

ORDINANCE NO. 2019-2867

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA MESA ADDING
CHAPTER 10.19 TO THE LA MESA MUNICIPAL CODE REGARDING SHARED
MICROMOBILITY PROGRAM

WHEREAS, the City of La Mesa ("City") is committed to the long-range goal of protecting the natural environment, increasing sustainability efforts, and improving overall quality of life, and on March 17, 2018, the City Council unanimously approved its Climate Action Plan (CAP), establishing a number of strategies to achieve greenhouse gas (GHG) emissions reduction goals and targets, including facilitating safe, convenient and affordable alternative transportation options;

WHEREAS, among various other goals, CAP Measures T-1, T-2, and T-3 support the reduction of vehicle miles travelled by supporting car sharing, bike sharing and other potential shared mobility alternatives for the community;

WHEREAS, the City must also balance the benefits of shared mobility alternatives with its obligation to protect the health, safety and welfare of those who may use or may be impacted by the use of these shared mobility alternatives on City streets, roads, sidewalks, facilities and other public rights of way, including, but not limited to, City obligations to manage City risks arising from these mobility alternatives, ensure compliance with disability regulations, maintain minimum widths for pedestrian usability in City business and commercial corridors and overall preserve a safe, accessible and healthy transportation and pedestrian environment within the City;

WHEREAS, it has become well publicized and reported that competing shared mobility businesses have engaged in aggressive strategies to gain market share in various public jurisdictions, including dropping undocked mobility devices (primarily electric scooters) into local public rights of way, sometimes without municipal knowledge, consultation, permission, ordinance or regulation in place;

WHEREAS, serious injuries to users and third party victims through use of these mobility devices is reportedly on the increase, and accordingly, the City has concluded that there is a need to appropriately assess and manage the safe and efficient operation of the evolving mobility device business within the City; and

WHEREAS, since these shared mobility devices are still a new and evolving mode of transportation within the City and since the City is unable to accurately gauge the scope and scale of their impact on City until user experience and impact can be assessed, the City adopts this Ordinance to establish a micromobility share program allowing operators to conduct business with the City, subject to a negotiated agreement approved by City Council.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of La Mesa, California as follows:

SECTION 1: All of the above statements are true.

SECTION 2: The City Council finds that this action is not a project under the California Environmental Quality Act (“CEQA”) because there is no development or physical change that would result from the adoption of this ordinance.

SECTION 3: A new Chapter 10.19 entitled “Micromobility Share Program” is hereby added to the La Mesa Municipal Code to read as follows:

**“CHAPTER 10.19
MICROMOBILITY SHARE PROGRAM**

Sections:

- 10.19.010 Title.
- 10.19.020 Purpose.
- 10.19.030 Definitions.
- 10.19.040 Administrative regulations.
- 10.19.050 Prohibited conduct.
- 10.19.060 Micromobility Share Program operator license agreement.
- 10.19.070 Operator indemnity and insurance requirements.
- 10.19.080 Grounds for termination, revocation or suspension of operator license agreement.
- 10.19.090 Impoundment of devices.
- 10.19.100 Enforcement.
- 10.19.110 Servability.
- 10.19.120 Conflicts with prior ordinances.

10.19.010 Title.

Micromobility Share Program

10.19.020 Purpose.

Consistent with the City’s goals of enhancing mobility and access, easing traffic congestion, promoting sustainability and achieving its Climate Action Plan goals, this Chapter initiates a micromobility share program to evaluate the impact of shared mobility alternatives within the City while ensuring the protection of the City and public health and safety, including evaluating the safety of the public traveling by foot, bicycle, or any vehicle on public sidewalks, streets, other public right-of-way and adjacent private property.

10.19.030 Definitions.

- A. ‘Abandoned’ shall mean leaving any item unattended for any length of time.
- B. ‘City Manager’ shall mean the City Manager or his or her designee.
- C. ‘Operator’ shall mean the person(s) or business entity(ies) licensed by the City to operate the Micromobility share Program pursuant to this Chapter.
- D. ‘Micromobility Share Program’ shall mean a program establishing a licensee under a license agreement to rent, use, locate, display, offer or place for rent City-approved

micromobility options within City boundaries. The Micromobility Share Program requires the City Manager or delegated staff to monitor and assess the overall performance, safety and benefits of the program.

E. '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.

F. 'Public Right-of-Way' shall mean any public alley, parkway, public transportation path, roadway, sidewalk, trails, pathways or street that is owned, granted by easement, operated or controlled by the City. This includes, but is not limited to, those private areas adjacent to public property.

G. 'Shared Micromobility Device' shall mean any device by which a person can be transported, propelled, moved or drawn, that is rented, used, located, displayed, offered or placed for rent in any public area or public right-of-way for the purpose of transportation, except that a shared micro-mobility device does not include a rental car, taxicab, or any other device excluded pursuant to administrative regulations.

10.19.040 Administrative regulations.

The City may at its discretion develop administrative regulations to implement the provisions of this Chapter, which may include regulations relating to lawful conduct, prohibited conduct, public safety, data sharing, data privacy and/or the timely removal of hazards.

No person shall fail to comply with the City's administrative regulations, if adopted. Any violation of any administrative regulation issued pursuant to this Chapter shall constitute a violation of this Code and shall subject the violator to the penalties set forth in this Code.

10.19.050 Prohibited conduct.

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

A. Deploy, drop, abandon, leave, dock or otherwise place or encourage the use of any Shared Micromobility Devices within City Boundaries without an executed license agreement with the City of La Mesa.

B. Abandon or temporarily park any Micromobility Share Program Device, in the City Public Right-of-Way or a City Public Area in a manner that: (1) obstructs travel upon or blocks access to a Public Area or Public Right-of-Way; (2) violates ADA or any other disability access and path of travel laws, requirements and/or regulations; (3) poses an immediate public safety hazard or nuisance; or (4) is otherwise prohibited by applicable local, State or Federal laws or administrative regulations; or

C. Use or aid, abet or encourage the use of any Prohibited Mobility Device in violation of this Code or impair any license, permit, applicable law or administrative regulation.

This Ordinance is not intended to prohibit or limit the lawful private non-commercial use, ownership or operation of a Micromobility Device within City limits.

10.19.060 Micromobility Share Program Operator License Agreement.

A. Under this Micromobility Share Program, the City Manager is authorized to negotiate Micromobility Share Program Operator license agreements authorizing Operators to deploy micromobility devices within designated City locations.

B. The City Council may set operator fees by resolution related to the operation of a business pursuant to this Ordinance.

C. The City Manager may impose, as part of the Micromobility Share Program Operator license issued, any and all conditions that are determined necessary to effectuate the purposes of this Chapter, consider accessibility of any Public Area, Public Right-of-Way and the availability of public space for shared use by all, and to protect City and the health, welfare, and safety of the public.

D. The number, location, technical requirements and mode(s) of Micromobility Share Program Devices and related applications shall be set forth in the negotiated license agreement approved by City Council.

E. At any time, in the City Council's discretion, the City Council may reassess the approved Operator license agreement and its terms, consistent with the approval of the agreement.

F. The City Council approved Micromobility Share Program Operator license agreement and its determinations under this Section shall constitute the final decision of the City and shall not be subject to further administrative review.

G. Before the Micromobility deployment, the Operator must execute a license agreement in a final form approved by City Council, comply with all license agreement conditions, provide evidence of insurance as required by this Chapter and license agreement and obtain a City business license.

10.19.070 Operator Indemnity and Insurance Requirements.

To the fullest extent permitted by law, the City shall not assume any liability whatsoever with respect to having issued a Micromobility Share Program Operator license agreement or otherwise approving the operation of any Shared Micromobility Device. As a condition to the issuance of any Micromobility Share Program Operator license or any other Shared Micromobility Device, the Operator shall at a minimum be required to meet all of the following conditions:

A. The Operator shall, in language approved by the City Risk Manager, agree to indemnify, defend (at Operator'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 enter into a Micromobility Share Program Operator license agreement, the process used by the City in making its decision, any alleged violation of any Federal, State, or local laws by Operator, and for any and all claims, losses, damages, injuries, liabilities, or losses to any micromobility Device user or any third party, arising out of, or which are in any way related to, Operator activities and operations, including, but not limited to, under

the Program Micromobility Share Operator license agreement.

B. Maintain insurance at coverage limits, and with conditions thereon, as determined by the City Risk Manager as necessary and appropriate, including naming City of La Mesa as an additional insured. The Operator's insurance policy shall be endorsed to state that coverage shall not be cancelled except after thirty days' prior written notice has been given to the City. If any insurance policy issued to an Operator is cancelled for any reason, the license agreement issued under Chapter is automatically suspended and all Operator operations shall cease. In order to reinstate the license, the licensee shall provide a new certificate and policy of insurance to the City.

10.19.080 Grounds for Termination, Revocation or Suspension of Operator License.

A Micromobility Share Program Operator license agreement may be revoked, suspended, or denied by the City Manager consistent with the terms of the license agreement approved by City Council or for violation of this Chapter.

10.19.090 Impoundment of devices.

A. Except for any Micromobility device authorized by a City Council under a City Micromobility Share Program license agreement, Prohibited Shared Mobility Devices that are rented, used, dropped, left, located, displayed, offered or made available for rent, or Abandoned, in the Public Right-of-Way, Public Area or is otherwise determined to constitute a public nuisance 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, administration, storage and impound costs.

C. No person shall retrieve any impounded Prohibited Shared Mobility Device except upon demonstrating proper proof of ownership of the device and payment of applicable impound fees.

D. Any Prohibited shared Mobility Device not retrieved from impound for more than 30 calendar days shall be deemed abandoned and may, in the City Manger's discretion, be destroyed or auctioned in accordance with applicable state law.

10.19.100 Enforcement.

A. Any person who violates any provision of this Chapter, shall be guilty of an infraction or a misdemeanor, which shall be subject to the provisions of the general penalty clause set out in Section 1.01.080 of the code of the City.

B. Any person who violates any provision of this Chapter, including any license agreement condition, shall be subject to administrative fines and administrative penalties pursuant to the Municipal 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 the City, shall reimburse the City for its actual reasonable costs expended related to the same, including reasonable attorneys' fees and costs.

10.19.110 Servability.

In the event that any court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause or phrase in this Ordinance to be unconstitutional, preempted or otherwise invalid, the invalid portion shall be severed from this Ordinance and shall not affect the validity of the remaining portions of this Ordinance. The City hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause or phrase in this Ordinance irrespective of whether any one or more sections, subsections, paragraphs, sentences, clauses or phrases in this Ordinance might be declared unconstitutional, preempted or otherwise invalid.

10.19.120 Conflicts with Prior Ordinances.

In the event that any City ordinance or regulation, in whole or in part, adopted prior to the effective date of this Ordinance, conflicts with any provisions in this Ordinance, the provisions in this Ordinance shall control.”

EFFECTIVE DATE: This ordinance shall be effective 30 days after its adoption and the City Clerk shall certify to the adoption of this Ordinance.

INTRODUCED AND FIRST READ at a Regular meeting of the City Council of the City of La Mesa, California, held the 9th day of April 2019, and thereafter PASSED AND ADOPTED at a Regular meeting of said City Council held the 23rd day of April 2019, by the following vote, to wit:

AYES: Councilmembers Alessio, Baber, Parent, Weber and Mayor Arapostathis

NOES: None

ABSENT: None

APPROVED:

MARK ARAPOSTATHIS, Mayor

ATTEST:

MEGAN WIEGELMAN, CMC, City Clerk

CERTIFICATE OF CITY CLERK

I, MEGAN WIEGELMAN, City Clerk of the City of La Mesa, California, do hereby certify the foregoing to be a true and correct copy of Ordinance No. 2019-2867, duly passed and adopted by the City Council of said City on the date and by the vote therein recited and that the same has been duly published according to law.

MEGAN WIEGELMAN, CMC, City Clerk

(SEAL OF CITY)