From: **Sam Dreiman** <sam@li.me>
Date: Tue, Feb 19, 2019 at 1:44 PM
Subject: Lime Comments to Item 12.2, February 19, 2019 Council Agenda
To: <amedina@emeryville.org>

Hi Mayor Medina,

Thank you for taking time to speak with me yesterday. As I mentioned, we are excited about the progress the draft Ordinance (Item 12.2 on tonight's council agenda) represents in helping bring alternative mobility options to Emeryville. We are committed to working closely with you and staff on ensuring regulations address concerns surrounding dockless mobility, while also allowing operators to be able to serve the community effectively.

Below I have listed our comments to the proposed ordinance language. They are structured below with each ordinance item first listed, followed by our comment in bullet below, followed again by our suggested redline language where appropriate.

We appreciate you taking the time to hear these comments, and look forward to continuing to work with you on this.

Best,

Sam

4-13.03. Dockless Shared Mobility System Operator Requirements.

(d) Prior to Permit issuance, Permit applicant shall provide to the City for inspection one example Device of each model it intends to deploy. After a Permit is issued, Operators shall not introduce new models without prior inspection by the City. Devices must be made available for compliance audits and enforcement actions upon request.

- Although we respect the City's point of view in wanting to ensure safety, this provision is onerous and stifles innovation. Furthermore, we haven't seen this form of rule in any other City aside from Oakland, to whom we have provided the same comment. We recommend revising section (d) to require submitting a device if there are substantial changes or differences to earlier models. See below for our proposed language revisions:

(d) Prior to permit issuance, Permit applicant shall provide to the City for inspection one example Device of each model it intends to deploy. After a permit is issued, all updated models of the Operator's device that are substantially similar to the Device inspected at the time Operator submitted its Permit application are not required to be inspected by the City. After a Permit is issued, if the Operator releases a model of a Device that is not substantially similar (e.g. addition of a seat, addition of a wheel) to the Device that was Inspected by the City at the time Operator submitted its Permit Application,s Operator shall notify the City of the new model of the Device, and the City shall be able to request to Operator to provide an example of such Device for the City to inspect.

(e) Prior to Permit issuance, Permit applicant shall provide the City with a full list of unique identifying numbers for each proposed Permitted Device.

- Given how frequent all operators, including Lime, substitute vehicles on a day-to-day basis, this requirement would place an overly undue burden on our operations teams. We are always replacing scooters and switching in between markets, especially those that are adjacent to other cities where we operate. Moreover, we do not view it necessary for operators to manually report which scooters are in the City. The data sharing provided by MDS would allow the City complete insight into every scooter on the ground in the City. **We recommend removing this requirement entirely.**

(g) Federal, State, and Local Law Compliance Operators shall comply with all federal, state, and local laws and shall be responsible for Dockless Shared Mobility User compliance with all laws, rules, and regulations governing the use of Dockless Shared Mobility Systems.

- We clearly understand taking on the responsibility of complying with laws that are applicable to us as Operators. However operators cannot take on the responsibility, including penalties, for riders who violate the law or their individual choices to comply with laws. (ex. An operator being responsible for a user that chooses to ride recklessly after receiving education from Lime on safe riding practices.) We would recommend revising this section as follows:

(g) Federal, State, and Local Law Compliance Operators shall comply with all federal, state, and local laws.

4-13.04. Establish Parking and Fleet Size Requirements in Accord with California Vehicle Code Section 21225 (Motorized Scooters).

(c) Operators shall inform Users on how to properly park a Device. Operators shall provide a monthly report to the City on the effectiveness of efforts to enforce proper parking within their mobile application; the report shall include information on the number and description of incidents of improper parking reported to or found by the Operator, the minimum, maximum, and average response time to these incidents, and other data as requested by the City.
(e) If Operator does not enforce proper parking requirements, the City Manager reserves the right to reduce the number of Shared Mobility Devices allowed under their Permit, or revoke it entirely.

- These two sections seem to want to address parking compliance. We have never seen a City require monthly reports from operators on the effectiveness of their own efforts to enforce proper parking. We iterate constantly on our technology and product to improve parking behavior, but this has never been a requirement to report such efforts. While we are happy to have regular conversations with City staff on how we can mutually improve parking behavior, we would like to see this requirement removed.
- Rather than punish operators for not enforcing parking requirements (as mentioned previously, operators should not be held liable for the responsibility of riders who do not abide by our education), the City should monitor operators' responsiveness to inbound requests or reports to address parking issues. This can be done through integration with the City's 311 service or responsiveness to its own customer service center. We recommend revising this section into one as follows:

(c) Operators shall inform Users on how to properly park a Device. If Operators do not respond to improperly parked Dockless Shared Mobility Devices within designated time limits as specificed in Section 4-13.03(i), the City Manager reserves the right to reduce the number of Shared Mobility Devices allowed under their Permit, or revoke it entirely.

4-13.08. Affordability.
(a) Operators shall offer a discounted membership plan for those with low incomes, equivalent to $5 for one year of unlimited 30-minute rides for those who participate in the State Nutritional Assistance Program (SNAP) or California Alternative Rates for Energy (CARE).

- We fully believe the City should require all operators to offer a low-income program that affords a reduced or discounted rate, a non-smartphone access option, and a cash payment option. However, we do not believe the City should be explicitly stating what the price or offering of all operators' low-income programs should be. We already offer LimeAccess, which provides qualified users a 50% discount on their ride fare, and we offer text-to-unlock access along with the ability to pay in cash through our partnership with PayNearMe. We recommend revising this provision as follows:

(a) Operators must offer a low-income program that provides for qualified users a discounted rate or fare, a non-smartphone access option, and a cash payment option. Operators should ensure those who participate in the State Nutritional Assistance Program (SNAP) or California Alternative Rates for Energy (CARE) can qualify.

4-13.10. System Data and Reports. (a) Operators shall make real-time data available to the City and designated third parties via the data standard developed by the North American Bikeshare Association, known as the “Mobility Data Specification (MDS),” or similar standard as determined by the City.

- Lime is committed to sharing data with the City via MDS. However, we consider all information provided via MDS to be trade secret and proprietary. Therefore, we would like the "designated third-parties" to be specified prior to access being granted.

(b) Operators must provide quarterly reports to the City on key performance indicators, including, but not limited to, the following: 1. Utilization rates 2. Total downloads, active Users, and repeat User information 3. Total trips by day of week and time of day 4. Origins and destinations 5. Trips per Device by day of week, time of day 6. Average trip distance 7. Device maintenance reports including battery life and disposition 8. Incidents of theft and vandalism 9. Number of complaints 10.Crash information 11.Payment method information 12.Rebalancing information 13.Outreach activities completed 14.Number of free or discounted helmets distributed 15.Number of Users taking advantage of low-income discount 16.Number of discounted rides taken.

- Through the MDS data sharing specification, all ridership/trip data will already be available to the City. Aside from that, we can provide reports for certain items listed here. Others however we do not believe we should need to report for various company, security and privacy concerns. **We would like to see the following removed: 2 - total downloads, active users and repeat user information; 11 - payment information; 12 - rebalancing information**

4-13.12. Revocation or Suspension of Permits.
(a) The City Manager may revoke or suspend a Permit, or impose penalties at his or her reasonable discretion for reasons including, but not limited to, the following: 11.Failure by the Users of Devices of specific Permittee to comply with applicable laws and the requirements of this Chapter.

- We do not believe the City Manager should be able to revoke or suspend operator permits for the actions of users. We, and I'm sure other operators, will do our part in trying to find new ways to influence rider behavior but tying our ability to be permitted to user behavior puts operators in an unfair position. **We recommend removing #11 from this section.**

(b) The City Manager’s decision to revoke or suspend a permit is final.

- Like holders of other permits in the City, Dockless Shared Mobility Device permitted operators should have a process available to them to appeal a decision made by the City Manager. We would like to see this codified in the ordinance.

4-13.15. Indemnification.
(a) Operator shall defend, indemnify, and hold harmless the City and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), expert witness fees, damages or liabilities of any nature whatsoever, for death or injury to any person, including Operator's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by Operator, subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under a Permit issued pursuant to this ordinance. This provision will survive the expiration or termination of the Permit.
(b) Permittee expressly acknowledges and agrees that the City would not be willing to give a Permit in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of the City or its agents, and Permittee expressly assumes the risk with respect to its services authorized pursuant to a Permit, which includes the use of its services by the parties it contracts with through the lease or rental of its Dockless Shared Mobility Devices. Accordingly, without limiting any indemnification obligations of the Permittee or other waivers contained within this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes against the City for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, the City, its departments, commissions, officers, directors and employees, and all persons acting by, through, or under each of them, arising out of this Permit or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Permittee pursuant to the Permit, regardless of cause, and whether or not due to the negligence of the City or its agents, except for the willful misconduct of the City or its agents. This waiver includes, without limitation, any and all claims whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the public rights of way and any related improvements or any law or regulation applicable thereto or the suitability of the public rights of way for Permittee's intended use.

- We would like to propose modifications to Section (a), which is provided below. Section (b) we would like to see removed altogether. A company cannot agree to release its ability to bring a claim against the City. Moreover, this is language is not included in the agreement the City of Emeryville signed with Motivate to provide bikeshare services. We would like an opportunity to discuss this further with Emeryville's City Attorney.

(a) Operator shall defend, indemnify, and hold harmless the City and any of its boards, officers, agents, employees, assigns, and successors (collectively "Indemnified Parties") in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and reasonable cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), expert witness fees, damages or liabilities of any nature whatsoever, for death or injury to any person, including Operator's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by Operator, subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under a Permit issued pursuant to this ordinance. This provision will survive the expiration or termination of the Permit. The foregoing indemnification obligation shall not apply with respect to the negligence or willful misconduct on the part of the the City and other indemnified parties.
Operator may assume, and if the Indemnified Parties request in writing shall assume, the defense of any Claim, and upon request by the Indemnified Parties, Operator shall allow the Indemnified Parties to participate in the defense at the Indemnified Parties' own expense. The Indemnified Parties shall give Lime prompt written

notice of any Claim. If any of the Indemnified Parties settle any such Claim, demand, or action without the prior written consent of Lime, Lime shall be released from the indemnity in that instance.

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Your ride anytime