

# **City of Berkeley Application Criteria: Shared Electric Micromobility Permit Program (SEMPP)**

## **I. Introduction**

The City of Berkeley has seen significant growth in new mobility services, from on-demand ridehailing services to app-enabled transportation options like car sharing and bicycle sharing. The accelerated development of these technologies has the potential to dramatically shape cities in the next few decades. New mobility services can help the City achieve its goals in equity, livability, and sustainability; however, new technologies can also be disruptive and leave the marginalized further and further behind. The purpose of the regulations herein is to maximize public benefits while mitigating negative impacts through the issuance of permits for the deployment of shared electric micromobility devices (“Devices”) within the City of Berkeley (the “City”). Below are the City’s goals, definitions, terms and conditions, and application procedure for the Shared Electric Micromobility Permit Program.

## **II. Permit Goals:**

- Provide dockless shared electric micromobility devices as an option for City of Berkeley residents.
- Diversify mobility options of residents, employees, and visitors to Berkeley.
- Protect public health and safety.
- Avoid waste by ensuring the Devices in Berkeley are robust enough for commercial use.
- Avoid sidewalk, pathway, and pedestrian ramp blockages.
- Reduce emissions from short trips and connections to transit.
- Maximize user awareness of safe and legal behaviors for operating shared mobility devices.
- Create an enforceable framework for managing shared mobility services.
- Ensure use of the Public Right of Way (PROW) benefits public mobility.
- Ensure private operators respond to pervasive issues and service complaints.

## **III. Definitions**

- (A)** “Adaptive Shared Electric Micromobility Device” or “Adaptive Device” means an electric-assisted scooter, tricycle, or bicycle that is accessible to people with various physical disabilities. Adaptive Devices must include three wheels (or be self-balancing), a seat, and a basket or storage area large enough to hold a cane. When used in this document, the terms Shared Electric Micromobility Device or Device shall include an Adaptive Device unless otherwise noted.
- (B)** “Amenity Zone” is the portion of the sidewalk between the curb and the Pedestrian Zone in which street furniture and amenities, such as lighting, benches, utility poles, tree wells, and bicycle parking, are provided. It is located between the curb and the Pedestrian Zone of the sidewalk. (See Berkeley Pedestrian Plan Figure B-2.)
- (C)** “City Manager” means the City Manager or their designee.
- (D)** “Equity Priority Communities” means the most recent census tracts or block groups designated as Equity Priority Communities by the Metropolitan Transportation Commission.

- (E)** “Deployment” means the placement of devices by the Shared Electric Micromobility system operator.
- (F)** “Indemnitee” means the individual or entity that is being indemnified and held harmless by another.
- (G)** “Pedestrian Zone” is the portion of the sidewalk for walking and pedestrian travel. (See Berkeley Pedestrian Plan Figure B-2.)
- (H)** “Roadway” is defined in Section 530 of the California Vehicle Code or any successor statute.
- (I)** “Shared Electric Micromobility Device” or “Device” means an electrically-powered device for short-term rental for point-to-point trips where, by design of the shared electric micromobility operator, the device is intended to remain in the public-right-of-way, even when not being rented, and is not required to be docked in a designated docking station for rental. “Devices” include electric-assisted scooters and bicycles.

  - (1)** “Device(s)” may include:

    - (a)** “Electric Scooter” or “Scooter” – any two-wheeled device that has handlebars, has a floorboard that is designed to be stood upon when riding, and is powered by an electric motor, as defined in Section 407.5 of the California Vehicle Code;
    - (b)** “Electric Bicycle” or “Bicycle” – A Class 1 Electric Bicycle or Class 2 Electric Bicycle as defined in Section 312.5 of the California Vehicle Code;
    - (c)** “Electric Motorized Bicycle” – A fully motorized two-wheeled device with a seat, footrest and an electric motor of no more than 750 watts; or
    - (d)** “Electric Tricycle” – a three-wheeled device with a seat and an electric motor of no more than 750 watts.
- (E)** “Shared Electric Micromobility System Operator” or “Operator” is an entity that owns and/or operates a Shared Electric Micromobility System in the public-right-of-way. The term includes any employee, agent, or independent contractor hired or retained by the Operator.
- (F)** “Shared Electric Micromobility Permittee” or “Permittee” is an entity that is issued a Permit by the City to operate a Shared Electric Micromobility System in the public-right-of-way.
- (G)** “Shared Electric Micromobility Permit Program” or “Program” means the program under which the permit system is regulated.
- (H)** “Shared Electric Micromobility System” or “System” means a system providing Devices as defined above.
- (I)** “Shared Electric Micromobility User”, “User” or “Customer” is any person that uses, rents, or rides a Shared Electric Micromobility Device or is a customer of the Operator.
- (J)** “University” is the University of California, Berkeley.

#### IV. **Permit Terms and Conditions**

- (A) Purpose** - The purpose of this document is to establish requirements that govern and permit the operation of a Shared Electric Micromobility System in the City, and to provide a regulatory framework for the City’s Shared Electric Micromobility Program (hereinafter “Program”).
- (B) Authority** - The City Manager or their designee is authorized to issue system operator Permits to operators who submit applications and fulfill all requirements herein, including payment of all fees, fines, and penalties to operate such systems.
- (C) Duration** - Permits are valid for one year from the time of Permit issuance. Operators must renew Permits on an annual basis. At the sole discretion of the City, Permit requirements may be adjusted to accommodate changing technology, needs, and priorities.
- (D) Modifications** - The City Manager may promulgate additional or revised regulations governing systems, including but not limited to designating locations for dedicated parking devices in the public right-of-way.
- (E) Relationship to City** - In rendering service, hereunder, the Operator shall be and remain an Independent Contractor. It is expressly understood and acknowledged by the parties that any amounts payable hereunder shall be paid in gross amount, without reduction for penalties, taxes, or charges. Operators are responsible for assuming any applicable federal or state withholding taxes, estimated tax payments, or any other fees or expenses whatsoever.
- (1)** Permits issued under this program are not to be assigned or delegated to a substitute provider, a successor in interest, or a purchaser of the Permit without express written permission by the City.
- (2)** The City reserves the right to terminate Permits at any time and require the operator to remove their entire fleet of Devices from City streets. An operator will have thirty (30) days to remove the entire fleet from City streets.
- (F) Non-transferability** - A Permit may not be transferred without prior written approval of the City Manager. Operator shall promptly notify the City of any changes to the Operator’s corporate structure or ownership. Failure to do so shall be cause for revocation of the Permit. “Transfer” shall include the sale or other exchange of fifty percent (50%) or more of the ownership or control of a Permittee to a third party.
- (G) Indemnification** - Operator/Permittee, by acceptance of the Permit, agrees and promises:
- (1)** Without limiting or otherwise waiving liability for the acts or omissions of the parties hereto, and to the greatest extent permitted by law including, without limitation, California Civil Code sections 1668 and 2772, et seq., to defend, indemnify, and hold harmless City and each of its respective Councilmembers, officers, directors, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as “Indemnitees” or individually as “Indemnitee”) from and against any and all liabilities, claims, lawsuits, actions or causes of action, losses, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, and expenses, including, but not limited to, reasonable attorney’s fees (both in-house and outside counsel) and cost of litigation (including all actual litigation costs incurred by City, including but not limited to, costs of experts and consultants), damages or liability of any kind or nature whatsoever (hereafter referred to as “Liabilities”), for death or bodily injury

to any person, including without limitation, Operator and its officers, directors, employees, agents, assignees, and/or Operator’s Shared Electric Micromobility Users, Customers, or clients, or for damage or destruction of any property of either party hereto or of third parties, in any manner resulting from, arising out of, relating to, or by reason of any:

- (a) act, error, or omission, including both passive and active negligent conduct of Operator, its officers, directors, employees, Shared Electric Micromobility Users, Customers, or representatives, agents, servants, sub-consultants and subcontractors, independent contractors, and their assigns, and successors in interest; or
- (b) act, error, or omission, including both passive and active negligent conduct, of City and/or Indemnitees, including without limitation, any act or omission resulting from, arising out of, or relating to the design, construction, maintenance, repair, replacement, oversight, management, or supervision of any physical, environmental, or dangerous condition(s) of public property including the Public Rights-of-Way and of any related improvements, or with respect to the suitability of the Public Rights-of-Way for Operator’s and/or its Shared Electric Micromobility Users’ or Customers’ intended use.
- (3) The rights and remedies of City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Permit. This provision will survive expiration or termination of this Permit.
- (4) Notwithstanding the foregoing, if Operator/Permittee fails or refuses to defend and indemnify City and/or Indemnitees from and against any and all Liabilities, with legal counsel acceptable to City, City shall have the right to engage its own legal counsel, at Operator’s/Permittees sole cost and expense, for the purpose of participating in the defense. In no event shall Operator/Permittee agree to the settlement of any Liabilities described herein without the prior written consent of City.

**(H) Waiver/Release of Liability**

- (1) Operator/Permittee expressly acknowledges and agrees that City would not be willing to issue this Permit to the Operator/Permittee in the absence of a waiver of liability for consequential or incidental damages resulting from, arising out of, or relating to the passive or active negligent acts, errors or omissions of City, its Councilmembers, officers, directors, partners, agents, and employees, or of any and all persons acting by, through or under each of them (“Agents”), and
- (2) Operator/Permittee expressly assumes the sole and exclusive risk with respect to its Shared Electric Micromobility business, Devices, equipment, or services authorized pursuant to this Permit including, without limitation, the use of its services by the parties with which it contracts for the lease or rental of the Shared Electric Micromobility Devices, or for the servicing and repair of the Shared Electric Micromobility Devices by Operator’s employees, subcontractors, subconsultants, independent contractors, or agents.
- (3) Accordingly, to the greatest extent permitted by law, without limiting any indemnification obligations of Operator/Permittee or other waivers contained within this Permit, and without impairing any applicable insurance coverage described herein, as a material part of the consideration for this Permit, Operator/Permittee hereby fully and forever RELEASES, WAIVES, AND DISCHARGES any and all claims, demands, rights, lawsuits, and causes of action, against the City and its Agents for consequential and/or incidental damages (including without limitation, lost profits), and covenants not to initiate or prosecute any legal action against City or its Agents, in any forum or tribunal, for such losses or damages, arising out of this Permit or

the uses authorized hereunder, including, without limitation, any interference with uses conducted by Operator/Permittee pursuant to the Permit, regardless of the nature or cause, and whether or not due to the passive or active negligence of City or its Agents, except for the willful misconduct of City or its Agents.

- (4) This waiver and release includes, without limitation, any and all claims whether direct or indirect, known or unknown, foreseen and unforeseen, that may result from, arise out of, relate to, or in any way be connected with the design, construction, maintenance, repair, replacement, oversight, management, or supervision of any physical, environmental or dangerous condition(s) of the Public Rights-of-Way and any related improvements, or the suitability of the Public Rights-of-Way for Permittee's or its Shared Electric Micromobility User's or Customers' intended use.
- (5) Operator/Permittee further acknowledges that it understands and agrees that it hereby expressly waives any and all rights and benefits which it now has, or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY".
- (6) Operator/Permittee recognizes and understands that by waiving the provisions of this section, Operator/Permittee will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to agree to these terms and conditions, regardless of whether Operator/Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

**(I) Insurance Requirements/Operator's Liability Not Relieved or Limited/Notices**

Unless a written waiver is obtained from the City's Risk Manager, Contractor must provide the insurance listed in [Attachment A] SHARED ELECTRIC MICROMOBILITY PROGRAM INSURANCE REQUIREMENTS. [Attachment A] is attached hereto and incorporated herein by reference. Approval or purchase of any insurance contracts or policies shall in no way impact or impair Operator's indemnity and/or defense obligations hereunder nor relieve from liability or limit the liability of Operator, its subcontractors of any tier, or the officers, employees, or agents of any of them. In the event of loss, however, Operator shall give all required notices to all insurance carriers, and shall require its subcontractors to do the same. The City may, in its discretion, request evidence of such notices from Operator.

**(J) Shared Electric Micromobility System Operator Requirements**

- (1) Operators seeking to participate in the Program must obtain a City of Berkeley business license before applying for a Permit.
- (2) Operators must be in compliance and in good standing with tax payments or the Permit may be revoked or not eligible for renewal the following year.
- (3) All Operators seeking to operate a System within the City must obtain a Shared Electric Micromobility System Permit ("Permit") pursuant to this chapter.
- (4) Operators seeking a Permit or renewal of an existing Permit shall obtain a business license tax certificate from the Finance Department. Failure to maintain a business tax certificate or pay delinquent business license tax penalties or fees constitutes a basis for revocation or nonrenewal of a Permit.

- (5)** Applicants shall submit a Permit application on a form provided by the City and shall pay any applicable application fee.
- (6)** Prior to Permit issuance, Permit applicant shall provide to the City for inspection one (1) 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.
- (7)** Prior to Permit issuance, Permit applicant shall provide proof that each of its proposed models of Device comply with all Federal, State, and local laws. Compliance with such laws shall include, without limitation, U.S.C. Title 15 Sections 2052(a)(1) and 2085, C.F.R. 1500.18(a)(12) and Part 1512 of Title 16 C.F.R., and Article 4, Sections 21200 through 21213, and Article 5, Section 407.5, and Sections 21220 through 21235 of the California Vehicle Code.
- (8)** The City Manager may impose conditions as part of Permit issuance, and may deny a Permit to applicants who do not meet Program requirements.
- (9)** Operators seeking to renew a Permit shall follow the same procedures as applying for a new Permit.
- (10)** Operators seeking to obtain a permit for operation on private property, or another agency's property within the City limits of Berkeley, must first enter into an agreement with said agency. This includes but is not limited to University of California Berkeley and BART properties.
- (11)** Shared Electric Micromobility Operators shall:

  - (a)** Provide a single point of contact (phone number and email) customer service line, available twenty-four (24) hours a day, seven (7) days a week, for complaints regarding improper parking; and display that contact information clearly on each Device, along with a unique identifying number;
  - (b)** Address complaints within three (3) hours of receipt during hours when Devices are available for rental;
  - (c)** Issue a "ticket number" for each complaint to both the City and the person who reported the issue;
  - (d)** Provide a response to the complainant when a complaint is closed; and
  - (e)** Provide sufficient operations and maintenance staff to respond in Berkeley within three (3) hours to address issues and remove improperly parked Devices.
- (12)** For Complaints submitted through Berkeley's 311 system, Operator must:

  - (a)** Provide a forwarding or "pass through" phone number that Berkeley 311 staff can forward the call/complaint to.
  - (b)** Address complaints within 3 hours during periods when Devices are available for rental;
  - (c)** Issue a "ticket number" for each complaint to both the City and the person who reported the issue;
  - (d)** Provide sufficient operations and maintenance staff to respond in Berkeley within three (3) hours to address issues and remove improperly parked Devices; and
  - (e)** Notify the City of Berkeley via email to [sharedmobility@cityofberkeley.info](mailto:sharedmobility@cityofberkeley.info), and notify the person who made the complaint, when a complaint has been addressed and is considered closed.
- (13)** Operator may be charged an Improper Parking Fee if any of Operator's Devices are found to be improperly parked, and not removed within three (3) hours.

- (14) Permittee shall provide quarterly reports of all calls and emails received through their customer service hotline and contact email including telephone wait times, email response times, and the nature of the customer inquiry.
- (15) Operators shall provide a plan to prevent Devices from being misplaced in bodies of water, including but not limited to: Aquatic Park, the creeks, Marina, or Bay. Operators shall provide to the City for approval their Standard Operating Procedures (SOPs) for retrieval of Devices from bodies of water, along with proof of agreements with any third parties contracted to provide services for Device removal, such as areas that require a boat or other specialized equipment.
- (16) Operators deploying Scooters must verify that Users have valid credentials for use of a Scooter, as required by the California Vehicle Code Section 21235. This verification may include in-app Driver's License scanning and verification or similar technologies. Driver's License verification must be required of all Users upon issuance of Operator Permit, including existing Users.
- (17) Operators must ensure that each User is only able to rent one Device at a time.
- (18) Operators shall maintain a multilingual website, call center, and app customer interface, that is available twenty-four (24) hours a day, seven (7) days a week. Languages shall include, at a minimum, Spanish and simplified Chinese.
- (19) Businesses operating service within the City of Berkeley are subject to Berkeley's Living Wage Ordinance. See BMC Chapter 13.27 for further information regarding this ordinance.
- (20) Operators shall not utilize their Devices for the sale or display of third party advertising.
- (21) Operator agrees not to engage in anti-competitive behavior with other Dockless Device sharing Operators, including but not limited to falsifying data and sabotaging Devices.

**(K) Device and Fleet Specifications**

- (1) Electric Scooters and Electric Motorized Bicycles shall have a governor that restricts electric assisted speed to 15 mph consistently. Electric Bicycles and Electric Tricycles shall have a governor that restricts electric assisted speed to 20mph when operated on a level surface. Speed limits on all Devices will be re-evaluated on an ongoing basis. The City reserves the right to revise the speed limit based on crash and injury data as recommended by the City of Berkeley Transportation Division. Operators must agree to further reduce speeds within areas designated by the City and their Devices deployed in Berkeley must be capable of doing this.
- (2) All Devices shall have always-on front and back lights that are visible from a distance of at least 300 feet under normal atmospheric conditions at night. Front and rear lights must stay illuminated for at least 90 seconds after the Device has stopped.
- (3) All Scooters shall have clearly visible signage notifying the User that:
  - (a) Helmets should be worn by all persons when operating a Scooter, and helmets MUST be worn by all persons under the age of 18 while operating a Scooter;
  - (b) Scooters must yield to pedestrians;
  - (c) Scooter Users must obey all rules of the road, obey all traffic laws, and obey all applicable City of Berkeley ordinances when riding a Scooter on a street, roadway, or highway;
  - (d) Riding on sidewalks is prohibited at all times. "No Riding On Sidewalks" in no less than 48-point font, shall be printed on every Scooter; and

- (e) Scooter Users must have a valid Driver’s License or Learner’s Permit to operate a Scooter (California Vehicle Code section 21235).
- (4) Customers using Devices must be provided with an easily accessible, user-friendly method, within the Operator’s mobile application, to notify Operator of any safety or maintenance issues associated with the Device. In addition, a phone number for reporting safety or maintenance issues must be conspicuously printed on every Device. Devices reported as damaged or inoperable must be taken out of service immediately and remain out of service until repaired.
- (5) Operator’s Devices shall not create excessive or annoying noises in violation of BMC 13.40.070, and shall not play threatening messages.
- (6) Permit applicants shall present to the City for inspection one (1) fully functioning Device of every make and model that the Operator intends to deploy through the Program. Operators shall not deploy new Device models without prior inspection by the City, unless changes in new models are only cosmetic and have no impact on the Device’s safety or performance. Devices must be made available for compliance audits and enforcement options.
- (7) Operator must provide the City of Berkeley with at least five free Device rentals per quarter which will be used for testing purposes only.
- (8) Operators shall provide the City with a list of unique identification numbers for each permitted Device.
- (9) Operators shall provide proof that each of its proposed Device models complies with all applicable federal, state, and local laws. Compliance with such laws shall include, without limitation Article 4, sections 21200-21213, and Article 5, section 407.5 and sections 21220-21235, of the California Vehicle Code.
- (10) Operators shall explain how damaged Devices are repaired or recycled, and what efforts will be made to reduce landfill waste. All batteries and other potentially toxic materials must be disposed of or recycled, per state law, at an appropriate recycling facility. Operator shall provide proof of proper disposal.
- (11) Operators may request additional Device permits to increase fleet size on a quarterly basis, up to the maximum fleet size allowed under their permit. City of Berkeley staff will evaluate the following factors to determine if additional permits should be granted:

  - (a) Trips per Device per day;
  - (b) Trips beginning or ending in Equity Priority Communities; and
  - (c) Number of parking violations.
- (12) In order to maximize Device safety, all Devices shall have a minimum wheel size of 9” in diameter.

**(L) Parking**

- (1) Operators shall ensure their Devices are not parked in a way that violates the terms of their Permit, impedes the regular flow of travel in the public way, or in any way impedes the clearance on sidewalks needed for Americans with Disabilities Act (ADA) compliance. Operators shall ensure that their Devices are parked within a bicycle rack, an on-street bike corral, or in another area specifically designated for bicycle parking and/or scooter parking. Improperly parked Devices may be subject to fines.



- (2) Operator shall inform Users on how to properly park their Devices. Operators shall report to the City, on a quarterly basis, the effectiveness of efforts to enforce proper parking within their mobile application.
- (3) Devices shall be upright when parked.
- (4) Devices shall not be parked in the landscape/furniture zone adjacent to or within:
  - (a) Disabled parking zones, or any other accessible routes that would otherwise create a barrier to accessibility;
  - (b) Curb ramps;
  - (c) Red curb zones;
  - (d) Loading zones;
  - (e) Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones, except at existing bicycle racks;
  - (f) Street furniture that requires pedestrian access (for example – benches, parking pay stations, bus shelters, transit information signs, etc.);
  - (g) Entryways or driveways.
- (5) Any Device that is parked in one location for more than 3 consecutive days without moving may be removed and taken to a City facility for storage at the expense of the Operator.
- (6) Upon request, Operators shall institute geo-fencing around designated Device parking areas and implement in-app technology to require their use in high-density areas.
- (7) Operators shall be responsible for removing Devices that have a dead battery or are damaged.
- (8) Operators shall implement “No Parking” zones in all areas the City has prohibited Device parking within 72 hours of being notified by the City of the parking restriction.
- (9) Operator shall deploy devices with locking mechanisms that attach to bike racks and other appropriate fixed objects, in a way that:
  - (a) Devices may not be parked in any way that obstructs curb ramps, loading zones, access to disabled parking zones or the pedestrian path of travel.
  - (b) Devices must not be attached to bus stop signs, disabled parking signs, trees, fire hydrants, or private property.
  - (c) Devices locked to bike racks shall be positioned parallel to inverted-U or circle bike racks or perpendicular to a wave style rack.
  - (d) No more than one Device shall be locked to each inverted-U or circle-style bike rack.
  - (e) Devices locked in a way that violates this section may be subject to impoundment and fines.
- (10) An integrated locking mechanism shall be deployed on all Devices. Locking mechanisms should be designed so that they cannot be removed using simple tools and can securely hold the Device upright when parked at a bike rack or other fixed object. A combination lock will not be considered an integrated locking mechanism.

**(M) User Education and Safety Plan**

- (1) Operators shall provide screenshots, images and explanations of all existing User education materials and technologies, including those in the mobile application, on the Device, and via in-person interaction.
- (2) Operators shall describe in their Permit application any additional education, incentives, training, Device modifications, notification systems, infrastructure, etc. they propose to provide.
- (3) Operators shall describe in their Permit application how they will monitor Users' compliance with the terms and conditions regulating Device use, including any technology that the Operator will employ to monitor Device Use, and how they will address Users who fail to comply with Device Use rules and regulations.
- (4) Operators shall deploy in-app technology that requires a User to submit a photo of their parked Device at the end of each ride.
- (5) Operators shall coordinate with City staff to conduct outreach, both in-person and digital, to raise awareness and provide public education on proper and legal use of the Devices.

**(N) Number of Operators, Fleet Size, and Service Area Coverage**

- (1) The City may issue Permits to up to three (3) Operators on a competitive basis, with the first two Permits reserved for Operators that use their own employees (with wages from the Operator reported on a federal W-2 Form), rather than contract workers, for Device recharging and rebalancing, and the third Permit reserved for an Operator that uses Devices with a seat as the primary Device available to Users. If such Permit applications are not received within three (3) months of the release by the City of the Permit application, the City may consider issuing Permits to up to two (2) other Operators in the order in which qualifying Permit applications are received.
- (2) Operator must provide a minimum of fifty (50) Devices to ensure availability.
- (3) Operator must serve the public right of way in the entire City of Berkeley. An Operator shall not restrict the use of its Devices to certain geographical areas of the City without written permission, such as geo-fencing certain areas.
- (4) Devices should be distributed equally throughout Berkeley. More than 50% of Devices must be deployed in the Berkeley Equity Priority Communities (as designated by the Metropolitan Transportation Commission).
- (5) Operators shall provide real-time access to data showing the location of all of their Devices.
- (6) Permission to operate the Shared Electric Micromobility Permit Program outside of the public right of way shall require approval from the property owner(s), or the department or agency that has jurisdiction over the proposed location of operation, if applicable.
- (7) Operator shall have a means of communicating with the User when a Device has been parked in a non-permitted area.
- (8) Operators will closely monitor ridership and adjust Device density and location accordingly to maximize the convenience to the greatest number of users.
- (9) If charging or servicing of Devices is contracted to third parties, Operators must take steps to prevent conflicts between contractors seeking to charge or service Devices. This may include partnering with local organization(s) to provide this service, allocating Devices to charging

personnel in a coherent way, hiring charging staff directly, or other such mechanisms that removes or reduces the incentive for conflicts.

**(O) Accessibility**

- (1) Operators must provide Adaptive Devices for persons with disabilities. The total percentage of Adaptive Devices shall be based on expected need, performance, and usage.
- (2) If the operator is unable to deploy Adaptive Devices at the time of permit issuance, a plan must be submitted to the City of Berkeley Transportation Division within three months of permit issuance detailing a timeline for incorporation of shared Adaptive Devices within nine (9) months of the Permit issuance. This “Adaptive Device” plan should describe the type of Device, number of Devices, and timeline for when the Devices will be made available. Adaptive Devices must:
  - (a) Be self balancing (or include at least three wheels),
  - (b) Have a seat; and
  - (c) Have a basket or storage area large enough to hold a cane
- (3) Mobile apps and other Customer interface technology must be fully accessible to persons with disabilities and accessible to screen readers, and must comply with Section 508 of the United States Workforce Rehabilitation Act of 1973

**(P) Affordability**

- (1) Operators shall make available ways to use and pay for the service that do not require a smart phone or credit card.
- (2) Operators shall offer a discounted membership for those with low-income, equivalent to \$5 for one year of unlimited 30 minute rides for those who participate in the Supplemental Nutritional Assistance Program (SNAP) or California Alternative Rates for Energy (CARE). Low-income plans will be considered equivalent if a significant discount is provided.
- (3) Operators shall implement a marketing and targeted outreach plan at their own cost to increase awareness of low-income discount options.
- (4) Operators must report quarterly the status of their low-income discount programs including how many Customers have signed up, how many rides have been taken at a discounted rate, and other aspects of the program as requested by staff.

**(Q) Personal Data and Privacy**

- (1) Operator must employ an electronic payment system that is compliant with the Payment Card Industry Data Security Standards (PCI DSS), and provide proof of compliance.
- (2) Operator must provide a Privacy Policy that safeguards Customers’ personal, financial, travel, and usage information.
- (3) Operator should clearly communicate to the public and to the City what personal information is being collected about Users, how it is being used, and for how long.
- (4) Operator shall produce a Privacy Policy that complies with the California Online Privacy Protection Act (CalOPPA) and any data protection laws applicable to minors, and further, expressly limits the collection, storage, or usage of any personally identifiable information to the extent absolutely required to successfully accomplish the provision of the Shared Electric Micromobility Program.

**(R) Data Reporting**

- (1)** Operators shall make anonymized real-time data in Mobility Data Standard (MDS) format available to the City, and/or a City-designated, third party transportation data analysis platform, for the purposes of aggregating this data, evaluating Device usage, or enforcing the requirements in the Permit. Precise origin and destination points will be obscured to a one-block (or equivalent) radius to protect user privacy. Device IDs must be unique Device identifiers that are consistent over time. Operator data may be publicly reported in aggregated form(s). More information about MDS can be found online at:  
<https://github.com/openmobilityfoundation/mobility-data-specification>

  - (a)** Any MDS compatible application programming interface (API) must export the following data:

    - (i)** The trip starts in the City of Berkeley,
    - (ii)** The trip ends in the City of Berkeley, and
    - (iii)** GPS telemetry data showing the trip passing through the City of Berkeley.
  - (b)** Operators shall maintain or develop connections to ingest all MDS “Policy” endpoints for which the City populates information.
  - (c)** The Operator shall maintain compliance with the most current published version of MDS, including the addition of any new APIs or fields not listed in these permit requirements, unless the City provides a written exception. Any changes or updates to the API will require at least 90-day notification to the City.
  - (d)** The City of Berkeley may adopt additional data sharing requirements that provide the City and any authorized third-party contractor of the City with real-time and collected shared mobility device data available through the Operator’s application program interface.
  - (e)** Operators shall anonymize all data shared with the City or any authorized third-party contractor of the City.
  - (f)** Operators shall comply with applicable federal, state, and local data privacy laws to protect the privacy of any personal information that they receive.
- (2)** Operators shall make anonymized real-time data available via a public API end point in the data standard developed by the North American Bikeshare Association, known as the “General Bikeshare Feed Specification (GBFS)”, with reasonable modifications to this specification to account for the dockless nature of the Operator’s Devices. A smart phone-based application used to rent Devices does not qualify as a publicly accessible application program interface. Public GBFS feeds should omit Device IDs to protect user privacy.
- (3)** Operators must provide data on key performance indicators, including, but not limited to, the following:

  - (a)** Utilization rates;
  - (b)** Total downloads, active Users, and repeat User information;
  - (c)** Total trips by day of week and time of day;
  - (d)** Origins and destinations;
  - (e)** Trips per Device by day of week, time of day;

- (f) Average trip distance;
  - (g) Device maintenance reports (including but not limited to Device ID number and maintenance performed);
  - (h) Incidents of theft and vandalism;
  - (i) Number of complaints;
  - (j) Number of crashes or collisions, including the date and time of the incident, Device ID, location of incident (geo coordinates), traveling path of Device (sidewalk, bike lane, travel lane), the severity of the incident (fatality, severe injury, minor injury, or property damage only), and if a police report was filed;
  - (k) Payment method information;
  - (l) Rebalancing of Devices to designated service areas;
  - (m) Outreach activities completed;
  - (n) Total number of free or discounted helmets distributed;
  - (o) Number of Customers participating in the low-income discount program;
  - (p) Number of discounted rides taken;
- (4) Operators must provide reports on a quarterly basis. Any data that is already provided to a City-designated third party data aggregator and is queryable on a quarterly basis does not need to be included in the quarterly reports.
- (5) Operators must agree to distribute an opt-in User survey, developed in coordination with the City of Berkeley Transportation Division, to all Users annually.

**(S) Community Engagement**

- (1) Operators must provide a plan for community engagement, including a list of planned presentations, activities and events with community based organizations, Business Improvement Districts, and other key stakeholders in the service area.
- (2) Operators must have a way to receive and respond to complaints in multiple languages, including, but not limited to, Spanish and simplified Chinese. A summary of complaints must be submitted to the City of Berkeley on a quarterly basis.
- (3) Operators shall make available free or discounted helmets through in-person events or through their mobile application website.

**(T) Permit Revocation or Suspension**

- (1) The Transportation Division Manager or their designee may revoke or suspend a Permit, effective immediately, at their sole discretion for reasons including, but not limited to, the following:
  - (a) A failure to comply with the Berkeley Municipal Code;
  - (b) A failure to comply with the Terms and Conditions of the permit;
  - (c) A determination that the operation of the Devices by the Permittee poses a risk to public safety;
  - (d) A determination that the operation of Devices by the Operator conflicts with the Transportation Division’s obligation to manage the Right-of-Way responsibly;

- (e) A transfer of the permit to another party without prior written approval from the Division Manager;
  - (f) A material misstatement or omission in the Permit application or any other associated document;
  - (g) The Operator sells or shares confidential User Data;
  - (h) The Operator does not pay required fees, surcharges, or penalties;
  - (i) The Operator blocks or alters the presentation of any information or denies access to its company application by any City employee authorized to enforce the provisions of the associated Permit and this Rule, or attempts to thwart or interfere with any City employee’s enforcement or oversight of the associated permit or this Rule;
  - (j) Consistent failure by the Operator to compel or influence its Users to comply with applicable laws; or
  - (k) Failure to comply with a material term set forth in this Shared Electric Micromobility Permit Program.
- (2) The Division Manager may allow the temporary continuation of a Permit that is otherwise subject to revocation or suspension if, in the determination of the Manager, the public welfare would not suffer thereby.

**(U) Administrative Review and Appeals**

Any decision by the City of Berkeley Transportation Division to suspend or revoke a Permit may be reviewed by the Transportation Division Manager upon a timely submission of a request for reconsideration. Any request for reconsideration shall be submitted in writing to the Manager within 10 days of the effective date of the suspension or revocation.

**(V) Severability/Partial Invalidity**

If any Permit term or condition of the Shared Electric Micromobility Permit Program, or the application of any term, condition, or provision thereof to a particular situation, shall be finally found to be void, invalid, illegal, or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term, condition, or provision shall remain in force and effect to the extent allowed by such ruling and all other permit terms and conditions or the application thereof to other situations shall remain in full force and effect.

[END Terms & Conditions]

## V. **Operator Application Instructions**

### **(A) Submissions**

Please review the Terms and Conditions in detail, and submit all relevant application materials to:

City of Berkeley c/o Ryan P Murray  
1947 Center St, 4<sup>th</sup> Floor, Public Works – Transportation Division  
Berkeley, CA, 94704

Additionally, please submit one digital (pdf) copy of the application to:  
[sharedmobility@cityofberkeley.info](mailto:sharedmobility@cityofberkeley.info)

### **(B) Permit Fees**

Checks should be made payable to: *“The City of Berkeley”*.

Application Fee: \$1,500

Upon application review and permit issuance, the following fees will be due prior to launching services.

Annual Permit Fee: \$15,000

Permitted Device Fee: \$64

Permits are valid for one year from the date of issuance.

### **(C) Selection Criteria and Process**

The City is seeking the best qualified Operators that meet all of our Terms and Conditions as well as the below listed criteria. Applications will be scored on each criteria on a scale of 1 to 10, with 1 being extremely unqualified and 10 being extremely qualified. A minimum score of 35 is required to obtain a permit. The City is looking to permit three (3) operators for the first year of permit issuance. Due limited staffing resources, not all applications meeting the minimum requirements will be granted permits. The City of Berkeley Public Works Department reserves the right to limit the number of permitted Operators.

- (1) Alignment with the above listed Terms and Conditions
- (2) Adaptive device accomodation (providing a device with a seat or other such accomodation)
- (3) Outreach and engagement plans
- (4) Regional connectivity to transit
- (5) Environmental sustainability

The selection committee will consist of City staff with knowledge and experience in issues related to shared mobility devices, including their impact on safety and health.

### **(D) Appeals Process**

Any decision by the selection committee to deny a permit application may be reviewed by the Deputy Director of Transportation upon timely submission of a request for reconsideration. Any request for reconsideration shall be submitted in writing to the Deputy Director within 10 days of the date the application is denied.

## Permit Application:

### (1) Application Information

<b>Business Name</b>	
Business Address	
City, State, and Zip Code	
Mailing Address <i>(if different from business address)</i>	
City, State, and Zip Code	
Website	
General Company Contact Phone	
General Company Contact Email Address	

### (2) Contact Information

<b>Primary Contact Name</b>	
Title	
Phone Number	
Email Address	
<b>Secondary Contact Name</b>	
Title	
Phone Number	
Email Address	

### (3) Terms and Conditions Agreement

*(I/We), the undersigned, declare, under penalty of perjury under the laws of the State of California, that (I am/we are) the owner(s) or authorized representative(s) of the entity of this application; that (I/We) have received a copy of the legal terms and conditions for the Shared Electric Micromobility Permit Program, and (I/We) agree to the terms and conditions for the permit for which (my/our) company is applying; and that the information on all plans, drawings, and sketches attached hereto and all the statements and answers contained herein are, in all respects, true and correct.*

Printed Name(s)	
Authorized Signature(s)	
Date	



## **(4) Application Materials**

In your application, please provide responses to the questions below. Page limits are highly recommended (additional images and maps do not count towards the limit). *Please review the Terms and Conditions, and incorporate how you will meet or exceed these terms in your responses.*

### **(A) Company background (max 2 pages)**

Please provide a brief introduction to your dockless micromobility sharing company, and your interest in doing business with the City of Berkeley.

### **(B) Operations, service area, and availability (max 5 pages)**

Please describe your proposed scooter sharing program in Berkeley. In your response, please be sure to include (1) hours of operation, (2) proposed fleet size [number of devices] and service area at launch, (3) proposed deployment locations, (4) methods for deploying and redistributing devices, (5) ESRI Shapefile with deployment areas and proposed designated device parking areas, indicating number of devices at each deployment area (showing at least 50% geographic distribution of devices in Equity Priority Communities), and (6) hiring and labor plan (by contract or Federally reported W2), including number of full time employees and contract employees (if any) expected to be employed in Berkeley.

### **(C) Device specifications (max 2 pages)**

Please describe your proposed shared devices and how these devices meet the requirements in the Terms and Conditions, including lighting, branding and identifiable markings. Please provide photos, drawings, or sketches of all proposed device models.

### **(D) Mobile application specifications (max 1 page)**

Please describe your mobile application for device sharing services. Please provide screenshots or other images of the mobile application that shows its usability, including accessibility. Additionally, please provide links to any publicly available APIs for data sharing.

### **(E) Parking and improper user of devices (max 2 pages)**

Please describe how you will address improper parking and use of devices in the City of Berkeley. In your response, please be sure to include (a) recommended parking zones and (b) Standard Operating Procedures for Retrieval of Devices from Bodies of Water.

### **(F) User education and safety plan (max 1 pages)**

Please describe how you will educate your users on the proper use of devices, and ensure safe use of devices in Berkeley. Please provide screenshots, images, and explanations of all user education materials, and describe any additional education, incentives, training, device modifications, notification systems, and more that you propose.

### **(G) Accessibility (max 1 page)**

Please describe how you will provide adaptive devices for persons with disabilities. If you are unable to deploy adaptive devices, please describe your plan for the incorporation of shared adaptive devices. (Please note our requirements for adaptive devices listed in the Terms and Conditions.)

### **(H) Rate structure and low-income discount plan (max 1 page)**

Please describe your user payment structure. Please describe how you will provide a discounted membership for those with low-income.

## **(5) Additional Attachments**

Please attach the following to this application:

- (a) Attachment A and Proof of Insurance
- (b) Copy of Business License
- (c) Copy of user agreements, user privacy, and user data collection policies
- (d) Additional plans, drawings, sketches, and maps to add to your application

## Attachment A

### SHARED ELECTRIC MICROMOBILITY PROGRAM INSURANCE REQUIREMENTS

a. General Liability, Automobile, Workers' Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. **Commercial General Liability insurance** shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations, personal & advertising injury, and contractual liability. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).

Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, the general aggregate shall have a limit of not less than \$4,000,000 annually and shall apply separately to dockless device operations.

- ii. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.

- iii. **Workers' Compensation insurance** as required by the laws of the State of California, with statutory limits, and statutory coverage may include Employers' Liability coverage, with limits not less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, and \$1,000,000 each employee bodily injury by disease. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. Insured Status (Additional Insured): Contractor shall provide insured status naming the City of Berkeley, its Councilmembers, directors, officers, agents, employees and volunteers as insureds under the Commercial General Liability policy. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later revisions used). If Contractor submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on an ISO form CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and
- ii. Coverage afforded on behalf of the City, Councilmembers, directors, officers, agents, employees and volunteers shall be primary insurance. Any other insurance available to the City Councilmembers, directors, officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement); and
- iii. Cancellation Notice: Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity; and
- iv. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the contractor, its employees, agents and subcontractors; and
- v. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- vi. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII, or better.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Should the Contractor subcontract out the work required under this agreement, they shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Berkeley and the Contractor shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

a. Waiver of Subrogation

Contractor waives all rights against the City of Berkeley and its Councilmembers, officers, directors, employees and volunteers for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

b. Evaluation of Adequacy of Coverage

The City of Berkeley maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

J. Higher Limits of Insurance

If the contractor maintains higher limits than the minimums shown above, The City shall be entitled to coverage for the higher limits maintained by the contractor.