



CITY OF SOUTH BEND PETE BUTTIGIEG, MAYOR

DEPARTMENT OF LAW

STEPHANIE STEELE
CORPORATION COUNSEL

ALADEAN M. DEROSE
CITY ATTORNEY

October 24, 2019

Mr. Tim Scott
South Bend Common Council
4th Floor, County City Building
South Bend, IN 46601

Re: Bill No. 49-19 Substitute Version of Ordinance to Amend the South Bend Municipal Code at Chapter 4, Article 4 to Add New Section 4-54 Addressing Shared Mobility Devices

Dear Council President Scott:

Scheduled on the Common Council's agenda for October 28, 2019 is Bill No. 49-19 regarding licensing of shared mobility devices such as bicycles and scooters. A substitute version of that Bill is attached.

The most significant change to Bill No. 49-19, based upon further study of the national operators who provide these devices, is at page 3 of the Bill under Municipal Code Section 4-54 (b)(5) which permits the Board of Works to grant an exclusive license to an operator in a given year. Also revised is Section 4-54 (f)(7), which does not make a speedometer required equipment because not all shared mobility operators have bikes equipped with speedometers. A copy of the substitute bill showing the changed subsections is attached for your convenience.

Thank you for your consideration of this substitute bill.

Sincerely,

Aladean M. DeRose
City Attorney



Substitute Bill No. 49-19

Ordinance No. _____

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND,
INDIANA, AMENDING, CHAPTER 4, ARTICLE 4, OF THE SOUTH BEND
MUNICIPAL CODE BY THE INCLUSION OF NEW SECTION 4-54 ENTITLED
SHARED MOBILITY DEVICE OPERATOR**

STATEMENT OF PURPOSE AND INTENT

Increasingly, and with public desire for clean air, exercise, and recreational activity, the use of rental electric powered mobility devices such as bicycles and scooters, have been introduced with enthusiasm to the City of South Bend. It now becomes necessary to provide for reasonable safety regulations for such devices, for the licensing of operators of shared mobility systems, and the fee for such licensing, taking into consideration recovery of costs for use of the public right of way and for City oversight.

This ordinance is in the best interest of the City of South Bend and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, as follows:

SECTION I. Chapter 4, Article 4 of the South Bend Municipal Code shall be amended by adding a new Section 4-54 entitled Shared Mobility Device Operator which shall read in its entirety as follows:

Sec. 4-54. Shared Mobility Device Operator.

(a). Definitions.

As used in this Subsection the terms below shall have the following meanings:

- (1) City* means the City of South Bend, Indiana.
- (2) License administrator* means the City Controller, or the person designated by the City Controller to perform the duties of license administrator under this Section.
- (3) Operator* means a person or entity that owns and/or operates a Shared Mobility System.
- (4) Person* means an individual, proprietorship, partnership, corporation or other legal entity.
- (5) Public right-of-way* shall have the meaning as set out in Chapter 14, Article 8, Section 14-41 of this Code.

(6) *Shared Mobility Device* means, but is not limited to, any of the following devices used in a Shared Mobility System:

- (i) A bicycle, as that term is defined in Chapter 20, Article 4, Section 20-31 of this Code.
- (ii) An electric bicycle shall mean any bicycle equipped with a motor that provides assistance when the rider is pedaling, and that ceases to provide assistance when the electric bicycle reaches 20 mph or a Bicycle equipped with a throttle-actuated motor, that ceases to provide assistance when the electric bicycle reaches 20 mph.
- (iii) Scooter, which means a conveyance or device with two (2) or more wheels in contact with the ground with a floorboard for the user to stand upon when using it, and which may be propelled by a motor that reaches no more than 20 mph.
- (iv) Any other similar device approved by the license administrator.
- (v) Shared Mobility Device does not include any other type of motor vehicle as defined in Chapter 14, Article 8, Section 40-41 of this Code.
- (vi) Notwithstanding the foregoing, a shared mobility device shall not include a device used to aid a disabled person, including but not limited to a motorized wheel chair.

(7) *Shared Mobility System or System* means a system comprised of a number of shared mobility devices of one or many types as described in subpart 2 of this Section which are provided to Users for short term rentals for point-to-point trips; and which may be locked or unlocked for use with or without being located on a rack or docking system.

(8) *User* means a person who rents and uses from an Operator, or allows another person to use an Operator's shared mobility device. A User must be at least eighteen (18) years of age.

(b) *License required; fee.*

(1) It shall be unlawful for a person or entity to operate, or cause to be operated, a Shared Mobility System in the public right-of-way in the city, unless the Operator first obtains a license from the license administrator.

(2) The fee for a Shared Mobility System license shall be fixed initially in the sum of Ten Thousand Dollars (\$10,000). The amount of the license fee shall remain in effect for calendar year 2020 or until modified thereafter by the City Board of Public Works. It is recognized that this is a new and changing business model requiring flexibility and specialized expertise in the adjustment of fees. The Board of Public Works shall notify the City Clerk within ten (10) days of any adjustment in the license fee, and any new rate shall be posted promptly to the City's website. In adjusting license fees, the Board of Public Works shall consider, among other relevant factors, the reasonableness of the cost charged by the Operator to the User, the impact of all shared mobility device usage upon the maintenance costs to the public right of way, and the license or other fees charged to similar Operators by other municipalities.

(3) A license issued under this section shall expire on the last day of the calendar year in which it is issued, and to continue operating a shared mobility system an operator shall apply for a

new license at least 30 days prior to the expiration of its license. The license fee established by this Section shall apply to an application for a new license.

(4) Upon receipt of a completed license application, the execution of an Indemnification Agreement, and the filing of a bond and insurance certificate under subsection (e) (1) of this Section, the license administrator shall either issue or deny a shared mobility operator license. In making this determination, the license administrator may consider, among other factors, the extent to which the applicant's operations or the use of the applicant's Shared Mobility Devices have complied with current law and any history of operation within other municipalities.

(4)(5) The Board of Public Works shall have the discretion to make a license issued under this Section exclusive in any calendar year based upon facts, circumstances, and the best interest of the public. These factors shall include available operators, safety/and or maintenance record of operator, selection of vehicles offered by the operator, the City's MBWE Inclusion Policy, among other factors. In awarding an exclusive license the Board of Public Works shall express its factual basis for exclusivity.

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(c) *License application; information.*

(1) Applications for a license under this chapter shall be made on forms provided by the license administrator, and shall be signed by an authorized representative of the applicant who is an officer or employee of the applicant with authority to legally bind the applicant, who shall verify under oath that the information contained in the application is true and accurate.

(2) In addition to identification and contact information, the applicant shall provide the following information

- (i) The number of Shared Mobility Devices that will be used in the Shared Mobility System;
- (ii) An inventory of all Shared Mobility Devices that shall be used in the Shared Mobility System, including a description of the model, manufacturer, serial number, unique identifier and color of each Shared Mobility Device;
- (iii) Color photographs depicting the Shared Mobility Devices to be used in the Shared Mobility System;
- (iv) A schedule of rates and charges that the applicant will charge to use a Shared Mobility Device;
- (iv) A GPS or GIS based map depicting the proposed service area of the Shared Mobility System;
- (v) A 24-hour customer service telephone number;
- (vi) The rules and regulations that are consistent with this Section 4-54 for the Users of the Shared Mobility System
- (vii) A signed indemnification agreement required by subpart (e)(1) of this Section;
- (ix) Proof of public liability coverage as required by subpart (e)(2) of this Section;
- (x) Any other information deemed necessary by the license administrator.

(3) Any changes to the information required under foregoing and above subsection (2) shall be submitted to the License Administrator within 15 days of such change.

(d) *Restrictions on operation imposed by regulation.*

The license administrator may by regulation impose appropriate conditions on the operation of Shared Mobility Systems in order to further the purposes of this Section, including but not limited to, the following:

- (1) Limits on the locations in which a Shared Mobility System may operate;
- (2) Designations of the specific locations where Shared Mobility Devices may be stored or parked when not in use;
- (3) Limits on the number of Shared Mobility Devices permitted in the Shared Mobility System;
- (4) Standards for the use and maintenance of Shared Mobility Devices;
- (5) The license administrator may impose any other regulations necessary to further the purposes of this Chapter.

(e) *Indemnification, insurance.*

(1) Any Shared Mobility Device operator issued a license under this chapter shall, as a condition of the issuance and continued validity of the license to operate a Shared Mobility System, indemnify, hold harmless and defend, by counsel of the city's choosing, the City and its respective officers, agents, officials and employees from any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any negligent or wrongful act or omission, or violation of any provision of this Code or other law by an Operator or any of its officers, agents, employees and users arising from the operation, maintenance, or use of the shared mobility system and the Operator's shared mobility devices. Such indemnity shall include attorneys' fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by any insurance coverage required by this chapter or otherwise carried by the Operator. This indemnification requirement shall be memorialized in an agreement signed by an authorized representative of the Operator who is an officer or employee of the Operator with authority to legally bind the Operator, and the Operator shall be required to post an indemnity bond in favor of the city. Such agreement and indemnity bond shall be in a form approved by the City's corporation counsel.

(2) Any Shared Mobility Device Operator issued a license under this chapter shall, as a condition of the issuance and continued validity of the license to operate a shared mobility system, purchase and maintain a policy of commercial general liability insurance that will protect it and the City from claims for damages because of bodily injury and personal injury, including death and claims of damages to property which may arise out of or result from the operation, maintenance, or use of the shared mobility system and the operator's shared mobility devices.

The commercial general liability insurance required under this subsection (e)(2) shall be not less than: (1) each occurrence limit of \$1,000,000.00; (2) \$100,000.00 for damage to rented premises; (3) \$5,000.00 for medical expenses; (4) \$500,000.00 for personal and advertising injury; (5) \$1,000,000.00 products/completed operations; (6) \$1,000,000.00 auto liability; (7) \$2,000,000.00 general aggregate limit; (8) \$5,000,000.00 excess/umbrella liability. Certificates of insurance naming the City as an additional insured showing such coverage then in force, but not less than the above amounts, shall be submitted by the Operator with its

application for a license under this chapter. Such certificates shall contain a provision that the policies and coverage afforded thereunder will not be canceled until at least 30 days after written notice to the license administrator.

(3) The failure to maintain the bond or insurance policies required under this Section throughout the entire term of a license shall constitute a violation of this Code.

(f) Safety, condition and appearance; equipment.

(1) A Shared Mobility Device shall always be maintained in a reasonably clean and working condition.

(2) All shared mobility operators must meet all safety standards as prescribed by the license administrator.

(3) Every Shared Mobility Device shall have a unique identifier that is visible to the user that clearly identifies both the Shared Mobility System operator and the specific Shared Mobility Device.

(4) Every Shared Mobility Device shall have posted on it a notice to the user of the 24-hour telephone number with live operator, website, and mobile application information of the shared mobility operator.

(5) Every Shared Mobility Device shall be equipped with a bell, horn, or other lawful sound signaling device.

(6) Every Shared Mobility Device shall be equipped with the following if able to operate after sunset and before sunrise:

- (i) a lamp on the front exhibiting a white light visible from a distance of at least five hundred (500) feet to the front; and
- (ii) a lamp on the rear exhibiting a red light visible from a distance of at least five hundred (500) feet to the rear.

(7) Every Shared Mobility Device with a motor ~~shall~~ should be equipped with a speedometer.

(8) Every Shared Mobility Device shall have posted on it language clearly visible to users that:

- (i) Users are encouraged to wear helmets;
 - (ii) Users shall follow all traffic laws;
 - (iii) Users shall yield to pedestrians in the public right of way; and
 - (iv) Users must follow proper parking procedures.
- (iv) Users must operate shared mobility devices only in designated bike lanes, protected bike lines as marked within City sidewalks, or on multi-use bike paths. Use is prohibited on a sidewalk outside a protected bike lane, or in any location impeding pedestrian access especially if the device would affect access for persons with mobility impairments.

Substitute Bill No. 49-19

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(2) The fee for a Shared Mobility System license shall be fixed initially in the sum of Ten Thousand Dollars (\$10,000). The amount of the license fee shall remain in effect for calendar year 2020 or until modified thereafter by the City Board of Public Works. It is recognized that this is a new and changing business model requiring flexibility and specialized expertise in the adjustment of fees. The Board of Public Works shall notify the City Clerk within ten (10) days of any adjustment in the license fee, and any new rate shall be posted promptly to the City's website. In adjusting license fees, the Board of Public Works shall consider, among other relevant factors, the reasonableness of the cost charged by the Operator to the User, the impact of all shared mobility device usage upon the maintenance costs to the public right of way, and the license or other fees charged to similar Operators by other municipalities.

(3) A license issued under this section shall expire on the last day of the calendar year in which it is issued, and to continue operating a shared mobility system an operator shall apply for a

new license at least 30 days prior to the expiration of its license. The license fee established by this Section shall apply to an application for a new license.

(4) Upon receipt of a completed license application, the execution of an Indemnification Agreement, and the filing of a bond and insurance certificate under subsection (e) (1) of this Section, the license administrator shall either issue or deny a shared mobility operator license. In making this determination, the license administrator may consider, among other factors, the extent to which the applicant's operations or the use of the applicant's Shared Mobility Devices have complied with current law and any history of operation within other municipalities.

(5) The Board of Public Works shall have the discretion to make a license issued under this Section exclusive in any calendar year based upon facts, circumstances, and the best interest of the public. These factors shall include available operators, safety/and or maintenance record of operator, selection of vehicles offered by the operator, the City's MBWE Inclusion Policy, among other factors. In awarding an exclusive license the Board of Public Works shall express its factual basis for exclusivity.

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(1) Applications for a license under this chapter shall be made on forms provided by the license administrator, and shall be signed by an authorized representative of the applicant who is an officer or employee of the applicant with authority to legally bind the applicant, who shall verify under oath that the information contained in the application is true and accurate.

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- (iv) A schedule of rates and charges that the applicant will charge to use a Shared Mobility Device;
- (v) A GPS or GIS based map depicting the proposed service area of the Shared Mobility System;
- (vi) A 24-hour customer service telephone number;
- (vii) The rules and regulations that are consistent with this Section 4-54 for the Users of the Shared Mobility System
- (viii) A signed indemnification agreement required by subpart (e)(1) of this Section;
- (ix) Proof of public liability coverage as required by subpart (e)(2) of this Section;
- (x) Any other information deemed necessary by the license administrator.

(3) Any changes to the information required under foregoing and above subsection (2) shall be submitted to the License Administrator within 15 days of such change.

(d) *Restrictions on operation imposed by regulation.*

The license administrator may by regulation impose appropriate conditions on the operation of Shared Mobility Systems in order to further the purposes of this Section, including but not limited to, the following:

- (1) Limits on the locations in which a Shared Mobility System may operate;
- (2) Designations of the specific locations where Shared Mobility Devices may be stored or parked when not in use;
- (3) Limits on the number of Shared Mobility Devices permitted in the Shared Mobility System;
- (4) Standards for the use and maintenance of Shared Mobility Devices;
- (5) The license administrator may impose any other regulations necessary to further the purposes of this Chapter.

(e) *Indemnification, insurance.*

(1) Any Shared Mobility Device operator issued a license under this chapter shall, as a condition of the issuance and continued validity of the license to operate a Shared Mobility System, indemnify, hold harmless and defend, by counsel of the city's choosing, the City and its respective officers, agents, officials and employees from any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any negligent or wrongful act or omission, or violation of any provision of this Code or other law by an Operator or any of its officers, agents, employees and users arising from the operation, maintenance, or use of the shared mobility system and the Operator's shared mobility devices. Such indemnity shall include attorneys' fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by any insurance coverage required by this chapter or otherwise carried by the Operator. This indemnification requirement shall be memorialized in an agreement signed by an authorized representative of the Operator who is an officer or employee of the Operator with authority to legally bind the Operator, and the Operator shall be required to post an indemnity bond in favor of the city. Such agreement and indemnity bond shall be in a form approved by the City's corporation counsel.

(2) Any Shared Mobility Device Operator issued a license under this chapter shall, as a condition of the issuance and continued validity of the license to operate a shared mobility system, purchase and maintain a policy of commercial general liability insurance that will protect it and the City from claims for damages because of bodily injury and personal injury, including death and claims of damages to property which may arise out of or result from the operation, maintenance, or use of the shared mobility system and the operator's shared mobility devices.

The commercial general liability insurance required under this subsection (e)(2) shall be not less than: (1) each occurrence limit of \$1,000,000.00; (2) \$100,000.00 for damage to rented premises; (3) \$5,000.00 for medical expenses; (4) \$500,000.00 for personal and advertising injury; (5) \$1,000,000.00 products/completed operations; (6) \$1,000,000.00 auto liability; (7) \$2,000,000.00 general aggregate limit; (8) \$5,000,000.00 excess/umbrella liability. Certificates of insurance naming the City as an additional insured showing such coverage then in force, but not less than the above amounts, shall be submitted by the Operator with its

application for a license under this chapter. Such certificates shall contain a provision that the policies and coverage afforded thereunder will not be canceled until at least 30 days after written notice to the license administrator.

(3) The failure to maintain the bond or insurance policies required under this Section throughout the entire term of a license shall constitute a violation of this Code.

(f) Safety, condition and appearance; equipment.

(1) A Shared Mobility Device shall always be maintained in a reasonably clean and working condition.

(2) All shared mobility operators must meet all safety standards as prescribed by the license administrator.

(3) Every Shared Mobility Device shall have a unique identifier that is visible to the user that clearly identifies both the Shared Mobility System operator and the specific Shared Mobility Device.

(4) Every Shared Mobility Device shall have posted on it a notice to the user of the 24-hour telephone number with live operator, website, and mobile application information of the shared mobility operator.

(5) Every Shared Mobility Device shall be equipped with a bell, horn, or other lawful sound signaling device.

(6) Every Shared Mobility Device shall be equipped with the following if able to operate after sunset and before sunrise:

- (i) a lamp on the front exhibiting a white light visible from a distance of at least five hundred (500) feet to the front; and
- (ii) a lamp on the rear exhibiting a red light visible from a distance of at least five hundred (500) feet to the rear.

(7) Every Shared Mobility Device with a motor should be equipped with a speedometer.

(8) Every Shared Mobility Device shall have posted on it language clearly visible to users that:

- (i) Users are encouraged to wear helmets;
- (ii) Users shall follow all traffic laws;
- (iii) Users shall yield to pedestrians in the public right of way; and
- (iv) Users must follow proper parking procedures.
- (v) Users must operate shared mobility devices only in designated bike lanes, protected bike lines as marked within City sidewalks, or on multi-use bike paths. Use is prohibited on a sidewalk outside a protected bike lane, or in any location impeding pedestrian access especially if the device would affect access for persons with mobility impairments.

(9) Unless approved by the license administrator, it shall be unlawful for any shared mobility operator to advertise for a third party on any equipment related to its Shared Mobility System or on its shared mobility devices. Any violation not corrected within 24 hours of notice shall be in violation of this code, and if the violation is on a Shared Mobility Device the Device may be removed from the Public right-of-way and impounded by the city at the cost of the operator.

(10) A Shared Mobility System operator shall be jointly and severally liable for all violations of this chapter, including the violation of any traffic laws and parking restrictions, relating to a user's use of a Shared Mobility Device.

(g) Removal from the public right-of-way.

(1) During the hours of 6 AM through 9 PM any Shared Mobility Device that is unsafe to operate or is inoperable shall be removed from the public right of way by the shared mobility operator within 2 hours of notice made to the shared mobility operator. During the hours of 9:01 PM through 5:59 AM, an inoperable Shared Mobility Device or a Shared Mobility Device that is not safe to operate shall be removed from the public right of way by the shared mobility operator within 6 hours of notice made to the shared mobility operator. Notice may be given to the Shared Mobility System operator by any person through the 24-hour phone number, website, email, or mobile application.

(2) The license administrator reserves the right to prohibit the use of any Shared Mobility Device in the area surrounding any special event and the area affected by any public safety emergency.

(3) Shared mobility devices that are not removed pursuant to above subsection (g)(1), or any Shared Mobility Device that is not parked in accordance with the following subsection (h) may be removed by the City at the cost of the shared mobility operator.

(4) Any Shared Mobility Device that poses a hazard to the public health and safety may be removed by the City at the cost of the shared mobility operator.

(h) Parking.

A Shared Mobility Device that is not in use:

(1) Shall be parked in such a way that leaves at least ~~six~~ five feet of unobstructed passage in the public right of way, which shall be documented by the Operator through its operating software or other acceptable means;

(2) May be parked in the grassplot, the grassy section of Public right-of-way between the sidewalk and street, but may not park in any landscaped areas in the public right-of-way between the sidewalk, street or buildings;

(3) Shall be parked at a bicycle rack or docking station, if available; and:

(i) Shall be parked in an upright manner;

(ii) Shall not be parked in a way to obstruct:

- (a) Any transit infrastructure, where parking blocks ADA accessibility, bike share stations, or bus operations including but not limited to bus stops and signs, shelters, passenger waiting areas and bus layover and staging zones, except at existing bicycle racks;
- (b) Any loading zone;
- (c) Any ADA accessible parking zone or parking space;
- (d) Any street furniture that require pedestrian access;
- (e) Any curb ramp;
- (f) Any entrance or exit from any building;
- (g) Any driveway; and
- (h) Any raingarden and/or drainage facilities.

(iii) Shall not be parked in any street or alleyway.

(4) Pursuant to Subsection (g) of this Section 4-54, the license administrator may by regulation limit the locations at which a Shared Mobility System may operate or cause Shared Mobility Devices to be stored or parked.

(i) *City wide distribution of shared mobility devices.*

An Operator shall distribute all its types of shared mobility devices in an equitable manner throughout the City to assure that shared mobility devices are available for convenient use and in adequate quantities by Users in all sections of the City, and most particularly in low and moderate income areas. This shall not prevent an Operator from considering in its distribution those City areas where shared mobility devices are more frequently used. The specific manner of equitable distribution after considering all circumstances shall be addressed in the agreement between the City and the operator.

(j) *Data sharing.*

(1) To inform and support safe, equitable and effective management of the Shared Mobility Device System throughout the city and inform transportation planning efforts, all Shared Mobility Operators shall provide anonymized data, including but not limited to: (1) origin and destination data; (2) the number of bike share users and trips. The license administrator shall determine the scope, format, frequency and manner of data to be collected and transmitted to the City.

(2) All Shared Mobility Operators shall keep records of maintenance, operations, and reported collisions of its Shared Mobility Devices. The license administrator shall determine the frequency and method of reporting this information.

(k) *Enforcement and penalties.*

Operating A Shared Mobility System without a license, operating without a bond or required insurance, or operating in a manner which poses an unreasonable risk of serious bodily injury may subject the Operator to a cease and desist order or other specific injunctive relief by a court of

competent jurisdiction in St. Joseph County, Indiana and a civil penalty of Two Thousand five hundred dollars (\$2,500), and any other damages permitted by law.

(l) License application date.

From and after the effective date of this ordinance, it shall be unlawful to operate a Shared Mobility System without first obtaining a license as provided in this chapter. The license administrator shall be prepared to accept license applications beginning on January 2, 2020.

SECTION II. If any section, sentence, clause, word or other provision of this Ordinance or any ordinance amendatory thereof or supplemental thereto, shall be held invalid, such fact shall not affect the validity of any other section, sentence, clause, word or other provision herein, which may be severable therefrom and be valid and capable of reasonable effect and application without such invalid portions, and to this end all such portions of this article are declared severable and shall be so construed whenever possible to do so.

SECTION III. This ordinance shall be in full force and effect from and after its passage by the Council, approval by the Mayor, and compliance with publication required by Ind. Code § 36-3-4-14.

Member of the Common Council

Attest:

City Clerk

Presented by me to the Mayor of the City of South Bend, Indiana on the _____ day of _____, 2____, at _____ o'clock ____ . m.

City Clerk

Approved and signed by me on the _____ day of _____, 2____, at _____ o'clock ____ . m.

Mayor, City of South Bend, Indiana