



**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: June 5, 2023
Reviewed by: NA

SUBJECT: Ordinance Relating to Mobility Sharing Services – Second Reading, Pass-to-Print

REPORT BY: Michelle Plouse, Community Development Analyst
Justin Fried, Transportation and Sustainability Manager
Jeff Bond, Community Development Director

SUMMARY

The action before the City Council is the adoption of Ordinance No. 2023-03, replacing urgency Ordinance No. 2022-08, amending Chapter 5 of the Municipal Code to regulate mobility sharing services.

TRANSPORTATION COMMISSION RECOMMENDATION

That the Council adopt an ordinance to amend the Albany Municipal Code to include the proposed permitting regulations of shared micromobility services and that fees include sufficient funding to help implement increased infrastructure for parking.

STAFF RECOMMENDATION

That the Council adopt Ordinance No. 2023-03, amending sections of the Albany Municipal Code relating to mobility sharing services – Second Reading, Pass-to-Print.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The project is categorically exempt from CEQA pursuant to Section 15301 “Existing Facilities” of the CEQA Guidelines, which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing streets and sidewalks with negligible expansion of use.

BACKGROUND

Shared electric scooters (also identified as e-scooters or motorized scooters) are a "micromobility" transportation option that have been expanding in the region and in other cities. These scooters are owned and operated by private companies offering shared scooter services and can be used for one-way trips and unlocked/locked with a mobile phone application. These scooters are generally

used for shorter trips and are meant to be used by many different people each day. Most shared scooters are “dockless” meaning that they do not need to be parked in specific locations.

Three shared scooter companies, Veo, Link, and Spin, launched in Berkeley in the summer of 2022. One company, Veo, applied for an Albany business license and approached city staff in August of 2022 to launch their service in the City.

On October 13th, 2022, the City Council adopted Ordinance No. 2022-08, an urgency ordinance adopting a new Section 5-12 of the Albany Municipal Code relating to mobility sharing services (See Attachment 2 for staff report and Attachment 3 for Ordinance No. 2022-08). On October 14th, the City signed a temporary operating agreement with Veo Mobility, allowing them to begin operating in Albany.

At the May 15, 2023 City Council meeting, the City Council introduced Ordinance No. 2023-03 and waived further reading. The Ordinance before Council is for Second Reading, Pass-to-Print. If adopted, a summary of the Ordinance will be posted at each of the City’s posting locations and go into effect 30 days following adoption.

DISCUSSION

Veo Micromobility has been operating in the City since October 14, 2022. So far, the City has received only two complaints related to the micromobility program. As of May 3rd there have been 970 trips taken in Albany, averaging 13 minutes per trip. During the winter, Veo was deploying an average of 15 devices throughout the City, but in the past few months the average has dropped down to about 5 devices in the City at a given time.

Updates to the Ordinance

It is considered a best practice to follow-up the adoption of urgency ordinances with approval of a regular ordinance through the usual two-reading/30-day effective date procedure. Thus, staff recommends adopting Ordinance No. 2023-03. It is nearly identical to Urgency Ordinance No. 2022-08, except that language related to the urgency of the ordinance and need for the ordinance to take immediate effect was removed. Additionally, the effective date was changed to the standard 30 days after posting.

SUSTAINABILITY/SOCIAL EQUITY CONSIDERATIONS

City General Plan policies include encouraging the use of low emission or zero emission vehicles, along with the infrastructure to support such vehicles (Policy T-2.3) and supporting car sharing and bike sharing programs (Policy T-2.5). In addition, Goal 1 of the first strategy (Advance Active, Shared, and Electric Transportation) in the 2019 Climate Action and Adaptation Plan is to decrease passenger vehicle miles traveled (VMT) through use of alternative modes. Action 1.1.6 is to work with third party programs to provide shared electric mobility options, calling for the city to work

with companies to encourage the provision of these services to Albany community members and visitors while considering safety implications and reducing potential safety hazards.

To ensure equity and provide access to all Albany residents, operators must serve the entire City and distribute devices throughout Albany. Operators also need to provide adaptive devices for user with disabilities. The ordinance also authorizes the City to develop a program offering heavily discounted rides for low-income residents and make it possible to use devices without a smartphone or credit card.

CITY COUNCIL STRATEGIC PLAN INITIATIVE

Goal 1: Advance Climate Action and Adaptation.

FINANCIAL CONSIDERATIONS

There is no financial impact with the proposed ordinance. Application fees are anticipated to recuperate staff costs for permitting and addressing any improperly parked vehicles.

Attachments

1. Ordinance No. 2023-03
2. October 13, 2022 Staff Report
3. Ordinance No. 2022-08

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ORDINANCE NO. 2022-03

**AN ORDINANCE OF THE ALBANY CITY COUNCIL REPLACING
SECTION 5-12 OF THE ALBANY MUNICIPAL CODE RELATING TO
MOBILITY SHARING SERVICES**

WHEREAS, Article 11, Section 7 of the California Constitution authorizes the City to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws;

WHEREAS, cities around the State of California have developed policies regulate mobility sharing services, whereby non-motorized or motorized bicycles or scooters or “shared mobility devices” are available to residents and visitors for rent via self-service portals, applications, or other methods;

WHEREAS, on October 13th, 2022, the Albany City Council adopted Ordinance No. 2022-08, an urgency ordinance of the City of Albany, California, adopting a new Section 5-12 of the Albany Municipal Code relating to mobility sharing services, for the immediate preservation of the public peace, health, and safety, and declaring same to be an urgency measure to take effect immediately;

WHEREAS, this Ordinance replaces Section 5-12 of the Albany Municipal Code, to be effective thirty days after the ordinance is posted, and will be published in the municipal code; and

WHEREAS, any and all other legal prerequisites relating to the adoption of this Ordinance have occurred.

1 **NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS AS FOLLOWS:**
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3 **SECTION 1:**
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5 The recitals above are each incorporated by reference and adopted as findings by the City
6 Council.
7

8 **SECTION 2: CALIFORNIA ENVIRONMENTAL QUALITY ACT**
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10 The City Council finds that this Ordinance is not subject to the requirements of the
11 California Environmental Quality Act (“CEQA”) for the following reasons:

12 A. This Ordinance is not a “project” within the meaning of Section 15378 of the State CEQA
13 Guidelines. (See State CEQA Guidelines, § 15060, subd. (c)(3) [“An activity is not subject to
14 CEQA if ... [t]he activity is not a project as defined in Section 15378”].) Here, the Ordinance is
15 not a “project” within the meaning of Section 15378 because the Ordinance has no potential “for
16 resulting in a direct physical change in the environment, or a reasonably foreseeable indirect
17 physical change in the environment,” as further discussed below. (State CEQA Guidelines, §
18 15378.)

19 B. In the alternative, and if a project, this Ordinance is exempt under State CEQA Guidelines
20 section 15061(b)(3), the common sense exemption, because it can be seen with certainty that there
21 is no possibility that the activity in question may have a significant effect on the environment.
22

23 **SECTION 3: CHAPTER 5 OF THE ALBANY MUNICIPAL CODE, SECTION 5-12**
24 **TITLED “DOCKLESS SHARED MOBILITY SYSTEMS” IS HEREBY AMENDED**
25 **TO REMOVE THE EXISTING CHAPTER 5-12, “DOCKLESS SHARED MOBILITY**
26 **SYSTEMS” IN ITS ENTIRETY AND REPLACE TO READ IN FULL AS FOLLOWS:**
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1 **“§ 5-12 DOCKLESS SHARED MOBILITY SYSTEMS**

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3 **§ 5-12.1 Definitions.**

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5 For the purposes of this section, unless otherwise apparent from the context, certain words or
6 phrases used in this section are defined as follows:

- 7
8 (a) “City Engineer” means the City Engineer or their designee.
- 9 (b) “Deployment” means the placement of devices by the dockless shared mobility system
10 operator.
- 11 (c) “Dockless shared mobility device,” or “device,” means a device for short-term rental for
12 point to point trips where, by design of the dockless shared mobility operator, the device
13 is intended to remain in the public right-of-way, even when not being rented, and is not
14 required to be docked in a designated docking station for rental. “Devices” include, but
15 are not limited to, electric-assist scooters and dockless bicycles. This definition shall not
16 apply to dockless, point to point car rental services that may be separately authorized to
17 operate within the City.
- 18 (d) “Dockless shared mobility system,” or “system,” means a system providing devices as
19 defined above.
- 20 (e) “Dockless shared mobility system operator” or “operator” is an entity that owns and/or
21 operates a dockless shared mobility system in the public right-of-way. The term includes
22 any employee, agent or independent contractor hired or retained by the operator.
- 23 (f) “Dockless shared mobility system permit” is the permit granted to the operator under this
24 chapter which allows the operator to commence services within the City.
- 25 (g) “Dockless shared mobility user,” or “user,” is any person that uses, rents, or rides a
26 dockless shared mobility device or is a customer of the operator.
- 27 (h) “Locking mechanism” is a locking mechanism integrated into or on the device which
28 cannot be removed using simple tools and which securely holds the device upright when
parked at a bike rack or other fixed object.

1 (i) “Roadway” is defined in Section 530 of the California Vehicle Code or any successor
2 statute.
3

4 **§ 5-12.2 Dockless Shared Mobility System Operator Permits.**
5

6 (a) All operators seeking to operate a dockless shared mobility system within the City must
7 obtain a dockless shared mobility system permit pursuant to this Chapter.

8 (b) The City Engineer is authorized to issue system operator permits to operators who submit
9 applications and fulfill all requirements of this chapter, including payment of all fees,
10 fines, and penalties to operate such systems.
11

12 (c) A permit issued pursuant to this chapter shall expire on June 30 of each year. Permits
13 issued prior to July 1, 2023 shall expire on June 30, 2024. Operators must renew such
14 permits annually to continue operation.

15 (d) Operators seeking a permit or renewal of an existing permit shall obtain a business license
16 tax certificate from the Finance Department. Failure to maintain a business tax certificate
17 or pay delinquent business license tax penalties or fees constitutes a basis for revocation
18 or non-renewal of a permit.

19 (e) Operators seeking a permit or renewal of an existing permit shall submit a permit
20 application or renewal application on a form that is provided by the City, and shall pay
21 any applicable application or renewal fee.

22 (f) The City Engineer may impose conditions as part of permit issuance, and may deny a
23 permit to applicants who do not meet program requirements.

24 (g) The City Engineer may establish conditions including, but not limited to, locations for
25 parking devices, locations for riding, speed limits for devices, deployment of devices,
26 device specifications, requirements to indemnify the City and provide certain levels of
27 insurance coverage, and requirements to advance community engagement, equity,
28 accessibility, and personal privacy.

1 **§ 5-12.3 Operating Agreement While Permit Application is Pending**
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3 While an operator is engaged in the process of obtaining a permit pursuant to Section 5-12.2, the
4 operator may commence operations immediately without violating this Chapter by entering into
5 a Temporary Operating Agreement with the City. The Temporary Operating Agreement will be
6 of a limited period established by the City Manager, which period is intended to allow staff to
7 process and approve or deny the permit application, and will contain such terms as are necessary
8 to adequately protect the City’s and applicant’s interests. Section 5-12.4 will apply to the dockless
9 shared mobility service while the operator is awaiting a determination on the permit application.
10

11 **§ 5-12.4 Parking Requirements Established**
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13 (a) Unless otherwise specified, dockless shared mobility devices must be locked upright to a
14 bike rack or other fixed object, which shall not include trees, and may not impede access
15 to or use of the right-of-way. Devices are required to have locking mechanisms. Devices
16 shall not be parked adjacent to or within:

- 17 (1) Disabled parking zone, or any other accessible route that would otherwise
18 create a barrier to accessibility;
- 19 (2) Curb ramps;
- 20 (3) Fire hydrant zones;
- 21 (4) Roadways;
- 22 (5) Loading zones;
- 23 (6) Transit zones, including bus stops, shelters, passenger waiting areas, and bus
24 layover and staging zones, except at existing bicycle racks;
- 25 (7) Locked to street furniture that requires pedestrian access, such as benches,
26 parking pay stations, bus shelters, and transit information signs;
- 27 (8) Entryways;
- 28 (9) Driveways; and
- (10) Handrails.

(b) Dockless shared mobility systems must comply with the following requirements:

1 (1) Provide a single point of contact (phone number and email) for a customer
2 service representative who is available 24 hours per day, 7 days a week for
3 matters relating to the system's operation within the City.
4

5 (i) This information shall be clearly displayed on each device, along with
6 a unique device identification number.

7 (2) Issue a "ticket number" for each complaint to both the City's designated
8 contact person and the person who filed the complaint.

9 (3) Address such complaints within three hours of receipt of such complaint, or
10 advise the City and the complainant that additional time is required to address
11 the complaint and provide an estimated resolution timeframe.

12 (4) Provide a response to the complainant when a complaint is closed.

13 (5) Provide sufficient operations and maintenance staff to respond to the City
14 within three hours to remove improperly parked devices.

15 (c) Operator may be charged an improper parking fee, to be set by resolution of the City
16 Council, if any of operator's devices are found to be improperly parked and are not
17 removed within three hours of receiving a complaint.

18 (d) If operator does not adequately enforce the parking requirements set forth in this chapter,
19 the City Engineer reserves the right to reduce the number of shared mobility devices
20 allowed under the operator's permit, or revoke the permit entirely, subject to section 5-
21 12.5.

22 (e) Any device that remains parked in one location for more than three consecutive calendar
23 days without being moved may be removed and taken to a City facility for storage at the
24 expense of the operator. The City will notify the operator that a device has been removed,
25 and will advise operator that they have 72 hours to retrieve the device before a fee will be
26 imposed, which fee shall be set by resolution of the City Council.

27 (f) Operators shall promptly remove devices from the public right-of-way when they are
28 damaged or their battery has been depleted.

1 (g) Should the City determine that the number of devices deployed within the City is creating
2 a public safety impact, the City may cap or reduce the number of devices each operator is
3 allowed under their existing permit.
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6 **§ 5-12.5 Revocation or Suspension of Permits.**
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8 (a) The City Manager or designee may revoke or suspend a permit, or impose penalties at
9 their reasonable discretion for reasons including, but not limited to, the following:
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- 11 (1) A failure to comply with the Albany Municipal Code;
- 12 (2) A failure to comply with the conditions of the permit, if any;
- 13 (3) A violation of the provisions of this chapter;
- 14 (4) A determination that the operation of the shared mobility service poses a risk
15 to public safety;
- 16 (5) A determination that the operation of the shared mobility service by the
17 permittee conflicts with the City’s obligation to manage the right-of-way
18 responsibly;
- 19 (6) A transfer of the permit to another party without prior written approval by the
20 City;
- 21 (7) A material misstatement or omission in the permit application or any other
22 associated document;
- 23 (8) The permittee sells or shares confidential and individual user data;
- 24 (9) The permittee does not pay fees, surcharges, or penalties required by this
25 chapter or City policy;
- 26 (10) The permittee blocks or alters the presentation of any information or denies
27 access to the online application (“app”), through which it provides its services,
28 by any City representative authorized to enforce the provisions of the
associated permit and this chapter, or for the purpose of thwarting or

1 interfering with any City representative's enforcement or oversight of the
2 associated permit or this chapter; and

3
4 (11) Failure by the users of devices of specific permittee to comply with applicable
5 laws and the requirements of this chapter.

6 (b) The following procedures shall apply to govern the permittee's appeal of a
7 disapproval, revocation, or suspension of a permit under this chapter:

8 (1) Within 15 days after the City Engineer serves notification of disapproval,
9 revocation, or suspension of a permit, an applicant or permit holder may appeal
10 the action by notifying the City Clerk in writing of the appeal, the reasons for
11 the appeal, and paying any applicable fees.

12 (2) The City Clerk shall set a date and time certain for the hearing, within 30 days
13 after the receipt of the appeal, unless the City and the applicant/permit holder
14 agree to a longer time to consider the appeal. The City Clerk shall provide
15 notice of the date, time, and place of hearing, at least seven days prior to the
16 date of the hearing.

17 (3) The City Manager shall appoint a Hearing Officer to hear the appeal, determine
18 the order of procedure, and rule on all objections to admissibility of evidence.
19 The applicant/permit holder and the City Engineer shall each have the right to
20 submit documents, call and examine witnesses, cross-examine witnesses, and
21 argue their respective positions. The proceeding shall be informal, and the
22 strict rules of evidence shall not apply, and all evidence shall be admissible
23 which is of the kind that reasonably prudent persons rely upon in making
24 decisions.

25 (4) The Hearing Officer shall issue a written decision within fifteen (15) days after
26 the close of the hearing. The decision of the Hearing Officer shall be final.”
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1 **SECTION 4: SEVERABILITY:**
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4 If any provision of this Ordinance or its application to any person or circumstances is held
5 invalid, such invalidity has no effect on the other provisions or applications of the Ordinance that
6 can be given effect without the invalid provision or application, and to this extent, the provisions
7 of this Ordinance are severable. The City Council declares that it would have adopted this
8 Ordinance irrespective of the invalidity of any portion thereof.
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10 **SECTION 5: PUBLICATION AND EFFECTIVE DATE:**
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12 This ordinance shall be posted at three public places within the City of Albany and shall
13 become effective thirty days after the date of its posting
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15 **PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting on
16 the __ day of _____ 2023, by the following vote:

17 AYES:

18 NOES:

19 ABSENT:

20 ABSTAIN:

21 _____
22 AARON TIEDEMANN, MAYOR
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**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: October 13, 2022

Reviewed by: NA

SUBJECT: Urgency Ordinance Adding a New Section to the Albany Municipal Code Relating to Mobility Sharing Services and Authorization to Enter into a Temporary Operating Agreement

REPORT BY: Michelle Plouse, Community Development Analyst
Justin Fried, Transportation and Sustainability Manager
Jeff Bond, Community Development Director

SUMMARY

The action before the City Council is the adoption of Urgency Ordinance No. 2022-08, amending Chapter 5 of the Municipal Code to regulate mobility sharing services and authorization to enter into a temporary operating agreement.

STAFF RECOMMENDATION

That the Council:

1. Adopt Urgency Ordinance No. 2022-08, entitled:
An Urgency Ordinance of the City of Albany, California, Adding a New Section 5-12 of the Albany Municipal Code Relating to Mobility Sharing Services, for the Immediate Preservation of the Public Peace, Health, and Safety, and Declaring Same to be an Urgency Measure to take effect immediately.
2. Authorize the City Manager to enter into a temporary operating agreement with dockless shared mobility operators in advance of permit issuance.

TRANSPORTATION COMMISSION RECOMMENDATION

That the Council adopt an ordinance to amend the Albany Municipal Code to include the proposed permitting regulations of shared micromobility services.

BACKGROUND

Shared electric scooters (also identified as e-scooters or motorized scooters) are a "micromobility" transportation option that have been expanding in the region and in other cities. These scooters are owned and operated by private companies offering shared scooter services and can be used for one-way trips and unlocked/locked with a mobile phone application. These scooters are generally used for shorter trips and are meant to be used by many different people each day. Most shared scooters are "dockless" meaning that they do not need to be parked in specific locations.

In 2018 and early 2019, Lime operated dockless bikes in Albany. In January of 2019, Lime requested authorization to deploy scooters. Lime proceeded to deploy a small number of scooters throughout 2019. In the spring and summer of 2019, multiple class action lawsuits were filed against various cities alleging disabled accessibility impacts from the shared electric scooters permitted in those cities. As a result, shared scooter permitting was put on hold in many cities across California, and many shared scooter companies suspended operation. Currently no shared electric scooter companies are actively deploying scooters in Albany.

The suit against the City of Oakland reached a final Settlement Agreement in April 2021, and since then, Berkeley, Emeryville, and Oakland have developed regulations and permit programs in accord with the settlement agreement and now have several companies operating in their cities. Three companies, Veo, Link, and Spin, launched in Berkeley this summer. One company, Veo, has applied for an Albany business license and coordinated with city staff on plans to launch scooters in Albany on October 15.

At the July 28, 2022 Transportation Commission meeting, the commission reviewed regulations adopted by nearby cities related to shared micro-mobility operations and provided feedback to staff for development of regulations in the City of Albany.

At the September 22, 2022 Transportation Commission meeting, the Commission reviewed the draft ordinance and permit language and recommended Council adoption of the ordinance amending the Municipal Code.

DISCUSSION

State Law

The California Vehicle Code (Sections 407.5, 2220-21235, 22411) regulates the operation of motorized scooters, whether individually owned, or owned by an operator and rented to qualified users. These regulations include:

- Operators of motorized scooters upon a roadway generally have all the rights and are subject to all of the provisions applicable to drivers
- Motorized scooters are not required to have license plates and have safety requirements regarding visibility and braking
- Operators must have a valid driver's license or instruction permit and must wear a bicycle helmet if under 18 years of age
- Operators are prohibited from exceeding 15 miles per hour
- Operators are prohibited from operating a motorized scooter with any passengers
- Operators are prohibited from operating on a sidewalk or leaving a scooter lying on the sidewalk or in apposition that does not provide an adequate path for pedestrian traffic
- Operators are required to ride as close as practicable to the right-hand curb or within a Class II bicycle lane when available

Local jurisdictions are permitted, by ordinance, to regulate the parking and operation of motorized scooters on pedestrian or bicycle facilities and local streets and highways, if that regulation is not in conflict with the Vehicle Code (CVC Section 21225).

Local Law

Currently, under the Albany Municipal Code, Chapter VIII Law Enforcement, Section 8-4 Parks, Recreation, Open Space, Waterfront and Albany Hill Areas, motorized scooters are defined as motor vehicles (8-4.2) and generally may not be operated in the Albany Hill open space area nor in the Waterfront area (8-4.8) unless authorized by the City Manager or designee. Outside of this section, motorized scooters are not separately defined and are currently regulated by the City of Albany the same as other motor vehicles. Mobility sharing services are not currently regulated in the Municipal Code beyond the requirement to obtain a business license to operate in Albany.

ANALYSIS

The Urgency Ordinance before Council is for incorporation of permitting and regulation of mobility sharing services in Chapter 5 “General Licensing and Business Regulations” of the Municipal Code. If adopted, a summary of the Ordinance will be posted at each of the City’s posting locations and take effect immediately upon its passage by a 4/5 vote. The proposed ordinance does not regulate the use of privately owned micromobility devices.

The proposed ordinance is intended to regulate the use of shared scooters to maintain the safety and accessibility of sidewalks and roadways for all. At the same time, the goal is to create a permeable border with our neighboring Cities by creating regional consistency in the rules for shared scooter operations. Given Albany’s size and travel behavior that does not follow jurisdictional boundaries, these services will only be effective in Albany if they can operate across borders.

Staff has developed draft municipal code language and permit requirements for the permitting and regulation of mobility sharing services. The regulations are primarily a simplified version of those adopted in Emeryville. The proposed municipal code language requires companies to apply for a permit annually and specifies requirements for parking the devices and removing improperly parked devices.

Municipal Code Requirements

Scooters must be parked upright, locked to a bike rack or other fixed object. They must not impede the right of way or any of the following:

- (1) Disabled parking zone, or any other accessible route that would otherwise create a barrier to accessibility;
- (2) Curb ramps;
- (3) Fire hydrant zones;
- (4) Roadways;
- (5) Loading zones;

- (6) Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones, except at existing bicycle racks;
- (7) Locked to street furniture that requires pedestrian access (e.g. benches, parking pay stations, bus shelters, transit information signs, etc.);
- (8) Entryways;
- (9) Driveways; and
- (10) Handrails.

In order to ensure compliance with these requirements and respond to improper parking, the operators will be required to provide a contact number or email on each device for parking-related complaints and respond to all complaints within 3 hours. Damaged devices or devices with depleted batteries must also be removed. If operators fail to respond to complaints, the City has the right to charge a fine, remove and/or dispose of the devices, and revoke the operator's permit.

Permit Requirements

The Ordinance primarily addresses the accessibility concerns associated with parking of vehicles and allows the City Engineer or designee to implement other regulations, which are detailed in the draft permit requirements. Leaving the majority of regulations outside of the Ordinance offers flexibility to easily adjust them as lessons are learned about the use of shared mobility devices and technology evolves. needs arise. A draft of permit requirements is attached (Attachment 2). The draft contains the majority of Emeryville's requirements and a few requirements from Berkeley, summarized below.

- User education: Operators will be responsible for educating users about all State and local requirements. Operators also must ensure that riders have a driver's license or permit and take a photo of the parked device at the end of each ride.
- Pollution: Operators must have a plan to prevent devices from entering the Bay and to retrieve any devices. They must also have a plan or repair and recycling of devices.
- Device specifications: Devices should have a maximum speed of 15 miles per hour and be able to temporarily reduce the maximum speed in slow zones. Devices also need to be marked with information regarding essential rules of the road and a contact number for the operator.
- Data: Operators must supply the City with various data regarding the use of the scooters, and issues or complaints. Specific indicators are listed in Attachment 2. This data will allow the City to analyze the success of the program and adjust requirements as needed. Data collection from users must follow State privacy law and use industry standard data security protocols.

- Community Engagement: Operators must provide ways for residents to contact them with complaints and suggestions. They must also offer free helmets to users. Staff, in consultation with the Commission, can implement other requirements for a community engagement process, including presentations to the Commission.
- Legal and insurance: Indemnity and insurance requirements will be included in the permit application. Staff are still communicating with legal experts and the specific language of these requirements. A draft version is included in Attachment 2.
- Location: Staff may also implement additional regulations regarding the location and use of devices, such as no riding zones, no parking zones, slow zones, and parking hubs. Staff will consult with the Commission before implementing or changing such requirements.
- According to the Municipal Code, the City Manager can authorize the use of motorized vehicles on the waterfront and Albany Hill. Use of shared scooters can be authorized under this authority along the Bay Trail but remain prohibited in unpaved areas of the Albany Bulb or Albany Hill.

Temporary Operating Agreement

A temporary operating agreement (Attachment 3) has also been prepared to permit the operation of shared mobility services in advance of permit issuance under the urgency ordinance. This will allow staff and an applicant time to prepare and review permit materials.

SUSTAINABILITY/SOCIAL EQUITY CONSIDERATIONS

City General Plan policies include encouraging the use of low emission or zero emission vehicles, along with the infrastructure to support such vehicles (Policy T-2.3) and supporting car sharing and bike sharing programs (Policy T-2.5). In addition, Goal 1 of the first strategy (Advance Active, Shared, and Electric Transportation) in the 2019 Climate Action and Adaptation Plan is to decrease passenger vehicle miles traveled (VMT) through use of alternative modes. Action 1.1.6 is to work with third party programs to provide shared electric mobility options, and calls for the city to work with companies to encourage the provision of these services to Albany community members and visitors, while considering safety implications and reducing potential safety hazards.

In order to ensure equity and provide access to all Albany residents, operators must serve the entire City and distribute devices throughout Albany. Operators also need to provide adaptive devices for user with disabilities. The ordinance also authorizes the City to develop a program offering heavily discounted rides for low income residents, and make it possible to use devices without a smartphone or credit card.

CITY COUNCIL STRATEGIC PLAN INITIATIVE

Goal 1 Objective 1 of the Strategic Plan is to advance climate action and adaptation.

FINANCIAL CONSIDERATIONS

Permit fees can be assessed to recuperate staff costs and costs of additional parking infrastructure. This will be brought to the Council as an amendment to the master fee schedule at an upcoming Council meeting.

NEXT STEPS

It is considered a best practice to follow-up the adoption of urgency ordinances with approval of a similar ordinance through the usual two-reading/30-day effective date procedure. Thus, in the near future, the Council will have an opportunity to further discuss and act on shared mobility services regulations.

Attachments

1. Ordinance No. 2022-08
2. Draft permit requirements
3. Temporary operating agreement

1 **ORDINANCE NO. 2022-08**

2 **AN URGENCY ORDINANCE OF THE CITY OF ALBANY, CALIFORNIA,**
 3 **ADOPTING A NEW SECTION 5-12 OF THE ALBANY MUNICIPAL CODE**
 4 **RELATING TO MOBILITY SHARING SERVICES, FOR THE IMMEDIATE**
 5 **PRESERVATION OF THE PUBLIC PEACE, HEALTH, AND SAFETY,**
 6 **AND DECLARING SAME TO BE AN URGENCY MEASURE**
 7 **TO TAKE EFFECT IMMEDIATELY**

8 **WHEREAS**, Article 11, Section 7 of the California Constitution authorizes the City
 9 to make and enforce within its limits all local, police, sanitary, and other ordinances and
 10 regulations not in conflict with general laws; and

11 **WHEREAS**, Government Code section 36937(b) authorizes the City Council to
 12 adopt an urgency ordinance for the immediate preservation of the public peace, health, or
 13 safety upon a declaration of the facts constituting the urgency; and

14 **WHEREAS**, cities around the State of California have recently experienced
 15 operations of unauthorized mobility sharing services, whereby non-motorized or motorized
 16 bicycles or scooters or "shared mobility devices" are available to residents and visitors for
 17 rent via self-service portals, applications, or other methods; and

18 **WHEREAS**, many shared mobility devices provided through an unregulated and
 19 unrestricted scooter-share program are "dockless" and provided to consumers without any
 20 designated platform, parking areas, or other safe and unobtrusive location for leaving parked
 21 or unattended shared mobility devices, resulting in a proliferation of unattended or
 22 abandoned shared mobility devices on streets, sidewalks, parks, and trails which block
 23 pedestrian access and unlawfully encroach on City property; and

24 **WHEREAS**, the proliferation of unauthorized mobility sharing programs in other
 25 California cities has resulted in complaints of injury and unauthorized encroachment on
 26 public and private property; and

27 **WHEREAS**, motorized scooters are capable of traveling at speeds of up to 15 miles
 28 per hour and therefore, particularly in large or unregulated quantities, constitute serious
 public safety hazards for pedestrians, bicycles, and vehicles, and may result in serious
 injuries to persons and property; and

WHEREAS, the general public is often unaware of the potential safety hazards and
 state law restrictions applicable to operation of shared mobility devices, and therefore
 unregulated access to shared mobility devices can result in unauthorized and dangerous use
 on sidewalks or highways causing serious risk of harm to riders, pedestrians, vehicles,
 bicycles and property; and

WHEREAS, the City Council has therefore determined that operation of unregulated
 and unpermitted mobility sharing program in the City will cause immediate serious and
 significant impacts to the public health, safety and welfare, including unauthorized use of
 sidewalks and streets, unpermitted obstructions and encroachments on public and private

1 property, increased traffic congestion and collision, and potential for serious injury to persons
2 and property; and

3 WHEREAS, the City Council desires to immediately and expressly prohibit the
4 operation of unauthorized mobility sharing services within the City, unless and until
5 authorized and permitted by a written operating agreement between the City and the mobility
6 sharing operator and/or a permit as set forth in this Ordinance; and

7 WHEREAS, the City Council finds that this Ordinance is necessary to preserve the
8 public peace, health, and safety; and

9 WHEREAS, any and all other legal prerequisites relating to the adoption of this
10 Ordinance have occurred.

11 **NOW THEREFORE, THE ALBANY CITY COUNCIL DOES ORDAIN AS
12 FOLLOWS:**

13 **SECTION 1:** The recitals above are each incorporated by reference and adopted as findings
14 by the City Council.

15 **SECTION 2: Declaration of Urgency.** The City Council finds that the recitals set forth above
16 are true and correct and hereby adopts and incorporates the recitals herein as findings in
17 support of this Ordinance. Pursuant to Government Code section 36937(b), the City Council
18 hereby declares that the unauthorized and unregulated operation of motorized scooter share
19 programs in the City will result in significant and immediate adverse impacts to City
20 residents, visitors, businesses, public and private property, including impacts on traffic and
21 congestion, unlawful encroachment on property and the public right-of-way, and potential for
22 serious harm to riders and pedestrians alike. Because of these impacts, this Ordinance
23 prohibits motorized scooter share programs unless and until authorized and permitted by
24 future action of the City Council, in order to preserve the public peace, health or safety. To
25 this end, this Ordinance is hereby declared an urgency ordinance to take effect immediately
26 upon adoption by a four-fifths vote of the City Council.

27 **SECTION 3:** The City Council finds that this Ordinance is not subject to the requirements of
28 the California Environmental Quality Act (“CEQA”) for the following reasons:

- 29 A. This Ordinance is not a “project” within the meaning of Section 15378 of the State
30 CEQA Guidelines. (See State CEQA Guidelines, § 15060, subd. (c)(3) [“An activity
31 is not subject to CEQA if ... [t]he activity is not a project as defined in Section
32 15378”].) Here, the Ordinance is not a “project” within the meaning of Section
33 15378 because the Ordinance has no potential “for resulting in a direct physical
34 change in the environment, or a reasonably foreseeable indirect physical change in the
35 environment,” as further discussed below. (State CEQA Guidelines, § 15378.)
- 36 B. In the alternative, and if a project, this Ordinance is exempt under State CEQA
37 Guidelines section 15061(b)(3), the common sense exemption, because it can be seen
38 with certainty that there is no possibility that the activity in question may have a
39 significant effect on the environment.

1 SECTION 4: Albany Municipal Code, Title 5, General Licensing and Business Regulations,
2 is hereby amended to add Chapter 5-12, Dockless Shared Mobility Systems, to read in full as
3 follows:

4 **“§ 5-12 DOCKLESS SHARED MOBILITY SYSTEMS**

5 § 5-12.1 Definitions.

6 § 5-12.2 Dockless Shared Mobility System Operator Permits Required.

7 § 5-12.3 Operating Agreement While Permit Application is Pending

8 § 5-12.4 Parking Requirements Established.

9 § 5-12.5 Revocation or Suspension of Permits.

10 § 5-12.1 Definitions.

11 For the purposes of this section, unless otherwise apparent from the context, certain
12 words or phrases used in this section are defined as follows:

- 13 (a) “City Engineer” means the City Engineer or their designee.
- 14 (b) “Deployment” means the placement of devices by the dockless shared mobility
15 system operator.
- 16 (c) “Dockless shared mobility device,” or “device,” means a device for short-term rental
17 for point to point trips where, by design of the dockless shared mobility operator, the
18 device is intended to remain in the public right-of-way, even when not being rented,
19 and is not required to be docked in a designated docking station for rental. “Devices”
20 include, but are not limited to, electric-assist scooters and dockless bicycles. This
21 definition shall not apply to dockless, point to point car rental services that may be
22 separately authorized to operate within the City.
- 23 (d) “Dockless shared mobility system,” or “system,” means a system providing devices
24 as defined above.
- 25 (e) “Dockless shared mobility system operator” or “operator” is an entity that owns
26 and/or operates a dockless shared mobility system in the public right-of-way. The
27 term includes any employee, agent or independent contractor hired or retained by the
28 operator.
- (f) “Dockless shared mobility system permit” is the permit granted to the operator under
this chapter which allows the operator to commence services within the City.
- (g) “Dockless shared mobility user,” or “user,” is any person that uses, rents, or rides a
dockless shared mobility device or is a customer of the operator.

1 (h) "Locking mechanism" is a locking mechanism integrated into or on the device which
2 cannot be removed using simple tools and which securely holds the device upright
3 when parked at a bike rack or other fixed object.

4 (i) "Roadway" is defined in Section 530 of the California Vehicle Code or any successor
5 statute.

6 § 5-12.2 Dockless Shared Mobility System Operator Permits.

7 (a) All operators seeking to operate a dockless shared mobility system within the City
8 must obtain a dockless shared mobility system permit pursuant to this Chapter.

9 (b) The City Engineer is authorized to issue system operator permits to operators who
10 submit applications and fulfill all requirements of this chapter, including payment of
11 all fees, fines, and penalties to operate such systems.

12 (c) A permit issued pursuant to this chapter shall expire on June 30 of each year. Permits
13 issued prior to July 1, 2023 shall expire on June 30, 2024. Operators must renew such
14 permits annually to continue operation.

15 (d) Operators seeking a permit or renewal of an existing permit shall obtain a business
16 license tax certificate from the Finance Department. Failure to maintain a business tax
17 certificate or pay delinquent business license tax penalties or fees constitutes a basis
18 for revocation or non-renewal of a permit.

19 (e) Operators seeking a permit or renewal of an existing permit shall submit a permit
20 application or renewal application on a form that is provided by the City, and shall
21 pay any applicable application or renewal fee.

22 (f) The City Engineer may impose conditions as part of permit issuance, and may deny a
23 permit to applicants who do not meet program requirements.

24 (g) The City Engineer may establish conditions including, but not limited to, locations for
25 parking devices, locations for riding, speed limits for devices, deployment of devices,
26 device specifications, requirements to indemnify the City and provide certain levels of
27 insurance coverage, and requirements to advance community engagement, equity,
28 accessibility, and personal privacy.

§ 5-12.3 Operating Agreement While Permit Application is Pending

While an operator is engaged in the process of obtaining a permit pursuant to Section 5-12.2, the operator may commence operations immediately without violating this Chapter by entering into a Temporary Operating Agreement with the City. The Temporary Operating Agreement will be of a limited period established by the City Manager, which period is intended to allow staff to process and approve or deny the permit application, and will contain such terms as are necessary to adequately protect the City's and applicant's interests. Section 5-12.4 will apply to the dockless shared mobility service while the operator is awaiting a determination on the permit application.

1
2 § 5-12.4 Parking Requirements Established

3 (a) Unless otherwise specified, dockless shared mobility devices must be locked upright
4 to a bike rack or other fixed object, which shall not include trees, and may not impede
5 access to or use of the right-of-way. Devices are required to have locking
6 mechanisms. Devices shall not be parked adjacent to or within:

- 7 (1) Disabled parking zone, or any other accessible route that would otherwise
8 create a barrier to accessibility;
- 9 (2) Curb ramps;
- 10 (3) Fire hydrant zones;
- 11 (4) Roadways;
- 12 (5) Loading zones;
- 13 (6) Transit zones, including bus stops, shelters, passenger waiting areas, and
14 bus layover and staging zones, except at existing bicycle racks;
- 15 (7) Locked to street furniture that requires pedestrian access, such as benches,
16 parking pay stations, bus shelters, and transit information signs;
- 17 (8) Entryways;
- 18 (9) Driveways; and
- 19 (10) Handrails.

20 (b) Dockless shared mobility systems must comply with the following requirements:

- 21 (1) Provide a single point of contact (phone number and email) for a customer
22 service representative who is available 24 hours per day, 7 days a week for
23 matters relating to the system's operation within the City.
 - 24 (i) This information shall be clearly displayed on each device, along
25 with a unique device identification number.
- 26 (2) Issue a "ticket number" for each complaint to both the City's designated
27 contact person and the person who filed the complaint.
- 28 (3) Address such complaints within three hours of receipt of such complaint,
or advise the City and the complainant that additional time is required to
address the complaint and provide an estimated resolution timeframe.

1 (4) Provide a response to the complainant when a complaint is closed.

2 (5) Provide sufficient operations and maintenance staff to respond to the City
3 within three hours to remove improperly parked devices.

4 (c) Operator may be charged an improper parking fee, to be set by resolution of the City
5 Council, if any of operator's devices are found to be improperly parked and are not
6 removed within three hours of receiving a complaint.

7 (d) If operator does not adequately enforce the parking requirements set forth in this
8 chapter, the City Engineer reserves the right to reduce the number of shared mobility
9 devices allowed under the operator's permit, or revoke the permit entirely, subject to
10 section 5-12.5.

11 (e) Any device that remains parked in one location for more than three consecutive
12 calendar days without being moved may be removed and taken to a City facility for
13 storage at the expense of the operator. The City will notify the operator that a device
14 has been removed, and will advise operator that they have 72 hours to retrieve the
15 device before a fee will be imposed, which fee shall be set by resolution of the City
16 Council.

17 (f) Operators shall promptly remove devices from the public right-of-way when they are
18 damaged or their battery has been depleted.

19 (g) Should the City determine that the number of devices deployed within the City is
20 creating a public safety impact, the City may cap or reduce the number of devices
21 each operator is allowed under their existing permit.

22 § 5-12.5 Revocation or Suspension of Permits.

23 (a) The City Manager or designee may revoke or suspend a permit, or impose penalties at
24 their reasonable discretion for reasons including, but not limited to, the following:

25 (1) A failure to comply with the Albany Municipal Code;

26 (2) A failure to comply with the conditions of the permit, if any;

27 (3) A violation of the provisions of this chapter;

28 (4) A determination that the operation of the shared mobility service poses a
risk to public safety;

(5) A determination that the operation of the shared mobility service by the
permittee conflicts with the City's obligation to manage the right-of-way
responsibly;

(6) A transfer of the permit to another party without prior written approval by
the City;

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- (7) A material misstatement or omission in the permit application or any other associated document;
- (8) The permittee sells or shares confidential and individual user data;
- (9) The permittee does not pay fees, surcharges, or penalties required by this chapter or City policy;
- (10) The permittee blocks or alters the presentation of any information or denies access to the online application (“app”), through which it provides its services, by any City representative authorized to enforce the provisions of the associated permit and this chapter, or for the purpose of thwarting or interfering with any City representative’s enforcement or oversight of the associated permit or this chapter; and
- (11) Failure by the users of devices of specific permittee to comply with applicable laws and the requirements of this chapter.

(b) The following procedures shall apply to govern the permittee’s appeal of a disapproval, revocation, or suspension of a permit under this chapter:

- (1) Within 15 days after the City Engineer serves notification of disapproval, revocation, or suspension of a permit, an applicant or permit holder may appeal the action by notifying the City Clerk in writing of the appeal, the reasons for the appeal, and paying any applicable fees.
- (2) The City Clerk shall set a date and time certain for the hearing, within 30 days after the receipt of the appeal, unless the City and the applicant/permit holder agree to a longer time to consider the appeal. The City Clerk shall provide notice of the date, time, and place of hearing, at least seven days prior to the date of the hearing.
- (3) The City Manager shall appoint a Hearing Officer to hear the appeal, determine the order of procedure, and rule on all objections to admissibility of evidence. The applicant/permit holder and the City Engineer shall each have the right to submit documents, call and examine witnesses, cross-examine witnesses and argue their respective positions. The proceeding shall be informal, and the strict rules of evidence shall not apply, and all evidence shall be admissible which is of the kind that reasonably prudent persons rely upon in making decisions.
- (4) The Hearing Officer shall issue a written decision within fifteen (15) days after the close of the hearing. The decision of the Hearing Officer shall be final.”

1 **SECTION 5: SEVERABILITY.**

2 If any provision of this Ordinance or its application to any person or circumstances is
3 held invalid, such invalidity has no effect on the other provisions or applications of the
4 Ordinance that can be given effect without the invalid provision or application, and to this
5 extent, the provisions of this Ordinance are severable. The City Council declares that it would
6 have adopted this Ordinance irrespective of the invalidity of any portion thereof.

7 **SECTION 6: PUBLICATION AND EFFECTIVE DATE.**

8 The Mayor shall sign and the City Clerk shall certify to the passage and adoption of
9 this Ordinance and shall cause the same, or the summary thereof, to be published and posted
10 pursuant to the provisions of law and this Ordinance shall take effect immediately upon its
11 passage by a 4/5 vote.

12 **PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting on the
13 13th day of October, 2022, by the following vote:

14 AYES: Council Members Gary, McQuaid, Tiedemann and Mayor Jordan

15 NOES: Council Member Nason

16 ABSENT: None

17 ABSTAIN: None

18
19
20 
21 PRESTON JORDAN, MAYOR

22 ATTEST:

23
24 
25 Anne Hsu, City Clerk



City of Albany

1000 San Pablo Avenue • Albany, California 94706
(510) 528-5710 • www.albanyca.org

ORDINANCE NO. 2022-08

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

The 13th day of October, 2022, by the following votes:

AYES: Council Members Gary, McQuaid, Tiedemann and Mayor Jordan

NOES: Council Member Nason

ABSENT: none

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this

14th day of October, 2022.

Anne Hsu
CITY CLERK