



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** October 20, 2020  
**TO:** Christine Daniel, City Manager  
**FROM:** Mary Grace Houlihan, Public Works Director  
**SUBJECT:** **Resolution Of The City Council Of The City Of Emeryville Concluding The City's Contractual Obligations Related To A Right Of First Offer For Operation Of A Bike Share Program With Electric-Assist Bicycles**

### RECOMMENDATION

Staff recommends that the City Council approve the above-entitled resolution rejecting Lyft's proposal to operate E-Bikes in Emeryville and determining that the parties have been unable to reach agreement on the terms of a program for electric bicycles in Emeryville, thus concluding and fulfilling Emeryville's obligations under the Right of First Offer process established in the multi-party "Coordination Agreement".

### BACKGROUND

A bike share program ("Program") has been operated in five bay area cities (Emeryville, Berkeley, Oakland, San Francisco and San Jose) since 2017, first by Motivate, LLC ("Motivate") and subsequently by Lyft, Inc. ("Lyft") which acquired Motivate in 2018. The Program is run in accordance with three documents: a "Program Agreement" between the Metropolitan Transportation Commission ("MTC") and Motivate dated November 4, 2015, (Attachment 1), a "Coordination Agreement" among the five cities, Motivate, and the MTC dated December 31, 2015 (Attachment 2) and a "First Amendment to the Coordination Agreement" among the same seven parties, dated November 21, 2016 (Attachment 3).

#### Bike Sharing Policy Objectives

In agreeing to implement bike share in Emeryville, the City of Emeryville established the following objectives:

1. Support bike sharing on public property and the public right of way
2. Balance the opportunities for bike sharing with the constraints of local parking conditions and other uses of the public right of way
3. Ensure an accessible, equitable program
4. Site stations in areas that are safe, convenient, and unrestricted to public access
5. Operate a program at no cost to the City

The Coordination Agreement sets forth numbers of bikes and stations for Emeryville, sets pricing for memberships and casual use, defines responsibilities for the costs of the program, and describes Emeryville's rights and responsibilities related to siting, advertising, sponsorship and signage. The Coordination Agreement includes a ten-year period of exclusivity for the "classic," non-electric, bike share system and a provision for cities to provide Lyft with a right of first offer (ROFO) for electric-assist bikes (e-bikes.)<sup>1</sup> There are no costs to the City for the bicycles and stations, or for their operation and maintenance, with the exception of staff time for planning and siting efforts.

## DISCUSSION

The City of Emeryville is a party to the Coordination Agreement (Agreement) between the Metropolitan Transportation Commission (MTC) and Bay Area Motivate, LLC, among others, effective December 31, 2015. As noted above, the Agreement established a multi jurisdiction bicycle sharing program in San Jose, San Francisco, Oakland, Berkeley, Emeryville (Participating Cities). Lyft subsequently acquired Bay Area Motivate, LLC and currently operates the program as Bay Wheels. Section 32.3 of the Agreement created a "Right of First Offer" should any Participating City wish to establish a bike share program with "E-Bikes" (electric bicycles). Section 32.3 specifically states:

"If at any time during the Term but after June 30, 2016, a Participating City intends to issue a Request for Proposals or initiate another type of procurement (each of the foregoing, a "Solicitation") to operate a bike share program with E-Bikes, then prior to issuance of such Solicitation, such Participating City shall offer to Operator the opportunity to operate bike share program with E-Bikes. Following such offer, Operator and such Participating City shall negotiate in good faith the terms of such program. If within 3 months following such offer, Operator and such Participating City are unable to reach agreement on the terms of such program, then such Participating City shall have the right to issue a Solicitation, and Operator shall have the right to respond to such Solicitation, pursuant to the procurement rules applicable in said Participating City."

In furtherance of its obligations to make an offer to the Operator pursuant to section 32.3, the City of Emeryville proposed business terms for operation of hybrid electric bicycles in Emeryville to Lyft by correspondence dated January 24, 2020. Lyft responded on February 3, 2020 by way of extending terms of its Proposal for hybrid electric bicycles in Oakland to the cities of Emeryville and Berkeley. The East Bay cities, including Emeryville, provided a further proposal to Lyft on April 6, 2020. Subsequently on June 2, 2020, Lyft provided a formal response to all three East Bay cities. Staff has analyzed that response and concluded that its price and terms do not sufficiently address the City's interests for operation of an electric bicycle sharing program in Emeryville.

Accordingly, staff is recommending that the City Council reject Lyft's June 2, 2020 proposal and determine that the parties have been unable to reach agreement on the terms of a program for electric bicycles in Emeryville, thus concluding and fulfilling

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<sup>1</sup> Section 32.3, Coordination Agreement

Emeryville's obligations under the Right of First Offer process established in the Coordination Agreement.

### **FISCAL IMPACT**

Fiscal impacts to the City of rejecting Lyft's offer include the loss of proposed funding from Lyft for bike racks, at a rate of \$75 per e-bike deployed. Lyft's proposal is for 40 e-bikes in Emeryville, with \$3,000 in funding for additional bike racks.

If Lyft's offer for exclusive e-bike service were accepted, no additional permits or fees would be due to the City. However, in the absence of an agreement for exclusive e-bike service with Lyft, the City's Dockless Shared Mobility Ordinance can be used to regulate these services from Lyft or any other qualified operator. The Ordinance provisions include a permit process and permit fee for dockless devices, including bikes, currently set at \$15,000 per operator, as shown in the City's Master Fee Schedule.

### **STAFF COMMUNICATION WITH THE PUBLIC**

Lyft's e-bike program and pricing proposals were discussed at the May 4, 2020 Bicycle and Pedestrian Advisory Committee.

### **CONCLUSION**

Staff recommends that City Council reject Lyft's June 2, 2020 proposed terms as set forth above, concluding and fulfilling the City's contractual obligations of a "Right of First Offer."

**PREPARED BY:** Nancy Humphrey, Environmental Programs Supervisor

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Christine Daniel, City Manager

## **ATTACHMENTS**

- Draft Resolution
- Program Agreement, December 31, 2015
- Coordination Agreement, December 31, 2015
- First Amendment to the Program Agreement, November 16, 2016
- Draft Business Terms for Stationless Electric Bicycle Bikeshare Program in Emeryville, January 24, 2020
- Lyft's Revised 2020 Bay Wheels Pricing Proposal, February 3, 2020
- East Bay Participating Cities' Initial Joint Hybrid eBike Pricing Proposal, April 6, 2020
- Bay Wheels Ebike Pilot Proposal for the East Bay, June 2, 2020