

# AGENDA REPORT

## City Council

---

**MEETING DATE:** March 13, 2019

**PREPARED BY:** Crystal Najera, CAP  
Program Administrator

**DEPT. DIRECTOR:** Karen P. Brust

**DEPARTMENT:** City Manager

**CITY MANAGER:** Karen P. Brust

---

**SUBJECT:**

Second reading and adoption of City Council Ordinance 2019-02, titled “An Ordinance of the City Council of the City of Encinitas, California Adding Chapter 9.55 to the Encinitas Municipal Code Regarding Pilot Shared Mobility Program.”

**RECOMMENDED ACTION:**

1. Adopt City Council Ordinance 2019-02, titled “An Ordinance of the City Council of the City of Encinitas, California Adding Chapter 9.55 to the Encinitas Municipal Code Regarding Pilot Shared Mobility Program.” (Attachment 1)

**STRATEGIC PLAN:**

This item aligns with the City’s Strategic Plan goals for:

- Environment - through the promotion of the use of emissions-free bicycles as an alternative mode of transportation.
- Transportation – By providing effective, safe, and easy transportation for all modes of movement.

**FISCAL CONSIDERATIONS:**

There are no direct fiscal considerations associated with the recommended action.

**BACKGROUND:**

The City of Encinitas is dedicated to implementing ways to reduce local greenhouse gas (GHG) emissions to limit the effects of climate change while offering viable transportation alternatives to driving. The City Council approved an updated Climate Action Plan (CAP) on January 17, 2018. The CAP establishes a number of strategies to achieve GHG emissions reduction goals and targets, including facilitating safe, convenient and affordable alternative transportation options. Specifically, CAP Goal 4.1: *Reduce Vehicle Miles Traveled*, includes a supporting measure to “develop a program to support car sharing and bike sharing for the community.”

On March 14, 2018, City Council approved Resolution 2018-030 approving a Memorandum of Understanding (MOU) to work towards establishing a pilot bike share program in partnership with the cities of Del Mar, Solana Beach, Carlsbad and Oceanside, the San Diego Association of Governments (SANDAG) and the North County Transit District (collectively known as Parties) (Attachment 2). Through this partnership the Parties agreed to seek a single bike share vendor to operate within the north coastal San Diego region to achieve economies of scale, to reduce

conflicts between competing operators, and to provide optimal convenience to users renting a bicycle in one jurisdiction and terminating the rental in another jurisdiction. Thus far, Cities of Del Mar and Solana Beach have also joined the City of Encinitas in entering into this MOU.

All cities in the partnership continued to collaborate and participate in the development of possible pilot bikeshare program, including determining optimal program goals and objectives, issuing a joint request for proposals, reviewing proposals, and making a staff-level recommended operator selection for the program.

Since the formation of the MOU, 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. These strategies have included dropping undocked mobility devices (primarily electric scooters) into local public rights of way, sometimes without municipal knowledge, consultation, permission, ordinance or regulations in place. In addition, serious injuries to users and third-party victims through use of these mobility devices is reportedly on the increase. Accordingly, there is a need to craft a regulatory environment to appropriately assess and manage the safe and efficient operation of the evolving mobility device business within the City in advance of selecting an operator for a pilot north county bike share program.

Therefore, on February 13, 2019, the City Council voted unanimously to introduce Ordinance 2019-02 without any revisions or modifications.

### **ANALYSIS:**

Proposed Ordinance 2019-02 would enable a pilot bike share program to be established and operated by a single bike share licensee. The licensee would be allowed to deploy unpowered bicycles and/or “Class 1” or “Class 2” electric powered bicycles within the City, subject to a negotiated license agreement approved by City Council. Being that shared mobility devices are still a new, evolving and untested mode of transportation within the City, adopting this ordinance would enable the City to more accurately gauge the scope and scale of their impact on City rights of way, public and businesses and potential benefit to shared mobility users.

If the City Council adopts Ordinance 2019-02, City Staff will return to Council with a recommended bike share operator and license agreement for review and adoption. The intent is to have the shared mobility pilot program implemented prior to the start of next summer with enough time factored in prior to launch to conduct a robust community outreach program.

### **ENVIRONMENTAL CONSIDERATIONS:**

The action being considered by the City Council is exempt from the California Environmental Quality Act (CEQA) because it is not a “project” under Section 15378(b)(5) of CEQA Guidelines. The action involves an organizational or administrative activity of government that will not result in the direct or indirect physical change in the environment.

The action being considered is related to the Climate Action Plan, supporting Goal 4.1: *Reduce Vehicle Miles Traveled.*

### **ATTACHMENTS:**

1. City Council Ordinance 2019-02, titled “An Ordinance of the City Council of the City of Encinitas, California Adding Chapter 9.55 to the Encinitas Municipal Code Regarding Pilot Shared Mobility Program.”
2. North County Bike Share Memorandum of Understanding
3. February 13, 2019 City Council Agenda Report

**ORDINANCE 2019-02****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA ADDING CHAPTER 9.55 TO THE ENCINITAS MUNICIPAL CODE REGARDING PILOT SHARED MOBILITY PROGRAM**

**WHEREAS**, the City of Encinitas (City) is committed to the long-range goal of protecting the natural environment, increasing sustainability efforts, and improving overall quality of life, and on January 17, 2018, the City Council unanimously approved its final 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 Goal 4.1, supports 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 protecting City as well as protecting 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 is not limited to, City obligations to manage City risks arising from these alternative 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;

**WHEREAS**, since these shared mobility devices are still a new, evolving and untested 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 pilot bike share program allowing a single bike share licensee to deploy unpowered bicycles and/or "Class 1" or

“Class 2” electric powered bicycles within the City, subject to a negotiated license agreement approved by City Council; and

**WHEREAS**, the City Council directs the City Manager or delegated staff to monitor and assess the overall performance, safety and benefits of the pilot program and provide City Council with a report approximately one (1) year after initial deployment of licensed Bikes under the pilot program, including, but not limited to, recommendations whether to maintain, modify, eliminate or expand City authorization of the use of other shared mobility devices or other developing clean modes of transportation. The report shall also address and recommend revisions to this Ordinance, if applicable.

**NOW THEREFORE**, the City Council of the City of Encinitas does ordain 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. Chapter 9.55 is added to Title 9 of the Encinitas Municipal Code and shall read as follows:

## **Chapter 9.55 Pilot Bike Share Program**

### **9.55.010 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 pilot Bike 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 rights-of-way and adjacent private property.

### **9.55.020 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 or business entity licensed by the City to operate the Pilot Bike share Program pursuant to this Chapter.
- (d) “Pilot Bike Share Program” shall mean a pilot program establishing a single licensee under a license agreement to rent, use, locate, display, offer or place for rent unpowered bicycles and/or “Class 1” or “Class 2” electric bicycles within City boundaries. The Pilot Bike Share Program requires the City Manager or delegated staff to monitor

and assess the overall performance, safety and benefits of the pilot program and provide City Council with a report.

(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 and any area established under the City "Sidewalk Café Policy", established by City Resolution 2011-56 and related zoning and specific plan amendments.

(g) "Bike" shall mean a pedaled bicycle that is rented, used, located, displayed, offered or placed for rent in any Public Area or Public Right-of-Way by Operator under a City Council approved Operator license agreement. A Bike shall meet the safety standards outlined in the International Standardization Organization (ISO) 43.150 – Cycles; the standards outlined in Code of Federal Regulations Title 16, Chapter II, Subchapter C, Part 1512 - Requirements for Bicycles; and the standards established in CVC section 21201, including for lighting during operation, or equivalent recognized standards and requirements. If powered, a Shared Mobility Device shall be limited to "Class 1" or "Class 2" electric bicycles, as defined in California Vehicle Code (CVC) Section 312.5.

(h) "Prohibited Mobility Device" shall mean any device other than a Bike by which a person can be transported, propelled, moved or drawn, that is rented, used, located, displayed, offered or placed for rent or use in any public area or public right-of-way, except that a Prohibited Mobility Device does not include a rental car, taxi cab or car matched through a peer-to-peer ridesharing application.

#### **9.55.030 Administrative regulations.**

(a) 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.

(b) 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.

#### **9.55.040 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 Prohibited Mobility Device within City Boundaries.

(b) Abandon or temporarily park any Pilot Bike Share Program Bike or Prohibited Mobility 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 this Code or impair any license, permit, applicable law or administrative regulation.

(d) This Ordinance is not intended to prohibit or limit the lawful private non-commercial use, ownership or operation of a mobility device within City limits.

#### **9.55.050 Pilot Bike Share Program Operator License.**

(a) Under this Pilot Bike Share Program, the City Manager is authorized to negotiate one (1) shared Pilot Bike Share Program Operator license authorizing a single Operator to deploy Bikes within designated City locations.

(b) The City Manager may impose, as part of the Pilot Bike 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.

(c) When presenting the negotiated Pilot Bike Share Operator license agreement to City Council for approval, the City Manager shall report, in writing, the reasons supporting the Operator License Agreement terms, conditions and Operator selection.

(d) The number, location, technical requirements and mode(s) of Pilot Bike Share Program Bikes 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 approved agreement.

(f) The City Council approved Pilot Bike 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 Bike 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.

#### **9.55.060 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 Pilot Bike Share Program Operator license or otherwise approving the operation of any Bike or other shared mobility device. As a condition to the issuance of any Pilot Bike Share Program Operator license or any Bike or other shared mobility 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 Pilot Bike 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 Bike 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 Pilot Program Bike 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 Encinitas 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 issued under this 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.

#### **9.55.070 Grounds for Termination, Revocation or Suspension of Operator License.**

A Pilot Bike 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.

#### **9.55.080 Pilot Bike Share Program Assessment.**

The City shall monitor and assess the overall performance, safety and benefits of the pilot program and provide City Council with a report approximately one (1) year after Bike deployment. The report shall include, but is not limited to, recommendations whether to maintain, modify, eliminate the program or modify the program to expand City authorization of the use of other shared mobility devices or other developing clean modes of transportation. The report shall also address and recommend revisions to this Ordinance, if applicable.

#### **9.55.090 Impoundment of devices.**

(a) Except for any Bike authorized by a City Council under a City Pilot Bike 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 Manager's discretion, be destroyed or auctioned in accordance with applicable state law.

#### **9.55.100 Enforcement.**

(a) Any person who violates any provision of this Chapter, shall be guilty of an infraction or a misdemeanor, which shall be punishable pursuant to Chapter 1.08 of this Code.

(b) Any person who violates any provision of this Chapter, including any permit condition, shall be subject to administrative fines and administrative penalties pursuant to Chapter 1.08 of this 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 a law enforcement agency, shall be ordered to reimburse the City and other participating law enforcement agencies their full investigative costs.

#### **9.55.110 Severability.**

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.

**9.55.120 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 will control.

**EFFECTIVE DATE:** This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the Encinitas shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

**INTRODUCED AND FIRST READ** at a regular meeting of the City Council of the City of Encinitas, California, on the 13th day of February, 2019; and

**THEREAFTER ADOPTED** at a regular meeting of the City Council of the City of Encinitas, California, on the \_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

- AYES: Councilmembers –
- NOES: Councilmembers –
- ABSTAIN: Councilmembers –
- ABSENT: Councilmembers –

\_\_\_\_\_  
Catherine S. Blakespear, Mayor

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Glenn Sabine, City Attorney

\_\_\_\_\_  
Kathy Hollywood, City Clerk

**Memorandum of Understanding  
Between the Cities of Del Mar, Solana Beach, Encinitas, Carlsbad,  
Oceanside, North County Transit District, and the United States  
Marine Corps Base at Camp Pendleton regarding a North County  
Coastal Pilot Bikeshare Program**

The City of Del Mar, City of Solana Beach, City of Encinitas, City of Carlsbad, City of Oceanside, North County Transit District (NCTD), and the United States Marine Corps Base at Camp Pendleton, hereinafter collectively referred to as “Parties,” enter into this Memorandum of Understanding (MOU), dated February 8, 2018, for the express purpose of developing a pilot bikeshare program for the North County coastal region.

### **1. Background**

The cities in the North County coastal region of San Diego County are increasingly aware of the need to reduce local greenhouse gas (GHG) emissions to limit the effects of climate change while offering viable transportation alternatives to driving alone. Many of the cities have adopted Climate Action Plans (CAPs) or are in the process of developing CAPs. CAPs establish environmental initiatives by which cities aim to achieve GHG emissions reduction goals and targets. Transportation, especially travel via single occupancy vehicle, is a major source of GHG emissions in North County. Facilitating safe, convenient, and affordable alternative transportation options is often a component of these plans and initiatives.

The Marine Corps Mobility Transformation Strategy calls for demonstration projects at installations like Camp Pendleton to meet official business mobility with capabilities that are smarter, more efficient, more accessible, and cheaper.

Offering and promoting programs, like bikeshare, that replace vehicle trips with bike trips, is one way the Parties can help to reduce emissions while offering more efficient and more affordable transportation modes for residents, employees, and visitors. Bikeshare is a service by which bicycles are made available for shared use to individuals on a very short-term basis, allowing them to borrow a bicycle at one location and return it either at the same location or a different location within a defined geographic boundary.

### **2. Purpose**

The purpose of this MOU is to establish a formal working relationship between the Parties based on the desire to work cooperatively to pilot a bikeshare program in the North County coastal region. It is the desire of the participants in this MOU to collectively agree upon a single bikeshare vendor to operate within the North Coastal San Diego region to achieve economies of scale, to reduce conflicts between competing vendors and to provide optimal convenience to users by being able to rent a bicycle in one jurisdiction and terminate the rental in another jurisdiction party to this agreement. The Parties agree that:

- a. There is a need to reduce local greenhouse gas emissions to limit the effects of climate change while also offering increased opportunities for transportation modes alternative to greenhouse gas producing single occupancy vehicles;
- b. Human and electric-assist powered bicycles offer opportunities for fuel efficient transportation that has little impact on the environment;
- c. The North Coast of San Diego County offers a uniquely beautiful and geographically suitable area for bicycle transportation;
- d. The North Coast of San Diego County has a well-utilized rail network with stops throughout the North Coast which provides for local transportation, and serves the needs of tourists visiting from outside the area;
- e. Bicycles are especially adapted to provide the “first/last mile” transportation from a rail or bus stop to a final destination and back;
- f. Bicycle transportation relieves parking congestion, providing better accessibility to our beaches, parks, businesses and tourist attractions and is beneficial to the development of our collective economies; and
- g. Bikeshare programs allow the short-term rental of bicycles for those with temporary transportation needs.

### **3. Description of Responsibilities**

The City of Encinitas agrees to:

- a. Serve as the lead city in developing the Request for Information and/or Request for Proposals solicitation to potential bikeshare operators and work cooperatively with the Parties to select a bike share operator.
- b. Coordinate meetings among the parties or delegate a meeting coordinator as agreed upon by all parties.
- c. Act as the liaison between the parties and the prospective bikeshare operator.
- d. Share information from the prospective bikeshare operator among all parties to this MOU.

The Parties agree to:

- a. Work cooperatively to select a bike share operator and implement a pilot bikeshare program in an expeditious and diligent manner, including attending scheduled meetings and responding to information requests in a timely manner.
- b. Raise any issues or concerns as soon as reasonably known so that the parties may work to overcome any differences or challenges.
- c. Make their best effort to come to consensus on the terms, design, operation, and deployment of the pilot bikeshare program.
- d. Collectively evaluate the success and effectiveness of the program after the pilot is complete and cooperatively decide whether to expand or terminate the program.

#### **4. Terms**

The term of this MOU shall commence upon the signing of the MOU by all parties and shall continue through December 31, 2019. This MOU contains all the terms and conditions agreed upon by the parties regarding the subject matter of this MOU and supersede any prior agreement, oral or written, and all other communications between parties related to such subject matter.

This MOU does not create any financial obligations.

#### **5. Non-assignability**

The Agreement shall not be assigned by any party without first obtaining the express written consent of the Parties.

#### **6. Notices**

Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to the Parties shall be in writing and shall be deemed served and given when personally delivered to the party whom directed or in lieu of such personal services when deposited in the United States mail, postage pre-paid to:

City of Encinitas  
505 S Vulcan Ave  
Encinitas, CA 92024  
Attn: City Manager

City of Del Mar  
2010 Jimmy Durante Blvd, Ste 120  
Del Mar, CA 92014  
Attn: City Manager

City of Solana Beach  
635 South Coast Hwy 101  
Solana Beach, CA 92075  
Attn: City Manager

City of Carlsbad  
1200 Carlsbad Village Dr  
Carlsbad, CA 92008  
Attn: City Manager

City of Oceanside  
300 North Coast Hwy 101  
Oceanside, CA 92054  
Attn: City Manager  
North County Transit District

810 Mission Avenue  
Oceanside, CA 92054  
Attn: Executive Director

United States Marine Corps Base at Camp Pendleton  
Box 555019  
Marine Corps Base Public Affairs Office  
Camp Pendleton, CA 92055-5019

## **7. Indemnification**

Each party agrees to defend, indemnify, and save all other parties harmless from any and all claims arising out of said party's negligent acts, errors, omissions, or willful misconduct while performing pursuant to this MOU.

Each party hereby agrees to defend itself from any claim, action or proceeding arising out of the concurrent acts or omissions. In such cases, each party agrees to retain their own legal counsel, bear their own defense costs, and waive their right to see reimbursement of such costs.

Notwithstanding the above, where a trial verdict or arbitration award allocates or determines the comparative fault of members, the members may seek reimbursement and/or reallocation of defense costs, settlement payments, judgements and awards consistent with said comparative fault.

## **8. Legal Representation and Advice**

Each party shall rely upon and consult with its respective jurisdiction's legal counsel regarding legal matters or issues related to this MOU. In the event that a legal matter relates to two or more jurisdictions, said jurisdictions shall meet and confer on appropriate legal representation of costs, if applicable.

## **9. Entire MOU**

The Parties agree that this MOU constitutes the sole and only MOU between them in relation to a North County Coastal Bikeshare Program and correctly sets forth their obligations and duties with respect to each other.

## **10. Termination for Convenience**

Any party may, in its sole and absolute discretion, with or without cause terminate the MOU upon the giving of ten days prior written notice to the other parties.

## **11. Amendments or Modification**

This MOU may not be amended except by a writing duly executed by the parties hereto.

## **12. Subject Headings**

The subject headings of the paragraphs in this agreement are included solely for the purposes and references, and shall not be deemed to explain, limit, amplify or aid in the meaning, construction or interpretation of any provision of this MOU.

## **13. No Interpretation Against Drafting**

This MOU has been negotiated at arm's length between parties hereto. Accordingly, any rule or law (including California Civil Code §1635 et seq.) or legal decisions that would require interpretation of any ambiguities in this MOU against the party that has drafted the applicable provisions, is not applicable and is waived. The provisions of this agreement shall be interpreted in a reasonable manner to affect the purpose of the parties.

## **14. MOU in Writing**

This MOU contains and embraces the entire MOU between the parties hereto and it, nor any part of it, may not be changed, altered, modified, limited or extended, orally or by any MOU between the parties unless such MOU be expressed in writing, signed and acknowledged by the Parties.

## **15. Governing Law**

This MOU shall be construed in accordance with and governed by the laws of the State of California.

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

For the City of Encinitas



Signature



Date

City Manager

Title

APPROVED AS TO FORM:

City Attorney



IN WITNESS THEREOF, this AGREEMENT is executed as follows:

For the City of Oceanside

---

Signature

---

Date

---

Title

APPROVED AS TO FORM:

City Attorney

---

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

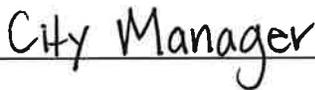
For the City of Del Mar



Scott W. Huth, City Manager



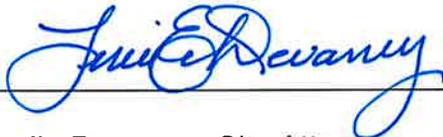
Date



Title

APPROVED AS TO FORM:

City Attorney



Leslie Devaney, City Attorney

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

For the City of Carlsbad

---

Signature

---

Date

---

Title

APPROVED AS TO FORM:

City Attorney

---

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

For the City of Solana Beach

  
\_\_\_\_\_  
Signature

11-8-18  
Date

CITY MANAGER  
Title

APPROVED AS TO FORM:

City Attorney

  
\_\_\_\_\_

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

For the United States Marine Corps Base at Camp Pendleton

---

Signature

---

Date

---

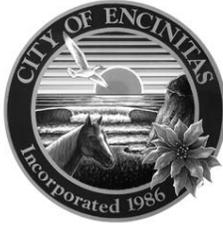
Title

APPROVED AS TO FORM:

Marine Corps Attorney

---





# AGENDA REPORT

## City Council

**MEETING DATE:** February 13, 2019

**PREPARED BY:** Crystal Najera, CAP  
Program Administrator

**DEPT. DIRECTOR:** Karen P. Brust

**DEPARTMENT:** City Manager

**CITY MANAGER:** Karen P. Brust

**SUBJECT:**

Public hearing regarding the introduction of City Council Ordinance 2019-02, titled “An Ordinance of the City Council of the City of Encinitas, California Adding Chapter 9.55 to the Encinitas Municipal Code Regarding Pilot Shared Mobility Program.”

**RECOMMENDED ACTION:**

1. Conduct the public hearing; and
2. Introduce City Council Ordinance 2019-02, titled “An Ordinance of the City Council of the City of Encinitas, California Adding Chapter 9.55 to the Encinitas Municipal Code Regarding Pilot Shared Mobility Program.” (Attachment 1)

**STRATEGIC PLAN:**

This item aligns with the City’s Strategic Plan goals for:

- Environment - through the promotion of the use of emissions-free bicycles as an alternative mode of transportation.
- Transportation – By providing effective, safe, and easy transportation for all modes of movement.

**FISCAL CONSIDERATIONS:**

There are no direct fiscal considerations associated with the recommended action.

**BACKGROUND:**

The City of Encinitas is dedicated to implementing ways to reduce local greenhouse gas (GHG) emissions to limit the effects of climate change while offering viable transportation alternatives to driving. The City Council approved an updated Climate Action Plan (CAP) on January 17, 2018. The CAP establishes a number of strategies to achieve GHG emissions reduction goals and targets, including facilitating safe, convenient and affordable alternative transportation options. Specifically, CAP Goal 4.1: *Reduce Vehicle Miles Traveled*, includes a supporting measure to “develop a program to support car sharing and bike sharing for the community.”

On March 14, 2018, City Council approved Resolution 2018-030 approving a Memorandum of Understanding (MOU) to work towards establishing a pilot bike share program in partnership with the cities of Del Mar, Solana Beach, Carlsbad and Oceanside, the San Diego Association of Governments (SANDAG) and the North County Transit District (collectively known as Parties)

(Attachment 2). Through this partnership the Parties agreed to seek a single bike share vendor to operate within the north coastal San Diego region to achieve economies of scale, to reduce conflicts between competing operators, and to provide optimal convenience to users renting a bicycle in one jurisdiction and terminating the rental in another jurisdiction. Thus far, Cities of Del Mar and Solana Beach have also joined the City of Encinitas in entering into this MOU.

All cities in the partnership continued to collaborate and participate in the development of possible pilot bikeshare program, including determining optimal program goals and objectives, issuing a joint request for proposals, reviewing proposals, and making a staff-level recommended operator selection for the program.

### **ANALYSIS:**

Since the formation of the MOU, 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. These strategies have included dropping undocked mobility devices (primarily electric scooters) into local public rights of way, sometimes without municipal knowledge, consultation, permission, ordinance or regulations in place. In addition, serious injuries to users and third-party victims through use of these mobility devices is reportedly on the increase. Accordingly, there is a need to craft a regulatory environment to appropriately assess and manage the safe and efficient operation of the evolving mobility device business within the City in advance of selecting an operator for a pilot north county bike share program.

Proposed Ordinance 2019-02 would enable a pilot bike share program to be established and operated by a single bike share licensee. The licensee would be allowed to deploy unpowered bicycles and/or “Class 1” or “Class 2” electric powered bicycles within the City, subject to a negotiated license agreement approved by City Council. Being that shared mobility devices are still a new, evolving and untested mode of transportation within the City, adopting this ordinance would enable the City to more accurately gauge the scope and scale of their impact on City rights of way, public and businesses and potential benefit to shared mobility users.

If the City Council approves the introduction of Ordinance 2019-02, City Staff will begin negotiations with the preferred bike share operator on the license agreement. If both parties come to an agreement on the terms, the license agreement will be brought back to City Council for formal review and adoption. The intent is to have the shared mobility pilot program implemented prior to the start of next summer with enough time factored in prior to launch to conduct a robust community outreach program.

### **ENVIRONMENTAL CONSIDERATIONS:**

The action being considered by the City Council is exempt from the California Environmental Quality Act (CEQA) because it is not a “project” under Section 15378(b)(5) of CEQA Guidelines. The action involves an organizational or administrative activity of government that will not result in the direct or indirect physical change in the environment.

The action being considered is related to the Climate Action Plan, supporting Goal 4.1: *Reduce Vehicle Miles Traveled.*

### **ATTACHMENTS:**

1. City Council Ordinance 2019-02, titled “An Ordinance of the City Council of the City of Encinitas, California Adding Chapter 9.55 to the Encinitas Municipal Code Regarding Pilot Shared Mobility Program.”
2. North County Bike Share Memorandum of Understanding