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ORDINANCE NO. 2023-03

**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:**
2

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**
9

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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28

1 **“§ 5-12 DOCKLESS SHARED MOBILITY SYSTEMS**

2
3 **§ 5-12.1 Definitions.**

4
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**
2

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**
12

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.
4

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6 **§ 5-12.5 Revocation or Suspension of Permits.**
7

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:
10

- 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.
9

10 **SECTION 5: PUBLICATION AND EFFECTIVE DATE:**

11
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
14

15 **PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting on
16 the 5th day of June 2023, by the following vote:

17 AYES: Council Members Hansen-Romero, Jordan, López, Miki and Mayor Tiedemann

18 NOES:

19 ABSENT:

20 ABSTAIN:

21 
22 _____
23 AARON TIEDEMANN, MAYOR
24
25
26
27
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City of Albany

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(510) 528-5710 • www.albanyca.org

ORDINANCE NO. 2023-03

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

The 5th day of June, 2023, by the following votes:

AYES: Council Members Hansen-Romero, Jordan, López, Miki and Mayor

Tiedemann

NOES: none

ABSENT: none

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this 6th
day of June, 2023.

Anne Hsu
CITY CLERK