

City Attorney

FILED
INTRODUCED BY: COUNCIL MEMBER _____
OFFICE OF THE CLERK
CITY OF OAKLAND

2020 FEB -4 AM 11:24

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING ORDINANCE 13355 C.M.S. GRANTING AN EXCLUSIVE FRANCHISE TO BAY AREA MOTIVATE, L.L.C. TO OPERATE A BIKE SHARE PROGRAM

WHEREAS, the City of Oakland recognizes the practice of bike sharing as a beneficial mode of transportation that reduces demand for private vehicles, decreases per capita greenhouse-gas emissions, and creates more affordable mobility options for all of Oakland's residents; and

WHEREAS, the City of Oakland adopted a Bike Sharing Policy (Resolution No. 85715 C.M.S.) which calls for the implementation of a bike sharing program that facilitates the "last mile" of transit trips and non-auto short trips; and

WHEREAS, the City of Oakland approved resolution (No. 85715 C.M.S.) to adopt a Bike Sharing Policy and authorize the City Administrator to negotiate and enter into an Intergovernmental Agreement ("Coordination Agreement," attached hereto and incorporated herein as *Exhibit A*) with the Metropolitan Transportation Commission ("MTC") consistent with the Bike Sharing Policy; and

WHEREAS, that Coordination Agreement has also been negotiated and entered into between the MTC and the cities of Berkeley, Emeryville, Oakland, San Francisco, and San Jose (the Bike Sharing Program "Participating Cities"); and

WHEREAS, the regional bike share project manager, the MTC, approved a sole source agreement ("Program Agreement" attached hereto and incorporated herein as *Exhibit B*) for expansion with Bay Area Motivate, LLC. ("Motivate"), the largest bike share vendor and operator in the U.S.; and

WHEREAS, the City of Oakland adopted Ordinance No. 13355 C.M.S. that granted a franchise to Motivate to operate a Bike Share Program in Oakland as more fully described in MTCs' regional Program Agreement and the intergovernmental Coordination Agreement; and

WHEREAS, the City of Oakland has the authority, pursuant to City Charter Article X, Section 1000 to grant or issue franchises for the transaction of business, providing of services or for the use of public streets or other public places, and to assess fees or other compensation to be paid therefor and the penalties for violations thereof; and

WHEREAS, Ordinance No. 13355 C.M.S., Section 6, states "The City Administrator is authorized to negotiate and execute a non-exclusive Franchise Agreement with Motivate, subject to the review and approval of the City Attorney."

WHEREAS, the City of Oakland wishes to amend Ordinance No. 13355 C.M.S to Authorize the City Administrator to negotiate and execute an exclusive Franchise Agreement with Motivate, subject to the review and approval of the City Attorney; and

WHEREAS: This action is exempt from the California Environmental Quality Act ("CEQA") under the following, each as a separate and independent basis, including but not limited to, the following: CEQA Guidelines §15303 (New Construction or Conversion of Small Structures), §15061(b)(3) (no significant effect on the environment), and §15183 (projects consistent with a community plan, general plan, or zoning).

Now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Ordinance No. 13355 C.M.S is amended to read as follow:

Section 1. Bike Sharing Franchise. The City Council does hereby find and declare that the above recitals are true and correct and that the award of a Franchise to Motivate for a bike share program is a proper public purpose, is in the public interest, convenience, and welfare, and is for the common benefit of the inhabitants of the City. The City will grant Motivate the right to operate a bike share program only for an automated, point-to-point program as described in the Coordination Agreement and is contingent on the City's successful negotiation and execution of a Bike Sharing Program Franchise Agreement with Motivate, for the operation of the Bike Sharing Program.

Section 2. Term of Franchise. For an initial term of ten (10) years, commencing on the Effective Date of the Franchise Agreement and shall end on the last day of the calendar month in which the 10th anniversary of the earlier of (a) the date that Phase I is completed, and (b) the Agreed Phase I Completion Date occurs (the "Initial Term") as set forth in Section 2.2 of the Program Agreement, unless the Initial Term is reduced as set forth in Section 2.3 of the Program Agreement.

Section 3. Renewal Term. If the Initial Term has not been reduced pursuant to Section 2.3 of the Program Agreement and Motivate is in substantial compliance with the terms of the Program Agreement, Coordination Agreement, and the Franchise Agreement, one year prior to the expiration of the then current Term, then, upon mutual agreement of the Parties, the Term may be extended for 2 (two) five (5) year renewals terms (each a "Renewal Term") on substantially equivalent terms applicable to the Initial Term, in accord with Section 2.4 of the Program Agreement and the terms and conditions of the Franchise Agreement.

Section 4. Shared Revenue Formula. When revenue is paid to the Metropolitan Transportation Commission (the "MTC") when the qualifications for such share payments are met in accord with the Program Agreement, the City will receive from the MTC a share of revenue generated by the Bike Share Program in accord with the "Shared Revenue Formula" and the terms and conditions set forth in Section 10, 11, and 12 of the Coordination Agreement, which provide that:

- A. When Bike Share Program revenue is shared between the Participating Cities, such shared revenue will be distributed as follows: 20% to MTC for administration of the program, 80% to be split between the Participating Cities according to the formula described in Section 10 of the Coordination Agreement.

- B. When revenue is shared between the Participating Cities, unless otherwise stated, the revenues shall be split according to the following formula: The share of Bike Sharing Docks in each Participating City will count for 70% of the allocation, and the share of Trips in each Participating City will count for 30% of the allocation. The share of Docks and Trips will be calculated from the monthly reports provided by Operator. The share of Docks will be measured as an average of the number of Docks at the beginning and end of each month in each Participating City. The share of Trips will be measured as a total of the most recent 12 months, beginning with the completion of Phase I. As an example, a Participating City with 14% of the Program's Docks and 20% of the Program's total Trips would receive 15.8% of the funds that are to be shared among the Participating Cities.

Section 5. Siting of Bike Share Program Stations. Siting of Bike Sharing Stations will be in accord with Section 4 of the Coordination Agreement and with the City's Bike Share Siting Criteria to be established by the City in accord with the following guidelines:

- A. All stations shall be located within the service area, unless otherwise agreed to in writing by the City.
- B. The City Of Oakland shall approve all station sites.
- C. 20% of total stations shall be in East and West Oakland. East Oakland is defined as areas east of 14th Avenue, West Oakland is defined as areas west of 980 Highway.
- D. Stations will be sited in locations that ensure maximum visibility and safety and that provide unrestricted public access.
- E. Stations will be located to avoid conflicts with driveways, hydrants, and other features that require regular or emergency access.
- F. Stations will not be located in areas that create conflicts or encourage disruptive bicycling behavior, such as sidewalk riding or riding into driveways.
- G. Stations will not interfere with existing pedestrian travel patterns and where possible will be placed in line with other street furniture.
- H. Given that sidewalks in Oakland are generally narrow and have an abundance of existing street furniture and fixtures, wherever feasible, stations will be located in the parking lane, similar to parklets and on-street bicycle parking corrals.
- I. Where possible, stations will be sited so that they may be serviced and rebalanced easily and without disrupting traffic; alternatively, identify areas that could be designated as rebalancing "loading zones" for a particular area.
- J. Motivate shall minimize the extent to which the use of the streets or other property of the City is disrupted.
- K. Station plates shall not cover or in any way obstruct any utility access points, drains, or any kind of ground access point.

Section 6. The City Administrator is authorized to negotiate and execute an ~~non~~-exclusive Franchise Agreement with Motivate, subject to the review and approval of the City Attorney.

Section 7. The City Administrator is further authorized to conduct all negotiations and execute all documents including but not limited to Franchise Agreement amendments, modifications, notices, and related actions which may be necessary and consistent with the basic intent and purpose of this Ordinance.

Section 8. The City Council has independently reviewed and considered this environmental determination and finds and determines that the action complies with CEQA and directs the City's Environmental Review Officer to file a Notice of Exemption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN

NOES-

ABSENT-

ABSTENTION-

ATTEST:

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

NOTICE AND DIGEST

ORDINANCE GRANTING A FRANCHISE TO BAY AREA MOTIVATE, L.L.C. TO OPERATE A BIKE SHARE PROGRAM, AND AUTHORIZING THE CITY ADMINISTRATOR OR HER DESIGNEE TO NEGOTIATE AND EXECUTE A FRANCHISE AGREEMENT AND CERTIFYING CEQA EXEMPTION FINDINGS

An Ordinance has been prepared that will grant a Franchise to Bay Area Motivate, L.L.C. to operate a Bike Share Program and authorize the City Administrator or designee to negotiate and execute a franchise agreement with Bay Area Motivate, L.L.C. The Ordinance allows for implementation of the City's bike sharing policy. The adopted bike sharing policy recognizes that bike sharing provides numerous transportation and environmental benefits, and identifies specific means by which the City Of Oakland will support the growth of bike sharing services.