

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: April 17, 2020

TO: Councilmember Scott Sherman, District 7

FROM: City Attorney

SUBJECT: Shared Mobility Devices: Parking Enforcement and Towing

INTRODUCTION

In May of 2019, the Council of the City of San Diego (Council) adopted the Shared Mobility Device Ordinance (Ordinance). The Ordinance, which went into effect on June 16, 2019, defines Shared Mobility Devices (SMD or SMDs) as “any motorized scooter, electric bicycle, or motorized bicycle by which a natural person can be propelled or moved, that is displayed, offered, or made available for rent to the public.” The Ordinance regulates the staging, parking, and operation of SMDs offered for rent to the public. SMDs that are not parked as prescribed in the Ordinance are not lawfully parked (hereinafter referred to as “illegally parked.”) You asked our Office a series of questions relating to the alleged unlawful towing of SMDs by private companies, which we address below.

QUESTIONS PRESENTED¹

1. Are illegally parked SMDs being removed from public property by towing companies with current agreements with the San Diego Police Department (SDPD)?

2. Are private companies that tow SMDs from private property subject to the notice requirements of California Vehicle Code (Vehicle Code) section 22658 *et seq.* pertaining to signage and notifying SDPD within a certain time period after a tow is made?

¹ We have consolidated your questions for efficiency in analyzing the legal issues.

3. Has the City Attorney's Office received complaints of, or pursued enforcement actions against, illegal towing of SMDs by companies without an agreement with the City or for violations of the Vehicle Code?

SHORT ANSWERS

1. No, the SDPD does not maintain any agreements with towing companies related to the removal of SMDs. The City, through its Environmental Services Department (ESD), has an agreement with Sweep, Inc. to remove illegally parked SMDs based on violations of the San Diego Municipal Code (SDMC). We defer to ESD staff regarding the extent to which Sweep, Inc., has been actively towing SMDs under this contract.

2. The law is unclear as to whether private companies that tow SMDs from private property must comply with the Vehicle Code's notice requirements. The requirements of Vehicle Code section 22658, which are intended to apply to automobiles, and not SMDs, lays out four different scenarios under which an automobile may be removed from private property. Each scenario entails different signage and notice requirements. There are also several exceptions to the notification requirements.

3. Yes, the Civil Division of our Office has received at least two unsubstantiated complaints about alleged illegal towing of SMDs by private companies, neither of which could be pursued. Our Office cannot comment on any pending or active criminal investigations.

ANALYSIS

SDMC section 83.0311 describes the notice and impound requirements that apply to SMDs used on public property under the Ordinance. Under the Ordinance, the City will give an SMD company three hours' notice to retrieve a device that is parked in violation of the SDMC or the Vehicle Code, unless it poses an imminent life safety hazard, in which case, the City can immediately confiscate the SMD. The City has outsourced the noticing and impounding of SMDs to a private company, as described below.

I. PRIVATE COMPANIES MAY TOW SMDs FROM PUBLIC PROPERTY PURSUANT TO AN AGREEMENT WITH THE CITY.

While the SDPD does not maintain any agreements for the removal of SMDs from public property, the City does have such an agreement that is administered by ESD. ESD issued a Request for Proposal for Shared Mobility Device Impound Services in November of 2019. Sweep, Inc. was selected as the successful proposer and entered into an agreement with the City to provide SMD impound services on February 12, 2020. The scope of services for the agreement with Sweep, Inc., includes: patrolling the City public right-of-way, identifying SMDs in violation of the SDMC, notifying the Operator (i.e., the person who manages, owns, or operates an SMD business) of the violation, confirming SMD Operator compliance, impounding

the offending SMD upon authorization from City staff, moving offending SMDs, transporting SMDs to the City impound facility at 20th & B Streets Operations Yard, and providing documentation and reports to the City.

We defer to ESD regarding the extent to which Sweep, Inc., has been actively towing SMDs under its agreement with the City and other operational matters relating to towing of SMDs.

II. THE PROVISIONS OF THE VEHICLE CODE PROVIDE GUIDANCE AS TO HOW PROPERTY OWNER'S MAY REMOVE VEHICLES FROM PRIVATE PROPERTY, BUT IT IS UNCLEAR HOW SUCH PROVISIONS WILL BE APPLIED TO SHARED MOBILITY DEVICES.

Although the City is not responsible for removing SMDs from private property, section 22658 of the Vehicle Code provides four different scenarios under which a property owner can have a vehicle removed from their personal property at their own expense:

1. There is a sign prohibiting public parking at the property that meets the requirements of Vehicle Code section 22658(a)(1);
2. The vehicle has been issued a parking violation and 96 hours have passed since that violation;
3. The vehicle is on private property and is unable to be driven on the road safely, the property owner has contacted law enforcement, and 24 hours have passed; or
4. The private property lot is improved with a single-family dwelling.

Under the fourth scenario, no notice or time delay is required. Therefore, on private property improved with a single-family dwelling, there is no signage or notice requirement for towing of SMDs. On a commercial property (i.e. with no single-family dwelling), some form of notice or signage would likely be required.

Under Vehicle Code section 22658(m), a towing company that removes a vehicle from private property must notify the SDPD within 60 minutes after the vehicle is removed from the private property and is in transit or 15 minutes after arriving at the storage facility, whichever time is less. Note that the ESD has no role as this is considered a private enforcement matter.

It is unclear at this time how a court will treat these requirements when applied to SMDs. The existing towing and impound provisions in the Vehicle Code appear to have been written with automobiles in mind. For example, section 22658(b) requires that “[t]he notice provided for in

this section shall include the amount of mileage on the vehicle at the time of removal and the time of the removal from the property.” Section 22658(l) requires that a towing company obtains written authorization from the property owner that includes the “make, model, vehicle identification number, and license plate of the removed vehicle.” SMDs have no mileage indicator, no vehicle identification number, and no license plates making any such notice or written authorization impossible. We anticipate that the SMD industry will request legislative fixes at some point to address the ambiguities and omissions that exist in current law.

III. COMPLAINTS OF UNLAWFUL TOWING OF SMDs IN VIOLATION OF VEHICLE CODE SECTION 22658 BY A PRIVATE COMPANY ARE FUNDAMENTALLY PRIVATE DISPUTES.

Scooter Removal, LLC *dba* as Scoot Scoop (Scoot Scoop) is a company that offers removal services for electric scooters, a form of SMD, to private property owners. Lyft, an SMD operator, contacted our Office in November of 2019 alleging Scoot Scoop was unlawfully towing its SMDs in violation of the Vehicle Code, and it is our understanding that Uber has also lodged a complaint with the District Attorney’s Office. The Civil Division of this Office is unable to comment on the outcome of investigations into these complaints.² We can say generally, however, that if an SDMC violation or a crime has not occurred, the matter is likely a private dispute that should be civilly resolved between the feuding companies.

In March of 2019, for instance, both Bird and Lime (two other SMD operators) filed civil lawsuits against Scoot Scoop for the same conduct as alleged by Lyft and Uber. *See Bird Rides, Inc. v. Scooter Removal LLC* (Case No. 37-2019-00015016-CU-BT-CTL) and *Neutron Holdings, Inc. v. Scooter Removal LLC* (Case No. 37-2019-00014725-CU-BT-CTL). Both cases allege various Vehicle Code violations, theft-related causes of action, and an Unfair Competition Law claim. As of the date of this memo, both cases are pending in Superior Court. We are not aware of anything precluding Lyft and Uber from filing similar complaints. As this fundamentally appears to be a private dispute between companies, our Office has not pursued civil enforcement.

IV. VICTIMS SHOULD REPORT CRIMES TO SDPD AND THEN CRIMINAL INVESTIGATION AND ENFORCEMENT MUST FOLLOW APPROPRIATE PROCEDURES.

Our Office cannot comment on any pending or active criminal investigations, nor can we provide guidance as to which cases City prosecutors may pursue. If a crime occurs, the victim should report the suspected crime or crimes to the SDPD for investigation. If the SDPD determines a crime occurred, that department may refer the matter to the Criminal Division of our Office for possible prosecution.

² The Criminal Division of the Office of the City Attorney represents the People of the State of California. Accordingly, there is an ethical wall between the Civil and Criminal Divisions of this Office.

Scott Sherman, Councilmember
District 7
April 17, 2020
Page 5

CONCLUSION

The City has an agreement with Sweep, Inc., which is administered by ESD, to enforce SMD violations of the SDMC. Although the requirements of the Vehicle Code may apply to the impounding of SMDs, these requirements were crafted for automobiles and it is not known if courts will apply these requirements to SMDs. Crimes involving SMDs should be reported to the SDPD, which may in turn refer the matter to a prosecuting agency for enforcement. Private disputes between companies may be resolved through the courts.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/Ryan P. Gerrity
Ryan P. Gerrity
Deputy City Attorney

RPG:cw
MS-2020-10
Doc. No.: 2367535

cc: Honorable Mayor and Councilmembers
Aimee Fawcett, Chief of Staff, Office of the Mayor
Andrea Tevlin, Independent Budget Analyst
Kris Michell, Chief Operating Officer
Gene Matter, Interim Director, Environmental Services Department
Alia Khouri, Deputy Chief Operating Officer, Office of the Mayor