



GEORGETTE GÓMEZ
COUNCIL PRESIDENT, NINTH DISTRICT

December 11, 2019

Judge Peter C. Deddeh
Presiding Judge
San Diego Superior Court
1100 Union Street, 10th Floor
San Diego, CA 92101

Re: Grand Jury Report: "Electric Scooters: Innovation or Disruption?"

Dear Judge Deddeh:

Pursuant to California Penal Code Section 933.05(a), (b) and (c), the City of San Diego provides the attached response from the City Council to the applicable findings and recommendations included in the above referenced Grand Jury Report.

Thank you for your consideration. If you require additional information, or have any questions, please contact Matt Yagyagan, Director of Legislative Affairs, at 619-533-3920.

Sincerely,

A handwritten signature in blue ink, appearing to read "Georgette Gomez", with a long horizontal flourish extending to the right.

Georgette Gómez

- Encl: 1. City response to Grand Jury Report: "Electric Scooters: Innovation or Disruption?"
2. City Council Resolution R-2020-168

**City Council Response to
San Diego County Grand Jury Report Titled
“Electric Scooters: Innovation or Disruption?”**

Pursuant to California Penal Code section 933(c), the City Council of the City of San Diego provides the following responses to the findings and recommendations which are included in the above referenced Grand Jury Report.

FINDINGS 01 THROUGH 05

Finding 01: *Dockless scooters are spread out in great numbers on San Diego City sidewalks without approval from the City.*

Response: The City Council partially disagrees with the Grand Jury’s finding.

With the adoption of the Shared Mobility Device (SMD) Ordinance in May 2019, the City of San Diego has implemented a new regulatory framework which includes a permitting process and additional enforcement powers over motorized scooter and other SMD companies. Although riders have deposited scooters on San Diego City sidewalks at widespread levels in the past, with the new law in place, scooter rental companies have been required to intensify their efforts at addressing how scooters are staged, and their recent collection efforts have begun to alleviate the issue. Furthermore, to facilitate appropriate scooter staging efforts, the City has installed 265 scooter/SMD corrals on streets in the downtown area, plans to install around 150 more in the downtown and Uptown areas, and has installed 245 corrals in beach communities, specifically:

- La Jolla – 40
- Ocean Beach – 76
- Pacific Beach – 106
- Mission Beach – 23

Finding 02: *Riders of the dockless scooters are routinely violating the California vehicle code and San Diego City ordinances.*

Response: The City Council partially disagrees with the Grand Jury’s finding.

With the implementation of the SMD Ordinance, scooter and other SMD companies have been required to comply with City Municipal Code § 83.0301 et seq. Since that time, scooter-related violations have begun to diminish. Two pervasive types of violations include scooters operating on sidewalks and improper staging of scooters. Some scooter riders continue to illegally utilize sidewalks for travel, and scooters have not always been staged properly (e.g. in groups of four scooters, no more than one foot apart from each other). As mentioned in the response to Finding 01, the City has installed hundreds of scooter/SMD corrals, and there have been recent collections efforts by scooter companies to deal with improper scooter staging. The City is also implementing enforcement measures as discussed in the response to recommendation 19-54.

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Most scooter companies have attempted to restrict scooters to the speed limits included in the California Vehicle Code and the City’s Municipal Code, with varying degrees of success. The Municipal Code includes additional restrictions on speeds, which scooter companies are required to enforce through the use of geofencing technology. City Municipal Code § 83.0308 requires a speed of eight miles per hour or less on public walkways within Balboa Park, Liberty Station NTC Park, and Spanish Landing Park and Trail, as well as certain areas in or near Mission Beach, Mission Bay, La Jolla Shores, and Petco Park. Additionally, scooter speeds are limited to three miles per hour at the Martin Luther King Promenade, the North and South Embarcadero pedestrian walk, and the Piazza della Famiglia.

Nonetheless, after implementation of the SMD Ordinance, there were repeated public complaints of scooter speeds in excess of those allowed. In response to complaints related to speed and other violations, the City sent letters to six scooter rental companies on July 12, 2019 regarding compliance responsibilities and repercussions for violations. Additionally, scooter companies were advised that continued violations will result in revocation of their operating permits or non-renewal of their permits after they expire on January 31, 2020.

Finding 03: *Reckless and improper use of scooters has resulted in one death and many injuries.*

Response: **The City Council agrees with the Grand Jury’s finding.**

Finding 04: *Scooter accidents are exposing the City of San Diego and its citizens to expensive damage awards as a result of litigation.*

Response: **The City Council partially disagrees with the Grand Jury’s finding.**

While the potential for claims and litigation related to scooter accidents exists, the extent of any damages that may be borne by the City is unknown. Although there are outstanding claims and several pending lawsuits against the City, the City has taken action to limit its exposure. Since July 2019, with the implementation of the permitting process, the City has required scooter and other SMD companies to maintain commercial general liability insurance with limits of \$2 million per occurrence and a \$4 million aggregate. Each operator must also maintain a \$4 million umbrella policy. Additionally, to be permitted for operation by the City, each company must agree to indemnify the City from claims and damages related to operation of the scooter/SMD company’s business in the City.

Finding 05: *San Diego City government has lagged behind other comparable sized cities in regulating the scooter companies’ use of the public right of way.*

**City Council Response to
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Response: The City Council partially disagrees with the Grand Jury’s finding.

The City of San Diego has been dealing with scooter-related issues for some time. In May 2018, an emergency ban of scooters on boardwalks was considered by the City Council but was not adopted. Subsequently, the City began developing comprehensive regulations related to scooters and other SMDs. These regulations were adopted in May 2019 and compliance requirements subsequently went into effect. The City will continue to monitor and enforce existing regulations, as well as consider amendments to the SMD Ordinance based on lessons learned.

As the Grand Jury notes, a number of cities implemented regulations for scooter companies prior to the City of San Diego. Alternatively, some cities have implemented bans on shared scooter operations.

RECOMMENDATIONS 19-52 THROUGH 19-54

Recommendation 19-52: *Within the next twelve (12) months, rules for micro-mobility companies operating within the City. At minimum, the rules should include designated operating areas, speed limits and per unit licensing fees.*

Response: The recommendation has been implemented.

Per the SMD Ordinance, SMD companies operating in the City of San Diego must obtain a permit to operate and are subject to a host of new regulations, including additional restrictions on motorized scooter and motorized bicycle speeds, which the device companies are required to enforce through the use of geofencing technology. City Municipal Code § 83.0308 requires a speed of eight miles per hour or less on public walkways within Balboa Park, Liberty Station NTC Park, and Spanish Landing Park and Trail, as well as certain areas in or near Mission Beach, Mission Bay, La Jolla Shores, and Petco Park. Additionally, speed is limited to three miles per hour at the Martin Luther King Promenade, the North and South Embarcadero pedestrian walk, and the Piazza della Famiglia.

Permit requirements for SMD companies to operate in San Diego include proof of insurance; proof that SMD users are advised of driver’s license and other related requirements; labelling on scooter devices that states “Riding on Sidewalks is Prohibited;” agreement to share certain tracked data with the City; and agreement to indemnify the City from claims and damages related to operation of the SMD company’s business in the City. Permits are issued by the City for six-month periods; and the fee to be paid upon issuance or renewal of such permits is \$5,141. Additionally, a fee of \$150 per SMD is charged annually (which can be reduced to \$135 per device if the SMD company adopts an increased ridership opportunity program for low income individuals).

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Recommendation 19-53: *Within the next twelve (12) months, contracts with micro- mobility companies operating within the City. At minimum, the contracts should protect and indemnify the City in the event of liability or damages arising out of the use and operation of the vehicles.*

Response: The recommendation has been implemented.

Since July 2019, SMD companies operating in the City of San Diego must be permitted for operation by the City, which includes the requirement that such companies agree to indemnify the City from claims and damages related to operation of the company’s business in the City. Additionally, SMD companies are required to maintain commercial general liability insurance with limits of \$2 million per occurrence and a \$4 million aggregate. Each operator must also maintain a \$4 million umbrella policy.

Recommendation 19-54: *Provide additional resources to the SDPD for comprehensive enforcement of existing laws and regulations that pertain to electric scooters and other micro-mobility vehicles. This should include resources for the collection and storage of abandoned, seized and/or impounded vehicles.*

Response: The recommendation has been implemented.

To be effective, the City’s enforcement efforts encompass policing as well as other activities. Recent notable enforcement and other City efforts include:

- installation of scooter/SMD corrals as mentioned in the response to Finding 01;
- impoundment of 2,500 SMDs during July’s Comic-Con, and imposition of related fines;
- letters to SMD companies (dated July 12, 2019) regarding San Diego Municipal Code compliance responsibilities and repercussions for violations, as mentioned in the response to Finding 02;
- Notices of Violation (NOVs) sent to Bird, JUMP, Lime, Lyft, and Skip on August 8, 2019;
- issuance to-date of six Administrative Citations (ACs) to SMD companies for improper staging of SMDs; and
- initiation of a non-compliance proceeding and a Notice of Intent to Revoke the SMD permit from Lime, dated August 16, 2019. A related Administrative Hearing began October 24, 2019 and was continued to October 28. Once the hearing is completed, the Hearing Officer will have 30 days to render findings.

Ongoing efforts related to enforcement of scooter/SMD regulations include:

- The City has retained Sweep, Inc. to assist with impounding SMDs in violation of SMD parking/staging regulations.

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- The City’s FY 2020 expenditure budget includes \$150,000, largely for Police Department overtime related to dockless mobility enforcement of California Vehicle Code violations. This funding is being utilized for specialized enforcement days in various targeted areas, which have occurred about once per week since July 1, 2019.
- The Development Services Department’s (DSD) Code Enforcement Division has also been assigned to enforce violations of the City’s SMD Ordinance. ACs will be issued for age verification violations, most staging violations, and devices that are not picked up within the three-hour notification timeframe. NOVs will be issued for geofencing violations, unauthorized removal of impounded devices, and staging violations creating a safety hazard. ACs will typically be issued in the following order: warning, then \$500, then \$1,000. Fourth violations and beyond may be issued additional \$1,000 ACs, a NOV, or a Notice of Intent to Revoke the SMD company’s permit.
- The City’s Performance & Analytics Department (Panda) is helping DSD analyze the data that is required to be provided by SMD operators per the SMD Ordinance. Panda’s analysis will be used to help identify issues and insights related to scooter/SMD compliance and usage in the City.

In response to the implementation and enforcement of the SMD Ordinance, Uber announced in mid-September that it is pulling its JUMP e-bikes and scooters out of San Diego, and Skip is also pulling its scooters out of the San Diego market.

The City Council’s Active Transportation and Infrastructure (ATI) Committee requested an update on the regulation of scooters/SMDs six months after the effective date of the SMD Ordinance, which was presented at the October 23, 2019 ATI Committee meeting.

RESOLUTION NUMBER R- 312719

DATE OF FINAL PASSAGE OCT 31 2019

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING THE CITY COUNCIL'S RESPONSE
TO THE 2018-2019 SAN DIEGO COUNTY GRAND JURY
REPORT TITLED "ELECTRIC SCOOTERS: INNOVATION OR
DISRUPTION?"

WHEREAS, on June 20, 2019, the San Diego County Grand Jury filed a report, titled "Electric Scooters: Innovation or Disruption?" (Report) with the Presiding Judge of the San Diego Superior Court, in accordance with California Penal Code section 933; and

WHEREAS, the Report focuses on impacts to the City of San Diego (City) and its citizens related to scooter usage, as well as regulatory and associated enforcement issues; and

WHEREAS, the Report includes five findings and three recommendations, which are directed to the San Diego City Council (Council) for comment; and

WHEREAS, the Council is required to provide comments to the Presiding Judge of the San Diego Superior Court within 90 days; however, the Council President's office requested and received an extension for the response to December 13, 2019; and

WHEREAS, in responding to each Grand Jury finding, the City is required to either (1) agree with the finding or (2) disagree wholly or partially with the finding; and

WHEREAS, responses to the Grand Jury recommendations must indicate that the recommendation (1) has been implemented; (2) has not yet been implemented, but will be implemented in the future; (3) requires further analysis; or (4) will not be implemented because it is not warranted or is not reasonable; further, explanations for responses are requested, when applicable; and

WHEREAS, the Office of the Independent Budget Analyst (IBA) consulted with various City departments, including Development Services, Police, Environmental Services, Risk Management, and the Office of the City Attorney, to prepare a proposed Council response, which was set forth in IBA Report No. 19-22, dated September 24, 2019; and


WHEREAS, on October 2, 2019, the Active Transportation and Infrastructure Committee of the Council (Committee) reviewed the IBA's proposed Council response and approved it with one modification; and

WHEREAS, the IBA has revised the report, incorporating the Committee's modification, and now submits IBA Report No. 19-22 REV., dated October 15, 2019, to the Council for approval; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Council approves and adopts, as its own, the response to the San Diego Grand Jury Report titled "Electric Scooters: Innovation or Disruption?" as set forth in IBA Report No. 19-22 REV., dated October 15, 2019, and incorporating any modifications approved by the Council at the Council hearing.

BE IT FURTHER RESOLVED, that the Council President is authorized and directed, on behalf of the Council, to execute and deliver the above-described response to the Presiding Judge of the San Diego Superior Court no later than December 13, 2019.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Joan F. Dawson
Deputy City Attorney

JFD:jvg
October 15, 2019
Or.Dept: IBA
CC No. N/A
Doc. No.: 2201141

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 28 2019.

ELIZABETH S. MALAND
City Clerk

By Stacy Read
Deputy City Clerk

Approved: 10/31/19
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on OCT 28 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 31 2019

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Aty Brady*, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 31271.9