

## M E M O R A N D U M

TO: Mayor and Council Members

CC: Spencer Cronk, City Manager

Robert Goode, P.E., Assistant City Manager

Robert Spillar, P.E., Director, FROM:

Robert Spillar, P.E., Director,
Austin Transportation Department Low willing

DATE: July 31, 2018

**SUBJECT: Update on Rulemaking Process for Dockless Mobility Program** 

This memo provides an update to Mayor and Council on the process for establishing a Final Rule governing dockless mobility services in the City of Austin. It also provides a brief update on plans to extend the emergency rules to allow more time for the pilot and for public engagement.

#### **FINAL RULE ADOPTION PROCESS**

Following Council action to authorize a Dockless Mobility Program (Ordinance 20180426-027), the City Manager took action by adopting an Emergency Rule (Rule No. R161-18.09e, attached) that currently determines the binding provisions with which all dockless mobility operators must comply to operate on City right-of-way.

These Emergency Rules will expire on Sept. 10, 2018, unless renewed. Pursuant to Austin City Code Chapter 1-2-19, which allows for a one-time, 61-day renewal period, I have determined it necessary to extend the existing emergency rules to allow for more time to conduct further community and stakeholder engagement prior to Final Rule adoption. The process to establish Final Rules will include posting of a draft red-lined version of the proposed Final Rules in early August 2018, along with the release of a community survey and briefings to several Boards and Commissions. A Final Rule posting is expected in early September 2018, followed by a 31-day comment period and 30-day appeals period. The following timeline establishes the major milestones:

#### **Dockless Mobility Program Final Rule Adoption Process Milestones**

- July 31, 2018 Launch community survey, available through the month of August
- Early August 2018 Post red-lined draft version of proposed Final Rule for broader public review and feedback
- Month of August 2018 Briefings to relevant Boards and Commissions
  - o August 6<sup>th</sup> Pedestrian Advisory Council
  - o August 14th Urban Transportation Commission briefing
  - August 15<sup>th</sup> Downtown Commission briefing
  - August 21<sup>st</sup> Bicycle Advisory Council briefing
- Mid-September 2018 Post notice of proposed Final Rule; 31-day public comment period begins
- October 6<sup>th</sup>, 2018 Mobility Transformation Advisory Council briefing

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- October 11<sup>th</sup>, 2018 Mobility Committee of Council briefing
- Mid-October 2018 Public comment period ends and staff publishes responses to all comments
- Late October 2018 Final Rule adoption
- November 2018 30-day appeals process begins
- Early December 2018 30-day appeals process closes
- Early January 2019 Deadline to make a decision on appeals

#### **ENFORCEMENT OF SELECT PROVISIONS OF THE CURRENT EMERGENCY RULE**

On Thursday, July 26<sup>th</sup>, the Austin Transportation Department (ATD) hosted a series of workshops with licensed dockless mobility operators. The workshop was held to to discuss the process for Final Rule adoption and to seek input on how best to address two provisions in the Emergency Rule: the lock-to or haptic response requirement (Section 2. M) and the resting application programming interface (API) data reporting provision (Section 7. F, H and I). Based on the discussion with licensed operators we now understand industry trends and technological barriers suggest these provisions to be a challenge for many of the companies. After discussing with the City's Law Department, we recommend delaying/not enforcing these two provisions of the emergency rules scheduled to take effect on August 1, 2018 until further understanding can be gained from the pilot. We will revisit this in the final rules posting. As the marketplace continues to evolve, new tools to ensure proper parking may become available and I have asked ATD to continue exploring those options. At the same time, ATD will continue to actively work on a broad range of educational campaigns related to the proper use and storage of dockless devices. Licensed operators are already required to provide instructions for proper parking to users through the app, per Section 5. B and C as well as Section 6. C and D. Our observations suggest that most operators and users are acting in good faith to store their devices in safe locations.

Regarding the emergency rule requirement to provide a resting API for the purposes of real-time data reporting, ATD needs additional time to work with the industry in establishing standards for data reporting that do not compromise users' personally identifiable information and that do not compromise proprietary industry information. Licensed operators are still required to furnish monthly reports (per Section 4. D and 7. E of the Emergency Rule) on utilization and safety, with initial reports anticipated by August 15<sup>th</sup> and monthly thereafter.

#### **BRIEF OVERALL PROGRAM UPDATE**

While a full update is scheduled for the October 11th meeting of the Mobility Committee, ATD provides the following program status report.

Seven companies are currently licensed to operate dockless mobility services in Austin (either electric scooters or bikes). Pace (parent company Zagster) was the first to enter the market on May 15, 2018, with 250 bikes (the primarily white bikes). Pace has since increased their fleet to 500. Jump, offers a fleet of 250 all electric-assist bicycles (the primarily red bikes). Ofo (the yellow bikes) initially operated in Austin with a full fleet of bicycles. However, Ofo has announced a national decision to withdraw from Austin and many other US markets.

Scooter share service is provided by three operators: GOAT with 20 scooters, Bird with 500 scooters and Lime with 750 scooters. Spin has a license to operate one scooter. We believe that Spin is holding on to the single license as a place holder for a future launch.

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On the management front, ATD has piloted the installation of parking boxes in select areas downtown and has continued to map areas for additional placement, including a recent service project with the City's VISTA (Volunteers in Service to America) program to identify several areas around the Central Library. ATD is working with the Parks and Recreation Department and the Office of Special Events on management issues related to park access, use of dockless devices on parkland trails and managing dockless mobility for large special events. ATD is hosting a third workshop with licensed operators and staff from the Parks and Recreation Department as well as the Office of Special Events on August 8<sup>th</sup>, 2018. This workshop will focus on how to best manage dockless mobility for park accessibility and transportation to and from large special event.

Should you have additional questions, please contact Jason JonMichael, Assistant Director for Smart Mobility, at (512) 974-7028 or <a href="mailto:Jason.JonMichael@AustinTexas.gov">Jason.JonMichael@AustinTexas.gov</a>.

#### **Attachment:**

Rule No. R161-18.09e

Rule No: R161-18.09e

### NOTICE OF EMERGENCY RULE ADOPTION

**ADOPTION DATE: May 7, 2018** 

By: Spencer Cronk, City Manager

The City Manager has adopted the following emergency rule. This notice is issued under Chapter 1-2 of the City Code.

### EFFECTIVE DATE OF EMERGENCY RULE

The rule adopted by this notice is effective on May 7, 2018 and expires on September 10, 2018 (not later than the 121st day after the effective date). The rule may be renewed one time after the expiration date. If the rule is renewed, it will expire on the 61st day after the renewal date.

#### **TEXT OF EMERGENCY RULE**

A copy of the complete text of the adopted rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

Parking Operations, 1111 Rio Grande Street, Austin Texas 78701 and Office of the City Clerk, City Hall, located at 301 West 2nd Street, Austin, Texas 78701.

## SUMMARY OF RULE

Emergency Rule governs dockless mobility technology. Specifically, this rule describes licensure requirements relating to: (1) definitions; (2) dockless mobility units; (3) service are and size of fleet; (4) safety; (5) parking; (6) operations and customer service; (7) data reporting and sharing; (8) insurance, performance bonds and fees; and (9) general.

### NATURE OF EMERGENCY

Emergency rule is necessary to regulate, enforce and safeguard public safety and mobility, in the public right-of-way. Emergency action is necessary to ensure there are binding provisions that all dockless transportation operators will follow for safe operations within in the public right-of-way.

### **AUTHORITY FOR ADOPTION OF RULE**

The authority and procedure for adoption of a rule to assist in the implementation, administration and enforcement of a provision of the City Code is provided in Chapter 1-2 of the City Code. The authority to establish safe practice rules for private use of public right of way and to establish use is established in City Code Chapters 14-9 (Traffic or Sidewalk Obstructions).

# **CERTIFICATION BY CITY ATTORNEY**

By signing this Notice of Emergency Rule Adoption Rule 161-18.09e, the City Attorney certifies that the City Attorney has reviewed the rule and finds adoption of the rule to be a valid exercise of the City Manager's authority.

## REVIEWED AND APPROVED

Spencer Cronk, City Manager

DATE: 5/4/2018

Anne Morgan, City Attorney

DATE: 5/4/2018

Robert J. Spillar, P.E., Director Austin Transportation Department

date: <u>5/4/2018</u>

43 44 director, for the placement of dockless units.

**Unit** means a singular device used for the transportation or conveyance of people, goods or services.

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**Unit Placement Plan** means the written plan regarding the licensee's internal program, policy decisions and proposed actions in order to come into compliance with the rules, regulations and standards established by the City, in order to avoid violation of the City's ordinances or director's rules.

# Section 2 - Dockless Mobility Units

A. Dockless units shall only be available at rates that are clearly and understandably communicated to the customer prior to use of a unit.

C. Each unit shall prominently display the name of the licensee, their current contact information, a unique serial number and the permit sticker issued by the City, affixed to the unit itself.

D. Dockless units shall be equipped with a brake, and, for those units that operate at nighttime, a front light that emits white light and a red light and reflector at the rear of the unit, pursuant to Section 551.104 of the Texas Transportation Code.

E. Dockless units shall be equipped with an on-board GPS unit or equivalent that can report the location of a unit at any time for the purposes of use, recovery, repair, and data collection.

F. Dockless units shall be high quality, sturdily built to withstand the rigors of outdoor storage and constant use for at least five years.

G. Dockless units shall employ tamper-resistant security hardware.

H. Electric-assist dockless units used in systems issued a license must employ an electric motor of less than 750 watts (1 h.p.) whose maximum speed on a paved, level surface, when powered solely by such a motor when ridden by an licensee who weighs 170 pounds, is less than 20 mph.

I. Bicycles used in systems issued a license shall meet standards outlined in the Code of Federal Regulation (CFR) under Title 16, Chapter II, Subchapter C, Part 1512 – Requirements for Bicycles. Additionally, licensed systems shall meet the safety standards outlined in International Organization for Standardization (ISO) 43.150 – Cycles, subsection 4210.

42 J. Electric bicycles used in systems shall meet the definition of low-speed electric 43 bicycle outlined in 15 U.S.C. Chapter 47 Section 2085, be equipped with fully 44 operable pedals and shall be subject to the same requirements as ordinary 45 bicycles. 

- K. Scooters used in systems shall meet equivalent safety standards as those outlined in the Code of Federal Regulations and the International Organization for Standardization for bicycles.
- L. Electric scooters and bicycles shall be incapable of reaching a top speed of 20 mph or greater.
- M. Dockless units shall be able to securely stand upright when parked and no later than August 1, 2018, all units shall be capable of being locked to a bike rack or shall be equipped with haptic technology that indicates to the user if they have parked in a designated, geo-fenced parking area.

# Section 3 - Service Area and Size of Fleet

- A. The director shall limit the number of units licensed to a maximum of 500 units, per initial license. Units must show a minimum utilization rate of 2 rides per day. Should this demand not be met, the director may require a portion of the units to be relocated or removed. By August 1, 2018, all units must show a minimum utilization rate of 2 rides per day, per unit, per zone.
- B. Licensees may request to deploy additional units beyond the 500 unit maximum, in increments of 250, provided they meet the following criteria:
  - 1. The licensee provides a specific geographic area, in ESRI ArcGIS shapefile format, of at least 5 square miles in size.
  - 2. All additional units will operate outside of the <u>Downtown Austin Project</u> <u>Coordination Zone</u> (DAPCZ) as verified in real-time through a web-based application programming interface (API).
  - 3. The performance bond is adjusted at \$100/unit to cover all units operated by the licensee.
- C. Authorization of additional units is within the sole discretion of the director. Licensees are authorized to operate within the City of Austin full purpose, public right-of-way. All other operations, including access to the service and storage of the unit, is NOT authorized within parks, publically-accessible plazas subject to City license agreements with private property owners, off-street parking lots/garages, state owned land and/or facilities, campuses, or other areas outside of the City of Austin public right-of-way, unless authorized by a separate agreement.
- D. Licensee shall be responsible for monitoring distribution of units available to customers according to parameters required by the director. The director may require a reduction in a licensee's total number of units based on the overall

	number of units concentrated within a specific area. Licensees shall reduce the number of units according to the following timelines:
	<ol> <li>Reduction shall occur within four (4) hours of receipt of notice on weekdays, 6am and 6pm, not including holidays.</li> </ol>
	<ol> <li>At all other times, reduction shall occur within ten (10) hours of receipt of notice.</li> </ol>
E.	The director may amend, suspend or terminate a license pursuant to <b>City Code § 14-9-25</b> and require that the entire fleet of units be removed from Austin streets, within ten (10) calendar days.
Sec	tion 4 – Safety
A.	Licensee shall be capable of quickly identifying and addressing safety and maintenance issues with one or more of their dockless mobility units, including a mechanism for customers to notify the company that there is a safety or maintenance concern with the unit.
B.	Licensee shall be capable of remotely disabling the use of a unit should it be reported or found to have a safety, maintenance or other hazardous condition.
C.	Licensee shall remove any unit that is not safe to operate within four (4) hours of receipt of notice and shall not be redeployed until repaired.
D.	Licensee shall keep a record of reported collisions and send these reports to the director on a monthly basis.
E.	Licensee shall keep a record of maintenance activities including but not limited to unit identification number and maintenance performed.
F.	Licensee shall sign and record an indemnification agreement indemnifying the City and holding harmless the City.
G.	Licensee agrees to educate users on lawful and safe use of the dockless mobility unit.
H.	The director may require the removal of units with batteries or motors that are deemed unsafe for public use.
I.	Licensees operating electric-assist units shall have a program to ensure proper recycling of batteries and disposal of these batteries under Universal Waste Battery disposal standards under Title 40 of the Code of Federal Regulations (CFR) in part 273.

1 2 3 4 5	J.	Licensee shall require individuals or companies that pick up, drop off or chaunits to wear high-visibility safety apparel that meets the Performance Class 3 requirements of the ANSI/ISEA 107–2004 publication entitled "American National Standard for High-Visibility Apparel and Headwear".				
<ul><li>Section 5 – Parking</li></ul>			i – Par	'king		
8 9 10 11	Α.			ess units shall prominently display the licensee's current contact nation for the purposes of requesting removal, relocation or retrieval of the		
12 13 14	B.	Licensee shall park units and instruct users on how to park units only in designated areas, defined as follows:				
15 16 17 18 19		1.		hard surface (e.g. concrete, asphalt) within the landscape/furniture of a sidewalk so long as there is at least 3 feet of clear walking e;		
20		2.	At a	public bike rack;		
21 22 23		3.		director may further designate areas by geofencing, marked parking s or other determined method.		
24 25 26	C.			nall NOT park units and instruct users to NOT park units in <u>restricted</u> ned as follows:		
27 28		1.	In the	e area within or immediately adjacent to:		
29 30 31			a.	Americans with Disabilities Act (ADA) accommodations including curb ramps, railings and signal push buttons;		
32 33 34			b.	Sidewalk Cafes or Street Patios;		
35 36 37 38			C.	Transit zones, including bus stops, shelters, passenger waiting areas, and bus layover and staging zones, except at existing bike racks;		
39			d.	Loading zones;		
40 41			e.	Disabled parking zone;		
42 43 44 45			f.	Street furniture that requires parking access (for example, benches, pay stations);		

1 2 3			g.	Entryways and exitways, including fire exits, fire escapes, or any other building evacuation exitways or	
4 5			h.	Driveways.	
6 7		2.		s where the landscape/furniture zone is less than 3 feet wide, or there is no landscape/furniture zone.	
8 9 10		3.		paved right-of-way between curb lines, unless there is zone nated by the director.	
12		4.		irector may further restrict additional areas for the purposes of ess mobility unit parking.	
14 15 16	D.		Units that are parked incorrectly shall be re-parked in a correct manner or removed by the operator within the following time frames:		
17 18 19		1.		two (2) hours of receipt of notice, during weekdays, 6am and 6pm, cluding holidays.	
20 21 22	Sect	2. <b>ion 6</b> ·		ner times shall occur within ten (10) hours of receipt of notice.	
23 24 25 26	A.	custor	mer int	all have a customer service phone number, website, and apperface that is available (24) twenty four hours a day, (7) seven days ustomers to report safety concerns, complaints or ask questions.	
27 28 29	B.	Licens of Aus	nsee shall have a staffed operations and customer service center in the City ustin.		
30 31 32	C.			all have visible language that notifies the user of the City of Austin's obility Code of Ethics" as follows:	
33 34 35		1.		strians First - People operating bicycles and scooters shall yield to strians on sidewalks.	
36 37 38		2.		ng Responsibly - Units shall be parked in a secure upright position n designated areas.	
39 40 41 42		3.	are no	on Right of Way - Users should not take units to areas where they of authorized to operate, such as private property, parkland, stated land or other unauthorized areas.	
43 44 45		4.		What You're Sharing – Users have access to dockless mobility ces without having to share Personally Identifiable Information and	

- have the opportunity to Opt-In to sharing this information only after getting clear information about what type of information will be shared.

  Right and Report If you see a unit toppled over or parked improperly; help out by righting the unit and reporting the issue via 311.
  - D. The director reserves the right to modify the Dockless Mobility Code of Ethics and/or require licensees to provide additional information to their users.
  - E. Licensee shall provide the director with a direct contact for licensee staff that are capable of rebalancing units. All licensed licensees shall remove, relocate or rebalance units based on these times:
    - 1. Rebalancing shall occur within two (2) hours of receipt of notice, during weekdays, 6am and 6pm, not including holidays.
    - 2. All other times rebalancing shall occur within ten (10) hours of receipt of notice.
  - F. Licensee shall prepare and implement a marketing and outreach plan at its own cost to promote the use of dockless mobility in neighborhoods currently underserved by dockless mobility options, (initially defined as less than 25 licensee units per square mile, subject to change at the director's discretion) including offering an affordable option that does not require the user to access the service via a smartphone application for any customer with an income level at or below 200% of the federal poverty guidelines.
  - G. Licensee shall be responsible for implementing and submitting to the director a maintenance, cleaning, repair and waste management plan for approval. This plan shall address ongoing maintenance of units, routine cleaning and repair as well as how units that are no longer capable of service will be disposed of responsibly.
  - H. Licensee shall employ an electronic payment system that is compliant with the Payment Card Industry Data Security Standards. Each transaction shall include the unit identification number listed on the Unit Inventory List.

# Section 7 - Data Reporting and Sharing

- A. Licensee shall not require users (customers) to grant location services to use the licensee's mobility service. All other private data belonging to the user, including but not limited to contacts, photos and files, shall not be required to be shared in order to use the licensee's dockless mobility service.
- B. Licensee shall not require users (customers) to share their private data with 3<sup>rd</sup> parties in order to use the licensee's dockless mobility services.

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- C. Licensee may allow users (customers) to opt-in (not opt-out) to providing access to their contacts, photos, files, other private data and 3<sup>rd</sup> party data sharing only with clear notice to the customer.
- D. Licensee shall provide the director with updates to the terms of service; including but not limited to the Privacy Policy, terms and conditions of use, and the End User License Agreement published on the licensee's website and app, and agrees to provide all customers and the director any changes to the terms of service immediately upon adoption.
- E. On a monthly basis, all licensees shall provide the director with aggregate customer demographic data gathered by the system application, anonymized to protect Personal Identifiable Information.
- F. Licensee shall provide the director with real-time information for their entire fleet through a documented web-based application programming interface (API). The licensee is directly responsible for providing the API key to the director and shall not refer the City to another subsidiary or parent company representative for API access. The API shall deliver data in JSON format and include the following information in real time for every unit in service, in the format specified in the table below:
  - 1. Assigned Area (e.g. DAPCZ)
  - 2. Point location;
  - 3. Unit identification number;
  - 4. Type of unit;
  - 5. Charge level (if electric), if available; and
  - 6. Additional information as required by the director.

Description	Format	Field Name
Assigned Area	Text, e.g. "DAPCZ"	assigned_area
Unit location latitude in decimal	Number	unit_location_latitude
degrees		
Unit location longitude in	Number	unit_location_longtiude
decimal degrees		
Unique unit identifier	Text	unit_id
Type of Unit	Text, e.g. "Bicycle"	unit_type
Charge Level %	Number	charge_level
Availability start date and time	ISO-8601	availability_start_datetime
	compliant string	-

Availability end date and time	ISO-8601	Availability_end_datetime
	compliant string	
Company Name	Text	company_name

- G. Licensee found to be submitting incomplete or inaccurate data, such underrepresenting the total number of units in service, shall have their license revoked.
- H. Licensee agree to provide a separate web-based application programming interface (API) for the purposes of sharing data with a university research institute authorized by the director to evaluate the dockless mobility system for the purposes of human factors research.

I. Licensee shall provide the following anonymized data for each trip record:

Description	Format	Field Name
Company Name	[company name]	company_name
Type of unit	Text, e.g. "Bicycle"	unit_type
Assigned Area	Text, e.g. "DAPCZ"	"assigned_area", e.g. "DAPCZ"
Unique trip record identifier	Text	trip_id
Trip duration in minutes	Number	trip_duration
Trip distance in feet	Number	trip_distance
Start date and time	ISO-8601 compliant string	startdatetime
End date and time	ISO-8601 compliant string	enddatetime
Start location latitude in decimal degrees	Number	start_location_latitude
End location	Number	end_location_latitude
longitude in decimal		
degrees		
Unique unit identifier	Text	unit_id

J. Licensee shall administer a customer satisfaction survey within (60) sixty calendar days prior to the expiration of their license and provide the results of that survey to the director (15) fifteen calendar days prior to the expiration of their license.

# **Section 8 – Insurance, Performance Bond and Fees**

A. Licensee shall maintain commercial general liability insurance, worker's compensation, business automobile insurance and additional coverages specified in the license terms and conditions. The City of Austin shall be named as an additional insured.

- B. Licensee shall have a performance bond of \$100/unit. The form of the bond shall be approved by the director. These funds shall be accessible to the director for future public property repair and maintenance costs that may be incurred, removing and storing units improperly parked or if a company is not present to remove units if its license is terminated. If a licensee increases the size of their fleet, the performance bond shall be adjusted appropriately before deploying additional units.
  - C. If the director or any other City of Austin agency, department or commission, including the Law Department, incurs any costs for addressing or abating any violations of law, including impound dollars, impound fees, costs to recover a unit from a waterway and other ancillary costs, including repair or maintenance of public property, the licensee, upon receiving written notice from the City of Austin regarding such costs shall reimburse the director for these costs within (30) thirty days. Any payment made pursuant to this paragraph shall not substitute for any other payment otherwise owed or to be paid to the director.
  - D. Under Chapter 9-1 of the City of Austin Code of Ordinances, any dockless mobility unit left for more than 48 hours in one location without moving may be removed and stored by the City of Austin at the expense of the licensee.

# Section 9 - General

- A. The director shall determine all license terms, conditions and other standard or special requirements.
- 27 B. The director may remedy rule violations by amending, suspending or completely revoking a license for cause listed in City Code, Chapter 14-9 or for public safety concerns.
  - B. The director may require rule violators to reduce fleet size or to completely remove units from the right of way for revocation or during a period of suspension.
- 35 C. Prior to licensing, applicants shall be in good standing with the City of Austin. 36
- D. Units are eligible to be placed into operation immediately upon issuance of a dockless mobility sticker by the director.