



Kriss Worthington

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CONSENT CALENDAR

July 10, 2018

To: Honorable Mayor and Members of the City Council
 From: Councilmember Kriss Worthington and Sophie Hahn
 Subject: Refer to City Manager to look into adopting an ordinance requiring a permit process for scooter sharing companies to operate on public streets.

RECOMMENDATION:

Refer to the City manager to look into adopting an ordinance establishing a pilot Powered Scooter Share Permit Program for 24 months, requiring a permit issued by the Director of Public Works, establishing a fee for the issuance of the permit, establishing administrative penalties for failure to obtain a permit or violation of permit requirements, providing a procedure for the assessment and collection of administrative penalties for permit violations or parking or leaving standing an unpermitted powered scooter subject to the pilot Powered Scooter Share Permit Program on a sidewalk, street, or other public right-of-way.

BACKGROUND:

This proposal is heavily based on the regulations recently adopted by the city of San Francisco. The proposed legislation defines and regulates any "Powered Scooter Share Program." Such a program is defined as a system of self-service powered scooters for hire in the City of Berkeley operated by a Powered Scooter Share Operator, which offers to users a pool of self-service powered scooters for use in the public right-of-way or on public property in the City. State law currently imposes restrictions on the operation of powered scooters, requiring users to have a driver's license or instructional permit and use a helmet, prohibiting riding on sidewalks, and prohibiting the obstruction of sidewalks and other pedestrian paths of travel through the parking and/or dumping of scooters. There is a need for local regulation of the operation of Powered Scooter Share Programs.

A powered scooter is any two-wheeled device that has handlebars, has a floorboard that is designed to be stood upon when riding, and is powered by a motor. This device may also have a driver seat that does not interfere with the ability of the rider to stand and ride and may also be designed to be powered by human propulsion.

Earlier this year, three companies began operating electric scooter share programs in San Francisco but received backlash from the community due to lack of regulation. In

order to avoid this kind of public controversy, it is imperative that we proactively regulate scooter sharing.

FINANCIAL IMPLICATIONS:

All costs associated with permitting of Powered Scooter Share Permit Program are recovered through the permit fees – an initial permit fee of \$5,000 for a permit application, and a \$25,000 annual permit fee. These costs are the same as those reflected in the Ordinance passed by the City of San Francisco. These fees will not exceed the costs of the program.

ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170

Attachment:

1. Ordinance
2. [San Francisco MTA Scooter Sharing Ordinance](#)

**ORDINANCE NO. ##### -N.S.
ADDING ORDINANCE NO. ##### -N.S. TO THE BERKELEY MUNICIPAL CODE
UNDER TITLE 14: "POWERED SCOOTER SHARE PERMITS":**

BE IT ORDAINED by the Council of the City of Berkeley as follows:

That a Chapter 14.69 be added to the Berkeley Municipal Code reading as follows:

**Chapter 14.69
POWERED SCOOTER SHARE PERMITS**

Section 14.69.010: Permit Program

(A) General Permit Program provisions.

1. The Director of Public Works is authorized to implement a pilot program for the issuance of Powered Scooter Share Permits commencing on a date designated by the Director. The duration of the pilot program shall not exceed 24 months from the date of commencement.
2. The Director of Public Works may issue Powered Scooter Share Permits upon receipt of applications from Powered Scooter Share Operators on a form prescribed by the City of Berkeley which applications meet the requirements of this ordinance. Each applicant shall pay a nonrefundable permit application fee. The maximum number of Powered Scooters authorized under a Powered Scooter Share Permit shall be 250 during the first nine months of the pilot program, and 500 during the remaining months of the pilot program. In no event shall City of Berkeley issue more than five Powered Scooter Share Permits under the pilot program. Each permit shall be valid for up to one year, but in no event longer than the ending date of the pilot program. A permittee whose permit is revoked shall not be eligible to reapply for a permit for six months from the date of revocation.
3. Definition of Permittee. "Permittee" shall mean the natural person, sole proprietorship, partnership, association, corporation, governmental or non-profit agency that is the named holder of a permit issued under this ordinance.
4. Permit Required for Parking. No Powered Scooter that is part of a Powered Scooter Share Program may be parked, left standing, or left unattended on any sidewalk, Street, or public right-of-way under the jurisdiction of the City of Berkeley or the Department of Public Works (Public Works) without the

Powered Scooter Share Operator first obtaining a permit under this ordinance.

Section 14.69.020: Permit Issuance and Revocation

(A) Director's Authority to Issue Powered Scooter Share Program Permits. The Director of Public Works has the authority at his or her sole discretion to grant a revocable permit to the Powered Scooter Share Operator of a Powered Scooter Share Program for operation in the public right-of-way under the jurisdiction of the City of Berkeley or Public Works in the City. The Director of Public Works may impose permit conditions, including but not limited to, conditions related to the location, placement, parking, securing, safe operation, or maintenance of any Powered Scooter that is part of a Powered Scooter Share Program, as well as conditions the Director determines are necessary to protect the public convenience and safety concerning transfer of permits, grounds for permit revocation, indemnification requirements, protection of personal, financial and travel information of users, and the maintenance of insurance in a form and amount satisfactory to the City.

1. The Director of Public Works may issue a permit to a Powered Scooter Share Operator upon receipt of a written application from a qualified permit applicant on a form prescribed by the City of Berkeley.
2. The name and current contact information for the Powered Scooter Share Operator, as well as a unique number identifying the scooter, shall be prominently displayed on each scooter that is part of a Powered Scooter Share Program.
3. The Director of Public Works reserves the right to revoke a Powered Scooter Share Program Permit for cause at any time upon written notice of revocation as set forth in subsection (B) of this chapter. The Permittee shall surrender such permit in accordance with the instructions in the notice of revocation.
4. A permit fee must be paid by the permit applicant before any permit may be issued or renewed. In addition, an applicant shall provide sufficient evidence to demonstrate payment of any penalties assessed for violation(s) of any provision of the Berkeley Municipal Code or of terms of any existing or previously issued permits issued by the City, for which there has been a final determination of the violation.
5. Upon notification by the City of any Powered Scooter belonging to a Powered Scooter Share Program Operator that is improperly parked, left standing, or unattended on any sidewalk, Street, or public right-of-way under the jurisdiction of the City of Berkeley or Public Works, the Powered Scooter Share Operator shall remove the scooter within one hour.
6. To be eligible and qualified to obtain a Powered Scooter Share Program Permit, a permit applicant must demonstrate compliance with, or must agree to, as applicable, the following requirements, to the City of Berkeley's satisfaction:

(a) Each Powered Scooter shall be capable of providing real-time location data to the City of Berkeley in accordance with the specifications issued by the Director of Public Works.

(b) Adequate insurance as determined by the City's Risk Manager, which lists the City of Berkeley as an additional insured, must be provided for each Powered Scooter ridden, parked, or left standing or unattended on any sidewalk, Street, or public right-of-way under the jurisdiction of the City of Berkeley or Public Works, and for each user using the Powered Scooter during the period of use. The Permittee must indemnify and hold the City of Berkeley, its departments, commissions, boards, officers, employees, and agents (collectively, "Indemnitees") harmless from and against any and all claims, demands, actions, or causes of action that may be made against the Indemnitees for the recovery of damages for the injury to or death of any person or persons or for the damage to any property resulting directly or indirectly from the activity authorized by the permit, regardless of the negligence of the Indemnitees.

(c) Powered Scooter Share Operators shall pay the City of Berkeley a public property repair and maintenance endowment totaling \$10,000, payable at the time of permit issuance, to ensure adequate funds are available to reimburse the City for future public property repair and maintenance costs that may be incurred, including but not limited to any costs of repairing or maintaining damaged public property by the Powered Scooter Share Operator or its customers, removing and storing scooters improperly parked or left unattended on public property, and addressing and abating any other violations.

(d) If the City of Berkeley, Public Works, or any other City agency, department, or commission, including the City Attorney's Office, incurs any costs of addressing or abating any violations of this ordinance, including repair or maintenance of public property, upon receiving written notice of such City costs, the Powered Scooter Share Operator shall reimburse the City of Berkeley for such costs within 30 days. The City of Berkeley shall arrange for transfer of funds to any other City agency, department, or commission that incurred costs described above. The Powered Scooter Share Operator's payment under this subsection (A) shall not substitute for any installment payment otherwise owed or to be paid to the City of Berkeley.

(e) The City of Berkeley encourages City Powered Scooter Share Operators to make Powered Scooters available to users in census tracts designated as “communities of concern” by the Metropolitan Transportation Commission. Each Powered Scooter Share Program Operator shall provide a proposed service area for approval by the City of Berkeley and furnish an accurate map of the agreed-upon area to the City of Berkeley.

(f) Submit a maintenance, operations, cleaning, disposal, and repair plan for the Powered Scooters subject to approval the City of Berkeley and Public Works.

(g) Submit a low-income user plan that waives any applicable scooter deposit and offers an affordable and discounted cash payment option to any user with an income level at or below 200% of the federal poverty guidelines.

(h) Provide a multilingual website with languages determined by the City of Berkeley, 311 call center, and mobile application customer interface, that is available 24 hours a day, seven days a week. The website and mobile application shall also meet the requirements of Section 508 of the Rehabilitation Act and Section 255 of the Communications Act that apply to information and communication technology.

(i) Submit a Privacy Policy consistent with guidelines issued by the Director of Public Works that safeguards users’ personal, financial, and travel information and usage including, but not limited to, trip origination and destination data.

(j) Submit aggregate user demographic data that does not identify individual users, payment methods, or their individual trip history, gathered by the system application, to the City of Berkeley on at least a monthly basis using anonymized keys.

(k) Provide an electronic payment system that is compliant with the Payment Card Industry Data Security Standards (PCI DSS).

(l) Each Powered Scooter Share Program Operator shall use best efforts to ensure that its users comply with all applicable laws. Consistent failure by the users associated with a specific Operator to comply with applicable laws shall be grounds for permit suspension or revocation. At a minimum, each

Powered Scooter Share Program Operator shall provide to the user a summary of State and local laws governing the use of Powered Scooters, including but not limited to informing the user of applicable requirements for licensing, helmets, travel on highways, parking, and use of sidewalks, as specified by the Director of Public Works. The user shall be required to acknowledge having read these requirements.

(m) Each Permittee shall comply with, and shall ensure that their employees and contractors comply with, applicable laws, including but not limited to, the provisions of this ordinance, and other applicable provisions of the Berkeley Municipal Code, the California Vehicle Code, California workers' compensation laws, and the Americans with Disabilities Act.

(B) Issuance and Revocation Conditions.

1. After evaluating an applicant's permit application, the Director of Public Works shall either grant the Permit as requested, grant the Permit with modifications, or deny the Permit. Where the Permit is granted with modifications or denied, the notice shall explain the basis for the Director of Public Works's decision.
2. Notwithstanding any other requirement, the Director of Public Works has the authority to deny a permit based on the extent that issuing a permit would lead to an overconcentration of shared Powered Scooters in the public right-of-way, cause an imbalance in the geographical distribution of scooters that are part of the Powered Scooter Share Program, or otherwise not be in the public interest.
3. For good cause, the Director of Public Works may revoke any permit issued under this ordinance. "Good cause" hereunder shall include, but shall not be limited to, the following:
 - (a) A Permittee failed to pay a fine imposed by the City of Berkeley under Section 302 of this Code within 30 days of the date due under this ordinance;
 - (b) A Permittee failed to pay a permit fee within 30 days following notice of nonpayment;
 - (c) The Permittee has violated any statute or ordinance, including any provision of the Berkeley Municipal Code, governing the operation of Powered Scooters regulated by this Code; or
 - (d) The Permittee has violated one or more conditions

of the permit.

Section 14.9.030: Administrative Penalties applicable to Powered Scooter Share Program Operators

(A) Administrative Penalties Applicable to Powered Scooter Share Program Operators.

1. Any Powered Scooter Share Program Operator who violates the Berkeley Municipal Code is subject to the issuance of a citation and imposition of an administrative penalty.
2. Any Powered Scooter Share Program Operator who violates one or more conditions of a permit issued under this ordinance is subject to the issuance of a citation and imposition of an administrative penalty.
3. Administrative penalties may not exceed \$500 for each offense.
4. In addition to other designated employees, the Director of Transportation is authorized to designate officers or employees of the City of Berkeley to enforce the Berkeley Municipal Code. Any officer or employee so designated is hereby authorized to issue citations imposing administrative penalties for violations of the Berkeley Municipal Code.

(B) Procedure for Assessment and Collection of Administrative Penalties.

1. This subsection (B) shall govern the imposition, assessment, and collection of administrative penalties imposed pursuant to subsection (A).
2. The City of Berkeley finds:
 - (a) That it is in the best interest of the City, its residents, visitors, and those who park on City streets to provide an alternative, administrative penalty mechanism for enforcement of violations of the Powered Scooter Share Program Permit requirements established by this ordinance; and
 - (b) That the administrative penalty scheme established by this ordinance is intended to compensate the public for the injury or damage caused by any person or Powered Scooter Share Operator who parks or leaves standing or unattended any Powered Scooter, that is part of a Powered Scooter Share Program, on any sidewalk, Street, or public right-of-way under the jurisdiction of the City of Berkeley or

Public Works without a permit issued by the City of Berkeley authorizing the Powered Scooter to be parked, left standing, or left unattended at that location. The administrative penalties authorized under this ordinance are intended to be reasonable and not disproportionate to the damage or injury to the City and the public caused by the prohibited conduct.

3. Administrative Citation. Where a designated officer or employee determines that there has been a violation of the Berkeley Municipal Code, the officer or employee may issue an administrative citation to the person and/or entity responsible for the violation. The citation may be personally served on the applicant or served by certified U.S. mail to the last known address for the Powered Scooter Share Operator. The citation shall state the date and nature of the violation and the amount of the administrative penalty, and shall state that the penalty is due and payable to the City of Berkeley within 15 business days from the date of the notice, if not contested within the time period specified. The citation shall also state that the person or entity responsible has the right, under subsection (C), to request an administrative hearing of the determination as to the violation and assessment of penalties, and shall set forth the procedure for requesting an administrative hearing. The designated officer or employee shall mail the administrative citation and evidence supporting the determination of a violation to the last known address for the Powered Scooter owner.

(C) Request for Hearing; Hearing.

1. A person or entity that has been issued an administrative citation may request an administrative hearing in person, by telephone, or by email in order to contest the citation issued in accordance with this ordinance. The administrative hearing shall be initiated by filing a request for an administrative hearing with the City of Berkeley Hearing Section within 15 business days from the date of the citation. Failure to request a hearing in a timely manner or to attend a scheduled hearing shall be deemed a waiver of the right to hearing.
2. At the time the administrative hearing request is filed, the requesting party must deposit with the City of Berkeley Hearing Section the full amount of the penalty required under the citation.
3. Whenever an administrative hearing is requested under this subsection (C), the City of Berkeley Hearing Section shall, within 15 business days of receipt of the request, notify the requesting

party of the date, time, and place of the administrative hearing by certified mail. Such hearing shall be held no later than 30 calendar days after the City of Berkeley Hearing Section receives the request, unless time is extended by mutual agreement of the City of Berkeley and the affected party.

4. The administrative hearing shall be conducted by a neutral Hearing Officer assigned by the City of Berkeley Hearing Section.
5. The City of Berkeley Hearing Section may issue rules as needed to implement this requirement. The parties may present evidence and testimony to the Hearing Officer. All testimony shall be under oath.
6. The Hearing Officer shall ensure that a record of the proceedings is maintained. The burden of proof to uphold the violation shall be on the City, but the administrative citation shall be prima facie evidence of the violation.
7. The Hearing Officer shall issue a written decision including a summary of the issues and the evidence presented, and findings and conclusions, within 15 business days of the conclusion of the hearing. The Hearing Officer may uphold the penalty imposed by the citation or dismiss the citation. A copy of the decision may be personally delivered to the person contesting the violation or sent by first class mail. The decision shall be a final administrative determination. An aggrieved party may seek judicial review of the decision pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.

(D) Payment and Collection of Penalty.

1. Where a person or entity has not made a timely request for administrative hearing, the penalty shall be due and payable to the City of Berkeley on or before 15 business days from the date of issuance.
2. Where a person or entity has made a timely request for administrative hearing, and the violation and penalty have been dismissed upon review, the amount deposited by the requestor under subsection (D) shall be refunded to the requestor not later than 10 business days from the date of the notice of decision issued under subsection (D). If a penalty due and payable under subsection (D) remains unpaid after the specified due date, the City of Berkeley shall send the violator written notice that the penalty is overdue.
3. Penalties that remain unpaid 30 calendar days after the due date shall be subject to a late payment penalty of \$50. Persons and entities against whom administrative penalties are imposed shall also be liable for the costs and attorney's fees incurred by the City of Berkeley in bringing any civil action to

enforce the provisions of this ordinance, including obtaining a judgment for the amount of the administrative penalty and other costs and charges. Where there is a nexus between the violation and property in the City owned by the violator, the City of Berkeley shall further inform the violator that if the amount due is not paid within 30 calendar days from the date of the notice, the City of Berkeley may initiate proceedings to make the amount due and all additional authorized costs and charges, including attorney's fees, a lien on the property. Such liens shall be imposed in accordance with the Berkeley Municipal Code.

4. Administrative penalties shall be deposited in the Municipal Transportation Fund and may be expended only by the City of Berkeley.

- (i) Department of Public Works – Coordination. A Powered Scooter Share Program Permit shall not be issued by the Director of Public Works until the Department of Public Works is notified in writing of the permit application, had an opportunity to review and comment on the application, and has issued any other required permit(s).

2. [San Francisco MTA Scooter Sharing Ordinance](#)

