

AGENDA ITEM #6
April 8, 2019
Briefing

April 5, 2019

TO: County Council
FROM: Glenn Orlin, Deputy Director
SUBJECT: Dockless E-Scooter Pilot Program
PURPOSE: Briefing

For several months the Department of Transportation (DOT) has been preparing for the roll-out of a program to pilot dockless e-scooters in much of the County. The pilot was scheduled to begin in early April. However, due to safety concerns raised by the certain Councilmembers and members of the public, the Council President requested DOT to delay initiating the pilot until the full Council could be briefed.¹ DOT is preparing a PowerPoint presentation, but it was not yet available at the time this staff report was published. The briefing presenters are:

Al Roshdieh, Director, DOT
Christopher Conklin, Deputy Director for Transportation Policy, DOT
Gary Erenrich, Special Assistant to the Director, DOT

DOT now anticipates beginning the pilot in a few weeks. Up to four selected companies will deploy dockless e-scooters and e-bikes at no cost to the County. The demonstration project is expected to run for six months with an option for extension. The jurisdictions that have opted not to participate in the pilot are listed on ©A. The standard memorandum of understanding to be signed by each selected company is on ©1-10.

f:\orlin\fy19\transit services\190408cc-escooter briefing.docx

¹ Key words: #escooter, plus search terms transportation, pilot.

**Jurisdictions Currently
Not Participating In
Dockless Vehicle Pilot Program as of 2/26/19**

Agricultural Reserve

Barnesville

Battery Park

Brookeville

Chevy Chase, North

Chevy Chase, Town of

Chevy Chase Section 3

Chevy Chase Section 5

Chevy Chase View

Drummond

Friendship Heights, Village of

Garrett Park

Glen Echo

Kensington

Laytonsville

Martin's Addition

Oakmont

Poolesville

Somerset

Washington Grove

MEMORANDUM OF UNDERSTANDING

Between

Name of Company, Inc.

and

Montgomery County, Maryland

This Memorandum of Understanding (“MOU”) is made and entered into as of the _____, 2019, by and between Montgomery County, Maryland (the “County”) and Name of Company Inc. (“Name of Company”). This MOU sets forth the terms and performance measures agreed upon between Name of Company and the County regarding Name of Company’s participation in Montgomery County’s Dockless Vehicle-sharing Demonstration Project (the “Demonstration Project”).

RECITALS

WHEREAS, the purpose of this MOU is to permit Name of Company to participate in the Demonstration Project and to ensure that Name of Company’s Dockless Vehicles are parked appropriately without impeding pedestrian access, and/or obstructing access to fire hydrants and valves, street furniture, bus stops, driveways, crosswalks, ADA ramps, intersections, traffic operations, outside dining or retail functions, building access, or any other public use of right-of-way in Montgomery County; and

WHEREAS, the Montgomery County Government, along with other government agencies such as the Maryland State Highway Administration and Cities, Towns, and Villages within Montgomery County, owns, controls, and maintains the public space on which Name of Company will operate and park its Dockless Vehicles and

WHEREAS, the County Department of Transportation (“MCDOT”) will be the primary County department that will enforce the conditions set forth in this MOU; and

WHEREAS, Name of Company is an app-based mobility platform that connects users to specially designed vehicles equipped with GPS and a proprietary smart-lock technology. Name of Company enables users of its app to locate nearby Name of Company bicycles and e-scooters and unlock and rent them using their smartphones. After traveling to their destination, users can park and lock Name of Company vehicles in the public right-of-way, making the Name of Company vehicle available to other Name of Company users; and

WHEREAS, Name of Company desires to participate in the Demonstration Project in Montgomery County within the areas designated on the attached Exhibit A; and

WHEREAS, the County desires to facilitate the Demonstration Project to assess the viability of Dockless Vehicle-sharing operations within the County and to understand the parameters that will allow Dockless Vehicle-sharing to operate effectively and to avoid any public nuisance in the County;

NOW, THEREFORE, in consideration of the above recitals which are incorporated into this MOU and the mutual promises contained herein, the County and Name of Company hereby agree as follows:

Article I. Definitions

For the purposes of this MOU, the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific article or paragraph of this MOU. When not inconsistent with the context, words used in the present tense include the future and past tense, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

A. Publicly Accessible Dockless Vehicle-Sharing Program: means a program to rent dockless vehicles to the public for short-term trips, without the installation of any infrastructure within Montgomery County other than the deployment of vehicles.

B. Dockless Vehicle: means a shared-mobility vehicle that is available to the public to rent in public space, does not require any specialized installations of equipment other than the vehicle itself, and can be located and unlocked using a smartphone application or by manually entering a customer’s account number. A Dockless Vehicle can be a manual pedal bicycle, electric pedal-assist bicycle (“e-bike”) or electric scooter (“e-scooter”), as defined below, but not a motorcycle, motor vehicle or a motor-driven cycle or all-terrain vehicle as defined in the Maryland Motor Vehicle Code. Dockless vehicles must display company contact information in tactile format for the visually impaired.

C. Dockless Bicycle: means a bicycle that meets the definition of Dockless Vehicle above and may be a manual pedal bicycle or an electric pedal-assist bicycle as defined in the Maryland Motor Vehicle Code.

D. Dockless E-Scooter: means a device that meets the definition of Dockless Vehicle above and weighs less than 100 lbs., with two or three wheels, handlebars and a floorboard that can be stood upon while riding; is solely powered by an electric motor and/or human power, and has a motor of no more than 750 watts; and whose maximum speed, with or without human propulsion on a paved level surface, is no more than 20 mph.

Article II. Responsibilities of the County

The County, by and through MCDOT, will in good faith and in an effort to achieve the County’s policy goals, cooperate and communicate with Name of Company and the public to work towards a successful, safe and sustainable regulatory environment for a Dockless Vehicle-sharing operation.

- A) The County will notify its enforcement agencies not to ticket or impound Dockless Vehicles parked in accordance with the performance measures of this MOU and Federal, State and local law;
- B) The County will establish and update, as needed, parking requirements for Dockless Vehicles, including identification of suggested parking areas and areas that can serve as preferred Dockless Vehicle parking locations;
- C) The County may designate specific parking areas through signage, striping or other means for Dockless Vehicle parking.
- D) The County will provide to Name of Company a point of contact (POC) for the Demonstration Project.
- E) The County will coordinate, as needed, with jurisdictions that elect to join the Demonstration Pilot

Article II. Responsibilities of Name of Company

- A) Performance Requirements: Name of Company will in good faith cooperate and communicate with the County, through its POC and the public to work towards a successful, safe and sustainable operation of Dockless Vehicle-sharing services within Montgomery County, Maryland, conforming to Federal, State and local law and to the performance measures outlined below:
- 1) Management, Coordination, and Communication:
 - a) Name of Company shall provide Dockless Vehicles within the Service Area (defined below) identified by the County at no cost to Montgomery County, Maryland. All obligations of the County under this MOU shall be subject to, limited by and contingent upon the appropriation of funds. Name of Company will provide a \$10,000 bond to Montgomery County Government, Maryland, renewable on an annual basis, to defray the potential cost to MCDOT and participating jurisdictions of removing Dockless Vehicles that are parked illegally or which are otherwise creating an obstruction in the public right of way or on private property. The bond may be used to pay the obligations to the third-party contractor retained to collect and analyze operating data.
 - b) Upon signature of this MOU, Name of Company will provide to the County a point of contact (POC) with control of the services provided in accordance with this MOU for the planning of service and operations for the duration of the demonstration period. The demonstration period is for a period of six (6) months following the date on which this MOU is fully executed, with the County's option to continue the program after 6 months. At the expiration of the demonstration period, the parties may elect to extend such period upon mutually agreeable terms which will be evidenced by a written amendment to this MOU. Name of Company will also provide a local operations point of contact (based in the DC region) as the POC for rebalancing and operational requests.
 - c) The Name of Company representatives will meet with the County POC within three days of any request of the County to review operations or other issues. In addition to ad-hoc meetings, Name of Company will meet with the County POC at least one week before launch, and as requested by the County thereafter throughout the duration of the Demonstration Project. In the case of a critical issue or emergency situation that requires immediate attention, the Name of Company will be available within the Response Time to respond to emergency needs and to coordinate with the County. The County has the right to exercise "self-help" if it is determined that an emergency poses an imminent risk to public health and safety or a risk of property damage.
 - d) For the purposes of this Agreement, the "Response Time" shall mean, based on the time of report:
 - (i) When reported between 6 AM and 8 AM – within 2 hours from the time of report
 - (ii) When reported between 8 AM and 9 PM – within 1 hour from the time of report
 - (iii) When reported between 9 PM and 11 PM – within 2 hours from the time of report
 - (iv) When reported between 11 PM and 6 AM – Prior to 8 AM

- e) Name of Company shall respond within 48 hours directly to Montgomery County residents and all users reporting problems, issues and/or requesting information regarding Name of Company services, including but not limited to the parking of Name of Company Dockless Vehicles.
- f) The Name of Company POC will respond within five business days regarding issues or questions raised by the County in meetings, through telephone inquiries, or other correspondence. The Name of Company will keep a log of all issues and requests raised by the County.
- g) Name of Company will be solely responsible for providing information to its customers on safe and appropriate operation of Dockless Vehicles, including information about appropriate parking locations, throughout the duration of the Demonstration Project. Name of Company will provide to the County the details of its communications materials and schedule of this education effort within two weeks of launch or within two weeks of the date of this fully-executed MOU, whichever is later.
- h) Name of Company will be responsible for conducting monthly training sessions in Montgomery County for its customers on safe and appropriate operation of Dockless Vehicles, including appropriate parking behaviors and locations and traffic rules.

2) Fleet Size

- a) Name of Company shall provide a minimum of 200 Dockless Vehicles at all times. Name of Company may provide up to a maximum of 500 Dockless Vehicles initially. The number of e-bikes will not count against the maximum number of permitted vehicles.
- b) Name of Company may be authorized to increase the number of Dockless Vehicles when they are determined by the County to be in compliance with all provisions of this MOU and certain usage criteria are met. Name of Company may request permission to increase the number of Dockless Vehicles when:
 - (i) Dockless e-bikes – usage is greater than 1 trip per day per vehicle as reported weekly
 - (ii) Dockless e-scooters – usage is greater than 3 trips per day per vehicle as reported weekly
- c) Montgomery County may, in its sole discretion, request or approve changes to the minimum and maximum fleet sizes within defined subareas of the County upon notification to Name of Company.

3) Fleet Condition and Inventory

- a) All Dockless Bicycles used by Name of Company in its Demonstration Project under this MOU shall meet the standards outlined in the Code of Federal Regulations (CFR) under Title 16, Chapter II, Subchapter C, Part 1512 – Requirements for Bicycles. Additionally, permitted systems shall meet the safety standards outlined in ISO 43.150 – Cycles, subsection 4210.
- b) Any Dockless e-bike used by Name of Company in its Demonstration Project under this MOU shall meet the National Highway Traffic Safety Administrations (NHTSA) definition of low-speed electric bicycles; and shall be subject to the same requirements as ordinary bicycles (described above). This means, among other requirements, that electric

bicycles shall have fully operable pedals, an electric motor of less than 750 watts, and a top motor-powered speed of less than 20 miles per hour when operated by a rider weighing 170 pounds. Additionally, the County may terminate this Agreement if the battery, motor or any other component on an electric bicycle is determined by MCDOT to be unsafe for public use.

- c) Any Dockless E-Scooter used by Name of Company in its Demonstration Project under this MOU shall meet any relevant National Highway Traffic Safety Administrations (NHTSA), State of Maryland or Montgomery County standards as they currently exist or are promulgated in the future. In addition to any other requirements, Dockless E-Scooters shall weigh less than 100 lbs., have two or three wheels in tandem, handlebars and a floorboard that can be stood upon while riding, and be powered by an electric motor and/or human power, with a motor of no more than 750 watts, and have a maximum speed, with or without human propulsion on a paved level surface of no more than 20 miles per hour. Additionally, the County may terminate this MOU if the battery, motor or any other component on an e-scooter is determined by MCDOT to be unsafe for public use.
- d) Name of Company shall ensure each Name of Company Dockless Vehicle deployed and used is fully operable, free of defects, conforms to relevant safety standards, and is well-maintained and clean. Name of Company shall affix to each Name of Company vehicle deployed its clearly visible logo and instructions on how to contact the company to request pickup of an improperly parked Name of Company vehicle and/or a Name of Company vehicle in need of maintenance or cleaning. Information on vehicles must also be tactile for readers of Braille and for low vision individuals and shall comply with all other Federal, State and local requirements with respect to the Americans with Disabilities Act (ADA). Instructions shall include an email address, URL, and phone number for reporting problems without requiring an app or a smartphone.
- e) Name of Company shall not require customers to grant location services from their phones, and shall not require access to contacts, photos, or other files.
- f) Name of Company shall not require customers to share data with a third party.

4) Vehicle Parking and Removal

- a) Name of Company will ensure that Name of Company Dockless Vehicles are parked in accordance with the terms and performance measures in this MOU as outlined below and Montgomery County law and laws of jurisdictions participating in the Demonstration Project.
- b) Name of Company will work to ensure that Name of Company Dockless Vehicles are parked at public bicycle racks or on public sidewalks or other public areas in a manner that does not impede pedestrian access, does not obstruct access to fire hydrants and valves, does not affect access to street furniture, does not interfere with traffic operations, bus stop operation, driveway access, crosswalks, ADA ramps, access to private property, or access to outside dining or retail areas, and does not damage landscaping, street trees, street furniture or other aesthetic features.

- c) Name of Company will ensure that Name of Company Dockless Vehicles do not restrict access to Capital Bikeshare stations for Capital Bikeshare operations and maintenance and for Capital Bikeshare users.
- d) Name of Company will identify Dockless Vehicles deployment areas within the Demonstration Project service area and will identify preferred parking areas for Dockless Vehicles in areas where such approaches are deemed necessary by the County. Name of Company will notify its customers regarding these preferred parking areas and will work with the County and other organizations to address any issues created by these deployment or parking areas, including identifying alternative locations as needed.
- e) Name of Company shall not deploy more than three Dockless Vehicles along a block face within the County unless other requirements are established by the County or participating jurisdictions, and will work with the County and local communities to determine appropriate deployment numbers and approaches, which may vary for specific areas within the County. Designated deployment areas or preferred parking locations are limited to a maximum of 15 total Dockless Vehicles at any time, or such other number as may be determined by the County, and may be changed over time by the County, depending upon local circumstances.
- f) Name of Company will remove Name of Company Dockless Vehicles parked in violation of the parking requirements outlined in this Article III, or otherwise in conflict with applicable laws and regulations, or in violation with other Dockless Vehicle parking standards to be developed and periodically updated by the County.
- g) Name of Company will remove each parked Name of Company Dockless Vehicle in need of maintenance and/or cleaning in violation of the terms and performance measures in this MOU and Federal, State and local law.
- h) Montgomery County may establish and shall notify Name of Company of any additional requirements for Dockless Vehicle deployment or parking that it deems necessary.
- i) In the event of a declared snow emergency, Name of Company shall collect all their Dockless Vehicles located in the public right-of-way and relocate them to a storage facility under their control, or otherwise secure the Dockless Vehicles in a location that does not impede public and private snow and ice-clearing operations for the duration of the emergency.
- j) Upon request of the County due to emergency, construction, parade, public gathering, or other situation affecting the normal operation of the right-of-way, Name of Company shall collect and secure all or a portion of Name of Company's owned or controlled Dockless Vehicles to a location outside of the public right-of-way or to a location that does not otherwise impede the County's access and response to the situation for the duration of the situation.
- k) In the event Name of Company fails to adhere to these parking performance measures, the County may remove and store Name of Company's Dockless Vehicles. The County shall notify Name of Company in each such instance. Name of Company is required to pick up its Dockless Vehicles from such a facility within one business day of such notice and must reimburse the County for all costs associated with removal and storage of the Dockless

Vehicles, in addition to any applicable fines or fees, or other penalties as appropriate under the law. Subject to applicable laws and rules, the County will consider Name of Company Dockless Vehicles abandoned and may dispose of same as the County deems fit in the event Name of Company fails to pick up its Dockless Vehicles from a County facility within 7 days of the County's notice described above. The County will not be liable to Name of Company for any damage to any of its vehicles in the event the County doesn't collect and store them.

5) Data

- a) Name of Company shall provide a publicly accessible application program interface (API) clearly posted on the company's website that shows, at a minimum, the current location of any Dockless Vehicles available for rent at all times. Name of Company will follow Mobility Data Specification (MDS) to describe mobility vehicle trips and their routes, location and status of each vehicle at any point in time and historically and provider service areas.
- b) A smart phone-based application used to rent Dockless Vehicles does not qualify as a publicly accessible API.
 - (i) Data must be provided in compliance with the most current Generalized Bikeshare Feed Specification (GBFS) v1.0 and Mobility Data Specification (MDS) formats
- c) The public API need not be available without authentication; however, any member of the public, including commercial entities, must be able to gain access to the data provided by the API by requesting access through a web interface.
- d) Name of Company shall provide a monthly report within 3 business days of the end of the month, using a County approved template.
- e) Name of Company must also provide:
 - (i) Safety reports on any crashes involving Name of Company's Dockless Vehicles.
 - (ii) Reports on any Dockless Vehicles lost due to theft or vandalism.
 - (iii) Aggregated repair information on Name of Company's Dockless Vehicles by type of repair.
 - (iv) Monthly report of complaints received, nature of the complaint including type of vehicle, response time, and action taken.
 - (v) Name of Company agrees to provide the required data to a third-party contractor identified by MCDOT to evaluate the Dockless Vehicle-sharing program and Name of Company agrees to cooperate with that effort and agrees to compensate the third-party contractor directly to provide data assemble, visualization, and analysis to MCDOT. Failure to agree to payment to third party may result in a claim against the \$10,000 bond described below and termination of this MOU.

6) Penalties and Fines.

- a) Name of Company shall be financially responsible for any/all penalties, fines, and other costs to the County as a result of illegally parked Dockless Vehicles, including but not limited to parking tickets or other enforcement actions against Name of Company. Name of Company agrees to post a refundable bond of \$10,000 to cover costs to the County for enforcement of laws or enforcement of provisions of this MOU.

7) Advertising.

- a) Name of Company shall not advertise or publish Montgomery County government's participation in or endorsement of the Name of Company Dockless Vehicles or promotional material without County written consent.
- b) Name of Company shall not utilize its Dockless Vehicles for the sale or display of third-party advertising.

8) Remedies.

- a) Name of Company must carry out and perform its obligations pursuant to this MOU.
- b) If Name of Company violates any of its obligations under this MOU and such violation is not corrected within one week's time following written notice by the County, the County may then immediately terminate Name of Company's participation in the Demonstration Project, and may be reimbursed for costs from the bond referenced above.
- c) MCDOT has the right at any time and at its sole discretion to terminate or restrict a company's operation in any jurisdiction that requests this action based upon the company's failure to meet performance requirements or to adhere to other provisions of this MOU. Additionally, Name of Company must take reasonable action to alert riders of restricted areas.

9) No Right, Title or Interest.

- a) Name of Company expressly acknowledges that this MOU does not constitute a conveyance of real property, in whole or in part.

Article III. Duration

- A) This MOU shall become effective upon signature by the County and will remain in effect for an initial term of six months and may be extended at the County's sole discretion with the acceptance of the Name of Company. At the conclusion of the Demonstration Project the County may initiate, in its sole discretion, a permanent program open to all companies that participated in the Demonstration Project and satisfactorily complied with the terms and conditions of this MOU, or to other companies as determined by the County to be appropriate.

Article IV. Service Area

Name of Company will be permitted to operate throughout Montgomery County, except within certain proscribed areas as depicted in Exhibit A. Name of Company will be required to collect its Dockless

Vehicles that travel beyond this service area for redeployment within the service area within the Response Time per Article II.

Article V. Insurance and Indemnification

A) Insurance

- 1) Name of Company shall maintain at all times a comprehensive general liability insurance policy concerning acts or omissions of Name of Company and its employees, agents and contractors with respect to the Demonstration Project and its obligations under this MOU, with limits of not less than \$2,000,000 per occurrence and with excess liability limits of at least \$3,000,000 per occurrence and in the aggregate, for bodily injury, death and property damage, with a commercially reasonable deductible amount, with coverage including independent manufacturer's and independent contractor's liability, damage from explosion, collapse and underground hazards, and completed operations coverage. Montgomery County, its elected and appointed officials, officers, consultants, agents and employees shall be included as an additional insured on the policy for liability arising out of Name of Company's activities. Written notice of cancellation, if applicable, must be delivered to the County in advance. Name of Company shall provide the County with a certificate of insurance at the time of execution of this Agreement, issued to:

Montgomery County, Maryland, Department of Transportation / Director's Office

Attention: Al Roshdieh, 101 Monroe Street, Rockville, Maryland 20850

B) Indemnification.

- 1) Name of Company, its successors and assigns, hereby indemnifies, defends and holds the County harmless from and against any and all claims, loss or damage, including reasonable attorney's fees, arising out of any claims for damage or injury to persons or property resulting from the Name of Company's activities defined in this Agreement, including (a) any act or omission by Name of Company and its employees, agents and contractors in connection with Name of Company's activities associated with the Demonstration Project, and (b) any act or omission of Name of Company and its employees, agents and contractors associated with the Demonstration Project, excepting claims arising from the negligent act or intentional misconduct of the County or its employees. Name of Company's indemnification obligations shall survive termination of this MOU.

Article VI. Modification and Termination

This MOU may be modified only by mutual consent of authorized representatives from both parties, in writing.

Either party may terminate this agreement with 48-hours' notice to the other party. Upon termination, Name of Company shall remove all Dockless Vehicles under its ownership or control within five (5) business days of the date of termination and shall cease all operations within the service area. The County will consider any Name of Company Dockless Vehicles not removed as abandoned property and will dispose of them as it deems fit at Name of Company's expense.

IN WITNESS WHEREOF, the Parties hereto have caused this MEMORANDUM OF UNDERSTANDING to be executed as of the date first above written by their duly authorized representatives.

Montgomery County Maryland

Al Roshdiah

Title: MCDOT Director

Signature: _____

Name of Company Inc.

Title: Director

Signature: _____

EXHIBIT A: Service Area Map