



# STAFF REPORT CITY OF SOLANA BEACH

**TO:** Honorable Mayor and City Councilmembers  
**FROM:** Gregory Wade, City Manager  
**MEETING DATE:** December 12, 2018  
**ORIGINATING DEPT:** City Manager's Department  
**SUBJECT:** **Adopt (2<sup>nd</sup> Reading) Ordinance No. 495 – Shared Mobility Program**

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## **BACKGROUND:**

The City of Solana Beach (City) is 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. The City Council (Council) approved the City's first ever Climate Action Plan (CAP) on July 12, 2017. The CAP establishes a number of strategies to achieve GHG emissions reduction goals and targets, including facilitating safe, convenient and affordable alternative transportation options. In addition, the City Council Work Plan has included an Unprioritized Environmental Sustainability item to explore a bikeshare/car share program for the past several years.

On March 14, 2018, the Council approved Resolution 2018-030 approving a Memorandum of Understanding (MOU) to establish a pilot North County Coastal Regional Bikeshare Program. The City, along with the cities of Del Mar, Encinitas, Carlsbad and Oceanside, as well as Camp Pendleton, the San Diego Association of Governments (SANDAG) and the North County Transit District (collectively known as the "Parties") desire to establish a formal working relationship to develop a pilot bikeshare program.

On November 28, 2018, the Council introduced Ordinance 495 establishing guidelines for a Shared Mobility Pilot Program. This item is before the Council to consider adoption of Ordinance 495.

## **DISCUSSION:**

During the initial contract discussions with the preferred vendor, the City Attorney has recommended that an ordinance be adopted to establish the guidelines for the shared

COUNCIL ACTION:

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mobility program to ensure that the original intent of the program be solidified. For Solana Beach, this would specifically ensure that there would be only one selected vendor and that only bicycles and potentially a Neighborhood Electric Vehicle (NEV) ride share component be included in the program at this time. While the intent of the arrangements between the Parties is that each jurisdiction would have the ability to negotiate various terms for their specific jurisdiction (i.e. number of bikes; docked, dockless or a hybrid approach; locations for parking, geofences, etc.), the core program guidelines would be included. These include:

- Implementation of a pilot shared mobility program with only one vendor
- City control over the amount of shared mobility devices and the structure of the program (docked, dockless or hybrid)
- Implementation of a robust education and outreach program prior to the start of the program
- Limitations on City liability
- City access to ridership data including fleet status and trip patterns

If the City Council approves the adoption of Ordinance 495, City Staff will begin negotiations with the preferred vendor 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.

#### **CEQA COMPLIANCE STATEMENT:**

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.

#### **FISCAL IMPACT:**

There is no fiscal impact as a result of this item.

#### **WORK PLAN:**

Exploring the potential for a bikeshare/car share program has been an item in the Unprioritized Environmental Sustainability Issues section of the Work Plan for the past several years.

#### **OPTIONS:**

- Adopt Ordinance 495 establishing the guidelines for the Shared Mobility Pilot Program
- Do not adopt Ordinance 495

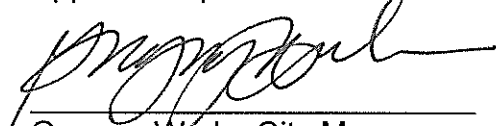
- Provide direction

**DEPARTMENT RECOMMENDATION:**

Staff recommends the City Council adopt Ordinance 495 establishing the guidelines for the Shared Mobility Pilot Program.

**CITY MANAGER'S RECOMMENDATION:**

Approve Department Recommendation.



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Gregory Wade, City Manager

Attachments:

1. Ordinance 495

## ORDINANCE 495

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA ADDING CHAPTER 10.46 TO THE SOLANA BEACH MUNICIPAL CODE REGARDING SHARED MOBILITY PROGRAM

**WHEREAS**, the City of Solana Beach (City) is 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;

**WHEREAS**, the City Council (Council) approved the final Climate Action Plan (CAP) on July 12, 2017. The CAP establishes a number of strategies to achieve GHG emissions reduction goals and targets, including facilitating safe, convenient and affordable alternative transportation options;

**WHEREAS**, the City Council Work Plan has included an Unprioritized Environmental Sustainability item to explore a bikeshare/car share program for the past several years;

**WHEREAS**, on March 14, 2018, the City Council approved Resolution 2018-030 approving a Memorandum of Understanding (MOU) to establish a pilot North County Coastal Regional Bikeshare Program. The City, along with the cities of Del Mar, Encinitas, Carlsbad and Oceanside, as well as Camp Pendleton, the San Diego Association of Governments (SANDAG) and the North County Transit District desire to establish a formal working relationship to develop a pilot bikeshare program;

**WHEREAS**, there has been an aggressive and excessive promulgation of modes of alternative transportation ranging from less desirable modes to potentially more desirable modes of alternative modes of transportation and there is a need to regulate the safe and efficient use and management of the public right-of-way;

**WHEREAS**, expanding the exploration of a City bikeshare program to a “shared mobility” program will help achieve City goals with respect to the CAP and public right-of-way management; and

**WHEREAS**, establishing guidelines for a shared mobility pilot program is necessary to provide safety and clarity for users of the public right-of-way and permit applicants.

**NOW THEREFORE**, the City Council of the City of Solana Beach 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 10.46 is added to the Solana Beach Municipal Code and shall read as follows:

## **Chapter 10.46 Shared Mobility Device Pilot Program**

### **10.46.010 Purpose.**

Consistent with the City’s goals of enhancing mobility and access, easing traffic congestion, promoting sustainability and achieving its Climate Action Plan this Chapter creates a limited term pilot program to facilitate the use of shared mobility devices while ensuring the protection of public health and safety, including the safety of the public traveling by foot, bicycle or any vehicle on public sidewalks, streets and other public rights-of-way.

### **10.46.020 Definitions.**

- (a) “Abandon” 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 any person or business entity selected by the City to participate in the Shared Mobility Device Pilot Program pursuant to this Chapter.
- (d) “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.
- (e) “Public right-of-way” shall mean any public alley, parkway, public transportation path, roadway, sidewalk or street that is owned, granted by easement, operated or controlled by the City.
- (f) “Shared mobility device” shall mean any device by which a person can be transported, propelled, moved or drawn, that is rented, used, located, displayed, offered or placed for rent in any public area or public right-of-way, except that a “shared mobility device” does not include a rental car, taxicab or any other device excluded pursuant to administrative regulations.

### **10.46.025 Administrative regulations.**

- (a) The City Manager may adopt administrative regulations to implement the provisions of this Chapter, including, but not limited to, permit application procedures and permit standards, which may include regulations relating to lawful 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. Any violation of any administrative regulation issued pursuant to this Section shall constitute a violation of this Code and shall subject the violator to the penalties set forth in this Chapter.

#### **10.46.030 Prohibited conduct.**

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

(a) Display, offer or make available for rent any shared mobility device within the City, unless the person has first obtained: (1) a valid shared mobility operator permit; (2) a license agreement approved by City Council; and (3) a business certificate issued in accordance with Chapter 4.02 of this Code;

(b) Abandon a shared mobility device not authorized by this Chapter in the public right-of-way or a public area;

(c) Abandon a shared mobility device in the public right-of-way or a public area in a manner that: (1) obstructs travel upon or blocks access to a public right-of-way; (2) poses an immediate public safety hazard; or (3) is otherwise prohibited by applicable laws or administrative regulations; or

(d) Use or aid and abet the use of any shared mobility device in a manner that would violate any applicable law or administrative regulation.

#### **10.46.040 Maximum number of shared mobility operator permits and shared mobility devices permitted.**

(a) The City Manager may issue one shared mobility operator permit authorizing the deployment of shared mobility devices within the City.

(b) The number and mode(s) of shared mobility devices authorized under each shared mobility operator permit shall be established pursuant to a license agreement approved by City Council.

(c) At any time, in the City Council's discretion, the City Council may reassess the number of shared mobility operator permits authorized for issuance.

#### **10.46.050 Shared mobility operator permit application procedure, fees and requirements.**

(a) Any person seeking to obtain a shared mobility operator permit shall have timely responded to a request for information advertised for a shared mobility program within the City.

(b) The City Council may establish permit fees and charges by resolution, which shall:

(1) Defray the City's costs in administering and enforcing the provisions of this Chapter; and

(2) Reflect charges associated with use of public property pursuant to this Chapter.

(c) The City Manager may specify the information that must be provided in connection with an application and the form in which the information is to be provided. The application shall contain, at a minimum, the following information:

(1) The name and business address of each person or entity that: (i) has more than a ten percent equity, participation, or revenue interest in the applicant; or (ii) is a trustee, director, partner, or officer of that entity or of another entity that owns or controls the applicant, excepting persons serving in those capacities as volunteers, without compensation, for organizations exempt from income taxes under Section 501(c)(3), (4), or (6) of the Internal Revenue Code;

(2) The name and business address of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling the applicant in whole or in part, or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity;

(3) Information sufficient to show that the applicant is financially, technically, and legally qualified to operate and maintain a shared mobility device system;

(4) A description of the proposed plan of operation, including, at a minimum, a detailed description of:

(i) The applicant's current operations in the City and other jurisdictions, including copies of the applicant's operating permits for all such jurisdictions,

(ii) The applicant's proposed operations in the City including the maximum number of shared mobility devices anticipated during the duration of the pilot program, the plan for balancing shared mobility devices for Citywide coverage, the plan for shared mobility device maintenance, levels of staff for operations and administration, and the plan for customer service,

(iii) The applicant's regulatory compliance program,

(iv) The applicant's and the applicant's customers' history of, intent to, and ability to comply with, State and local law,

(v) The applicant's plans to implement safety programs, including, for example, a program by which the applicant will receive information about, notify users of and stop inappropriate use,

(vi) The applicant's plans to educate users of shared mobility devices about applicable California Vehicle Code provisions and other applicable laws, regulations, and guidelines,

(vii) The applicant's plans to comply with applicable Federal, State, and local data privacy laws and otherwise to protect the privacy of personal information provided by users, and

(viii) Any other requirements set forth by administrative regulation.

#### **10.46.060 Shared mobility operator selection.**

(a) The Shared Mobility Operator shall be selected pursuant to a request for information process.

(b) The City Manager shall review all applications and make a ranking of each qualified applicant in accordance with objective criteria set forth by this Chapter and administrative regulations.

(c) Each qualified applicant shall be evaluated based upon objective criteria including: experience; proposed operations plan; financial wherewithal and stability; adequacy of insurance; ability to begin operations in a timely manner; public education strategies; relevant record of the applicant's, officers', owners', principals' or customers' violations of Federal, State or local law, or rules and regulations; and any other objective criteria established by administrative regulation.

(d) Each qualified applicant shall be provided an opportunity to submit written comments or objections to the City Manager's rankings of qualified applicants.

(e) The City Manager shall set forth, in writing, the reasons supporting his or her final determination. The City Manager may request additional information from City staff, any applicant, or any other source that would assist in determining the final qualifications and rankings.

(f) The City Manager shall grant a shared mobility operator permit to the highest ranked applicant after such applicant enters into a license agreement approved by City Council. Should two applicants receive the same score, a lottery shall be used to establish the final rankings for any applicants that achieved the same score.

(g) The City Manager's determinations under this Section shall constitute the final decision of the City and shall not be subject to further administrative review.

(h) The City Manager may impose, as part of any shared mobility operator permit issued, any and all conditions that are necessary to effectuate the purposes of this Chapter, mitigate traffic impacts, ensure accessibility of the public right-of-way and availability of public space for shared use by all, or protect the health, welfare, and safety of the public. No person shall fail to comply with such permit conditions.



#### **10.46.070 Limitations on City liability.**

To the fullest extent permitted by law, the City shall not assume any liability whatsoever with respect to having issued a shared mobility operator permit or otherwise approving the operation of any shared mobility device. As a condition to the issuance of any shared mobility operator permit, the applicant shall be required to meet all of the following conditions:

(a) The applicant must execute an agreement, in a form approved by the City Attorney, agreeing to indemnify, defend (at applicant'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 approve a shared mobility operator permit, the process used by the City in making its decision, or the alleged violation of any Federal, State or local laws by the applicant or any of its officers, managers, employees or agents.

(b) Maintain insurance at coverage limits, and with conditions thereon determined necessary and appropriate from time to time, as determined by the Risk Manager and name the City of Solana as additional insured. The applicant'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 a permittee is cancelled for any reason, the permit issued under this Chapter is automatically suspended. In order to reinstate the permit, the permittee shall provide a new certificate and policy of insurance to the City.

(c) Reimburse the City for all costs and expenses, including, but not limited to, attorney fees and costs, which it may be required to pay as a result of any legal challenge related to the City's approval of or activities conducted pursuant to the applicant's shared mobility operator permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve any of the obligations imposed hereunder.

(d) The applicant must execute a license agreement in a form approved by City Council.

#### **10.46.080 Grounds for revocation, suspension or denial.**

A shared mobility operator permit may be revoked, suspended, or denied by the City Manager based upon any of the following grounds:

(a) An applicant or operator, including its employees, managers, officers, principals, directors, owners, contractors, representatives, or agents:

(1) Making one or more false or misleading statements, or material omissions on the permit application, during the application process, or during the pilot program;

- (2) Failing to provide information requested or required by the City;
- (3) Operating, proposing to operate or aiding or abetting operating in a manner that endangers public health or safety; or
- (4) Failing to comply or aiding or abetting a failure to comply with any requirement imposed by the provisions of this Code (or successor provision or provisions) including any rule, regulation, condition or standard adopted pursuant to this Chapter, or any term or condition imposed on the shared mobility operator permit, or any provision of State law.

(b) Conviction of the operator, to include any of its officers, owners or principals, of a criminal offense that is substantially related to the qualifications, functions or duties of the shared mobility business or profession, including, but not limited to, any criminal conviction involving a violent or serious felony, fraud, deceit, or embezzlement.

(c) Repeated failures by operator's customers to comply with any requirement imposed by the provisions of this Code (or successor provision or provisions) including any rule, regulation, condition or standard adopted pursuant to this Chapter, or any term or condition imposed on the shared mobility operator permit, or any provision of State law.

#### **10.46.090 Pilot program term.**

Any permit issued pursuant to this Chapter shall terminate and be of no further force or effect beyond December 30, 2020, unless otherwise extended or terminated earlier by the City.

#### **10.46.100 Impoundment of devices.**

(a) A shared mobility device that is rented, used, displayed, offered, or made available for rent, or abandoned, in the public right-of-way or a public area in violation of Section 10.46.030 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 shared mobility device except upon demonstrating proper proof of ownership of the device and payment of applicable impound fees.

(d) Any shared mobility device not retrieved from impound for more than 30 days shall be deemed abandoned and may, in the City Manager's discretion, be destroyed or auctioned in accordance with applicable state law.

#### **10.46.110 Enforcement.**

(a) Any person who violates any provision of this Chapter, including any permit condition, shall be guilty of an infraction or a misdemeanor, which shall be punishable pursuant to Chapter 1.16 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 1.18 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.

Section 4. 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.

Section 5. 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 City of Solana Beach 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 Solana Beach, California, on the 28th day of November, 2018; and

**THEREAFTER ADOPTED** at a regular meeting of the City Council of the City of Solana Beach, California, on the 12<sup>th</sup> day of December, 2018, by the following vote:

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

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DAVID A. ZITO, Mayor

APPROVED AS TO FORM:

ATTEST:

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JOHANNA N. CANLAS, City Attorney

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ANGELA IVEY, City Clerk