



# Scooter Wars: Challenges and Opportunities in Local Regulation of Shared Mobility Devices

Prepared for the League of California Cities  
2019 City Attorneys' Spring Conference

May 9, 2019

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# Agenda

- Introduction
- Benefits & Problems Overview
- Examples of Regulations
- Vehicle Code
- Pending Legislation
- CEQA
- Liability
- ADA



# What are Shared Mobility Devices (“SMD”)?





# What are Shared Mobility Devices?



# SMD Users: Anyone with a Smartphone

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# Even Council Members!

What good are L.A.'s new rules for scooters if even a city councilman can't obey them?

SEP 07, 2018 | 4:00 AM



Los Angeles City Councilman Joe Buscaino rides a Bird rental scooter around City Hall on Sept. 4. (Al Seib / Los Angeles Times)



Joe Buscaino  
@JoeBuscaino



Follow

The future is here. Los Angeles must create citywide multimodal infrastructure to reduce traffic, link people to public transit, & reduce green house gas emissions. #escooters 🛴  
#ebikes 🚲



10:07 AM - 4 Sep 2018 from Los Angeles City Hall

# Who are the SMD players?

- Bird
- Lime
- Skip
- Spin (Ford)
- Scoot
- Lyft
- Jump (Uber)
- Uscooters
- Hopr
- Ofo
- Razor
- Ridecell



# Why People Love Shared E-Scooters

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- Rider experience
- First/last mile transportation options
- Help cities meet mobility needs
- Convenient to use



# Problems

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- Blocked sidewalks
- Injury potential
- ADA compliance
- Aesthetics

# Sidewalk Problems

- Vehicle Code § 21235
  - No operation on sidewalk
  - No leaving/parking on sidewalk



# Unsafe Operation

- Vehicle Code § 21235
  - Helmet required if under 18
    - New state law exempts 18+
  - No doubled-up riders





# Injuries: Making Headlines

LOCAL

## How dangerous are electric scooters? Two deaths in California show the risks are real

**BY TONY BIZJAK**

MARCH 20, 2019 12:41 PM, UPDATED MARCH 20, 2019 02:37 PM



## **E-Scooter Ride-Share Industry Leaves Injuries and Angered Cities in its Path**

A Consumer Reports investigation finds 1,500 e-scooter injuries across the country, and many hospitals still don't track them

By Ryan Felton  
February 06, 2019

# Injuries: Making Headlines

TECH

## The CDC is studying the rise in e-scooter injuries for the first time as start-ups expand to more cities

PUBLISHED FRI, MAR 8 2019 • 10:18 AM EST



Yasmin Khorram

SHARE     

## Head injuries make up 40% of e-scooter ER visits: Study

Head injuries are 40 percent of e-scooter-related ER visits, a UCLA study says.

# Result = Public Animosity

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## Examples of City Regulations: Balancing mobility needs with safety. Where does risk belong?



Bans, Permit Systems, License Agreements, and No Regulations

# Bans on SMDs

## ■ Beverly Hills

- July 2018 urgency ordinance
- December 2018 regular ordinance
- Unlawful to park/leave in right of way, operate in right of way, or offer for use in the City
- Bird sued the City



# Permit Systems

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## Examples

- Santa Monica
- San Francisco
- San Jose

## Common Provisions

- Selection or open permits
- Device caps
- Fees
- Device safety requirements
- Speed limits & restricted areas
- Insurance & Indemnification
- Customer service
- Data
- Equity



# More Scooters

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# South Lake Tahoe: Sole License Agreement

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- **Previously unregulated**

- Lime operated bikes previously, then introduced scooters
- City did not have regulations, relied upon state law and business licensing
- Worked cooperatively with Lime to reach agreement

# South Lake Tahoe: Sole License Agreement

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- **Some provisions included in agreement:**
  - Allows the use of scooters
  - Fleet cap
  - 5 cent per trip fee
  - Speed limit
  - Requires Lime to remove improperly parked scooters within 4 hours
  - Enables the City to remove scooters parked in unsafe locations and recover City costs (via a new \$35 fee per scooter removed by City staff)



# No Regulations

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- Nearly all cities when scooters first arrive
- May rely on state law to enforce prohibitions like riding on sidewalks
- Potential legal exposure

# Vehicle Code & Crafting Regulations

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## ■ Preliminary Issue: Defining Shared Mobility Devices

- No definition in Vehicle Code for Shared Mobility Device
- But, Vehicle Code defines devices that are used:
  - Motorized Scooters (§ 407.5)
  - Electrically Motorized Boards (§ 313.5)
- Definitions overlap and scooters presently offered meet both definitions

# Beverly Hills SMD Definition:

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“[A]ny wheeled device, other than an automobile or motorcycle, that is powered by a motor; is accessed via an on-demand portal, whether a smartphone application, membership card, or similar method; is operated by a private entity that owns, manages, and maintains devices for shared use by members of the public; and is available to members of the public in unstaffed, self-service locations, except for those locations which are designated by the City.”

Beverly Hills Municipal Code § 7-6-2



# Shared Mobility Devices



# Vehicle Code: Scope of Reg.

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- **§21:** express preemption of local regulation in field of motor vehicle traffic
- **§21225:** “regulate” registration, parking & operation of motorized scooters
- **§21230:** “prohibit” motorized scooter on bike paths
- **§21967:** “prohibit[] or restrict[] persons from riding... electrically motorized boards, on highways, sidewalks, or roadways”

# Vehicle Code: Impounding Authority

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- **Vehicle Code § 22651**

- (b) May be impounded if: parked or left standing upon a street or sidewalk in a position so as to obstruct the normal movement of traffic



# Pending Legislation

AB 1112 & AB 1286





# AB 1112 (Friedman)

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- Defines “shared scooter” and “scooter share operator”
- Shared scooter regulation = matter of statewide concern
- Local authority can regulate specified areas
- But can not impose “unduly restrictive” requirements or penalties more restrictive on those on private scooter or bikes
- \$1 million / occurrence liability insurance

# AB 1112

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## ■ Support

- Bird
- Sierra Club

## ■ Oppose

- League of California Cities
- California Walks
- Consumer Attorneys of California
- Several CA cities



# AB 1286 (Muratsuchi)

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- Broad definition of shared mobility device
- Before distribution, SMD company must enter into agreement/obtain permit from jurisdiction
- Requires cities and counties to adopt operation, parking, maintenance, and safety rules
- Prohibits any waiver of user's legal rights
- \$1 million / occurrence liability insurance

# AB 1286

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## ■ Support

- Consumer Attorneys of California
- Disability Rights California

## ■ Support In Concept

- League of CA Cities

## ■ Oppose

- Bird, Lime, Uber
- California Chamber of Commerce







# CEQA

# Preliminary CEQA Concerns

- Does CEQA apply?
- If so, are there exemptions?
  - Common sense
  - Existing facilities
  - Action to mitigate emergency
  - Project disapproval

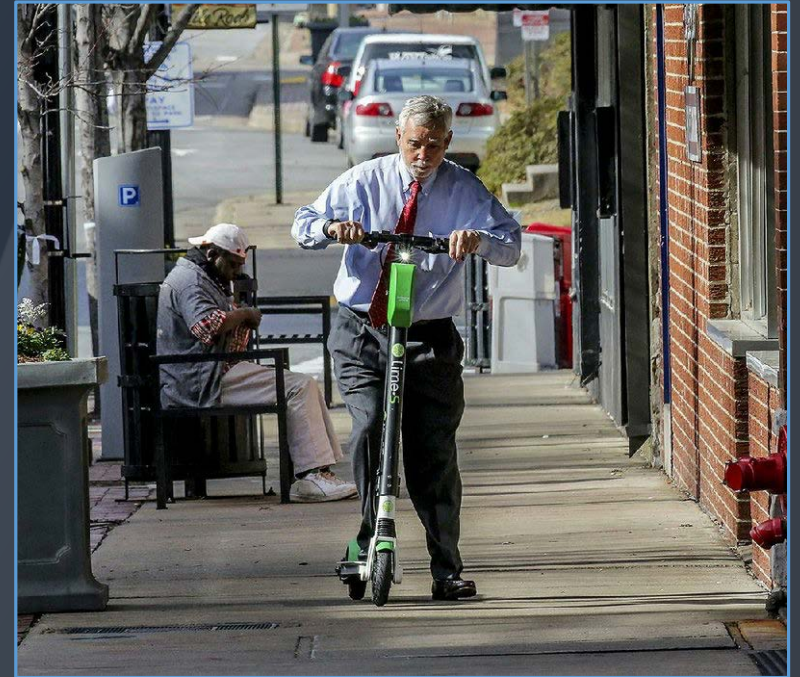


# More Scooters





# Liability Issues



When a scooter is involved in an accident, who will be held responsible?



# Dangerous Condition of Public Property

- Government Code § 835: city may be liable for injury caused by a dangerous condition of its property

News

## Man sues city over scooter crash injuries

By City News Service - March 5, 2019

65 0

LOS ANGELES (CNS) – A man is suing the city of Los Angeles, alleging a large pothole on Wilshire Boulevard caused him to crash the electric scooter he was riding and suffer serious injuries in 2018.

# Dangerous Conditions of Public Property

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- Cities have been sued where plaintiffs allege city is liable for creating a dangerous condition on public property by not regulating scooters appropriately
- For example, not having regulations in place that would require geofencing, speedometers and signs warning pedestrians that a busy area was used by scooters, without monitored speed

# ADA

Cities must keep sidewalks accessible



# ADA

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L.A. NOW LOCAL

## Disability advocates target city of San Diego and scooter companies in lawsuit

By GREG MORAN JAN 12, 2019 | 3:00 AM | SAN DIEGO





# Takeaways

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- Rapidly evolving
- Consider needs of jurisdiction when balancing safety and mobility
- Allocate risk to the appropriate party; for now, cities can try to mitigate risk that should arguably be factored into the cost of doing business

# Thank you!

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