

DOCKLESS MOBILITY REGULATION

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“Docked” v. “Dockless”



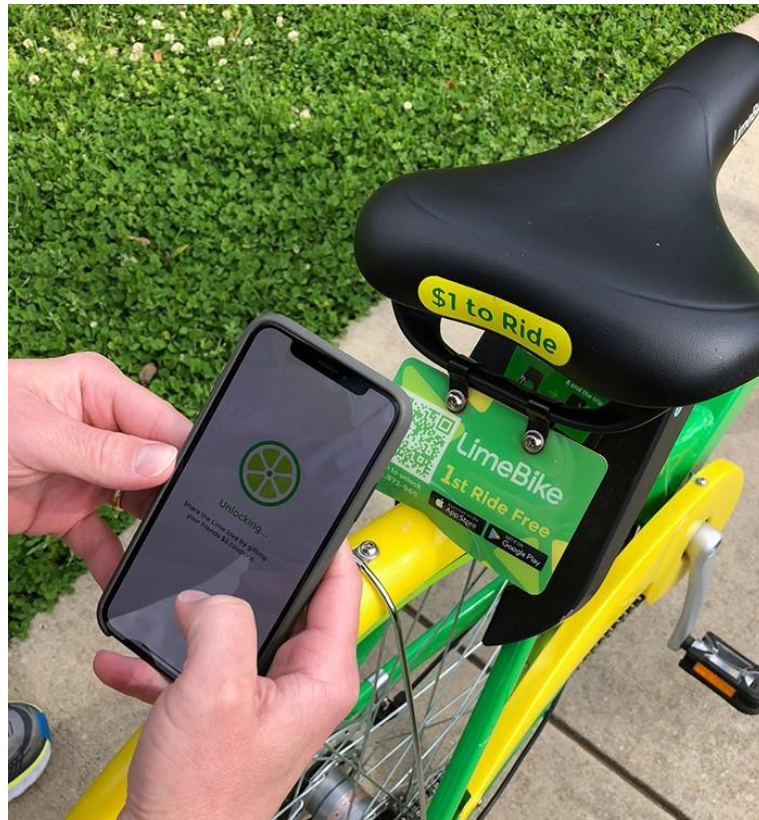
Lock to Examples



Dockless E-Scooters



App-Based Micromobility



Presentation Outline

- I. Political and Public Process
 - A. Local Support or Opposition Considered
 - 1. Goal
 - 2. Multi-Department Considerations
 - B. Multiple Public Meetings Recommended
 - C. State Law and Legislative Changes
 - D. Local Considerations
 - 1. Liability
 - 2. Data Privacy
 - E. Pilot Program

Presentation Outline Continued

II. No Regulation, Licensing, or Permitting

A. Come One, Come All

B. Licensing the Use of Right-Of-Way

1. Ordinance and/or Competitive Processes
2. Contract
3. Qualifications to Get License
4. Fees
5. Enforcement

C. Permitting

1. Ordinance
2. Qualifications to Get Permit
3. Fees
4. Enforcement

III. IMLA Guidance

Consideration of the Political Influence

- Are the requests for dockless scooters and bicycles coming from elected officials or from the companies?
- Is local permission required?
- What ordinances do you currently have that may apply?
 - ▶ Ex: Scooters can or cannot operate on sidewalk
- How much time do you have to implement a program?
- Is a pilot program an option?
- What other technology may be coming that you should consider in your regulatory scheme?
- How does state law tie into your regulatory scheme?
- What is the state doing to preempt local regulation?
 - ▶ What stakeholders are lobbying?





Start with a Goal

- What are you trying to achieve by regulating dockless scooters and bicycles?
- Examples
 - ▶ Limiting clutter in the right-of-way
 - ▶ Ensuring ADA access is not obstructed
 - ▶ Providing mobility alternative to vehicles for short trips in high-density areas
 - ▶ Providing last-mile alternative at bus transit stations and stops
 - ▶ Providing transportation option in low-income areas

Municipal Staff Influence

- Inventory Effect for All Departments

- ▶ Park and Public Space Use

- ▶ Are you going to allow them to operate on trails and in parks?

- ▶ Transportation

- ▶ Where will they be stored?
 - ▶ Are these adequate “last mile” solutions?

- ▶ Police

- ▶ Are they going to impound ones out of compliance?
 - ▶ Are they going to issue citations and who will you cite?
 - ▶ Are they going to handle general complaints?

- ▶ Code Compliance

- ▶ Are you creating a civil penalty?
 - ▶ How are you regulating the storage of them on private property?



Municipal Staff Influence Continued



► Planning and Development

- Do you have bike lanes?
- Are the sidewalks designed to accommodate both pedestrian and dockless scooters and bicycles?

► Economic Development

- Are they paying sales tax?
- Are they paying property tax?



► Municipal Court

- How will they process citations?
- Will you use a hearing officer or a judge?

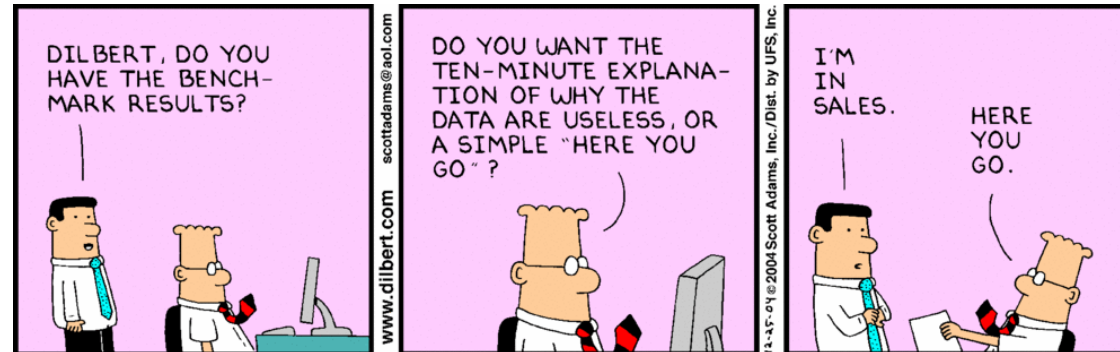


► Neighborhood Services

- What low-income programs are offered and will they be effective for your underserved areas?

Public Meetings

- Identify key community stakeholders
- Have multiple meetings and platforms
- Surveys of the public and the companies
- Meetings with elected officials
- Benchmarking of similar cities in Texas and nationally
 - ▶ Structure of program
 - ▶ Local management
 - ▶ Access to data
 - ▶ Non-routine events
 - ▶ Public education
 - ▶ Insurance/indemnification
 - ▶ Third-party advertising
 - ▶ Use of sidewalks
 - ▶ Count caps
 - ▶ Parking
 - ▶ Safety
 - ▶ Compliance



State Law and Legislative Changes

- Review State Law
 - ▶ How does state law define terms for purposes of local regulation?
 - ▶ State law does not regulate dockless scooters
 - ▶ Proposed legislation to provide framework for e-scooters did not pass
 - ▶ Right-of-way is owned in trust for the benefit of the public
 - ▶ Calculating fees for permits is limited to actual costs
 - ▶ Calculating fees for licensing should be tied to fair market value
 - ▶ Sales tax currently not required for dockless transactions
- Consider Future Legislative Changes
 - ▶ Will bills be proposed to preempt local regulation?
 - ▶ Who is lobbying for change in the law?
 - ▶ What other indirect bills are necessary (e.g. tax, data privacy, etc.)?

Use of Right-of-Way and Parking Restrictions

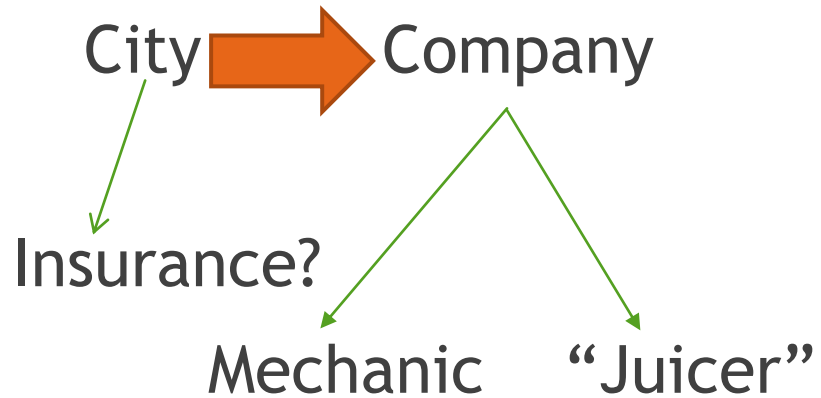
- ▶ Issues arising from use of the right-of-way:
 - ▶ Legality of operating on streets or sidewalks
 - ▶ Wisdom of operating on streets or sidewalks
 - ▶ Helmet requirements
 - ▶ ADA compliance
 - ▶ Hazards in the right-of-way
 - ▶ Parking requirements, geofencing, lock-to requirements, etc.
- ▶ Incentivizing and tracking enforcement

Lawsuit Examples

- ▶ Class action claiming gross negligence by scooter companies
 - ▶ Issue: Duty to non-riders who have not signed terms of use
- ▶ Lime sought injunction related to San Francisco procurement process
 - ▶ Issue: Public contracting/competition
- ▶ Bird sues Beverly Hills over moratorium
 - ▶ Issue: Right of local control/preemption
- ▶ Americans with Disabilities Act Class Action
 - ▶ Issue: Infrastructure/right-of-way access

Liability

- ▶ Who is liable?
- ▶ Proprietary or governmental function?
- ▶ How to track liability?



- ▶ User?



Insurance and Liability

- ▶ Protect your locality:
 - ▶ Run risk analysis and determine whether the locality has adequate insurance
 - ▶ Seek indemnification from the company
 - ▶ Request a copy of the company's insurance policy for review
 - ▶ Determine whether your locality should be listed as third-party insured
 - ▶ Determine whether insurance requirement must be passed down to subcontractors
 - ▶ Consider requiring performance bonds to ensure compliance with regulations and to cover the costs the locality incurs as a result of the presence of the business

Consumer Protection, Data Privacy and Data Sharing

- ▶ Review companies' privacy and data sharing policies and ask
 - ▶ What information does the company collect?
 - ▶ Can the user opt-out of data collection?
 - ▶ Is the information anonymized?
 - ▶ How is the information stored?
 - ▶ Is the information sold to third-party data brokers?
 - ▶ If the user agrees to share information, does that then imply other private data unrelated to the companies' app will also be shared?
 - ▶ What are the procedures in case of a data breach?
- ▶ Stay current on Federal and State regulations that impact data collection and your own privacy policies

Examples of Terms of Use

I Agree

I Have No Idea
What This Says



- ▶ Binding arbitration
- ▶ Rider certain age
- ▶ Wearing helmet
- ▶ Safe use of equipment
- ▶ Prohibited locations
- ▶ Data collection
- ▶ Data breach
- ▶ Privacy and customer trust

Pilot Program



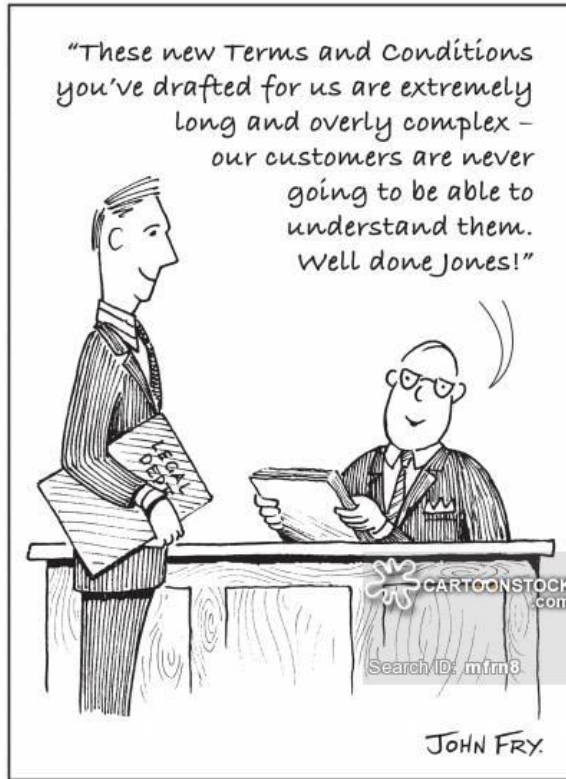
- Limited Time (6-12 months)
 - ▶ Automatic or optional renewal period
- Establish a Process
 - ▶ Contract, ordinance, competitive process
- Criteria to Evaluate Success
 - ▶ Rider usage and trip data
 - ▶ Violations, complaints, and accidents
 - ▶ Staff time and costs related to program
 - ▶ Input from users, stakeholders, and operators
- Boundaries for Pilot
 - ▶ City-wide or limited

No Regulation

- Free Enterprise
- Ordinances to ban operations without local permission
- Allowed to operate because no ban
- Public safety
- Other areas of regulatory power



Licensing Right-Of-Way



- Ordinance Plus Contract
- Competitive Process
 - ▶ Limiting operators
- Licensing Agreement
 - ▶ Treated more like a lease
 - ▶ Ability to require favorable terms
 - ▶ Access to data, indemnification, insurance, bond, termination, rebalancing, call response time, public education, low-income programs, set operational expectations, parking, require cooperation with investigations, hold operator responsible for user's actions, timeliness for managing complaints, etc.
 - ▶ Renewals with opportunity to adjust regulation
 - ▶ Ability to limit operational zones

Licensing Right-Of-Way Continued

- Qualifications to Get License
 - ▶ Safety standards
 - ▶ Regular maintenance
 - ▶ Speed limiter
 - ▶ Operator name and phone number on equipment to report issues
 - ▶ Remote lock-down
 - ▶ Equipment sufficient for safety
 - ▶ History of operation in other areas
 - ▶ Use of data/consumer agreement
 - ▶ Cap on number of units
 - ▶ Maximum number per license
 - ▶ Maintain minimum average daily trips
 - ▶ Opportunity for incremental expansion



Licensing Right-Of-Way Continued

- Fees
 - ▶ Calculated at fair market value
 - ▶ Annual fee plus monthly rent
 - ▶ Recover other costs
 - ▶ Costs for parking corals
- Enforcement
 - ▶ Ordinance violation
 - ▶ Civil v. criminal violations
 - ▶ Contract compliance monitoring
 - ▶ Breach of contract
 - ▶ Penalties
 - ▶ Termination
 - ▶ Parking Prohibitions



Permitting

- Ordinance
 - ▶ Harder to change when issues arise
 - ▶ Monitoring compliance
 - ▶ Limits changes during permit period
 - ▶ Limits flexibility for new technology
 - ▶ State preemption
 - ▶ Regulate use of dockless scooters and bicycles as well as operators
- Qualifications to Get Permit
 - ▶ Outline in ordinance
 - ▶ Capping number of operators
 - ▶ Proving compliance with ordinance qualification requirements



Permitting Continued

- Fees
 - ▶ May be limited to charge actual cost only
 - ▶ Loss of income
 - ▶ Operators make profit from users, data, and maybe advertising
- Enforcement
 - ▶ Limited to civil or criminal violation and revoking permit
 - ▶ Against the user or the operator
 - ▶ Prosecuting a business is challenging



IMLA Guidance

- ▶ IMLA's Dockless Micromobility Guidance Addresses
 - ▶ Approaches to regulation
 - ▶ Definitions and terms
 - ▶ Use of right-of-way and parking restrictions
 - ▶ Permit or licensing requirements
 - ▶ Consumer protection and data privacy
 - ▶ Data sharing
 - ▶ Ancillary programs
 - ▶ Insurance and liability
 - ▶ Additional contractual considerations

Questions?

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