

NetChoice

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# MOVING FORWARD: EXPOSING DISCRIMINATORY ACTIONS AGAINST SCOOTERS





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**“This is just something that can prove to the world that Memphis is ready, that Memphis is open to business, and that Memphis makes accommodations for things we want.”**

**- Memphis Council Chairman**

## **Moving Forward - Exposing Discriminatory Actions Against Scooters**

Discrimination is the unjust or prejudicial treatment of different categories of people or things. We often see discriminatory behavior when new technologies enter a market. We’ve seen this mistreatment with the advent of the train, the automobile, and the airplane. We are again seeing discrimination against motorized scooters.

Motorized scooters are a new form of transportation sweeping across the country, empowering Americans of all ages and incomes to more easily get where they are going. Motorized scooters (hereafter “scooters”) provide inexpensive, easy to use, convenient, and ecologically friendly movement. While growing rapidly in adoption, motorized scooters are really just that – a scooter with a motor. They typically run at top speeds of 15mph – below the speed of a bicycle – and are easy to use.

It was not long before scooters were paired with smartphones and micromobility technology – producing shared scooters. Today several businesses like Lime, Lyft, Bird, Scoot, and Uber, provide shared scooters for rent in localities across the globe. Riders use their smartphone to unlock the shared scooter, take their trip, and then park the shared scooter in appropriate locations. This shared scooter is then ready for its next rider.

But like all new technology, scooters are facing the expected reflexive opposition. This opposition is nothing new in the transportation space. In 1881 bicycles were banned in New York’s Central Park as they were considered a “nuisance.”<sup>1</sup>

140 years later scooters are facing the same complaints about nuisance and the same calls for outright bans. Often driven by fear of change, localities across the country are curbing the freedoms of their citizens to travel in new, cost effective, and environmentally conscious ways.

Often these anti-scooter laws and regulations in localities are discriminatory. For example, Arlington, VA limited the speed of scooters to only 10mph while allowing bicycles to maintain speeds well above 30mph. If Arlington is concerned about fast moving micromobility devices then Arlington should limit bikes to 10mph as well – not create discriminatory rules on scooters.<sup>2</sup>

While fair and effective regulations are encouraged, as with all modes of transit, states and cities must avoid following flawed approaches in addressing shared scooters.

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<sup>1</sup> Trace Mitchell, *New scooter lawsuits threaten innovation*, Orange County Register (Nov. 12, 2018).

<sup>2</sup> See, e.g. Memorandum of Agreement Between Name of Company and Arlington County, Virginia available at [https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/19/2018/10/SMD-Demonstration-Program-Memorandum\\_of\\_Agreement.pdf](https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/19/2018/10/SMD-Demonstration-Program-Memorandum_of_Agreement.pdf). Note that Arlington recently recognized the safety threats of a 10mpg limit and allowed shared-scooters drive at 15mph.

This paper analyzes the varying approaches to regulation of shared scooters and in particular the discriminatory nature of these regulations recommends solutions to meet citizen demand.

## The Problems of Regulatory Discrimination

With new innovation comes the predictable regulatory discrimination – either expressly or implicitly attempting to forestall inevitable change.

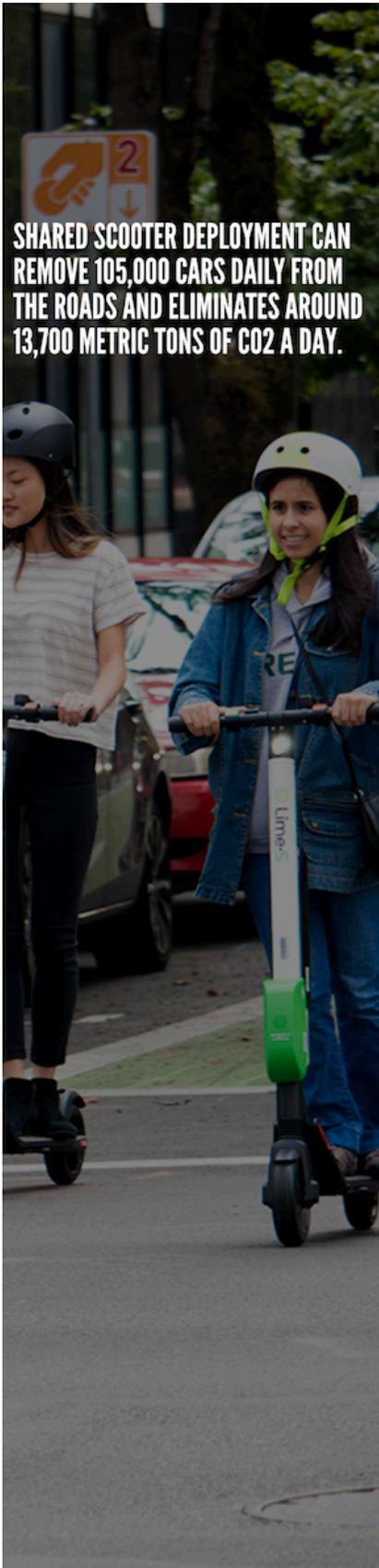
Over 100 years ago articles appeared in local newspapers warning of a new technology that was pushing pedestrians off sidewalks. That locals complained they “cannot enjoy a walk in the evening, without the danger of being run over by some of these new-created animals.”<sup>3</sup>

### Guidelines and Guardrails for Local Regulation of Shared Scooters

- **Data Collection on Use**
  - Must be necessary to achieve a particular purpose
  - Should not include any personally identifiable information
- **Fees**
  - Any fees must be limited to cost recovery for the locality
  - Fees must not be disproportionately higher than other forms of transportation
- **Parking Regulation**
  - Cities can designate where shared e-scooters cannot be deployed, provided that at least one location per block is provided in commercial/business districts
  - Operators must be provided at least 2-hours to remedy improperly parked scooters
  - Parking fines should be assessed on riders not operators
- **No Geofenced Speed Restrictions**
  - Rather than suddenly limiting speeds in certain areas, localities should set a 15mph speed limit for scooters in all areas
- **Curfews Must be Applied Equally**
  - Should the locality seek to limit riding times, such restrictions must also apply to all other comparable forms of travel – including bicycles

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<sup>3</sup> Clive Thompson, *What the Fight Over Scooters Has in Common With the 19th-Century Battle Over Bicycles*, Smithsonian Magazine (Dec. 2019).



A Baltimore newspaper described this invention as, “a curious two-wheeled device...which is propelled by jackasses instead of horses.” And a New Haven Newspaper editorial called for citizens to “seize, break, destroy, or convert to their own use as good prize, all such machines found running on the sidewalks.”<sup>4</sup>

Bureaucrats worried that, “Hit a bump and you might find yourself ‘taking a header by flying over the high front wheel.’”<sup>5</sup>

The new technology was the bicycle.

We look back at this history and laugh but the same arguments are appearing for scooters and the same unfounded arguments are being used to suppress the inevitable adoption of shared scooters.

### Learning From our Past Regulatory Mistakes

Of course, bad regulations result in bad outcomes. Rather than attempting to “clamp down on scooters” localities must identify the harms they want to address and then create rules to address them.

Take for example the current complaints about scooters on sidewalks. Rather than banning scooters, as some cities have done, we can instead take a page from the history of bicycles and require scooters be driven on streets – as many jurisdictions require.

Complaints about “illegally parked” scooters led several localities to begin impounding the scooters. But we saw the same complaints about bikes when they first appeared. Once again localities could instead begin educating citizens on proper parking of scooters and making it easy to legally park.

We have seen success when localities choose to regulate towards a goal not regulate against a technology. In Short-Term Rentals the concern over noise and trash is addressed through rules regulating noise and trash – whether as a result of rentals or from bad neighbors. When dealing with Transportation Network Companies, concerns about insurance led localities to require operators to maintain insurance, not ban the service. This same successful approach can and should be applied to shared-scooters.

Governments must realize that draconian regulations are just government picking winners and losers – and often the losers are the citizens. Localities must use wholistic analysis and realize that what is good for bikes is good for scooters too.

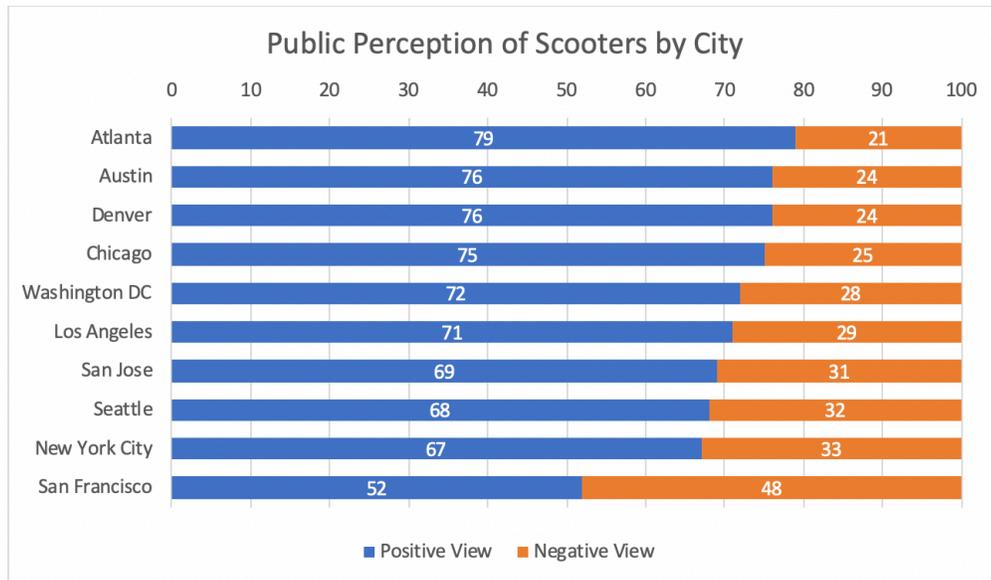
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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

## The Micromobility Revolution: Scooter Importance for Localities, Residents, and The Environment

Driven by inconvenient public transit, increased congestion, and environmental concerns, Americans are turning to shared scooters in record numbers. And it's easy to see why. Shared scooters provide a convenient, low cost, and environmentally friendly transit option.



*Populus Groundtruth, 2018*

### Americans' Demand for Scooters is Growing

In 2018 citizens across the country used shared scooters for more than 38 million trips – more than the number of trips on shared bicycles.<sup>6</sup> This adoption is reflected especially in major cities. In May 2018 alone, 55,000 District of Columbia residents booked more than 140,000 trips.<sup>7</sup>

Along with robust adoption, public opinion favors shared scooters as a transit option. Polling shows that 70% of people in major US cities favorably view

<sup>6</sup> The National Association of City Transportation Officials identified that in the US in 2018 there were 38.5 million trips on scooters surpassing bike-share trips of 36.5 million. National Association of City Transportation Officials, *Shared Micromobility in the U.S.: 2018*

<sup>7</sup> Max Smith, *DC again extends dockless bike, scooter pilot; promises permanent rules next year*, WTOP (Aug. 30, 2018).

**Shared scooters “solve a real need here for students... to get to and from class, to get back and forth from off-campus housing... It’s better, cheaper, and in a lot of cases safer than using a car”**

- Florida State University Student

scooter availability.<sup>8</sup> Even in cities that have banned all scooters,<sup>9</sup> shared or privately owned, the public generally views scooters positively.<sup>10</sup>

### Transportation Convenience

Almost all Americans have experienced the inconvenience of short distance transportation. This can come in the form of waiting on a street corner flailing for a taxi, finding that public transportation won’t get them where they need to go, or having to use one’s car for a short trip, relying on scarce parking.

In these situations micromobility provides great solutions. As Florida State University Students have said:

“[Shared scooters] solve a real need here for students... to get to and from class, to get back and forth from off-campus housing...It’s better, cheaper, and in a lot of cases safer than using a car.”<sup>11</sup>

Unlike private ownership of a scooter, shared scooters provide added convenience. Riders need not carry the scooter into their homes, up flights of stairs, or worry about keeping the scooter charged. Moreover, shared scooters provide added flexibility by allowing riders to choose when and where they want to use and park the scooters.

Since 80 to 90 percent of all automobile travel is short, single-occupancy car trips,<sup>12</sup> shared scooters provide a great alternative.

Scooters also help citizens over “last mile” deficits. The last mile in transportation can be the distance between the riders’ destination and the termination of public transit. The last mile also represents one of the greatest barriers to use of public transportation and is often the most costly for citizens and localities.<sup>13</sup>

To overcome this transportation deficit, Americans are turning to shared scooters. Data shows that one in five trips on shared scooters are to overcome this last mile between destination and public transit.<sup>14</sup> 40% of shared scooter users in San Francisco combine their usage with public transit.<sup>15</sup>

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<sup>8</sup> Populus.ai, *The Micro-Mobility Revolution: The Introduction and Adoption of Electric Scooters in The United States* (July 2018).

<sup>9</sup> Emma Fitzsimmons, *Electric Scooters Are Sweeping the Country. New York Says Not So Fast*, N.Y. Times (May 29, 2019).

<sup>10</sup> *Id.*

<sup>11</sup> Casey Chapter, *E-scooters provide convenience, with geofenced restrictions around universities*, FSU News (Aug. 25, 2019).

<sup>12</sup> Will Yakowicz, *14 Months, 120 Cities, \$2 Billion: There’s Never Been a Company Like Bird. Is the World Ready?*, INC. (Winter 2018/2019).

<sup>13</sup> Last mile logistics can be as high as 28% of total shipping costs for businesses. Fong, McDermott, Lucchi, *Micro-Mobility, E-Scooters and Implications for Higher Education* (May 2019) p.5.

<sup>14</sup> Lime, *Lime 2018 Year End Report Examines Stunning Growth of Micro Mobility* (Dec. 28, 2018).

<sup>15</sup> Lime, *San Francisco Scooter Use Survey Results* (July 19, 2018).

### Creating a Low-Cost Mode of Movement

Americans feel financially squeezed and the cost of public transportation is increasing.<sup>16</sup> When shared scooter rides cost only a few dollars it's easy to see the appeal. Moreover, the availability of shared scooters means that citizens need not make the sizeable financial outlay to purchase their own device.

Not surprisingly, those most favorable to shared scooters are those making less than \$50,000 a year.<sup>17</sup> This group is more cost conscious – seeing shared scooters as a more affordable option to owning a car or taking a taxi. But even 64% of those making over \$200,000 a year favorably view shared scooters.<sup>18</sup> And students see the cost savings – 67% of Indiana University students said the presence of scooters increased college affordability and economic opportunity.<sup>19</sup>

### Giving Citizens the Power to Choose

Many Americans are abandoning car ownership and fewer millennials are choosing to own cars<sup>20</sup> than their parents.

“More than half of adults between the ages of 22 and 37 say a car is not worth the money spent on maintenance, and that they would rather be doing something other than driving.”<sup>21</sup>

Shared scooters provide a cheap alternative to motor vehicle ownership. And the rise of scooters is directly related to the decrease of car ownership. In Portland, scooter availability led to 6% of scooter riders getting rid of their cars.<sup>22</sup> This means less congestion on the road and fewer cars taking up space in lots – a public benefit for those who need to drive.

### Shared Scooters Benefit the Environment

Fewer cars on the road means reduced local air pollution and general reductions in greenhouse gases. It's clear that the presence of scooters in a locality takes cars off the roads.<sup>23</sup> In Portland alone, 34% of riders reported scooters replaced car or taxi use.<sup>24</sup>

<sup>16</sup> There was a 10% price increase in public transit fares in the US from 2001 to 2010. Eric Jaffee, *The Real Reason Mass Transit Fares Are Rising Across the U.S.*, CityLab (Apr. 4, 2014)

<sup>17</sup> Brian Resnick, *Elon Musk says electric scooters “lack dignity”*, Vox (Nov. 2, 2018).

<sup>18</sup> *Id.*

<sup>19</sup> Indiana University Student Government, *Scooter Policy Recommendation Report Delivered to the Board of Trustees of Indiana University* (Sept. 30, 2019), p.14

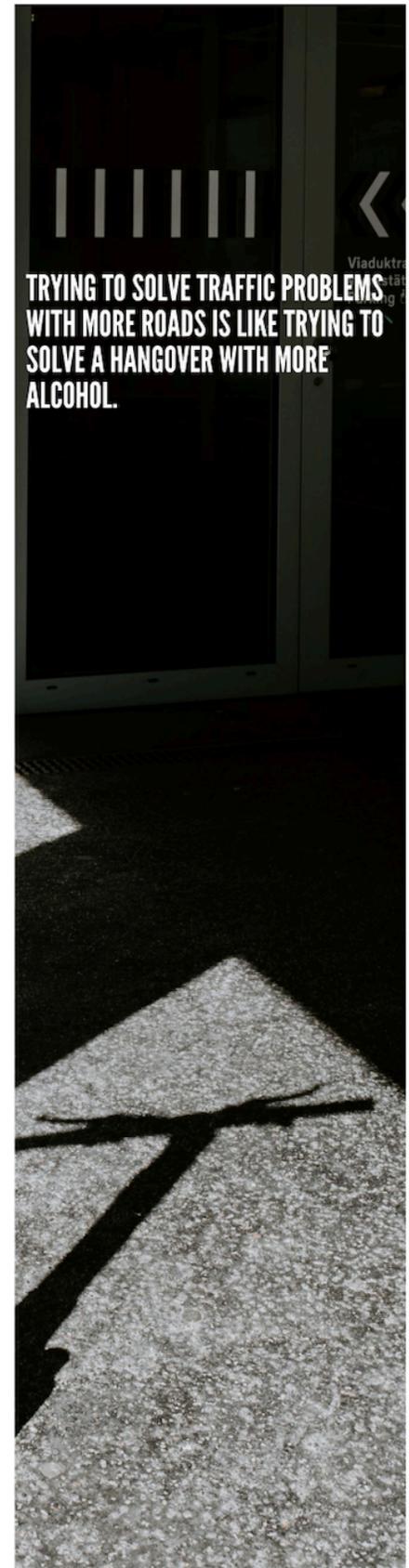
<sup>20</sup> Mary Wisniewski, *Why Americans, particularly millennials, have fallen out of love with cars*, Chicago Tribune (Nov. 15, 2018).

<sup>21</sup> *Id.*

<sup>22</sup> Portland Bureau of Transportation, *2018 E-Scooter Findings Report* (2018) p.7.

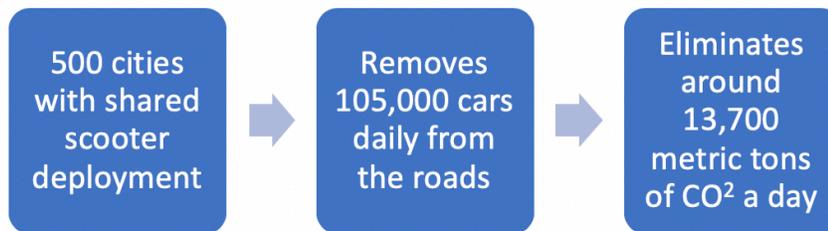
<sup>23</sup> *Id.* at 7.

<sup>24</sup> *Id.*



Studies show that 500 cities with shared scooter deployment can remove 105,000 cars daily from the roads and eliminates around 13,700 metric tons of CO<sup>2</sup> a day.<sup>25</sup>

The ecological benefits of shared scooters are so clear that California localities are struggling to ban scooters<sup>26</sup> since California's environmental laws<sup>27</sup> prevent cities from banning activities that harm the environmental quality.



### Decreasing Congestion on our Roads

The average American commuter spends 54 hours in traffic each year, wasting 3.3 billion gallons of gas.<sup>28</sup> Being stuck in congestion is also stressful leading to serious health consequences.<sup>29</sup> The traffic problem is only getting worse – road traffic increased by 15% in 2012 and that trend is continuing of years.<sup>30</sup>

40% of car trips in the United States are less than two miles.<sup>31</sup> This makes scooters an ideal replacement for cars.

Empirical evidence shows the presence of micromobility solutions takes cars off the roads.<sup>32</sup>

- In San Francisco nearly 65% of Lime scooter users replaced automobile usage.<sup>33</sup>
- 30% of Bird rides are trips that replaced cars.<sup>34</sup>
- Bird estimates that with full growth and adoption, scooters can

<sup>25</sup> Fong, McDermott, Lucchi, *Micro-Mobility, E-Scooters and Implications for Higher Education* (May 2019) p.10

<sup>26</sup> Heinselman, Richards, Watson & Gershon, *Scooter Wars: Local Approaches to Regulating Shared Mobility Devices*, League of California Cities (May 9, 2019).

<sup>27</sup> 14 Cal. Code Regs §15061(b)(3); See *Muzzy Ranch Co. v. Solano City. Airport Land Use Com.*, 41 Cal. 4th 372, 386 (2007), as modified (Sept. 12, 2007).

<sup>28</sup> Eleanor Lamb, *Traffic Getting Worse Amid Good Economy, Report Finds*, Transport Topics (Aug. 26, 2019).

<sup>29</sup> Elizabeth Landau, *Can you believe this traffic? Health consequences of a long commute*, CNN (Nov. 24, 2012) (outlining the long-term health ramifications of traffic).

<sup>30</sup> Eleanor Lamb, *Traffic Getting Worse Amid Good Economy, Report Finds*, Transport Topics (Aug. 26, 2019).

<sup>31</sup> Patrick Sisson, *How Santa Monica, the birthplace of dockless electric scooters, is shaping the multibillion-dollar industry*, Curbed (Dec. 7, 2018).

<sup>32</sup> Uber's addition of dockless electric bikes in San Francisco resulted saw a ten percent reduction in short rides and a fifteen percent increase in bike usage.

<https://www.curbed.com/2018/7/24/17604772/uber-lime-jump-bikes-scooters>

<sup>33</sup> Lime, *San Francisco Scooter Use Survey Results* (July 19, 2018).

<sup>34</sup> Bird, *A Look at e-Scooter Safety* (Apr. 2019) p.3

- reduce all car trips by as much as 40%.<sup>35</sup>
- “Utilization rates for scooters range from four trips to as high as 12 trips per day, depending on how many competitors are in a city. The average appears to fall closer to five trips a day in most major markets.”<sup>36</sup>

During Portland’s trial program about a third of all scooter trips substituted for private car trips.<sup>37</sup> That’s about almost two thousand fewer cars on the road each day in Portland because of the availability of scooters.

### Maximizing Existing Investments

Shared scooters can help citizens better use existing infrastructure investments including public transportation and bike lanes.

Shared scooters propel citizens to public transit since 40% of shared scooter users in San Francisco combine their usage with public transit – overcoming the last mile problem for these residents.<sup>38</sup>

Likewise, scooters help localities better actualize the value of bike lanes. Cities have spent hundreds of millions of dollars on building bike lanes – often at the expense of existing car lanes. Los Angeles’s bike lane project is projected to cost \$437 million,<sup>39</sup> yet the city saw decreases in bike ridership.<sup>40</sup> Seattle spent \$12 million on each of its bike lanes.<sup>41</sup>

To leverage investments on bike lane buildouts, localities should encourage shared scooters to maximize the lanes’ use.

### Benefits for Citizens

The costs of road and public transit maintenance are high for localities. The cost of traffic congestion is \$160 billion, or \$960 per commuter.<sup>42</sup> Public transportation costs per mile increase by 2% each year.<sup>43</sup>

By making shared scooters available, citizens can use these tools to save time, money, and their health. For localities, unlike public transit, upkeep costs for shared scooters are absorbed by shared scooter providers – taking the cost burden off localities and making more resources available.

**While fair and effective regulations are encouraged, as with all modes of transit states and cities must avoid following flawed approaches in addressing shared scooters.**

<sup>35</sup> Suzanne Kelleher, *Scooter Sharing Is the Unlikely Trend That’ll Reshape the Way We Travel*, Conde Nast Traveler (Apr. 11, 2018).

<sup>36</sup> Patrick Sisson, *How Santa Monica, the birthplace of dockless electric scooters, is shaping the multibillion-dollar industry*, Curbed (Dec. 7, 2018).

<sup>37</sup> Portland Bureau of Transportation, *2018 E-Scooter Findings Report* (2018) p.7.

<sup>38</sup> Lime, *San Francisco Scooter Use Survey Results* (July 19, 2018).

<sup>39</sup> Christian Britschgi, *After Millions of Dollars Spent and Hundreds of New Lane Miles Built, Bike Ridership Is Down Across America*, Reason Magazine (Sept. 27, 2018).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Texas A&M Transportation Institute, *2019 Urban Mobility Report*, available at <https://mobility.tamu.edu/umr/>

<sup>43</sup> Eric Jaffee, *The Real Reason Mass Transit Fares Are Rising Across the U.S.*, CityLab (Apr. 4, 2014).

Almost three-quarters of all complaints came from just 20 people in San Diego.

## The Discriminatory Backlash Against Shared Scooters

Usually when a new service enters a market, incumbents push back – eventually achieving an equilibrium condition satisfactory to all parties. The same story is hopefully true of shared scooters.

But today we are seeing localities engaging in discriminatory regulations on scooters and shared scooters. The justification for the backlash against scooters is often couched as “safety” or “public nuisance concerns.” Of course, these are the same concerns about forms of transportation that society already accepts, such as bikes, rollerblades, and even cars.

Some cities have banned only shared scooters but not privately-owned scooters.<sup>44</sup> Some cities have banned all scooters, but still allow bikes whether human or electrically powered.<sup>45</sup>

When shared scooters emerged, the plans by shared scooter providers included distributing as many scooters in a locality as possible.<sup>46</sup> They did this to enjoy the first-mover advantage of being first to market, and by achieving economies of scale first-movers discouraged imitations and competitors. First-movers also found a community of satisfied users to be mobilized for city council meetings.

Localities responded as expected by impounding and fining the businesses.<sup>47</sup> Several years later complaints about the mere presence of shared scooters remain, even when the underlying complaints are unjustified.



<sup>44</sup> See, e.g. Goletta, CA's ban on only shared scooters but not private scooters. Heinselmann, Richards, Watson & Gershon, *Scooter Wars: Local Approaches to Regulating Shared Mobility Devices*, League of California Cities (May 9, 2019) p.14.

<sup>45</sup> See, e.g. New York City's ban on scooters. Andrew Hawkins, *New York is poised to legalize electric scooters and bikes*, The Verge (July 17, 2019).

<sup>46</sup> Andrew Hawkins, *Electric scooters need to toughen up — and stay out of lakes — if they are going to survive 2019*, The Verge (Dec. 16, 2018).

<sup>47</sup> *Id.*

## NIMBYism

Often some of the greatest complaints against any change in society is driven by NIMBYism (“Not In My BackYard-ism”). We see NIMBYism when changes arise in a community – whether a new housing development, the erection of a traffic light, and now the introduction of shared scooters.

NIMBY complainers dislike shared scooters because of concerns about street clutter and sidewalk blocking. The complaints about scooters come from individuals who hate scooters or technology more generally. They will engage in absurd activities such as placing scooters in trees and breaking them.<sup>48</sup> This is, of course followed by a photograph on social media.

Fortunately, NIMBY complaints about shared scooters are the minority opinion. 70% of people in major US cities favorably view scooter availability.<sup>49</sup>

New York City went so far as to ban the use of all scooters in the city.<sup>50</sup> This meant even privately-owned scooters could not be used on New York streets. New Yorkers could buy scooters, carry their scooter into their apartment or office, but they couldn’t ride their scooter on New York streets. Fortunately, the city heard the outcry – as a majority of citizens favorable view scooters<sup>51</sup> – and the city is now reconsidering its ban.<sup>52</sup>

In Santa Monica, in just 17 days, shared scooters were driven over 60,000 miles. Only a minority of citizens complained about their presence.<sup>53</sup> But that didn’t stop the city from taking drastic draconian actions to restrict riders.

In San Diego, almost three-quarters of all the complaints came from just 20 people.<sup>54</sup>

Just like bikes in 1870s New York, those who dislike new modes of transit make their objections known and often ignore the majority who welcome these new tools of transit.

## Discriminatory Laws Against Shared Scooters

Localities use a multitude of methods to curtail or outright ban shared scooter deployment. Often these laws are discriminatory in nature – not addressing the underlying concern holistically, but only applying it scooters.

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<sup>48</sup> Don Sweeney, *Electric scooters are taking over U.S. cities. Fires, poop and bans are not stopping them*, The Sacramento Bee (Aug. 13, 2018).

<sup>49</sup> Populus.ai, *The Micro-Mobility Revolution: The Introduction And Adoption Of Electric Scooters In The United States* (July 2018).

<sup>50</sup> Andrew Hawkins, *New York is poised to legalize electric scooters and bikes*, The Verge (July 17, 2019).

<sup>51</sup> Populus.ai, *The Micro-Mobility Revolution: The Introduction And Adoption Of Electric Scooters In The United States* (July 2018).

<sup>52</sup> Andrew Hawkins, *New York is poised to legalize electric scooters and bikes*, The Verge (July 17, 2019).

<sup>53</sup> Patrick Sisson, *As scooters multiply, Santa Monica plans regulations to address community concerns*, Curbed Los Angeles (Jun. 7, 2018).

<sup>54</sup> John Wilkens, *New rules shaping scooter use in San Diego*, San Diego Union-Tribune (Oct. 10, 2019).

Scooters travel more slowly than bicycles which can reach 40mph. They both must use follow the same right of way laws. And surveys show that most people think that scooters should be treated the same way as bicycles.<sup>55</sup>

But some local officials don't see scooters the same way as their constituents. Scooter specific fees and outright bans exist which do not apply to bicycles. Creating an uneven system of rules and policies for bikes and scooters results in confusion and thus increases safety risks as riders and motorists face a



<sup>55</sup> Indiana University Student Government, *Scooter Policy Recommendation Report Delivered to the Board of Trustees of Indiana University* (Sept. 30, 2019), available at <https://iustudentgovernment.indiana.edu/doc/1USG%20Scooter%20Policy%20Report.pdf> p.2

patchwork of disparate rules. A rider may know bikes can use sidewalks, but not know scooters cannot. A rider may know that bikes rely on car speed limits but not know that the scooters are limited to only 10mph.

### Discriminatory All-Out Bans on Shared Scooters

Several localities ignore the preferences of most of their citizens and enact outright bans on shared scooters. Often these localities still permit the use of personally owned scooters but discriminate against shared scooters. Likewise, many of these localities allow bike-sharing but discriminatorily ban shared scooters. This included:

- Beverly Hills – banned shared scooters entirely<sup>56,57</sup>
- Charleston<sup>58</sup> issued cease and desist orders to shared scooter companies
- Denver initially impounded hundreds of shared scooters<sup>59</sup>
- Nashville issued cease and desist orders to shared scooter companies
- New York City banned all scooters, shared and privately owned<sup>60</sup>
- Norfolk banned impounded and fined shared scooter owners nearly \$100,000<sup>61</sup>

Fortunately, many of these initial bans are giving way to public opinion as even hardline cities like New York City are opening their streets to shared scooters.<sup>62</sup>

### Discriminatory De Facto Bans via Excessive Requirements

If not willing to take the politically unpopular move to expressly ban citizens from enjoying shared scooters, localities are using *de facto* bans on shared scooters – often imposing unreasonable rules only on scooters.

Washington, DC considered discriminating against scooters by requiring shared scooter services to accept cash and non-app based transactions<sup>63</sup> -- an activity that obviously wouldn't work. Of course, the city does not impose

<sup>56</sup> Sam Levin, *San Francisco's scooter war: city hits back as 'unlawful' schemes flood streets*, The Guardian (Apr. 17, 2018).

<sup>57</sup> Santa Monica used complaints that scooters are a "public health hazard" to justify banning scooters. Heinselman, Richards, Watson & Gershon, *Scooter Wars: Local Approaches to Regulating Shared Mobility Devices*, League of California Cities (May 9, 2019) p.13

<sup>58</sup> Bird, *A Look at e-Scooter Bird, A Look at e-Scooter Safety* (Apr. 2019) p.5

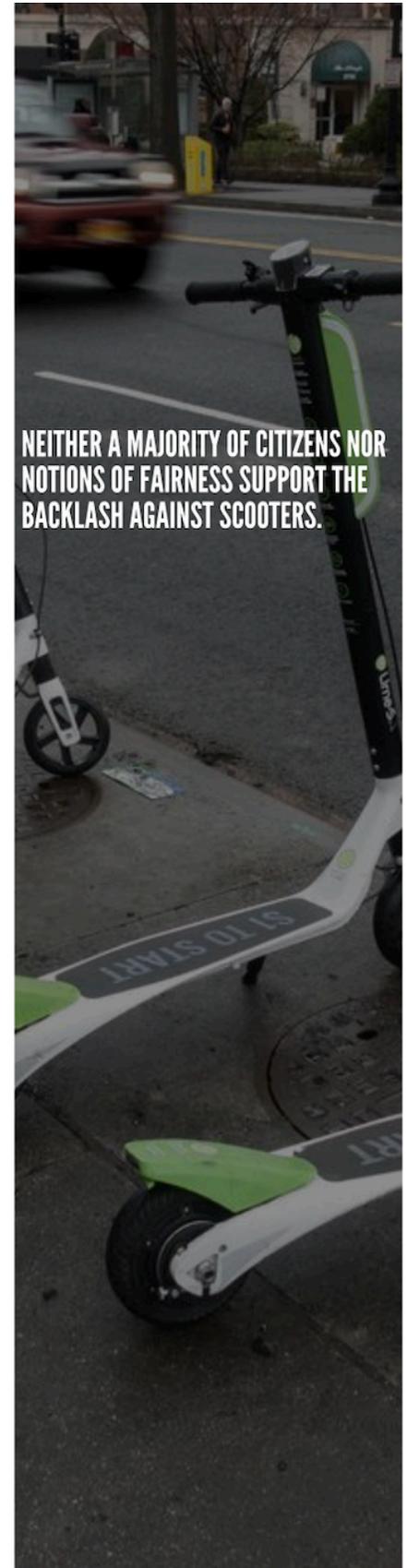
<sup>59</sup> Heinselman, Richards, Watson & Gershon, *Scooter Wars: Local Approaches to Regulating Shared Mobility Devices*, League of California Cities (May 9, 2019) p.13

<sup>60</sup> National Safety Council, *Vehicle Deaths Estimated at 40,000 for Third Straight Year*, available at <https://www.nsc.org/road-safety/safety-topics/fatality-estimates>

<sup>61</sup> Ariella Gintzier, *Bike Commuters Are Dying in Record Numbers*, Outside (Feb. 25, 2019). 6, 2018).

<sup>62</sup> Andrew Hawkins, *New York is poised to legalize electric scooters and bikes*, The Verge (July 17, 2019).

<sup>63</sup> Dist. Of Columbia, *Dockless Vehicles in the District*, available at <https://ddot.dc.gov/page/dockless-vehicles-district>



**Portland imposed a tax of \$0.22 per mile on shared scooter rides which is 10x greater than the city's gas tax equaled of \$0.02 per mile tax on cars.**

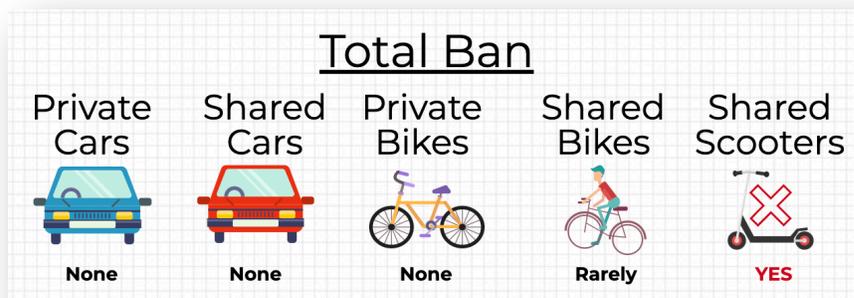
such onerous requirement on city's shared bikes<sup>64</sup> creating discriminatory policies.

Goleta, CA didn't want to risk the public outcry over banning personal ownership of shared scooters. So instead the city banned only the operation of shared scooters - but not privately-owned scooters.<sup>65</sup> If the concern is about the use of scooters then laws should ban the use of all scooters it's clear to see that only banning shared scooters does not address the problem.

### Arbitrarily Capping the Number of Shared Scooters Available

Basic economics shows that when supply exceeds demand, prices decrease. Conversely when demand exceeds supply, prices increase. But some localities seem unable to recognize this basic economic tenet.

We have seen how caps in the taxi market, like those in New York City, led to a shortage of taxis and high fares.<sup>66</sup> The same is true for the shared scooter market. When localities cap deployment below market demand, riders pay



more for their trips. And just like Taxis in New York, caps on shared scooters will make it harder to find an available scooter.

With a limit on deployment, a shared scooter operator will ensure that their small fleet gravitates to areas of high demand. This means those in outskirts and less trafficked areas – areas that may be in the greatest need of last mile transit – are likely to find little to no shared scooter availability.

Moreover, caps on shared scooters most benefit early movers, erecting barriers to new entrants and potentially raising costs for citizens. Early movers are sometimes grandfathered into the system and already have name recognition to help withstand regulatory challenges.

Caps can also be imposed via fees per device. Cincinnati's imposed a \$365 fee per shared scooter per year and San Jose instituted a high \$124 fee per shared

<sup>64</sup> See Capital Bikeshare Pricing and Billing, available at <https://help.capitalbikeshare.com/hc/en-us/categories/115001217608-Pricing-and-Billing>.

<sup>65</sup> Heinselman, Richards, Watson & Gershon, *Scooter Wars: Local Approaches to Regulating Shared Mobility Devices*, League of California Cities (May 9, 2019) p.14

<sup>66</sup> Farren, Koopman, & Mitchell, *Ridesharing vs. Taxis: Rethinking Regulations to Allow for Innovation*, Mercatus Center (May 25, 2017).

scooter per year.<sup>67</sup> ensures that only providers with a large enough financial backing can enter the market. This problem is further exacerbated by the city's addition of requirements for mandatory discount programs.<sup>68</sup>

Note that San Jose does not impose such discriminatory fees on its bike-sharing program, instead opting for a revenue sharing agreement.<sup>69</sup>

Caps on shared scooter fleets are not innately disastrous. If based on market demand and made flexible enough to allow supply to meet demand, caps can work. Otherwise caps create distorted markets and harm citizens.

### Imposing Discriminatory Parking Policies for Shared Scooters

Parking requirements help localities ensure that cars, bikes, and scooters reside in safe spaces that ensure accessibility to buildings and sidewalks. But many localities seek to only impose parking restrictions on shared scooters while ignoring parking requirements on bikes.

Many localities require scooters be several hundred feet from any building or curb entrance. This becomes unworkable in the highly dense streets where scooters most often appear. San Diego, for example, requires shared scooters be parked at least 150 feet from any building unless in highly dense areas where a lower distance is allowed.<sup>70</sup>

In Phoenix, all scooters must be parked in designated spot of which there are only 400.<sup>71</sup> This can negate the benefits of scooters to overcome the last mile

**Taxes and fees on shared scooter are passed directly to the rider, shared scooter riders pay ten times as much per mile as their car or bike driving neighbors.**



<sup>67</sup> Heinselman, Richards, Watson & Gershon, *Scooter Wars: Local Approaches to Regulating Shared Mobility Devices*, League of California Cities (May 9, 2019) p.6

<sup>68</sup> *Id.*

<sup>69</sup> See Bay Area Bike Share Program Agreement Between Metropolitan Transportation Commission And Bay Area Motivate, LLC December 31, 2015, available at [http://sanjose.granicus.com/Viewer.php?view\\_id=&event\\_id=1475&meta\\_id=544267](http://sanjose.granicus.com/Viewer.php?view_id=&event_id=1475&meta_id=544267)

<sup>70</sup> Joshua Smith, *San Diego approves rules for electric scooters as angry residents crowd City Hall*, The San Diego Union-Tribune (Apr. 23, 2019).

<sup>71</sup> Steven Hsieh, *The Non-Asshole's Guide to E-Scooters in Phoenix*, Phoenix New Times (Sept. 19, 2019).

problem and create competition among riders to ensure their scooter is within the zone.

Localities are also immediately impounding misparked scooters without prior notice to operators or an opportunity to cure. Atlanta, for example, gave itself the power to immediately impound a misparked shared scooter. Declining to notice the operator of the misparked scooter and denying the operator a chance to move the scooter, the Department of Public Works is artificially generating hundreds of thousands in fines as it impounded nearly 3,000 shared scooters.<sup>72</sup> These actions denied citizens a robust scooter infrastructure and results in a scooter shortage for the city.

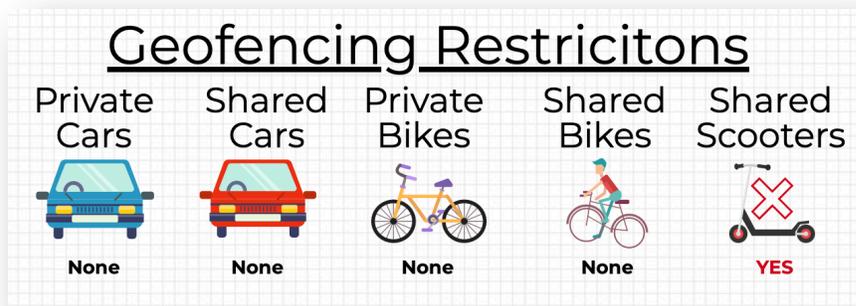
### Creating Operational Barriers Only Around Shared Scooters

Cities like Washington DC, Austin, and San Diego created “No Scooter Zones” for shared scooters while keeping shared bikes and privately owned scooters unrestricted.

For example, the National Mall in Washington DC. The National Park Service proudly declares, “Bicycles are welcome in the National Mall” but at the same time the National Park Service discriminated against shared scooters, prohibiting them on the National Mall.<sup>73</sup>

In San Diego, shared scooters are prohibited in the Embarcadero, but privately-owned scooters are permitted.<sup>74</sup> Moreover, while 457 people were injured or killed by bicycles in 2016, bicycles are still allowed on the sidewalks. The area of Brookline, MA requires operators to debilitate scooters if they leave the city’s borders.<sup>75</sup>

But the city discriminates against shared scooters which cannot be on sidewalks despite having less than ten fatalities in five years.



<sup>72</sup> Sean Keenan, *Despite new policy, Atlanta has failed to collect fines for impounded e-scooters*, Curbed (Nov. 11, 2019).

<sup>73</sup> Andrew Gilborne, *Should electric scooters be allowed on the U.S. Capitol Grounds?*, Curbed (Jun 26, 2019).

<sup>74</sup> Shelia Pell, *Dockless bikes and scooters in San Diego get new rules in June*, San Diego Reader (Mar. 5, 2019).

<sup>75</sup> Kristin LaFratta, *200 electric scooters to hit Brookline streets Monday morning*, Boston Buis. Jo. (May 31, 2019).

## Discriminatory and Dangerous Speed Limitations on Shared scooters

On its face, speed limits might seem necessary and obvious. But localities impose speed restrictions on scooters that do not exist for micromobility counterparts.

Unduly low speed limits on shared scooters, like Arlington, VA's 10mph,<sup>76</sup> create incredible safety hazards for shared scooter riders and the people around them.

Note that this speed restriction is only targeted at shared scooters, not privately-owned scooters. So, Virginia residents can go and buy their own private scooter and ride them at max speeds of 25mph, but if they cannot afford their own scooter or choose the convenience of shared-scooters, localities will discriminatorily limit shared-scooter riders' mobility.

Illegal to operate on sidewalks, all scooter riders in Arlington have to ride on the street or in a bike lane. Imagine a bicyclist or car accustomed to traveling at 25mph or even 40mph having to contend with a scooter going just 10mph.

This also creates safety problems for riders since the ability to stay upright is contingent on maintaining minimum speeds. And the motors create resistance on the wheels making self-propulsion difficult and exacerbating the dangers created by these geofenced limits.

Nashville instituted more dangerous draconian limitations.<sup>77</sup> Rather than just limiting speeds everywhere, Nashville created "slow scooter zones" where the speeds would suddenly slow to dangerously low speeds.

With "slow scooter zones" riders may think the device is broken as the speeds no longer match the throttle depression. Riders may begin driving erratically and be unprepared when they leave the zone and speeds suddenly increase.

San Diego limits shared scooters to only 3mph in many parts of the city while allowing bikes and privately-owned scooters to operate at full speed – note that a 3mph limit on scooters essentially requires user propulsion.

Downtown Salem limits shared scooters to only 5mph and has a total ban for weekend use.<sup>78</sup> The absurdly low speed limit essentially turns motorized scooters in human-powered scooters.

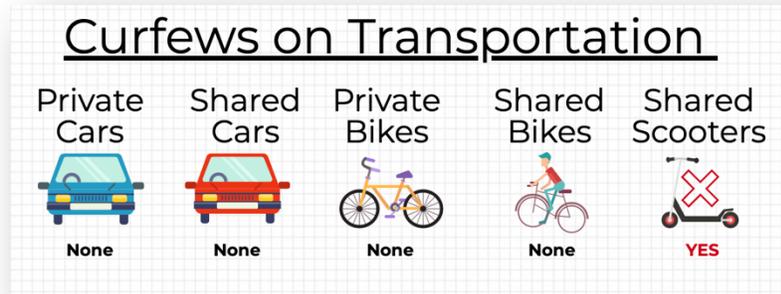


<sup>76</sup> Memorandum Of Agreement Between Name of Company and Arlington County, Virginia available at [https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/19/2018/10/SMD-Demonstration-Program-Memorandum\\_of\\_Agreement.pdf](https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/19/2018/10/SMD-Demonstration-Program-Memorandum_of_Agreement.pdf)

<sup>77</sup> Ryan Wilusz, *Can scooters go through Market Square? We saw it happen and tried it ourselves*, Knoxville Sentinel News (July 16, 2019).

<sup>78</sup> Sophie Reardon, *Salem Officials Ban E-Scooters on Weekends, Reduce Speed Limit*, Boston 10 (Oct. 9, 2019).

States like California have recognized these risks and permit scooters to travel at the standard 15mph.<sup>79</sup> And fortunately, Arlington recognized this safety hazard and recently raised its shared scooter speeds to 15mph.



### Curfews for Shared Scooters

Localities do not ban riding bikes before dawn nor limit car drivers when the sun goes down. These are absurd notions – but are the law for several localities when applied to shared scooters.

Localities see a new form of scooter prevention by denying ridership when it might be dark outside. This is yet another example of using safety concerns to engage in discrimination.

Cleveland prohibits riding before 7am or after 7pm.<sup>80</sup> This is one hour before sunrise and two-hours before sunset.<sup>81</sup> And since many people start work at 7am or work until 7pm, this curfew ensures that shared scooters are not a viable form of transportation home for many citizens.

Phoenix prohibits ridership before 5am.<sup>82</sup> Note that dawn starts before 5am during summer months.<sup>83</sup> Atlanta also bans riding scooters from 9 pm and 4 am<sup>84</sup> forcing at risk individuals to instead walk through dangerous neighborhoods at night. Similar bans do not exist for bikes.

To impose these restrictions, localities must first ignore the fact that virtually all shared scooters have lights. Second, localities must avoid applying these same restrictions to bikes and personally owned scooters as such limitations are clearly absurd.

<sup>79</sup> Jennifer Huddleston & Yuliya Yatsyshina, *What Scooter Regulations Mean for Riders and Companies*, Mercatus Center (Dec. 7, 2018).

<sup>80</sup> Sam Allard, *Bird Scooters Now Available for Rental in Cleveland, More on the Way*, Cleveland Scene (Aug. 26, 2019).

<sup>81</sup> Sunrise Sunset - July 2019 - Cleveland, Cuyahoga County, Ohio, USA - Sunrise and sunset calendar - Sunrise and sunset calendar available at <https://sunrise-sunset.org/search?location=Cleveland%20oh&year=2019&month=7#calendar>

<sup>82</sup> *Id.*

<sup>83</sup> Sunrise Sunset - June 2019 - Phoenix, Arizona - Sunrise and sunset calendar available at <https://sunrise-sunset.org/us/phenix-az/2019/6>

<sup>84</sup> Ross Terrell & Sophia Saliby, *Atlanta Puts Nighttime Ban On E-Scooters*, NPR (Aug. 8, 2019).

These limits force potential riders off scooters, negate the last mile benefits, and can force at risk individuals to instead walk through dangerous neighborhoods at night.

### Imposition of Discriminatorily Excessive Fees on Scooters

Some jurisdictions are effectively banning shared scooters with high fees on scooters but not on bicycles. High fees can result in little or no deployment – as the cost for operating far exceeds revenue. Examples of these costs are permit costs, daily surcharges and relocation fees.

Take for example, Portland<sup>85</sup> whose council imposed a tax of \$0.22 per mile on shared scooter rides.<sup>86</sup> This tax resulted in an increased cost to scooter riders of nearly 20%. The city attempted to justify this new tax as the cost of infrastructure. But this shared scooter tax is 10x greater than the city's gas tax which is the equivalent of \$0.02 per mile tax on cars.

And of course, the destructive footprint of a 2,000lb car far exceeds that of a 27lb scooter. Moreover, if the concern is the impact to roads by scooters, this tax should have been applied to all scooters, not just shared scooters.

Not content to just tax distance, Portland imposed a unique \$26.25/scooter daily fee during its pilot program of shared scooters. If an average 1-mile ride costs the rider \$3, a shared scooter operator would need at least 10 rides a day per scooter just to cover their taxes. These daily costs turn Portland's fees into a *de facto* ban for smaller providers and new entrants.

Likewise, San Antonio<sup>87</sup> charges shared scooter providers a \$50 "relocation fee" if the city has to move a scooter – even by tiny amounts of a few inches. This could easily be abused by localities looking for easy revenue by falsely claiming the need for relocations and then fining the shared scooter providers.

**Imagine not being able to ride your bike before dawn.**

**Or not being able to drive your car when the sun goes down.**

**These are absurd notions – but are the law for several localities when applied to shared scooters.**



<sup>85</sup> Jonathan Maus, *PBOT opens e-scooter applications, pilot program to start this month*, Bike Portland (July 5, 2018).

<sup>86</sup> Adam Kovacevich, *Op-Ed: How Cities Should Regulate Scooters*, Streets Blog NYC (Oct. 29, 2019).

<sup>87</sup> Ivan Herrera & Garrett Brnger, *Proposed regulations on electric scooters: What you need to know*, ABC KSAT 12 (Sept. 13, 2018).



If Portland and San Antonio's shared scooter taxes and fees are passed directly to the rider, shared scooter riders pay ten times as much per mile as their car or bike riding neighbors.<sup>88</sup>

### **Making Shared Scooter Providers Indemnify the Locality's Failures**

As one of the more absurd efforts by localities to encumber deployment of scooters, some cities now want to make shared scooter providers liable if a rider is injured as a result of the city's negligence.<sup>89</sup>

Under this regime the scooter operator must pay if the city fails to fill in a pothole. Likewise, the scooter operator must pay if a rider is hit by a garbage truck. Such a shifting of liability creates a moral hazard as cities are no longer incentivized to be responsible for the maintenance of their roads and services.

But even the California League of Cities, which advocates for this indemnification, cannot justify this discriminatory practice. The League says, "It is unclear if [shared scooter] riders are more susceptible to certain dangers from public property than pedestrians or bicycle, which already use such public facilities."<sup>90</sup>

But the moral hazard and dubious basis for these indemnification clauses haven't stopped California cities like Santa Monica,<sup>91</sup> Los Angeles,<sup>92</sup> San Francisco,<sup>93</sup> and Oakland<sup>94</sup> from forcing these discriminatory terms on shared scooter companies.

San Diego requires operators to indemnify the city for injuries caused by potholes and other city maintenance failures<sup>95</sup> and pay \$150 annually per scooter operated. These fees result in higher costs to riders.

As it turns out, these absurd demands of indemnification are now raising legal concerns for the cities as to the clauses' viability and constitutionality.<sup>96</sup>

### **Overcollection of Personal Information via Data Sharing Mandates**

To better understand adoption and use of shared scooters, localities understandably want to collect information. But some data sharing mandates have considered inclusion of personal information about the rider and real-time data.

<sup>88</sup> Joe Cortright, *Scooter Lessons: Success, but a stark double standard*, City Commentary (Jan. 17, 2019).

<sup>89</sup> Heinselman, Richards, Watson & Gershon, *Scooter Wars: Local Approaches to Regulating Shared Mobility Devices*, League of California Cities (May 9, 2019) p.19-21

<sup>90</sup> *Id.* at 20

<sup>91</sup> Santa Monica Municipal Code § 3.21.070

<sup>92</sup> SFMTA Powered Scooter Share Permit Terms and Conditions.

<sup>93</sup> City of Los Angeles Department of Transportation Dockless On-Demand Personal Mobility Conditional Use Permit Rules and Guidelines (Oct. 1, 2018)

<sup>94</sup> City of Oakland Dockless Scooter Share Program: Terms and Conditions and Permit Application (Draft 3.0 December 11, 2018)

<sup>95</sup> *Id.*

<sup>96</sup> Rachel Swan, *Scooter companies tussling with Oakland over who pays for injuries*, S.F. Chronicle (Feb. 20, 2019).

This creates obvious privacy and safety concerns for riders, an opportunity for governmental abuse, and a honeypot for data hackers. Bad actors could learn where individual citizens travel and meet them as they move.

### **Discriminatory Safety Concerns About Shared scooters**

Concerns about the safety of shared scooters are reasonable, as with bikes. But that reasonability ends when claims of safety concerns<sup>97</sup> are really just attempts to prevent deployment.<sup>98</sup> This is especially deplorable when the safety concerns are discriminatorily applied to scooters.

Shared scooter provider Bird says riders reported injuries in less than 0.01% of all trips. That is one injury per 27,000 miles ridden.<sup>99</sup>

But this data and the lack of comprehensive data about scooter related injuries<sup>100</sup> didn't stop the groups like the League of California Cities from instead using anecdotes to justify anti-scooter advocacy.<sup>101</sup>

There have been less than ten fatalities on shared scooters in the past five years compared with 40,000 fatalities from cars last year alone.<sup>102</sup> And bikes had over 700 fatalities last year.<sup>103</sup> The facts don't justify the complaints about the new "dangerous" nature of scooters.

Safety is a valid concern to be addressed, but based on the statistics, shared scooters are likely safer than cars or bikes. So, safety concerns should not be used as barriers to deployment of shared scooters. Localities should rely on data-based approaches not headlines and anecdotes.

<sup>97</sup> Sam Levin, *San Francisco's scooter war: city hits back as 'unlawful' schemes flood streets*, The Guardian (Apr. 17, 2018).

<sup>98</sup> Santa Monica used complaints that scooters are a "public health hazard" to justify banning scooters. Heinselman, Richards, Watson & Gershon, *Scooter Wars: Local Approaches to Regulating Shared Mobility Devices*, League of California Cities (May 9, 2019) p.13

<sup>99</sup> Bird, *A Look at e-Scooter Safety* (Apr. 2019) p.5

<sup>100</sup> Heinselman, Richards, Watson & Gershon, *Scooter Wars: Local Approaches to Regulating Shared Mobility Devices*, League of California Cities (May 9, 2019) p.18

<sup>101</sup> See *Id.* at 18-19

<sup>102</sup> National Safety Council, *Vehicle Deaths Estimated at 40,000 for Third Straight Year*, available at <https://www.nsc.org/road-safety/safety-topics/fatality-estimates>

<sup>103</sup> Ariella Gintzier, *Bike Commuters Are Dying in Record Numbers*, Outside (Feb. 25, 2019).

SCOOTERS TRAVEL MORE SLOWLY THAN BICYCLES AS BICYCLES CAN REACH 40MPH.

THEY BOTH MUST USE FOLLOW THE SAME RIGHT OF WAY LAWS.

AND SURVEYS SHOW THAT MOST PEOPLE THINK THAT SCOOTERS SHOULD BE TREATED THE SAME WAY AS BICYCLES.



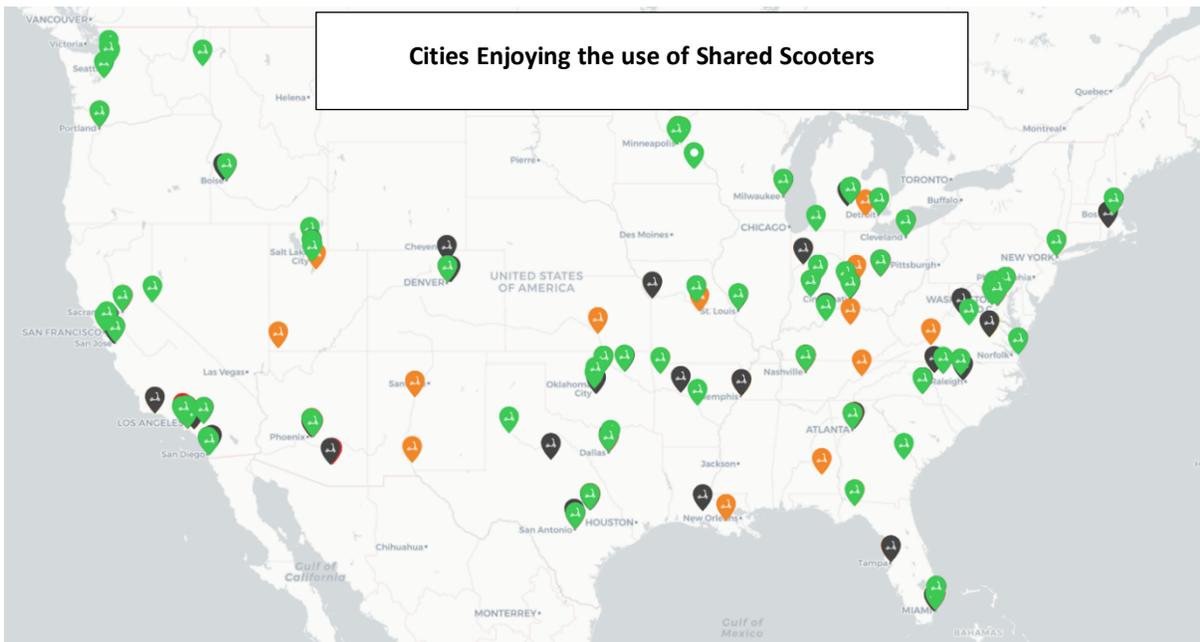
## Fair and Effective Ways Forward for Micromobility and Scooters

Cities and states<sup>104</sup> are creating ways to fairly and effectively integrate scooters into their infrastructure. And localities that welcome scooters see the benefits.

States like Virginia embrace the permissionless approach<sup>105</sup> which allows shared scooters to operate freely unless the locality has said otherwise. Other localities are turning to reasonable rules of the road for scooters.

Breaking from the restrictive approach of Nashville, Memphis entered agreements with shared scooter providers 30-days before deployment.<sup>106</sup> This led Memphis towards successful adoption of shared scooters. The Memphis Council Chairman said,

“This is just something that can prove to the world that Memphis is ready, that Memphis is open to business, and that Memphis makes accommodations for things we want.”<sup>107</sup>



<sup>104</sup> Florida is considering a state-wide bill to preempt localities and enable scooters. Scott Calvert, *States Race to Catch Up With Electric Scooters*, The Wall St. Jo. (Dec. 17, 2018).

<sup>105</sup> Emma Gauthier, *Scooter bill expected to give more authority to local governments, refresh state law*, Inside Nova (Feb. 23, 2019).

<sup>106</sup> Ryan Poe, *The Memphis-Bird electric scooters agreement: What you should know*, Commercial Appeal (June 19, 2018).

<sup>107</sup> *Id.*

Boston recently passed legislation to allow scooters – recognizing the demands of citizens.<sup>108</sup> Boston imposed modest fees as it continues to foster innovation.

### **Fair Rules of the Road**

By enacting laws that treat all micromobility devices equally, including bikes and scooters, jurisdictions can create consistent rules of the road and increase clarity and certainty for riders.

#### *Localities Should Apply any Parking and Riding Rules Equally to Bikes and Scooters.*

There are simple ways to address concerns about shared scooters blocking sidewalks and building entrances – reasonable rules about location in congested areas.

Any rules about parking and riding should apply equally to all micromobility services not just scooters.

For example, California brought scooters into parity with bikes regarding helmet laws.<sup>109</sup> And many other jurisdictions are looking to achieve consistency between bikes and scooters for all forms of regulation.

Enacting reasonable requirements like lights and bells on scooters are reasonable requirements that significantly improve safety without dictating design or manufacturing of scooters.

#### *Fines for Improper Riding or Parking Should be Levied on the Rider not the Operator*

Localities assess speeding tickets to the driver rented car – not the car rental enterprise. The same should be for shared-scooters when the rider violates riding or parking laws.

Failure to assess the rider creates an unsafe environment via a moral hazard. Rather than encourage individual responsibility, holding operators liable means riders are more likely to engage in illegal activities since the operator will pay for the riders' bad actions.

#### *Limits on Number of Scooters*

Caps on the number of shared scooters are neither fair nor effective. However, if a locality seeks to test caps, it should use “dynamic caps” that ensure that supply can keep up with demand such as in Miami FL, Salt Lake City UT, and Norfolk VA.<sup>110</sup>

<sup>108</sup> Christopher Gavin, *Boston City Council gives green light to electric scooter, micro-mobility licensing ordinance*, Boston.com (Mar. 27, 2019).

<sup>109</sup> California updated its helmet laws so only those under 18 are required to wear helmets. Eliyah Chiland, *California removes helmet requirement for electric scooters*, Curbed Los Angeles (Sept. 21, 2018).

<sup>110</sup> Adam Kovacevich, *Op-Ed: How Cities Should Regulate Scooters*, Streets Blog NYC (Oct. 29, 2019).



### *Protecting Citizen Privacy*

Data disclosure to the government creates problems. Data sharing mandates should be limited to non-real-time and non-personally identifying data. They must be designed to achieve a particular public interest and not turn into a data collection dragnet.

The Mobility Data Standard Provider API is a tool to help collect this information and is used by more than 70 cities and ensures that resident privacy is protected.<sup>111</sup> In addition, several third-party services exist to assist localities to understand the data, like Populus and Ride Report.

### **Guidelines and Guardrails for Local Regulation of Shared Scooters**

- **Data Collection on Use**
  - Must be necessary to achieve a particular purpose
  - Should not include any personally identifiable information
- **Fees**
  - Any fees must be limited to cost recovery for the locality
  - Fees must not be disproportionately higher than other forms of transportation
- **Parking Regulation**
  - Cities can designate where shared e-scooters cannot be deployed, provided that at least one location per block is provided in commercial/business districts
  - Operators must be provided at least 2-hours to remedy improperly parked scooters
  - Parking fines should be assessed on riders not operators
- **No Geofenced Speed Restrictions**
  - Rather than suddenly limiting speeds in certain areas, localities should set a 15mph speed limit for scooters in all areas
- **Curfews Must be Applied Equally**
  - Should the locality seek to limit riding times, such restrictions must also apply to all other comparable forms of travel – including bicycles

### **Creating Regulatory Sandboxes and Pilot Tests**

Once riders and cities see the benefits of scooters, lawmakers quickly see the benefits too. To overcome initial trepidation, many jurisdictions started with

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<sup>111</sup> Charlie Brown, *MDS, GBFS, and how cities can ask for data from micromobility providers*, Medium (Nov. 15, 2018).

pilot programs – and then later graduated the pilot program into a fully functioning operation. Under a pilot program the shared scooter deployment is relatively open and innovation is available. Localities test what does and does not work. Miami is currently using this pilot program approach.<sup>112</sup>

### *Keys to successful sandboxes and pilots-test programs*

1. Localities must be open to all desiring to engage. This is necessary to prevent cronyism that was seen in cities like San Francisco – where only select preferred providers were allowed in the program.<sup>113</sup>
2. Pilot-Test Program requirements and restrictions must be limited and reasonable to allow for true testing of demand and effect.
3. If a locality looks to limit deployment, Miami FL provides a model – make providers' shared scooter fleet size directly related to demand. In Miami, scooter companies could increase fleet size by 25% if the prior usage was more than 3 rides per day per scooter.<sup>114</sup>
4. Localities must limit the time that leads to a decision based on facts gathered during the test period. These pilot programs must be a step towards decisions on adoption of scooters, not an end in themselves.

## Conclusion

Discrimination against new forms of micromobility threatens to stall innovation in new forms of transit that improve city transit and reduce the impact of transportation on the environment. To move forward, cities should:

- Produce fair rules of the road,
- Prioritize safety over discriminatory policies, and
- Create regulatory sandboxes and pilot tests that encourage innovation.

Residents have embraced scooters; localities should too. Scooters represent the future mode of transit. Discriminatory and excessive limitations on scooters undermines fair and effective policymaking, derailing attempts to make city transportation accessible and safe.

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<sup>112</sup> City of Miami, Miami Scooter Pilot Program, *available at* <https://www.miamigov.com/Services/Transportation/Miami-Scooter-Pilot-Program>

<sup>113</sup> Carolyn Said, *San Francisco finds controlled scooter pilot a success*, S.F. Chron. (Apr. 12m 2019).

<sup>114</sup> City of Miami, Miami Scooter Pilot Program, *available at* <https://www.miamigov.com/Services/Transportation/Miami-Scooter-Pilot-Program>



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