. The name and business address of any parent or
18 subsidiary of the applicant, namely, any other business entity owning or
19 controlling the applicant in whole or in part, or owned or controlled in whole
20 or in part by the applicant, and a statement describing the nature of any
21 such parent or subsidiary business entity;

22 3. Information sufficient to show that the applicant is
23 financially, technically, and legally qualified to operate and maintain a
24 shared micromobility device system;

25 4. A description of the proposed plan of operation,
26 including, at a minimum, a detailed description of:

27 a. The applicant's current operations in the City
28 and other jurisdictions, including copies of the applicant's operating permits

1 for all such jurisdictions,

2 b. The applicant's proposed operations in the City,
3 the plan for balancing shared micromobility devices for Citywide coverage,
4 the plan for regular shared micromobility device maintenance, levels of staff
5 for operations and administration, and the plan for customer service and
6 response to customer complaints,

7 c. The applicant's regulatory compliance program,

8 d. The applicant's history of, intent to, and ability to
9 comply with, State and local law,

10 e. The applicant's plans to implement safety
11 programs, including, for example, a program by which the applicant will
12 receive information about and notify users of inappropriate use,

13 f. The applicant's plans to educate users of shared
14 micromobility devices about applicable California Vehicle Code provisions
15 and other applicable laws, regulations, and guidelines,

16 g. The applicant's plans to comply with applicable
17 Federal, State, and local data privacy laws and otherwise to protect the
18 privacy of personal information provided by users, and

19 h. Any other requirements set forth by
20 administrative regulation.

21 10.71.070 Shared micromobility operator selection.

22 A. City staff shall review all applications and make written
23 recommendations to the Director based on a ranking of each qualified
24 applicant in accordance with objective criteria set forth by this Chapter and
25 administrative regulations.

26 B. Each qualified applicant shall be evaluated based upon
27 objective criteria including: experience; proposed operations and
28 maintenance plan; financial wherewithal and stability; adequacy of

1 insurance; ability to begin operations in a timely manner; responsiveness to
2 the City's direction and compliance with regulations during the program;
3 public education strategies; references; relevant record of the applicant's or
4 officers', owners' or principals' violations of Federal, State or local law, or
5 rules and regulations; and any other objective criteria established by
6 administrative regulation.

7 C. Each applicant shall be provided an opportunity to submit
8 written comments or objections to the City's recommendations.

9 D. The City shall set forth, in writing, the reasons supporting its
10 final determinations. The City may request additional information from any
11 applicant or any other source that would assist in determining the final
12 qualifications and rankings.

13 E. The City shall grant a shared micromobility operator permit to
14 the highest six ranked applicants. Should two applicants receive the same
15 score, a lottery shall be used to establish the final rankings for any
16 applicants that achieved the same score.

17 F. The City's determinations under this Section shall be final and
18 shall not be subject to further administrative review.

19 G. The City may impose, as part of any shared micromobility
20 operator permit issued, any and all conditions that are necessary to
21 effectuate the purposes of this Chapter, mitigate traffic impacts, ensure
22 accessibility of the public right-of-way and availability of public space for
23 shared use by all, or protect the health, welfare, and safety of the public. No
24 person shall fail to comply with such permit conditions.

25 10.71.080 Limitations on City liability.

26 To the fullest extent permitted by law, the City shall not assume any
27 liability whatsoever with respect to having issued a shared micromobility
28 operator permit or otherwise approving the operation of any shared

1 micromobility device. As a condition to the issuance of any shared
2 micromobility operator permit, the applicant shall be required to meet all of
3 the following conditions:

4 A. The applicant must execute an agreement, in a form approved
5 by the City Attorney, agreeing to indemnify, defend (at applicant's sole cost
6 and expense), and hold harmless the City, and its officers, officials,
7 employees, representatives, and agents from any and all claims, losses,
8 damages, injuries, liabilities or losses which arise out of, or which are in any
9 way related to, the City's issuance of or decision to approve a shared
10 micromobility operator permit, the process used by the City in making its
11 decision, or the alleged violation of any Federal, State or local laws by the
12 applicant or any of its officers, managers, employees or agents.

13 B. Maintain insurance at coverage limits, and with conditions
14 thereon determined necessary and appropriate from time to time, as
15 determined by the Risk Manager and name the City of Long Beach as
16 additional insured.

17 C. The applicant's insurance policy shall be endorsed to state
18 that coverage shall not be cancelled except after twenty (20) days' prior
19 written notice by certified mail has been given to the City. If any insurance
20 policy issued to a permittee is cancelled for any reason, the permit issued
21 under this Chapter is automatically suspended. In order to reinstate the
22 permit, the permittee shall provide a new certificate and policy of insurance
23 to the City. Any contractors or others which applicant may use as part of
24 their application and permit shall be required to maintain insurance in
25 compliance with the provisions of this Section and to indemnify the City to
26 the same extent as applicant.

27 D. Reimburse the City for all costs and expenses, including, but
28 not limited to, attorney fees and costs, which it may be required to pay as a

1 result of any claim, lawsuit, or legal challenge related to the City's approval
2 of or activities conducted pursuant to the applicant's shared micromobility
3 operator permit. The City may, at its sole discretion, participate at its own
4 expense in the defense of any such action, but such participation shall not
5 relieve any of the obligations imposed hereunder.

6 E. The applicant shall include the City in any waivers and
7 disclaimers of liability provided to end-users' agreement, expressly
8 designating the City as a third-party beneficiary of its provisions.

9 10.71.090 Grounds for revocation, suspension or denial.

10 A shared micromobility operator permit may be revoked, suspended,
11 or denied by the City based upon any of the following grounds:

12 A. An applicant or operator, including its employees, managers,
13 officers, principals, directors, owners, contractors, representatives, or
14 agents:

15 1. Making one or more false or misleading statements, or
16 material omissions on the permit application, during the application process,
17 or during program operation;

18 2. Failing to provide information requested or required by
19 the City;

20 3. Failing to comply with the City's established numeric
21 device limitation;

22 4. Operating or proposing to operate in a manner that
23 endangers public health or safety; or

24 5. Failing to comply with any requirement imposed by the
25 provisions of this Code (or successor provision or provisions) including any
26 rule, regulation, condition or standard adopted pursuant to this Chapter, or
27 any term or condition imposed on the shared micromobility operator permit,
28 or any provision of State law.

1 B. Conviction of the operator, to include any of its officers,
2 owners or principals, of a criminal offense that is substantially related to the
3 qualifications, functions or duties of the shared micromobility business or
4 profession, including, but not limited to, any criminal conviction involving a
5 violent or serious felony, fraud, deceit, or embezzlement.

6 10.71.100 Impoundment of devices.

7 A. A shared micromobility device that is displayed, offered, or
8 made available for rent, or abandoned, in the public right-of-way or a public
9 area in violation of Section 10.71.040 shall be subject to immediate
10 impoundment by the City.

11 B. The City Council may adopt impound fees by resolution,
12 which shall reflect the City's enforcement, investigation, storage and
13 impound costs.

14 C. No person shall retrieve any impounded shared micromobility
15 device except upon consultation with City staff by appointment during
16 business hours, demonstrating proper proof of ownership of the device, and
17 payment of applicable impound fees.

18 10.71.110 Enforcement.

19 A. Any person who violates any provision of this Chapter,
20 including any permit condition, shall be guilty of an infraction, which shall be
21 punishable by a fine not exceeding two hundred fifty dollars, or a
22 misdemeanor, which shall be punishable by a fine not exceeding five
23 hundred dollars per violation or by imprisonment in the County Jail for a
24 period not exceeding six months or by both such fine and imprisonment.

25 B. Any person who violates any provision of this Chapter,
26 including any permit condition, shall be subject to revocation, suspension or
27 denial of the permit, administrative fines and administrative penalties
28 pursuant to Chapter 9.37 of this Code.

C. Any person convicted of violating this Chapter in a criminal case, or found to be in violation of this Chapter in a civil or administrative case brought by a law enforcement agency, shall be ordered to reimburse the City and other participating law enforcement agencies their full investigative costs.

Section 2. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the Mayor.

I hereby certify that the foregoing Ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 2019, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor