

Electric Scooters: Innovation or Disruption?

EXECUTIVE SUMMARY

The 2018/2019 San Diego County Grand Jury (Grand Jury), in response to a citizen complaint, studied the laws and policies governing electric scooters and the concerns raised by citizens regarding the sudden influx of these devices related to safety and clutter. The Grand Jury also investigated the benefits described by the companies and the drawbacks posed by electric scooters in order to recommend actions to the City of San Diego (City).

For simplicity, this report refers throughout to “electric scooters”, but most of the same issues apply to “shared” bicycles, both electric and pedaled, and other “micro-mobility” devices.

Through its investigation, the Grand Jury found that the City has been very slow in regulating electric scooter companies. New policies and procedures were not in place until May 2019 as this report was being published, almost a year and a half after these scooters first appeared in the City.

Moving forward the Grand Jury recommends that the City consider stronger enforcement of existing traffic laws and recent City ordinances relating to electric scooters. The Grand Jury also recommends that the City develop a strategy for dealing with new products, services and technologies when they first appear.

The Grand Jury also studied how other cities of comparable size have responded to these issues by enacting new ordinances, enforcing existing policies and establishing pilot programs. The difference between these cities and the City of San Diego are detailed in Appendix 1.

BACKGROUND

The Grand Jury decided to study this situation shortly after problems first arose.

On March 13, 2019, the first scooter fatality occurred in the City. According to police officials, in 2018 there were 44 collisions of which 13 resulted in serious injuries. To date in 2019 there have been 15 collisions resulting in six serious injuries. It is estimated that hundreds of unreported less serious accidents have also taken place, some involving children. Uncounted thousands of electric scooters and electric bicycles are parked or being ridden on San Diego sidewalks. This inundation occurred very rapidly, yet months later, the City of San Diego had not met this challenge with any meaningful response, while injuries and impediments mounted.

METHODOLOGY

The Grand Jury prepared this report by:

- Interviewing local officials
- Researching relevant laws and ordinances concerning riding and parking scooters in San Diego
- Attending City Council committee meetings
- Reading proposed plans and ordinances
- Reviewing other published resources relevant to scooter issues

DISCUSSION

The Grand Jury studied the issues regarding dockless electric scooters after it became apparent that a number of accidents have taken place on electric scooters resulting in serious injuries. During the summer of 2018, San Diego’s downtown sidewalks became overrun by hundreds, if not thousands, of scooters from various companies. Some scooters are being ridden unsafely and illegally. California Vehicle Code sections 21210-21235 pertain to electric scooters, and many of these legal requirements are not enforced or obeyed. For adults, a helmet requirement was removed from the Vehicle Code effective January 1, 2019. Helmets are still required for those under 18 but many teenagers are still illegally riding helmetless. Riding without a valid driver’s license, two people riding on one scooter and operating scooters on sidewalks all remain illegal under California Vehicle Code. Accidents and injuries are piling up.¹

Municipal Response

The Grand Jury has researched how other cities have governed scooters. (See Appendix 1).

As early as August 30, 2018, other California cities were regulating micro-mobility companies. For example, the City of Santa Monica banned scooters when they first appeared. Their city attorney criminally charged a company resulting in a \$300,000 settlement.² Shortly thereafter, Santa Monica passed regulations and instituted a pilot program requiring \$20,000 as an initial licensing fee, in addition to an annual fee of \$130 per scooter.³ As part of the pilot program, participating scooter companies all agreed to provide limits on speed and restrictions for use in certain areas (“geo-fencing”) as well as data tracking to determine use and location of the scooters. They were also required to carry insurance and agreed to indemnify the city for any damages imposed against the city as a result of scooter accidents. This last term may be most important financially.

¹ Levitan, C., La Jolla Light (2019) *Scouting Pains: Early Results in from e-Scooter Injuries at La Jolla and San Diego Hospitals*

² Santa Monica Daily Press, *Bird Rides Inc. Takes Plea Deal and Will Pay \$300,000*, 2018.

³ *City of Santa Monica Shared Mobility Device Pilate Program Administrative Regulations* (2018)

So what has San Diego done? At the time of this writing, a mere \$100 business license is the only prerequisite in San Diego to placing thousands of scooters on sidewalks and in parks.

Also, in July 2018, the San Diego City Council voted down a ban on scooters operating on the boardwalks in La Jolla Shores, Mission Beach, Pacific Beach and on Mission Bay Park shorewalk.⁴ Prior to that, in the spring of 2018, the office of the City Attorney sent out form letters to dockless scooter and bicycle companies, providing a summary of the aforementioned vehicle code sections, along with applicable municipal code ordinances.

The San Diego Municipal Code allows ample opportunity to restrict rentals and placement of scooters on sidewalks, beach areas and parks.⁵ The companies were also informed in the letter of citizen complaints and warned that it is illegal to block the public right of way, i.e., sidewalks. To comply with the Americans with Disabilities Act, the public right of way must remain free of impediments.

Financial Risks

San Diego, which is self-insured, remains vulnerable to significant financial risks from injuries related to scooters.

In July 2015, an accident occurred in San Diego injuring a rider on a two wheeled self-balancing personal transporter. The City was sued and damages were paid. The cost to the citizens of San Diego was \$1.7 million.⁶ This year, a number of serious accidents have taken place on electric scooters, resulting in injuries at times worse than those suffered by the aforementioned rider. On March 13, 2019, the first scooter fatality occurred in the City of San Diego. Hundreds of less serious accidents have also taken place, some involving children.⁷

Many of these accident cases are in the initial stages of litigation or have already been filed. The outcome of the lawsuits may depend on the effect of the scooter companies' user agreements. A rider must agree to a user agreement in order to activate a scooter. Ostensibly, and in severe legal terms, the agreement binds the rider to assuming the total financial risk of any occurrence during the ride. One user agreement available online is 41 pages long.⁸

⁴ Mackin-Solomon, A., La Jolla Light (2018) *San Diego City Council Votes against Scooter Ban on Boardwalks in La Jolla Shores, Pacific Beach and Mission Beach*

⁵ City of San Diego Municipal Code, (i.e, Article 3 Public Parks, Playgrounds, Beaches, Tidelands Division 1, Use of Park Areas, section 63.20.20 Sales and Rentals)

⁶ Garrick, D., San Diego Union Tribune (2018) *San Diego Paying 1.7M for Segway Injury on La Jolla Street*

⁷ ABC 10 News (October 19, 2018) *Boy Riding Dockless Scooter Injured after Crash in North Park*

⁸ Example end user agreement (<https://www.li.me/user-agreement>)

Enforcement

It is important to note that at all the City Council meetings attended by Grand Jury members, by far the most vocal objection to scooters was their flagrant misuse on City sidewalks. Such uses are now, and have always been, illegal under California Vehicle Code. None of the proposed regulations will change what is already illegal. Only rigorous enforcement will address the citizens' concern. There needs to be more enforcement of existing laws.

Currently the Traffic Division of the San Diego Police Department (SDPD) is responsible for law enforcement of all applicable vehicle code violations as pertains to motorized scooters. The Division conducts semi-monthly targeted enforcement using grant money from the California Office of Traffic Safety.⁹ Enforcement is currently lax outside the targeted areas and times. The Grand Jury recommends that fees collected from scooter companies be earmarked for use by the SDPD so that enforcement would be consistent, frequent and widespread.

New Innovative Businesses

Micro-mobility vehicles are not the first, nor will they be the last, innovative new business to arrive practically overnight in San Diego.

The Grand Jury is concerned that the City Council has been too slow to address the concerns discussed above and the response (or lack thereof) is nothing new. Recently, several new business types have been introduced to the City without regulation or response. Automobile ridesharing came into the City without local regulations. Last year the City failed to agree on how to regulate "short term vacation rentals". Autonomous vehicles and package delivery by drones are in the foreseeable future. Other new and innovative businesses and products will undoubtedly be introduced into San Diego, with dangers and/or benefits greater than posed by the "micro-mobility" industry. It is incumbent upon the City leadership to act promptly to protect its citizens while still encouraging and promoting innovation.

FINDINGS

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

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

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

⁹ California Office of Traffic Safety (<https://www.ots.ca.gov/grants/>)

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

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.

RECOMMENDATIONS

The 2018/2019 San Diego County Grand Jury recommends the San Diego City Council ask staff to bring forward for their consideration:

- 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.
- 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.
- 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.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
- (1) The respondent agrees with the finding

- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Date</u>
City Council, City of San Diego	19-52 through 19-54	9/18/19

Filed: June 20, 2019

Works Cited

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- Marshall, A. (2018). 2018 Was the Year of the Scooter. What Happens Now? *Wired*.
- Yakowicz, W. (2019). Inside Bird's Shadowy Army of E-Scooter Chargers. *INC*.

Appendix 1

The chart shown in this appendix gives a comparison of the City of San Diego versus seven other cities in Arizona, Oregon and California. For San Diego the regulations are all proposed by the Mayor’s Office as of February 20, 2019 but not yet adopted by the City Council. Some items not covered in the proposed regulations are covered in the California Vehicle Code (CVC).

Some of the information pertaining to other cities may be out of date at the time of publication of this report.

As can be seen by this chart many other cities are far ahead of San Diego in having regulations, scooter companies’ fee and license structures, insurance requirements and pilot programs in place.

Rules & Ordinances/Cities	San Diego, CA	Scottsdale, AZ	Tempe, AZ	Portland, OR	Santa Monica, CA	San Francisco, CA	Los Angeles, CA	Coronado, CA
Definitions Used By City	California Vehicle Code (CVC)		Shared Active Transportation Vehicle (SATV)				DOCKLESS ON-DEMAND PERSONAL MOBILITY CONDITIONAL PERMIT - Parking Section (DoDPMCP)	
General Notes	All regulations are pending (Proposed Rules - Feb 20, 2019) unless contained in the CVC			Pilot program in process	Pilot Program in process.	Board of Supervisors City and County of San Francisco. Meeting Minutes, April 17, 2018. See items 180214 and 180392. In addition there is a pilot program in place.	Pilot Program in process.	As of April 2018 no dock-less bicycles are allowed. Dock-less bicycles found in the public right of way are tagged by the Police Department then impounded by Public Services. No mention of scooters

Rules & Ordinances/Cities	San Diego, CA	Scottsdale, AZ	Tempe, AZ	Portland, OR	Santa Monica, CA	San Francisco, CA	Los Angeles, CA	Coronado, CA
Parking								
Sidewalk	May not block sidewalk CVC 21235(j)	Must yield the right-of-way to pedestrians using the sidewalk. User shall yield the right-of-way to vehicles while crossing a driveway or intersection	SATVs shall be staged and parked so as not to block or impede pedestrian and wheelchair traffic in compliance the Americans with Disabilities ACT (ADA)	In the Sidewalk Corridor and fully contained in the Furnishings Zone, or within a City-designated Scooter Parking Area	See section 3.10 Deployment and System Operations. City of Santa Monica	Restrictions	(DoDPMCP)	N/A
Racks	Not mentioned	Not mentioned	On certain streets SATVs shall be staged adjacent to a bicycle rack (no more than 10 feet away)	Not mentioned	See section 3.10 Deployment and System Operations. City of Santa Monica	Restrictions	(DoDPMCP)	N/A
Designated Areas	(Proposed) Staging in groups of four and 40 feet between groups. No staging is school or hospital zones	See Ordinance #4372 City of Scottsdale, Maricopa County, AZ, section 17-85 Parking	A parking surface does not include a parking space utilized by motor vehicles	TRN-15.01 – New Mobility – Shared Electric Scooters section E - 4	See section 3.10 Deployment and System Operations. City of Santa Monica	Restrictions	(DoDPMCP)	N/A
Time Limits	Not Mentioned	See Ordinance #4372 City of Scottsdale, Maricopa County, AZ, section 17-85 Parking	Operator shall stage all SATVs every 24 hour	TRN-15.01 – New Mobility – Shared Electric Scooters section F	See Above	Restrictions	(DoDPMCP)	N/A

Rules & Ordinances/Cities	San Diego, CA	Scottsdale, AZ	Tempe, AZ	Portland, OR	Santa Monica, CA	San Francisco, CA	Los Angeles, CA	Coronado, CA
Residential	Not Mentioned	See Ordinance #4372 City of Scottsdale, Maricopa County, AZ, section 17-85 Parking	Operator shall not stage SATVs in front of single-family residential properties on residential streets	TRN-15.01 – New Mobility – Shared Electric Scooters section F	See section 3.10 Deployment and System Operations. City of Santa Monica	Restrictions	(DoDPMCP)	N/A
Grouping	(Proposed) Staging in groups of four and 40 feet between groups. No staging is school or hospital zone	See Ordinance #4372 City of Scottsdale, Maricopa County, AZ, section 17-85 Parking	No more than 10 SATVs shall be staged in a group and groups should be separated by a distance of at least 150 feet	Shared Scooters parked within the Right-of-Way shall be located in groupings with a combined length of no greater than 10 feet, immediately abutting one another. At least 20 feet must be left clear of Shared Scooters between groupings of Shared Scooters along the same block face.	See section 3.10 Deployment and System Operations. City of Santa Monica	Restrictions	(DoDPMCP)	N/A
Blocking Sidewalk	(Proposed) Misplaced or abandoned may be removed after three hours of being reported	See Ordinance #4372 City of Scottsdale, Maricopa County, AZ, section 17-85 Parking	A clear width of 48 inches on a walking surface. SATVs must not impede width required for boarding transit vehicles	TRN-15.01 – New Mobility – Shared Electric Scooters section F	See section 3.10 Deployment and System Operations. City of Santa Monica	Restrictions	(DoDPMCP)	N/A

Rules & Ordinances/Cities	San Diego, CA	Scottsdale, AZ	Tempe, AZ	Portland, OR	Santa Monica, CA	San Francisco, CA	Los Angeles, CA	Coronado, CA
Riding								
Sidewalks	(Proposed) Devices must be labeled "Riding on Sidewalks is Prohibited".	Class 3 electric bicycles prohibited on sidewalks; stand-up electric mini-scooters prohibited on streets greater than thirty-five miles per hour with exceptions.	May ride on sidewalk if no sign posted prohibiting. Must yield right-of-way to any pedestrian or electric personal assistance mobility device.	Prohibited	Prohibited	Prohibited	Prohibited plus "No Riding On Sidewalks" (minimum 48-point font) located on the platform of every scooter.	N/A
Multiuse Paths	Permitted	Scooter Ok	Permitted	Permitted	Permitted	Not Mentioned	Not Mentioned	N/A
Streets	Permitted	If speed limit is < 40 MPH	Permitted	Permitted	Permitted	Not Mentioned	CVC takes precedent	N/A
Speed Limits	(Proposed) Two areas designated for either Eight mph or three mph. No other limits mentioned.	20 MPH Max	20 MPH Max	15 MPH Max	15 MPH Max	Not Mentioned	15 MPH Max	N/A
DUI	DUI Regulations apply to motorized scooters CVC 21221.5	Same limits as motor vehicles, .08, fine of not less than \$250.00.	Not mentioned in City Codes.	Not mentioned in City Codes or Vehicle Code	Not mentioned in Deployment and System Operations, City of Santa Monica	Not Mentioned	Not mentioned	N/A
Age Limit	(Proposed) Prior to each use companies will be required to educate riders of local and state vehicle and traffic codes.	No age restriction found in Ordinance.	Minimum age 16	Minimum age 16	Minimum age 16	Not Mentioned	Minimum age 18 and must have a driver's license	N/A

Rules & Ordinances/Cities	San Diego, CA	Scottsdale, AZ	Tempe, AZ	Portland, OR	Santa Monica, CA	San Francisco, CA	Los Angeles, CA	Coronado, CA
Riding								
Helmet Requirements	Helmet required if under 18 years of age. CVC	No helmet reference found in Ordinance.	Required if under age 18.	Helmets required of all riders.	Helmet required if under 18 years of age.	See item 180392 of meeting minutes. Opposition to state laws.	Helmet use is encouraged.	N/A
User Education								
Laws	(Proposed) Prior to each use companies will be required to educate riders of local and state vehicle and traffic codes.	Operator not required to supply education to users.	Operator agrees to educate Users regarding laws applicable to operating a SATV in Tempe and comply with all applicable Federal, State and local laws.	Not required	See section 3.15.2 Education. City of Santa Monica Shared Mobility Device Pilot Program Admin Regulations	Not mentioned	Not mentioned.	N/A
Customer Service Number	Not mentioned	Unsafe riding report to PD non-emergency line 480-312-5000. Parking issues 480-312-7433.	Operator shall provide the City with a name, direct telephone number and email address of the local staff member responsible for staging SATVs. Operator shall have a 24 hour customer service phone number for Users.	The Applicant has demonstrated that a 24-hour customer service number is available for customers and that the service has the ability for translation services.	See section 3.12 Customer Service. City of Santa Monica Shared Mobility Device Pilot Program Admin Regulations	Not mentioned	Organization structure of operations team, including title, and their specific responsibility on the project. An email address + phone number for LADOT to use as the direct point of contact 24 hours a day for notifications.	N/A

Rules & Ordinances/Cities	San Diego, CA	Scottsdale, AZ	Tempe, AZ	Portland, OR	Santa Monica, CA	San Francisco, CA	Los Angeles, CA	Coronado, CA
Tracking								
Usage	Proposed	No Requirements	Required	Required	Proposed	Not Mentioned	Required	N/A
Trips	Proposed	No Requirements	Required	Required	Proposed	Not Mentioned	Required	N/A
Date and Time	Proposed	No Requirements	Required	Required	Proposed	Not Mentioned	Required	N/A
Distance	Proposed	No Requirements	Required	Required	Proposed	Not Mentioned	Required	N/A
Location Start End	Proposed	No Requirements	Required	Required	Proposed	Not Mentioned	Required	N/A
Availability	Proposed	No Requirements	Required	Required	Proposed	Not Mentioned	Required	N/A

Rules & Ordinances/Cities	San Diego, CA	Scottsdale, AZ	Tempe, AZ	Portland, OR	Santa Monica, CA	San Francisco, CA	Los Angeles, CA	Coronado, CA
Fees								
Business or Operator License	(Proposed) Six month permit and performance bond but no cost mentioned.	No fee schedule found.	\$7,888.00 annual fee. \$100.00 relocation fee for SATV relocation activities.	The Applicant must pay an application fee of \$250.00 and must pay a Pilot Period Permit Fee of \$5,000.00.	Annual Operator Fee \$20,000 Per Operator. Business License Minimum Tax \$75.	Not mentioned	Permit Application Fee of \$5,000 (non-refundable)	N/A
Per Unit Fee	(Proposed) Annual fee of \$150 per device.	No fee schedule found.	\$1.06 per SATV per day.	Per-Trip Surcharge of \$0.25 for each booked trip.	Annual Device Charge \$130 per Device. Public Right-of-Way Fee \$1/dev./day	Not mentioned	Conditional Permit vehicle fee of \$ 32.50/vehicle (non-refundable)	N/A
Insurance								
Liability	(Proposed) Liability insurance and indemnify the City from liability claims. No mention of Insurance limits.	No insurance requirement found.	General Liability insurance, limit not specified. Operator shall agree to indemnify and hold harmless the City.	An Applicant shall secure and maintain a primary commercial general liability policy reflecting limits of no less than \$1 million per occurrence and \$2 million in the aggregate for covered claims arising out of, but not limited to, bodily injury and property damage in the course of the Permittee's operations under its permit.	Commercial General Liability (CGL): Covering CGL on an "occurrence" basis, operations, property damage, bodily injury and personal and advertising injury, with limits of no less than \$5,000,000 per occurrence and no annual aggregate. See Exhibit "A" and "B" in the City of Santa Monica Shared Mobility Device Pilot Program Regulations	Not mentioned	Commercial General Liability (CGL): insurance Service Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed: operations, property damage, bodily injury and personal and advertising injury, with limits of no less than \$5,000,000 per occurrence and no annual aggregate.	N/A