

RESOLUTION ARB2020-0003

Approval of Amendment to Cuyahoga County Rules for Receiving a Bicycle and Scooter Share Vendor's License

Whereas, County entities may adopt, amend, rescind, and administer rules on matters within their respective jurisdictions, as established by the County Charter, the County Code, or general law; and

Whereas, per Chapter 1303 of the Cuyahoga County Code, the Director of Sustainability has the authority to issue a Bicycle and Scooter Share License and charge a license fee and per trip fee pursuant to rules adopted by the Administrative Rules Board; and

Whereas, per section 113.02(A) of the Cuyahoga County Code, a county entity seeking to adopt, amend, or rescind a rule shall submit a request, including the specific language or the rule, to the Clerk of the Administrative Rules Board in accordance with the procedures and deadlines established by the Board for such submissions; and

Whereas, per section 113.02(G) of the Cuyahoga County Code, the Administrative Rules Board is given approval authority over rules promulgated by County entities based on a determination of: (1) whether the requesting entity has the authority to adopt, amend, or rescind the rule and (2) whether the proposed rule conflicts with the County Code; and

NOW, THEREFORE, BE IT RESOLVED BY THE ADMINISTRATIVE RULES BOARD OF CUYAHOGA COUNTY, OHIO:

Section 1. The Cuyahoga County Rules for Receiving a Bicycle and Scooter Share Vendor's License, as attached, are hereby amended.

Section 2. This Resolution shall go into immediate effect and remain in full force and effect until rescinded by the Administrative Rules Board.

Section 3. It is found and determined that all formal actions of this Board concerning and relating to the passage of this Resolution were passed in an open meeting of this Board and that all deliberations of this Board that resulted in such formal actions were in meetings open to the public and in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

The foregoing resolution was duly adopted on July 30, 2020.



*Jonathan Stone McGory
Clerk of the Board*

CUYAHOGA COUNTY RULES FOR RECEIVING A BICYCLE AND SCOOTER SHARE VENDOR'S LICENSE

BICYCLE AND SCOOTER SHARE LICENSE

1. Definitions

"Bicycle and Scooter Share" means a transportation program that allows users to rent bicycles, scooters, and other modes of transportation, as approved by the County, within the County for point-to-point trips.

"Bicycle and Scooter Share Fleet" means a specially designed, sturdy and durable group of bicycles, scooters, and other modes of transportation, as approved by the County, that operate together under the same ownership.

"Stationless Bicycle and Scooter Share" means users can pick up a bicycle, scooter, or other mode of transportation anywhere within a system's service area, ride it from point-to-point, and park it wherever they arrive, within the system's service area.

"Bicycle and Scooter Preferred Parking Location" means locations designated by the County where users can park a bicycle, scooter, or other mode of transportation and receive an incentive as determined by the Operator and approved by the County.

"Right-of-Way" is defined by applicable municipal ordinances and state law, but generally refers to the area on, below, and above an existing or proposed public roadway, highway, street, bicycle lane or sidewalk, planting strip, and associated adjacent land, in which the municipalities within the County have a property interest, whether by easement or fee and regardless of how acquired or established, for public travel and utility purposes. For purposes of this License, "Right-of-Way" shall not include property held or acquired primarily for the purpose of the movement of public transit vehicles, including railroad right-of-way.

2. Term. This License shall expire one year from the Issue Date. A new application must be submitted and approved by the County before operations can continue after the end of this term. If a renewal application is not submitted nor approved, Operator must remove the Bicycle and Scooter Share Fleet within 30 days after the end of this term.

3. Payment. The cost of this License shall be \$5,000 dollars with a \$0.15 per trip fee to be sent to the County on a monthly basis, except that a License issued in 2020 shall be \$2,500 dollars with a \$0.15 per trip fee. The County shall instruct Operator to pay the portion of the \$0.15 per trip fee directly to each city that has an agreement with the County regarding Bicycle and Scooter Share operations for all trips that originated in that city. If the City of Cleveland charges a per trip fee to Operators for trips that originate in the City of Cleveland, then this section will not apply to trips that originate in the City of Cleveland.

4. Regulation. Operator must at all times be compliant with the Cuyahoga County Bicycle and Scooter Share Requirements in Exhibit A, attached and made a part of this License, in addition to any permit requirements by the City of Cleveland when operating within the City of Cleveland.

5. Filing of Information. Operator shall file with the County, and keep current, the following information:

- a. The name, address, telephone number, fax number and e-mail address of a local representative(s). A local representative shall be available during normal business hours.
- b. Information regarding how to contact the Operator in an emergency.
- c. Name, address, telephone number, and e-mail address of all contractors authorized to work on Operator's behalf. The Operator shall be liable to the County for any and all work performed on the Operator's behalf in connection with this License.
- d. Operator shall file changes or additions to the above required information within fifteen (15) business days following the date on which Operator has knowledge of any changes or additions. Notwithstanding the foregoing, emergency contact information and information regarding authorized contractors shall be kept current at all times.
- e. Operators shall prepare and maintain maps of Bicycle and Scooter Preferred Parking Locations located within the County limits. Upon request, Operator shall allow the County to review such maps.

6. Indemnification. Operator hereby indemnifies, defends and holds harmless the County, any municipality it operates in within the County, and any entity with a rebalancing location on its private property, and their respective officers, officials, directors, board members, employees, and agents, from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, that result from (a) the negligent acts or omissions of Operator, including all of its officers, owners, principals, subcontractors, employees, and agents, or (b) breach or default by Operator under any terms or provisions of this License.

7. No Indemnity by County. Operator acknowledges that, as a political subdivision of the State of Ohio, neither the County nor any municipality it is operating in within the County does not indemnify any person or entity. Operator agrees that no provision of this License or any other contract or agreement between Operator and the County may be interpreted to obligate the County to indemnify or defend Operator or any other party.

8. Insurance. The Operator shall obtain and maintain during the life of this License, with an insurance Company rated A- VII or above by A.M. Best, authorized to do business in the State of Ohio, the following insurance:

- a. **Worker's Compensation Insurance** as required by the State of Ohio. If Operator has employees working outside of Ohio, Operator shall provide Worker's Compensation Insurance as required by the various state and federal laws including Employers' Liability coverage.
- b. **Commercial General Liability** with limits of liability not less than:
 - \$1,000,000 each occurrence bodily injury & property damage;
 - \$1,000,000 personal & advertising injury;

- \$1,000,000 general aggregate;
- \$1,000,000 products/completed operations aggregate.
Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

c. **Business Automobile Liability Insurance** covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

The Operator shall not commence any Services in connection with this License until it has obtained all of the foregoing types of insurance and such insurance has been approved by the County. The Company shall not allow any subcontractor to commence Services on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

OTHER INSURANCE REQUIREMENTS.

1. The insurance policies of the Operator required for this License, shall:

a) Name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured. This does not apply to Workers Compensation, Professional Liability/Errors & Omissions Insurance and Technology Professional/Errors & Omissions Insurance, or Cyber Risk Insurance.

b) Contain a waiver of subrogation provision wherein the insurer(s) waives all rights of recovery against the County; and

c) Be primary and not in excess or contingent on any other basis; and

d) The Certificates of Insurance evidencing these coverages shall contain the following additional insured and waiver of subrogation language where applicable:

(a) "Cuyahoga County and its employees are additional insureds for purposes of commercial general liability and automobile liability": and/or

(b) "Waiver of subrogation in favor of the County."

2. The insurance required for this License shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A- VII or above.

3. The terms of this License shall be controlling and shall not be limited by any insurance policy provision.

4. These insurance provisions shall not affect or limit the liability of Operator stated elsewhere in this License or as provided by law.

5. Operator shall require any and all of its subcontractors to procure, maintain, and pay premiums for

the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this License.

6. The County reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the County.

7. If the Bid/Proposal/RFQ specifies the need for higher limits of liability for any applicable insurance provision, the Bid/Proposal/RFQ specifications shall govern.

8. Where coverages are made on a claims-made basis the claims-made retroactive date on the policy shall be prior to the commencement of professional activity related to this License.

9. Operator shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this License.

9. License Subject to Exercise of Police Powers. All right and privileges granted herein are subject to the police powers of the County and all municipalities within the County and its right to make laws and regulations.

10. Non-Assignability. This License may not be transferred or assigned.

11. Non-Exclusivity. This License does not give the Operator an exclusive right to operate a Bicycle and Scooter Share program in the County. The County reserves the right to limit the number of Bicycle and Scooter Share programs within the County. Each municipality within the County reserves the right to exclude Bicycle and Scooter Share programs within their municipalities or come up with their own Licensing schemes.

12. Termination. The County may terminate this License for its convenience and without cause, effective thirty (30) days after the Operator receives notice from the County. If the Director of Sustainability finds that the Operator has violated a term of this License, the Director will notify the Operator in writing of the violation and the Operator will have fifteen (15) days to cure the violation or provide a timeline by which it will cure the violation. If the Operator does not cure the violation within fifteen (15) days or by the timeline it provided, then the Director may immediately terminate this License. If the Director determines in his/her sole discretion that the violation has any effect on the safety of the Operator's customers, the Director may require the Operator to remotely disable its entire Bicycle and Scooter Share Fleet until the violation has been cured. If the County terminates this License, Operator must remove their entire Bicycle and Scooter Share Fleet from the right-of-way within 30 days, unless a different time-period is determined by the County. Any bicycle or scooter that remains in the right-of-way after that time-period is subject to removal by the County or the municipality where it is found.

13. Adherence to Bicycle and Scooter Share License Requirements. The Operator shall abide by all terms as outlined in the County's Bicycle and Scooter License Requirements.

14. Notices. Wherever one party is required or permitted to give notice to the other pursuant to this

License, such notice shall be deemed given when delivered by hand, via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:

In the case of the County:
Cuyahoga County Department of Sustainability
2079 East 9th Street, 8th Floor
Cleveland, Ohio 44115

In the case of Operator:

Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which it will become effective.

15. Waiver. No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.

16. Survival of Terms. Termination or expiration of this License for any reason shall not release either party from any liabilities or obligations set forth in this License which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

17. Record Audit Retention. Operator agrees to make all pertinent contractual books and records and other documents pertaining to this License available to the County and its designated agents for purpose of audit and examination upon reasonable request during the term of this License and for a period of two (2) years from the expiration date or final payment under this License, whichever is later; provided however, that should Operator be notified that an audit has been commenced pursuant to Ohio Revised Code Sec. 117.11 during said period, for which the aforesaid books and records are material, the aforesaid records shall be retained pending the completion of said audit.

18. Governing Law and Jurisdiction. This License shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Ohio. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this License, and each party consents to the exclusive jurisdiction of such courts. Operator hereby agrees not to challenge this Governing Law and Jurisdiction provision, and further agrees not to attempt to remove any legal action outside of Cuyahoga County for any reason.

19. Assignment. Operator shall not assign, transfer, convey or otherwise dispose of this License, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this License without approval of the County.

20. Anti-Discrimination. Operator agrees that in its employment of labor, skilled or unskilled, there shall be no discrimination exercised against any person because of race, color, religion, national origin, sex, gender, ancestry, age, disability, sexual orientation, sexual identity, genetic information,

military status, or veteran status, and a violation of this term shall be deemed a material breach of this License. It shall be the policy of Operator to provide equal opportunity to all business persons seeking to contact, or otherwise interested in contracting with Operator, including various eligible Small Business Enterprises, but that such a policy does not create an obligation on the part of Operator to enter into any particular agreements.

21. No Apparent Authority/Proper Approvals. Operator recognizes and agrees that no public official or employee of the County may be deemed to have apparent authority to bind the County to any contractual obligations not properly authorized pursuant to the County Code.

22. ELECTRONIC SIGNATURE. OPERATOR AGREES ON BEHALF OF THE SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, THAT ALL LICENSE DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. OPERATOR ALSO AGREES ON BEHALF OF THE AFOREMENTIONED ENTITY AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY. License Subject to Additional or Altered Conditions.

23. The County reserves the right to require the Operator to place a decal on a visible location on each bicycle and scooter as evidence of their license. The design of the decal will be at the sole discretion of the County and will be provided to the Operator at no charge.

24. Agreement with and Acceptance of Terms. By accepting this License and exercising the right granted herein, the Operator agrees to and is hereby bound by the terms of the License.

Exhibit A – Cuyahoga County Bicycle and Scooter Share Requirements

Safety Requirements

1. All bicycles used in systems issued a License under this program shall meet the standards outlined in the Code of Federal Regulations (CFR) under Title 16, Chapter II, Subchapter C, Part 1512 – Requirements for Bicycles. Additionally, Licensed systems shall meet the safety standards outlined in by the International Organization of Standardization.

2. Any Licensed electric bicycles under this program shall meet the National Highway Traffic Safety Administrations (NHTSA) definition of low-speed electric bicycles; and shall be subject to the same requirements as ordinary bicycles (described above). This means, among other requirements, that electric bicycles shall have fully operable pedals, an electric motor of less than 750 watts, and a top motor-powered speed of less than 20 miles per hour when operated by a rider weighing 170 pounds. Additionally, Cuyahoga County (the “County”) may terminate any License issued under this pilot program if the battery or motor on an electric bicycle or scooter is determined by the County to be unsafe for public use.

3. All bicycles and scooters shall meet the Ohio Revised Code requirements for lights during hours

of darkness, described in ORC 4511.56, and all other applicable requirements of state law.

4. The maximum motor-assist speed of all bicycles and scooters in the program shall be set by each municipality within the County.

5. Every bicycle and scooter shall have a unique identifier that is clearly displayed and visible to the user on the bicycle

6. Bicycles and scooters throughout the County shall only be operable during the hours set by the City of Cleveland. However, if a municipality within the County has set specific hours for operability, those hours shall apply to that municipality.

Maintenance Requirements

1. Operator shall continuously maintain throughout the entire term of the License the insurance coverage and limits of liability as outlined in the Bicycle and Scooter Share License at no expense to the County.

2. Prior to the License being issued, Operator shall sign and record an agreement indemnifying and holding harmless the County as outlined in the License Application.

3. Operator shall have staffed operations located within Cuyahoga County for maintenance and rebalancing efforts.

4. Operator shall provide the County with a direct contact for staff that are capable of rebalancing and relocating improperly parked bicycles and scooters.

5. Operator shall have a plan to encourage users to return Bicycles and Scooters to rebalancing locations.

6. Operator shall provide the County with five account logins for County oversight.

7. Operator shall have a 24-hour customer service phone number for customers to report safety concerns, maintenance issues, complaints, or ask questions.

8. Operator shall remove any inoperable or unsafe bicycle or scooter from the right-of-way within 24 hours of notice by any means to the operator by any individual or entity and shall be repaired before placing the bicycle or scooter back into service. Operator must be able to remotely disable an individual bicycle or scooter upon notice of an issue with the bicycle or scooter that makes it unfit for normal use.

9. The County or any of the municipalities within the County may remove bicycles or scooters from the right-of-way if it interferes with pedestrian or vehicular traffic or if the bicycle impedes or obstructs the right-of-way.

10. The County or any of the municipalities within the County may, without prior notice, remove bicycles or scooters from the right-of-way if an emergency arises. In such instances, the County or municipality will attempt to notify the Operator as soon as reasonably practicable thereafter.

11. The County or any of the municipalities within the County may inform the Operator of a special event (marathons, parades, film shoots, etc.), at least seven days in advance of the event, and Operator shall remove all bicycles and scooters within the area of the special event prior to the event. If the County or any of the municipalities within the County provides the Operator with notice of a calendar of events available online, this shall serve as notice on the Operator of any special event on that calendar that appears at least seven days before the event.

12. Operator shall have at a minimum 50 bicycles and/or 50 scooters that are placed and regularly rebalanced outside of the City of Cleveland, in communities that have an agreement with the County to allow Bicycle and Scooter Share operations. The Director of Sustainability may waive this requirement if the Operator (1) does not have a permit from the City of Cleveland and (2) will only operate outside of the City of Cleveland. The County will inform the Operator of which communities have agreements with the County and whether the communities have their own minimum and/or maximum fleet requirements. The Operator will work in good faith with the communities to determine the best locations for such rebalancing and the number of bicycles and scooters allowed at each rebalancing location.

13. The County shall periodically publish a map and chart, made in coordination with the communities within the County, with rebalancing locations that Operators will need to devote a minimum number of vehicles to on a regular basis.

14. All applicants to the License program shall include the fleet size in their application. The Operator shall notify the County if they plan to change their fleet size two weeks before deployment.

15. Operator shall recharge all electric powered bicycles and scooters at least three times a week and inspect, maintain, and replace them on a regular basis.

16. Operator shall collect all bicycles and scooters at least three times a week and distributed throughout the County in accordance with a plan submitted with the License Application.

17. For purposes of maintaining, charging, inspecting, and/or rebalancing their Bicycle and Scooter Share Fleet, the Operator shall employ within their own company, or contract with a local entity, a workforce capable of discharging these duties. The Operator must pay its local workforce the mean hourly wage for Bicycle Repairers in the United States, as determined by the U.S. Bureau of Labor Statistics, but no less than \$15 dollars an hour. The Operator shall also use best efforts to work with a unionized staff. If the Operator employs independent contractors for charging their Bicycle and Scooter Share Fleet, and they are paid on a per bicycle or scooter basis, the Operator must show that the rate paid per bicycle or scooter reasonably equates to \$15 dollars an hour.

18. Operator shall promptly repark or remove any bicycle that is parked incorrectly in any part of the County outside of the City of Cleveland in a correct manner based on these times:

- a. 7am to 7pm seven days a week, not including holidays - within three hours of receiving notice;
- b. All other times – within 12 hours of receiving notice.

The City of Cleveland requirements for removing incorrectly parked bicycles and scooters can be found in the City's terms and conditions.

Data Sharing Requirements

1. Operator shall maintain a record of maintenance activities, including but not limited to bicycle and scooter identification number and maintenance performed. These records shall be made available to the County, upon request.

2. Operator shall provide the County with the following data on a monthly basis if the Operator collects such data:

- Number of bicycles and scooters in circulation;
- Daily, weekly, and monthly active riders;
- Number of trips that began in each municipality in the County;
- Number of trips that ended in each municipality in the County;
- Bicycle and scooter usage, including total miles (daily/monthly/quarterly/annually);
- Number and duration of rides/rider/day as well as rides/bike/day;
- Monthly summary of bicycle and scooter distribution and GPS-based natural movement; and
- Customer comments/complaints and resolution, theft/vandalism, and average repair times.

3. Operator shall provide the County with anonymized real-time data (information that is delivered immediately after collection) on the entire fleet, including the location of each bicycle and scooter in the fleet, upon request.

4. Operator shall provide the County with raw data, that has not been pre-aggregated, about all trips taken during a specific timeframe, upon request.

5. Operator should provide the County with data in the General Bikeshare Feed Specification and Mobility Data Specification (MDS) format whenever possible.

6. Operator will not restrict the County's use of any data shared with the County under this section. The County may share data with any municipality that has an agreement with the County regarding Bicycle and Scooter Share operations, any entity that has a rebalancing location on its private property, or any governmental or quasi-governmental agency concerned with transportation in the County, including but not limited to the Northeast Ohio Areawide Coordinating Agency, the Ohio and U.S. Departments of Transportation, the Greater Cleveland Regional Transit Authority, and the Cleveland Metroparks.

7. Operator shall make aggregated and anonymized trip data available to the public and other entities not affiliated with the Operator.

8. All bicycles and scooters shall be equipped with GPS equipment and shall ping at a minimum of every 90 seconds while in use.

9. Operator shall follow the Open Web Application Security Project ("OWASP") guidelines/testing best practices or equivalent industry best practices.

10. Customers shall not be required to share personal data with 3rd parties in order to use the services.

11. Customers must not be required to opt-in to providing access to their contacts, camera, photos, files, and other private data in order to use the services.

12. Operator shall maintain all data for at least one year.

13. The provisions of this section shall survive the termination of this License for three years.