ORDINANCE NO.  ORD-19-0013

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

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

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

Chapter 10.71
SHARED MICROMOBILITY DEVICE PROGRAM

10.71.010 Purpose.
Consistent with the City's goals of enhancing micromobility and
access, easing traffic congestion, and promoting sustainability, this Chapter
creates a program to facilitate the use of shared micromobility devices while
ensuring the protection of public health and safety, including the safety of
the public traveling by foot, bicycle, or vehicle on public sidewalks, streets,
and other public rights-of-way.

10.71.020 Definitions.
A. "Abandon" shall mean leaving an item unattended for any
length of time.
B. "City" shall mean the City of Long Beach, California.
C. "Director" shall mean the Director of Public Works or
designee.
D. "Operator" shall mean any person or businesses entity
selected by the City to participate in the Shared Micromobility Device Program pursuant to this Chapter.

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

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

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

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

10.71.030 Administrative regulations.

A. The City may adopt administrative regulations to implement the provisions of this Chapter, including, but not limited to, permit application procedures and permit standards, which may include regulations relating to lawful conduct, insurance, indemnification, public safety, data sharing, data privacy, and/or the timely removal of hazards.
B. No person shall fail to comply with the City's administrative regulations. Any violation of any administrative regulation issued pursuant to this Section shall constitute a violation of this Code and shall subject the violator to the penalties set forth in this Chapter.

10.71.040 Prohibited conduct.

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

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

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

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

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

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

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

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

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

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

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

B. The City Council may establish permit fees and charges by
resolution, which shall:

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

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

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

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

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

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

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

   a. The applicant’s current operations in the City and other jurisdictions, including copies of the applicant’s operating permits
for all such jurisdictions,

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

c. The applicant's regulatory compliance program,

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

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

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

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

h. Any other requirements set forth by administrative regulation.

10.71.070 Shared micromobility operator selection.

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

B. Each qualified applicant shall be evaluated based upon objective criteria including: experience; proposed operations and maintenance plan; financial wherewithal and stability; adequacy of
insurance; ability to begin operations in a timely manner; responsiveness to the City’s direction and compliance with regulations during the program; public education strategies; references; relevant record of the applicant’s or officers’, owners’ or principals’ violations of Federal, State or local law, or rules and regulations; and any other objective criteria established by administrative regulation.

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

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

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

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

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

10.71.080 Limitations on City liability.

To the fullest extent permitted by law, the City shall not assume any liability whatsoever with respect to having issued a shared micromobility operator permit or otherwise approving the operation of any shared
micromobility device. As a condition to the issuance of any shared
micromobility operator permit, the applicant shall be required to meet all of
the following conditions:

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

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

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

D. Reimburse the City for all costs and expenses, including, but
not limited to, attorney fees and costs, which it may be required to pay as a
result of any claim, lawsuit, or legal challenge related to the City's approval of or activities conducted pursuant to the applicant's shared micromobility operator permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve any of the obligations imposed hereunder.

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

10.71.090 Grounds for revocation, suspension or denial.

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

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

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

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

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

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

5. Failing to comply with any requirement imposed by the provisions of this Code (or successor provision or provisions) including any rule, regulation, condition or standard adopted pursuant to this Chapter, or any term or condition imposed on the shared micromobility operator permit, or any provision of State law.
B. Conviction of the operator, to include any of its officers, owners or principals, of a criminal offense that is substantially related to the qualifications, functions or duties of the shared micromobility business or profession, including, but not limited to, any criminal conviction involving a violent or serious felony, fraud, deceit, or embezzlement.

10.71.100 Impoundment of devices.

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

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

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

10.71.110 Enforcement.

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

B. Any person who violates any provision of this Chapter, including any permit condition, shall be subject to revocation, suspension or denial of the permit, administrative fines and administrative penalties pursuant to Chapter 9.37 of this Code.
C. Any person convicted of violating this Chapter in a criminal case, or found to be in violation of this Chapter in a civil or administrative case brought by a law enforcement agency, shall be ordered to reimburse the City and other participating law enforcement agencies their full investigative costs.

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

I hereby certify that the foregoing Ordinance was adopted by the City Council of the City of Long Beach at its meeting of May 21, 2019, by the following vote:

Ayes: Councilmembers: Gonzalez, Pearce, Supernaw, Mungo, Andrews, Uranga, Richardson.

Noes: Councilmembers: None.

Absent: Councilmembers: Price, Austin.

Approved: 5/22/19 (Date)

Mayor

City Clerk
STATE OF CALIFORNIA ) ss
COUNTY OF LOS ANGELES )
CITY OF LONG BEACH )

Tamela Austin being duly sworn says: That I am employed in the Office of the City Clerk of the City of Long Beach; that on the 22nd day of May 2019, I posted three true and correct copies of Ordinance No. ORD-19-0013 in three conspicuous places in the City of Long Beach, to wit: One of said copies in the entrance lobby of City Hall in front of the Information Desk; one of said copies in the Main Library; and one of said copies on the front counter of the Office of the City Clerk.

Tamela Austin

Subscribed and sworn to before me this 22nd day of May 2019.

[Signature]
CITY CLERK