

ORDINANCE No. 947

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA ADDING CHAPTER 14.60 TO THE DEL MAR MUNICIPAL CODE REGARDING A PILOT SHARED MOBILITY PROGRAM

WHEREAS, the City of Del Mar (City) is committed to the long-range goal of protecting the natural environment, increasing sustainability efforts, and improving overall quality of life. The City has adopted a Climate Action Plan which includes a number of strategies to achieve greenhouse gas (GHG) emissions reduction goals and targets, including facilitating safe, convenient and affordable alternative transportation options; and

WHEREAS, in the last year, in part due to rapid technological advancements, the public rights-of-way of many cities have seen an influx of shared mobility devices; and

WHEREAS, the proliferation of such systems and devices may impede pedestrian circulation and paths of travel, and create hazards in the public rights-of-way for persons with disabilities and others, especially when left unattended; and

WHEREAS, such devices have been involved in a number of traffic collisions, some of which resulted in serious injuries; and

WHEREAS, in response to the rapid proliferation of such systems and devices, and the serious safety hazards created by their use, the City seeks to adopt a pilot program that will establish operating regulations for shared mobility devices; and

WHEREAS, the City must balance the benefits of shared mobility alternatives with its obligation to protecting City as well as protecting the health, safety and welfare of those who may use or may be impacted by the use of these shared mobility alternatives on City, streets, roads, sidewalks, facilities and other public rights of way. This includes, but is not limited to, City obligations to manage City risks arising from these alternative mobility alternatives, ensure compliance with disability regulations, maintain minimum widths for pedestrian usability in City business and commercial corridors and overall preserve a safe, accessible, and healthy transportation and pedestrian environment in the City; and

WHEREAS, the City seeks to create a shared mobility device pilot program that will improve access to mobility options for residents, employees, visitors to Del Mar, create new and diverse mobility options, ensure safety by reducing sidewalk and pathway impediments, facilitate access for disabled individuals, educate users about the proper rules and etiquette, create a legal and enforceable framework for managing shared mobility in the public right-of-way, and build good working partnerships with shared mobility service providers; and

WHEREAS, a pilot shared mobility program would establish minimum operating requirements in the categories of maintenance, education, safety, customer service, data sharing and insurance/indemnification and also identify a broader list of recommended program components through which the Operator can be evaluated during the pilot term; and

WHEREAS, a pilot shared mobility program would be established for a short term to inform the content of future operating requirements and program components, and to provide flexibility during the pilot program duration through the Administrative Regulations.

NOW, THEREFORE, the City Council of the City of Del Mar hereby ordains as follows:

**SECTION ONE:** All the above statements are true.

**SECTION TWO:** Chapter 14.60 is added to Title 14 of the Del Mar Municipal Code and shall read as follows:

### **Chapter 14.60 Pilot Bike Share Program**

#### **14.60.010 Purpose and Intent.**

The purpose of this ordinance is consistent with the City's goals of enhancing mobility and access, easing traffic congestion, and promoting sustainability. 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.

#### **14.60.020 Definitions.**

The following definitions shall be applicable when the following words or phrases are used hereafter in this ordinance, whether or not these words or phrases are capitalized:

"Abandon" shall mean leaving any item unattended for any length of time.

"City Manager" shall mean the City Manager or his or her designee.

"Operator" shall mean the person or business entity licensed by the City to operate the Pilot Bike Share Program pursuant to this Chapter.

"Pilot Bike Share Program" shall mean a pilot program establishing a single licensee under a license agreement to rent, use, locate, display, offer or place for rent unpowered bicycles and/or "Class 1" or "Class 2" electric bicycles within City boundaries. The Pilot Bike Share Program requires the City Manager or delegated staff

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

“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.

“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. This includes, but is not limited to, those private areas adjacent to public property.

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

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

“Restricted areas” shall mean any area within the City that has been deemed off limits to Pilot Bike Share Program Bike use and/or parking.

#### 14.60.030 Administrative Regulations.

- A. The City may at its discretion develop administrative regulations to implement the provisions of this Chapter, which may include regulations relating to lawful conduct, prohibited conduct, public safety, data sharing, data privacy and/or the timely removal of hazards.
- B. No person shall fail to comply with the City’s administrative regulations, if adopted. Any violation of any administrative regulation issued pursuant to this Chapter shall constitute a violation of this Code and shall subject the violator to the penalties set forth in this Code.
- C. The City Council may establish operator 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.

14.60.040 Prohibited Conduct.

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

- A. Deploy, drop, abandon, leave, dock or otherwise place or encourage the use of any Prohibited Mobility Device within City Boundaries.
- B. Deploy, drop, abandon, leave, dock or otherwise place any Pilot Bike Share Program Bikes within restricted areas.
- C. Abandon or temporarily park any Pilot Bike Share Program Bike or Prohibited Mobility Device, in the City Public Right-of-Way or a City Public Area in a manner that: (1) obstructs travel upon or blocks access to a Public Area or Public Right-of-Way; (2) violates ADA or any other disability access and path of travel laws, requirements and/or regulations; (3) poses an immediate public safety hazard or nuisance; or (4) is otherwise prohibited by applicable local, State or Federal laws or administrative regulations.
- D. Use or aid, abet or encourage the use of any Prohibited Mobility Device in violation this Code or impair any license, permit, applicable law or administrative regulation.
- E. Use or aid, abet or encourage the use of any Pilot Bike Share Program Bikes in restricted areas in violation this Code.
- F. This Ordinance is not intended to prohibit or limit the lawful private non-commercial use, ownership or operation of a mobility device within City limits.

14.60.050 Pilot Bike Share Program Operator License Agreement.

- A. Under this Pilot Bike Share Program, the City Manager is authorized to negotiate one (1) shared Pilot Bike Share Program Operator License Agreement ("License Agreement") authorizing a single Operator to deploy Bikes within designated City locations.
- B. The City Manager may impose, as part of the License Agreement issued, any and all conditions that are determined necessary to effectuate the purposes of this

Chapter, consider accessibility of any Public Area, Public Right-of-Way and the availability of public space for shared use by all, and to protect City and the health, welfare, and safety of the public.

- C. When presenting the negotiated License Agreement to City Council for approval, the City Manager shall report, in writing, the reasons supporting the License Agreement terms, conditions and Operator selection.
- D. The number, location, technical requirements and mode(s) of Pilot Bike Share Program Bikes and related applications shall be set forth in the negotiated License Agreement approved by City Council.
- E. At any time, in the City Council's discretion, the City Council may reassess the approved Operator License Agreement and its terms, consistent with the approved agreement.
- F. The City Council approved License Agreement and its determinations under this Section shall constitute the final decision of the City and shall not be subject to further administrative review.
- G. Before Bike deployment, the Operator must execute a license agreement in a final form approved by City Council, comply with all license agreement conditions, provide evidence of insurance as required by this Chapter and license agreement and obtain a City business license.

14.60.060 Operator Indemnity and Insurance Requirements.

To the fullest extent permitted by law, the City shall not assume any liability whatsoever with respect to having issued a Pilot Bike Share Program Operator License or otherwise approving the operation of any Bike or other shared mobility device. As a condition to the issuance of any Pilot Bike Share Program Operator license or any Bike or other shared mobility device, the Operator shall at a minimum be required to meet all of the following conditions:

- A. The Operator shall, in language approved by the City Risk Manager, agree to indemnify, defend (at Operator's sole cost and expense), and hold harmless the City, and its officers, officials, employees, representatives, and agents from any and all claims, losses, damages, injuries, liabilities or losses which arise out of, or which are in any way related to, the City's issuance of or decision to enter into a Pilot Bike Share Program Operator License Agreement, the process used by the City in making its decision, any alleged violation of any Federal, State or local laws by Operator, and for any and all claims, losses, damages, injuries, liabilities or losses to any Bike user or any third party, arising out of, or which are in any way related to, Operator activities and operations, including, but not limited to, under the Pilot Program Bike Share Operator License Agreement.

- B. Maintain insurance at coverage limits, and with conditions thereon, as determined by the City Risk Manager as necessary and appropriate, including naming City of Del Mar as an additional insured. The Operator's insurance policy shall be endorsed to state that coverage shall not be cancelled except after thirty days' prior written notice has been given to the City. If any insurance policy issued to an Operator is cancelled for any reason, the license issued under this Chapter is automatically suspended and all Operator operations shall cease. In order to reinstate the license, the licensee shall provide a new certificate and policy of insurance to the City.

14.60.070 Grounds for License Agreement Termination, Revocation, or Suspension

A License Agreement may be revoked, suspended, or denied by the City Manager consistent with the terms of the License Agreement approved by City Council or for violation of this Chapter.

14.60.080 Pilot Bike Share Program Assessment.

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

14.60.090 Device Impoundment.

- A. Except for any Bike authorized by a City Council under a City Pilot Bike Share Program License Agreement, Prohibited Shared Mobility Devices that are rented, used, dropped, left, located, displayed, offered or made available for rent, or Abandoned, in the Public Right-of-Way, Public Area, or is otherwise determined to constitute a public nuisance shall be subject to immediate impoundment by the City.
- B. The City Council may adopt impound fees by resolution, which shall reflect the City's enforcement, investigation, administration, storage and impound costs.
- C. No person shall retrieve any impounded Prohibited Shared Mobility Device or Pilot Bike Share Program Bike except upon demonstrating proper proof of ownership of the device and payment of applicable impound fees.
- D. Any Prohibited Shared Mobility Device or Pilot Bike Share Program Bike not retrieved from impound for more than 30 calendar days may, in the City Manager's discretion, be repurposed, recycled, destroyed, or auctioned in accordance with applicable state law.

14.60.100 Enforcement

- A. Any person who violates any provision of this Chapter, shall be guilty of an infraction or a misdemeanor, which shall be punishable pursuant to Chapter 1.08 of this Code.
- B. Any person who violates any provision of this Chapter, including any permit condition, shall be subject to administrative fines and administrative penalties pursuant to Chapter 1.10 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.

14.60.110 Severability.

In the event that any court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause or phrase in this Ordinance to be unconstitutional, preempted or otherwise invalid, the invalid portion shall be severed from this Ordinance and shall not affect the validity of the remaining portions of this Ordinance. The City hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause or phrase in this Ordinance irrespective of whether any one or more sections, subsections, paragraphs, sentences, clauses or phrases in this Ordinance might be declared unconstitutional, preempted, or otherwise invalid.

14.60.120 Conflicts with Prior Ordinances

In the event that any City ordinance or regulation, in whole or in part, adopted prior to the effective date of this Ordinance, conflicts with any provisions in this Ordinance, the provisions in this Ordinance will control.

**SECTION THREE:**

This Ordinance was introduced by the City Council on March 18, 2019.

**SECTION FOUR:**

The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five (5) days prior to the consideration of its adoption and again within fifteen (15) days following adoption indicating votes cast pursuant to the provisions of Government Code Section 36933.

**SECTION FIVE:**

Upon adoption, the Ordinance will take effect and be in force 30 days from the date of City Council adoption (“Effective Date”).

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council held on the 1<sup>st</sup> day of April 2019.

---

Dave Druker, Mayor  
City of Del Mar

APPROVED AS TO FORM:

---

Leslie E. Devaney, City Attorney  
City of Del Mar

ATTEST AND CERTIFICATION:

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO  
CITY OF DEL MAR

I, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. 947 which has been published pursuant to law, and adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 1<sup>st</sup> day of April, 2019, by the following vote:

AYES: Mayor Druker, Deputy Mayor Haviland, Council Members Gaasterland,  
Parks and Worden

NOES: None

ABSENT: None

ABSTAIN: None

---



Ashley Jones, Administrative Services Director/City  
Clerk City of Del Mar