



AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Ryan Russo
Director, DOT

SUBJECT: Electric Bike Share Expansion

DATE: January 17, 2020

City Administrator Approval

Date: 1/30/20

RECOMMENDATION

Staff Recommends That The City Council:

- 1. Adopt A Resolution Authorizing The City Administrator To Finalize And Execute An Amendment To The City's Franchise Agreement With Bay Area Motivate L.L.C. That Provides For The Expansion Of The Bay Area Regional Bike Share Program By Introducing Electric-Assist, Self-Locking Bikes Consistent With The City's Bicycle Sharing Policy; And**
- 2. Adopt An Ordinance Amending Ordinance 13355 C.M.S. Granting An Exclusive Franchise To Bay Area Motivate, L.L.C. To Operate A Bike Share Program.**

EXECUTIVE SUMMARY

Beginning the summer of 2017, a regional bike share program has been operated by Bay Area Motivate, L.L.C. (henceforth, Motivate) in the cities of Berkeley, Emeryville, Oakland, San Jose and San Francisco with general coordination provided by the Metropolitan Transportation Commission (MTC). This report supports the ongoing success and expansion of this regional effort by recommending that City Council take two actions: first, authorizing the City Administrator to amend the Bike Share Franchise Agreement to allow Motivate to add dockless, electric-assist bikes to its existing station-based network, allowing a significant expansion of the City's bike share program; and, second, adopting an ordinance to amend the City's existing Bike Share Franchise Agreement with Motivate to make it exclusive. This is a cleanup measure to ensure that the authorizing ordinance is consistent with the terms of the Coordination Agreement and the executed Franchise Agreement between the City and Motivate.

BACKGROUND/LEGISLATIVE HISTORY

In July 2015, City Council approved Resolution No. 85715 C.M.S. adopting a Bike Sharing Policy and authorizing the City Administrator to negotiate and enter into an Intergovernmental Agreement with the Metropolitan Transportation Commission (MTC) and Bay Area Motivate, L.L.C.

In February 2016, City Council adopted Ordinance No. 13355 C.M.S. granting a Franchise Agreement to Bay Area Motivate, L.L.C. (Motivate) to operate a bike share program.

In July 2016, an agreement between the City and Motivate granting Motivate an exclusive franchise to provide a bike share program for a ten-year period was duly finalized and executed. The ten-year period of the Franchise is effective from July 31, 2017 to July 31, 2027.

In July 2018, City Council received an informational update on the City's shared mobility programs, including bike share.

In September 2018, City Council adopted Ordinance No. 13502 C.M.S. establishing regulations and permits for dockless scooter sharing in the public right of way.

ANALYSIS AND POLICY ALTERNATIVES

Initially branded as "Ford GoBike", Motivate began operating the regional bike share program in Oakland, Berkeley, Emeryville, San Francisco and San Jose in the summer of 2017. All 80 planned bike share stations in Oakland were installed by April 2018. Over 1,600 Oaklanders have signed up as members, and over 575,000 trips have been taken on the system. According to a Ford GoBike member survey, an estimated 30% of those trips would have been taken by car if bike share did not exist. About one fifth (22%) of Oakland's bike share members receive a discounted \$5 first-year membership through the "Bike Share For All" program, which is available to anyone who participates in the CalFresh, Pacific Gas and Electric (PG&E) California Alternative Rates for Energy (CARE) or San Francisco's MUNI Lifeline pass.

In November 2018 Motivate was purchased by the ride-hailing company Lyft. Motivate continues to operate bike share systems for Lyft. In January 2019, Ford Motor Company announced that it would end its corporate sponsorship of the Ford GoBike program in 2019. This change in ownership and corporate sponsorship does not affect the City's rights and responsibilities under the regional Coordination Agreement or the City's Franchise Agreement with Motivate. Lyft subsequently re-branded the bike share program as "Bay Wheels".

Rights to Operate E-bike Program

The rights to operate an electric-assist bike (henceforth, e-bike) share program are separate than the rights to operate a non-electric bike share system, as detailed in Section 32 of the regional Coordination Agreement between MTC, Motivate, and the five participating cities. Per Section 32.2, any exclusive right to operate an electric-assist (e-bike) share program that Motivate might have had under the Coordination Agreement expired on June 30, 2016, after a six-month window of exclusivity. In January 2018, the City's Department of Transportation (DOT) notified Motivate of its intention to develop an E-bike program, thereby triggering a 90-day exclusive negotiating period consistent with Section 32.3 of the regional Coordination Agreement. This exclusive negotiating period ended in April 2018, with DOT staff and Motivate unable to come to agreement on the terms of an e-bike program. Per the regional Coordination Agreement, the City would now have the right to issue a solicitation for an e-bike program that would be open to other operators as well as Motivate.

In July 2018 Councilmember Kaplan, Councilmember Gallo and DOT introduced an Ordinance to create a non-exclusive, regulated permit program for both dockless bikes and e-bikes and electric scooters. Around the same time, Motivate initiated a dispute resolution process, per section 34.0 of the regional Coordination Agreement, regarding the exclusive rights to operate a bike share program in Oakland. DOT staff and Motivate were unable to resolve the dispute, although Oakland staff agreed to remove bikes and e-bikes from the proposed Ordinance regulating dockless forms of shared mobility and to postpone the dispute resolution process upon learning that MTC was leading a regional process to coordinate an e-bike expansion throughout the five participating cities. DOT staff participated in this process to ensure that any future expansion of the regional bike share program would better serve the needs of all Oakland residents. At the conclusion of this regional "Right of First Offer" (ROFO) negotiation, only San Jose and San Francisco signed the regional ROFO agreement. San Francisco subsequently entered a bi-lateral ROFO negotiation with Lyft, which superseded the regional ROFO agreement, and secured greater benefits and accountability. Therefore, staff elected to use San Francisco's E-bike agreement as a starting point for bi-lateral negotiations, rather than the regional ROFO agreement.

In December 2018 Motivate added e-bikes to its station-based fleet in Oakland. These e-bikes were equipped with an electric battery to aid the rider's pedaling, and were required to return to docking stations. While they were in service, these e-bikes were ridden at more than double the rate of the non-electrified bikes. DOT approved the addition of e-bikes to the existing fleet with the understanding that this was solely an equipment upgrade allowed under Section 6.7 of the Program Agreement, and was not done to satisfy the terms of Section 32.3 of the Coordination Agreement, nor intended to grant exclusive rights to Motivate to operate e-bike share in Oakland. Prior to launching e-bikes, Motivate sent a letter to the City acknowledging this (see **Attachment A**, "Letter to Oakland Regarding Bicycle Upgrade"). Motivate's station-based e-bikes were later removed from the fleet due to concerns over brake malfunctions that were observed in a small number of e-bikes.

In December 2019 DOT staff, reinitiated negotiations with Lyft regarding the E-bike Right of First Offer (ROFO) for dockless e-bikes. DOT staff secured commitments for Oakland-specific benefits including \$93,750.00 of funding for bike racks, expansion of the bike share service area to the entire city and new Key Performance Indicators (KPIs) and associated liquidated damages. The proposed E-bike Franchise Amendment ("Amendment", see **Attachment B**) requires Motivate to deploy up to 1,250 dockless e-bikes throughout Oakland (with the exception of the hills east of Interstate 580 and State Route 13), and details several accountability mechanisms to ensure that bikes are deployed in a timely manner, that service is reliable, that bike racks are kept clean and that underserved portions of the City will have bikes. Bike share pricing, including any potential price increases for e-bikes, is regulated by Section 9 of the Program Agreement between Motivate and the MTC, not by the proposed Amendment. The proposed Amendment would commit Oakland to certain responsibilities, such as installation of bike racks and designation of locations for bike deployment.

The proposed Amendment, supplemented with provisions for the regulation of parking dockless e-bikes modeled on the City's e-scooter ordinance, represents a substantive amendment to the current Franchise Agreement, and therefore requires the review and approval of the City Council. According to the MTC, Oakland's agreeing to the proposed Amendment would

effectively close the dispute resolution process initiated by Motivate in summer 2018 (see **Attachment C**, MTC letter on Oakland Dispute Closure).

Amending Ordinance to Establish Exclusivity for Franchise Agreement

Staff is also recommending that the City Council address an inconsistency between the authorizing Ordinance that granted Motivate a franchise for the bike share program and other program agreements. Specifically, while the intergovernmental Coordination Agreement and the City's Franchise Agreement both grant Motivate "exclusivity" for a term of ten years, Ordinance 13355 C.M.S. stipulates that the franchise be "non-exclusive".

In preparing this recommendation, staff requested and received clarification from MTC on its interpretation of Motivate's exclusivity under the regional bike share program:

"MTC is providing the following statement at the request of the Cities of Berkeley, Emeryville, and Oakland. The statement is provided strictly from a policy standpoint, and MTC makes no representations as to a legal interpretation of the terms of the agreements related to the bike share program.

In approving the bike share agreement in 2015, MTC believed exclusivity was a central element for Motivate International Inc. (Motivate), to agreeing to foot the entire cost of delivering, installing, and operating a 7,000 bike share system in the Participating Cities of San Francisco, San Jose, and the East Bay (Oakland, Berkeley and Emeryville). It was clear that Motivate would not agree to do this, if the Participating Cities were going to allow for point-to-point bike share competitors for a specified period.

At the time, MTC estimated the 10-year monetary savings/value for the Bay Area of the public-private bike share program was in excess of \$65 million in 2015 dollars. In addition to the significant investment, the parties agreed that Motivate would make a long-term commitment to ensure consistency and reliability for the user, agree to key performance indicators (KPIs) or pay liquidated damages, and provide many other public benefits including price certainty and a low-income discount.

The program as finalized in late 2015 was documented in two agreements: 1) the program agreement between MTC and Motivate that sets forth the terms for Motivate to design, build, operate, maintain, and market a network of publicly available bicycles in a bike share program in the Participating Cities and 2) the coordination agreement between the Participating Cities, Motivate, and MTC that establishes certain rights, liabilities, and responsibilities of each party with respect to the program and defines the organization, management, and operational structure for the successful development of the program.

The intent related to exclusivity was broad from MTC's policy perspective, and is addressed in at least two areas of the coordination agreement: 1) definition of bicycle as included in the program and coordination agreements and 2) grant of exclusive rights provision as included in the coordination agreement.

A bicycle is defined in the program and coordination agreement as "a vehicle with pedals and with 2 wheels held in a frame and aligned one behind the other and steered with a

steering wheel.” Further, the definition makes clear that bicycle “shall not include motorized vehicles including scooters and mopeds. For the avoidance of doubt, electric assisted bicycles constitute bicycles.” The definition of bicycle is silent on any distinction between station-based and dockless bicycles.

The exclusivity provision, which resides in the coordination agreement, includes “the exclusive right to operate a bike share program in the public rights of way in the Participating Cities during the term, with the exception of (i) non-automated non-self-service (...) bike rental operations, (ii) electric scooter sharing program, and (iii) automated (...) roundtrip bike share operations.” Ebikes or dockless/stationless bikes are not included in the specific exclusions from the exclusivity provision. Enforcement of exclusivity in the public rights of way rests with the cities as the owners of such property.”

Consistent with this interpretation, staff’s agenda report in support of the original Ordinance awarding a franchise to Motivate referred to exclusivity. Yet, the Ordinance adopted by Council stated: “Section 6. 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.” Consistent with staff’s intentions, the executed franchise agreement between the City and Motivate states under section 1. Grant of Franchise, “By Ordinance 13355 C.M.S. City granted to Grantee an exclusive Franchise authorizing Grantee to implement a bike share transportation program in the City of Oakland and to use the public streets and rights of way for such purposes.”

As a result, staff is recommending that Council address this discrepancy by adopting an amended ordinance that changes the language in Section 6 of Ordinance 13355 from “non-exclusive” to “exclusive”. Doing so will eliminate the inconsistency and confirm the City’s support for the regional bike share program that provides Motivate with exclusivity for a period of ten-years.

Policy Alternatives

Various interests have raised concerns about the exclusivity provision of the Motivate agreement as it relates to dockless bikes and E-bikes, and an expansion of the system without a competitive procurement. The proposed amendment to the Franchise Agreement would grant Motivate conditional exclusivity over e-bike share for a period of four years, preventing other interested companies from providing such services in Oakland for the remaining term and subject to certain conditions included in the proposed amendment to the existing agreement. By excluding other companies, the proposed amendment could reduce the incentive for Motivate to respond to competition and changes in the bike share market. In addition to, or as an alternative to, granting a pathway to exclusivity over dockless e-bike share, Council could amend the dockless e-scooter program to allow dockless e-bikes. This could allow multiple companies to compete for business, creating a strong incentive for innovation. In addition, the total number of e-bikes allowed under an alternative regulated permit program could potentially be greater than the 1,250 that Motivate agreed to provide under the proposed Amendment, thereby leading to a higher overall bike availability for Oakland residents. However, the creation of an open, regulated marketplace would delay the introduction of dockless bike and e-bikes by months or even years and provide less certainty that bikes will be provided over a sustained time period. Some cities that experimented with an open marketplace for dockless bike share, such as

Dallas, TX, found that many providers went out of business or shifted business models in less than a year. Other cities, such as Seattle, WA have seen sustained success with open permit programs.

The benefits of an exclusive e-bike share system include having a seamless regional system with one operator and strong public benefits including a focus on safety, equity, transit, open data, customer service, fair wage and labor policies, and accountability components such as liquidated damages for contract non-compliance.

FISCAL IMPACT

Oakland's bike share system is operated, at no cost to the City, by Bay Area Motivate L.L.C. (Motivate), now operating as "Bay Wheels," and owned by Lyft. The regional Coordination Agreement that governs the bike share system does not specify any exchange of funds between the City of Oakland and Motivate, except for City staff time reimbursement for permit review, fees for specific services (such as moving a bike share station) and potential revenue sharing and liquidated damages. The Oakland Municipal Code lists a permit fee of \$1,781.00 for "New Bike Share Station Encroachment". The total fee for all 80 stations is \$142,381.00. The City of Oakland received a \$660,616.00 grant from the Bay Area Air Quality Management District (BAAQMD)'s Transportation Fund for Clean Air (TFCA) to fund these permit fees and other staff costs associated with the bike share program through the end of the year 2020.

Liquidated Damages and Revenue Sharing

The MTC calculated that Motivate must pay the City \$49,479.00 in liquidated damages for 2018 due to KPI violations in Oakland. In 2019, liquidated damages through June totaled \$25,050.64. Damages for the remainder of 2019 have yet to be calculated by the MTC. Such non-compliance included violations related bike availability, bike rebalancing and graffiti remediation. Future violations will result in additional liquidated damages, although the exact amount is uncertain and depends on Motivate's performance. Revenues from liquidated damages are required to be used to support the bike share program. Potential uses include staff support and free or discounted bike share memberships that support the City's equity and or environmental priorities and objectives.

Oakland's share of revenues from the bike share program for 2018 is approximately \$7,000. Following the acquisition by Lyft in November of 2018, the system's primary corporate sponsor, Ford Motor Company, indicated that it is ending its sponsorship. Without primary sponsorship revenue, it would be unlikely that the revenue sharing threshold would be achieved again. However, Lyft has committed to continue revenue sharing payments at their current level through the end of the contract period in 2027. Contract year 1 revenue sharing payments were negligible, and contract year 2 payments totaled \$40,210, shared among the five cities and the MTC. As allowed under the regional Coordination Agreement, Lyft has elected to defer payment of shared revenue until 2022.

E-bike Expansion Revenues and Expenses

All materials, labor and equipment for the expansion of the bike share program under the proposed Amendment (see **Attachment B**), with the exception of City staff time and any additional bike racks beyond those funded by the Amendment, would be funded entirely by

Motivate. The City's costs would include additional staff time for program coordination, community outreach, permit review and public hearings. Remaining funds from the TFCA Oakland Bike Share Expansion grant are expected to be sufficient to fund additional staff time through the end of the year 2020. The proposed amendment to the Franchise Agreement would obligate Motivate to pay the City \$75.00 per Hybrid E-bike (\$93,750.00 total at the proposed level of 1,250 E-bikes), which would be dedicated to the installation of new bike racks available to both the public and Bay Wheels E-bike users. Staff expects additional bike racks to be funded through existing regional grant sources and parking fees from the City's e-scooter program.

PUBLIC OUTREACH / INTEREST

Public outreach regarding this Resolution and Ordinance was conducted during outreach for Lets Bike Oakland! (Oakland Bike Plan) and presentations to the Bicycle and Pedestrian Advisory Commission (BPAC). Staff collected feedback on the current bike share system at the East Oakland Collective Community workshop on March 21, 2018 and the BPAC meeting on May 17, 2018. Feedback on potential expansion of the bike share program to include Hybrid E-bikes and expansion into East Oakland was collected at the East Oakland Collective Design Lab event on June 30th, 2018 and the BPAC meeting on July 18th, 2019.

COORDINATION

This report and legislation were developed by staff in coordination with the Offices of the City Attorney and the City Administrator. DOT staff also worked close with staff from MTC and the Cities of Berkeley and Emeryville.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed expansion of the bike share program will be privately funded by the system's owner, Lyft. The increased access to bicycles will increase mobility for Oakland residents, leading to better access to jobs and opportunities.

Environmental: Electric-assist bicycles are an environmentally beneficial mode of transportation that emit no air pollution or greenhouse gasses. An estimated 30% of bike share trips would have been made by car if bike share did not exist.

Race and Equity: The proposed expansion of the bike share system includes underserved areas that were not included in the current service area. Highly discounted passes will be provided for qualifying low-income residents.

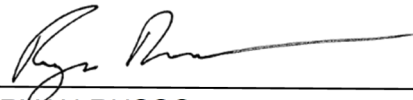
ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council:

1. Adopt A Resolution Authorizing The City Administrator To Finalize And Execute An Amendment To The City's Franchise Agreement With Bay Area Motivate L.L.C. That Provides For The Expansion Of The Bay Area Regional Bike Share Program By Introducing Electric-Assist, Self-Locking Bikes And Is Consistent With The City's Bicycle Sharing Policy; And
2. Adopt An Ordinance Amending Ordinance 13355 C.M.S. Granting An Exclusive Franchise To Bay Area Motivate, L.L.C. To Operate A Bike Share Program.

For questions regarding this report, please contact Kerby Olsen, Shared Mobility Coordinator at 510-238-2073.

Respectfully submitted,



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Attachments (3):

- A: Letter to Oakland Regarding Bicycle Upgrade
- B: Oakland E-bike Franchise Amendment
- C: Oakland Dispute Closure