

City of Berkeley: Shared Electric Micromobility Permit Program (SEMPP)

Terms and Conditions

Revised 2024

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.
- (J) “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.
- (K) “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.
- (L) “Shared Electric Micromobility Permit Program” or “Program” means the program under which the permit system is regulated.
- (M) “Shared Electric Micromobility System” or “System” means a system providing Devices as defined above.
- (N) “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.
- (O) “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”). These terms and conditions are issued pursuant to BMC 14.63.050(B).
- (B) Authority** - The Public Works Department, acting through its Shared Electric Micromobility Program staff, is authorized to issue system operator Permits to operators who submit applications and fulfill all requirements of BMC Chapter 14.63 and terms and conditions stated herein, including payment of all fees, fines, and penalties to operate such systems and to administer all aspects of the Program
- (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.
- (2) 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.
 - (3) 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 the City's 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

- (1) 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 and shall name the City as an additional insured on that policy.
- (2) [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 Public Works Department 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 Device usage that is not in compliance with this permit agreement; 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; otherwise applicable fines shall be applied, as outlined in Attachment B;
 - (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 internal systems, Operator must:
 - (a)** Provide a forwarding or “pass through” phone number that Berkeley 311 staff can forward the call/complaints regarding device usage that is not in compliance with this permit agreement.
 - (b)** Address complaints within 3 hours during periods when Devices are available for rental; otherwise applicable fines shall be applied, as outlined in Attachment B;
 - (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
 - (e)** Notify the City of Berkeley via email to sharedmobility@berkeleyca.gov, and notify the person who made the complaint, when a complaint has been addressed and is considered closed.
- (13)** For Complaints submitted to SEMPP staff, Operator must:
 - (a)** Provide an email point of contact for the operations team, who the SEMPP staff can forward the complaint to;
 - (b)** Address complaints within three (3) hours of receipt during hours when Devices are available for rental; otherwise applicable fines shall be applied, as outlined in Attachment B;
 - (c)** Notify the City of Berkeley via email to sharedmobility@berkeleyca.gov when a complaint has been addressed and is considered closed.
- (14)** If any of the Operator’s Devices are found to be improperly parked, and not removed within three (3) hours, applicable fines shall be applied, as outlined in Attachment B.
- (15)** 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.

- (16) 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.
- (17) 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.
- (18) Operators must ensure that each User is only able to rent one Device at a time.
- (19) 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, English, Spanish, and simplified Chinese.
- (20) 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.
- (21) Operators shall not utilize their Devices for the sale or display of third-party advertising.
- (22) 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; Scooter Users must obey all traffic laws and obey all applicable City of Berkeley ordinances when riding a Scooter on a street,

roadway, or highway;

- (c) 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
- (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.
- (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)** Accessible 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 by City, 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, private property, meter posts, fences, gates, or any posts with push buttons.
 - (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.
- (f) 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 to City 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) After one month and up to three months of operating under the permit agreement, the City will consider Operator proposals to increase the number of devices deployed. When considering operator proposals, the City will review:
 - (a) The Fleet Cap Increase Criteria (Attachment C), submitted by the Operator
 - (b) Progress on key performance indicators outlined in (R)(3)
 - (c) Timeliness of delivery and quality of quarterly reports
- (10) 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) Operators must submit an “Adaptive Device Plan” 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 credit card for payment of services.

- (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

- (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 English, 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 require 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.
- (l) 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]

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.

h. 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.

i. 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.

Attachment B

SHARED ELECTRIC MICROMOBILITY PROGRAM FINE STRUCTURE

Below are the fines related to the Shared Electric Mobility Program. Operators are responsible for reviewing and paying all applicable fines.

Fine Name	Description	Fine	Per	Invoice Frequency
Micro-Mobility Non-Compliance Fee (Non-responsiveness)	Fee charged to operators for each instance of non-responsiveness to complaints regarding Device usage that is not in compliance with the Permit Terms and Conditions, and is not resolved within 3 hours of receipt of the initial complaint.	\$27.00/violation	Per Violation	Quarterly
Micro-Mobility Non-Compliance Fee (Obstructing, or Blocking a Disabled Zone)	Fee charged to operators for each instance of non-responsiveness to complaints regarding Device usage that is not in compliance with the Permit Terms and Conditions, specifically poses an obstruction or blockage in a disabled zone such as a ramp or parking space, and is not resolved within 2 hours of receipt of the initial complaint.	\$128.00/violation	Per Violation	Quarterly

Adapted from the City of Long Beach, Shared Micromobility Program Regulations (October 2023), ATTACHMENT J – Master Fee [Schedule](#); and City of Berkeley [vehicle parking violation fee structure](#)