

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.8**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Sustainable Streets

**BRIEF DESCRIPTION:**

Ratifying the Interim Permit extension of Stationless Bicycle Share Permit Program No. 01, with Social Bicycles (also known as JUMP), on the terms of the Pilot, consistent with a court order in related litigation, including any terms that may conflict with the terms and conditions included in the Stationless Bicycle Share Program, Transportation Code Section 909, as amended by the SFMTA Board through Resolution No. 190416-042 on April 16, 2019.

**SUMMARY:**

- In March 2017, the SFMTA established a Stationless Bikeshare Permit Program and issued an 18-month permit to JUMP effective until July 9, 2019.
- On April 16, 2019, the SFMTA Board amended the Transportation Code to update the program to create a more useful, safe, sustainable, equitable, and accountable citywide Stationless Bikeshare Permit Program.
- On June 7, 2019, Bay Area Motivate (owned by Lyft) sued the SFMTA alleging that a 2015 Coordination Agreement gave Motivate the exclusive right to operate a bike share program in San Francisco.
- On July 23, 2019, the San Francisco Superior Court issued an Order granting Lyft's request for preliminary injunction to stop the SFMTA from issuing permits to any operator other than Lyft for bikeshare without first engaging in a 90-day Right of First Offer process regarding e-bikes. The Court's order recognized that the SFMTA could decide to allow JUMP to continue operating its pilot program with a maximum of 500 e-bikes for up to 100 days from the date of the Order
- On July 18, 2019 the Director extended JUMP's permit but could not issue a new permit under the revised April 2019 permit program due to the Court's order.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Third Amendment of Social Bicycles' Stationless Bikeshare Permit Program No. I ("Interim Permit")

**APPROVALS:**

	<b>DATE</b>
DIRECTOR <u>Tom Maguire</u>	<u>August 13, 2019</u>
SECRETARY <u>R. Boomer</u>	<u>August 13, 2019</u>

**ASSIGNED SFMTAB CALENDAR DATE:** August 20, 2019

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### **PURPOSE**

Ratifying the Interim Permit extension of Stationless Bicycle Share Permit Program No. 01, with Social Bicycles (also known as JUMP), on the terms of the Pilot, consistent with a court order in related litigation, including any terms that may conflict with terms and conditions included in the Stationless Bicycle Share Program, Transportation Code Section 909, as amended by the SFMTA Board through Resolution No. 190416-042 on April 16, 2019.

### **STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

This action supports the following SFMTA Strategic Plan Goals and Objectives:

Goal 2 - Make transit and other sustainable modes of transportation the most attractive and preferred means of travel.

Objective 2.2 - Enhance and expand use of the city's sustainable modes of transportation.

Goal 3 - Improve the quality of life and environment in San Francisco and the region.

Objective 3.3 - Guide emerging mobility services so that they are consistent with sustainable transportation principles.

This action supports the following Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
3. Decisions regarding the use of limited public street and sidewalk space shall encourage the use of public rights of way by pedestrians, bicyclists, and public transit, and shall strive to reduce traffic and improve public health and safety.
6. Bicycling shall be promoted by encouraging safe streets for riding, convenient access to transit, bicycle lanes, and secure bicycle parking.

### **DESCRIPTION**

In March 2017, after previously prohibiting private stationless bikeshare operators, which had begun unregulated operations in San Francisco, the SFMTA Board of Directors approved changes to the Transportation Code to establish and regulate a Stationless Bikeshare Permit Program in which an operator manages bicycles for hire from a self-service mobile device application, where the bikes can be parked at public bicycle racks, and not exclusively at a bikeshare station placed in the public right of way.

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Following a review of permit applications, the SFMTA announced its intention to issue a permit to a single operator – Social Bicycles’ JUMP Bikes. Following this decision, Motivate objected, arguing that it had an exclusive right to all bikeshare operations in San Francisco, including stationless bikeshare, and invoked the dispute resolution process under the existing Coordination Agreement between the City, the Metropolitan Transportation Commission, and Motivate for the Bay Area Bikeshare Program. As a result of this process, Motivate agreed that it would not object if the SFMTA issued a permit to JUMP for an 18-month period which was reflected in a Settlement Agreement entered into between the parties.

On April 16, 2019, the SFMTA Board amended the Transportation Code, (SFMTA Board Resolution No. 190416-042), to update the Stationless Bikeshare Permit Program (“Program”). These Transportation Code amendments modified the Program requirements to, among other things, provide:

- requirements that stationless bicycles have integrated lock-to devices and adhere to standard certifications as determined by the SFMTA
- a requirement that a certain percentage of each permittee’s fleet be electric bicycles as determined by the SFMTA
- revised stationless bicycle distribution and rebalancing requirements
- a requirement that applicants submit a marketing and targeted community outreach plan which complies with SFMTA’s Community Engagement Plan
- requirements that permittees’ Privacy Policies be consistent with state and local law and any guidelines issued by the Director of Transportation
- authorized the Director of Transportation to impose additional permit conditions that are necessary to protect the public convenience and safety including, but not limited to, approving the transfer of permits.
- included a labor harmony provision requiring that permittees describe the means by which they will ensure consistent distribution, operation, and maintenance, and steps taken to avoid potential disruptions.
- a requirement that permittees comply with the City’s Zero Waste Policy
- consideration of past operational experience in evaluating permit applications
- adjustments to the Stationless Bikeshare Program permit fee schedule to better reflect staff time, bringing the Permit Application Fee to \$4,947 and the Annual/Renewal Permit Fee to \$35,288 for Fiscal Year 2018-2019
- a requirement that applicants provide sample bicycles for inspection and evaluation by the SFMTA

The SFMTA issued permit applications based on the updated Program in June 2019.

On June 7, 2019, Motivate, owned by Lyft, sued the SFMTA alleging that a 2015 Coordination Agreement signed by SFMTA and Motivate, among other parties, gave Lyft the exclusive right to operate a bikeshare program in San Francisco. On July 23, 2019, the San Francisco Superior

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Court issued an Order granting a preliminary injunction enjoining the SFMTA from issuing permits to bike share operators other than Lyft for the time being. In its ruling, the court determined that Lyft had a likelihood of winning its argument—specifically, that Lyft would likely prove that it has an exclusive right to operate a traditional pedal bikeshare program in San Francisco and has a “Right of First Offer” (ROFO) with respect to any e-bike program. The court recognized that the parties needed to first engage in the ROFO negotiation process outlined in the Coordination Agreement, which gives Lyft and the SFMTA a 90-day period to negotiate, in good faith, the terms of an e-bike program.

The court also determined that the public interest would be served by maintaining the bikeshare “status quo” and allowing JUMP’s pilot program to continue while Lyft and the City engage in the ROFO negotiations. The final Order states: “Nothing in this Order precludes the City from exercising any regulatory authority it may have to allow Jump to continue to operate its pilot program of a maximum of 500 e-bikes on the streets of San Francisco for 100 days from the date this Order is entered by the Court.”

Consistent with this direction, the acting Director of Transportation extended JUMP’s permit to continue operating its 500-bike stationless bikeshare pilot program with the same terms and conditions as the pilot program through the completion date of the ROFO negotiation process between the SFMTA and Lyft. These terms and conditions do not reflect any of the Program changes made, as noted above, resulting from the Transportation Code amendments approved by the SFMTA Board on April 16, 2019, given the court’s order that JUMP could continue to operate its pilot program but enjoining the SFMTA from issuing any new permits to bike share operators other than Lyft.

As a result, the JUMP permit terms and conditions include many, but not all, of the revised Program terms and conditions the SFMTA Board recently approved in April 2019, as enumerated in the bulleted list above. To the extent that the terms and conditions in JUMP’s Interim Permit are not consistent with those revised terms and conditions that the SFMTA Board approved in April 2019, staff requests that the SFMTA Board ratify JUMP’s Interim Permit’s terms and conditions as directed by the court in order to allow JUMP’s pilot program to continue while Lyft and the City engage in the ROFO negotiations.

## **STAKEHOLDER ENGAGEMENT**

The SFMTA has conducted extensive community outreach in the development of San Francisco’s bikeshare system, including meetings with elected officials, community organizations, advocacy groups, and public meetings.

## **ALTERNATIVES CONSIDERED**

The SFMTA Board could decide not to ratify the Director’s extension of the permit. This would mean that JUMP bike service would no longer be permitted in San Francisco, as the SFMTA is

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enjoined from issuing a new permit to JUMP that would cover all of the updated program requirements.

**FUNDING IMPACT**

All costs associated with the Stationless Bicycle Share Permit Program are recovered through the SFMTA's permit fee schedule and administrative penalties which may be imposed for violations of local law.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The City Attorney has reviewed this report.

No other approvals are required.

**RECOMMENDATION**

Staff recommends that the MTA Board ratifies the Interim Permit extension of Stationless Bicycle Share Permit Program No. 01, with Social Bicycles (also known as JUMP), on the terms of the Pilot, consistent with a court order in related litigation, including any terms that may conflict with the terms and conditions included in the Stationless Bicycle Share Program, Transportation Code Section 909, as amended by the SFMTA Board through Resolution No. 190416-042 on April 16, 2019.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, In March 2017, the SFMTA Board approved changes to the Transportation Code to establish a Stationless Bikeshare Permit Program, and, after reviewing applications submitted by stationless bikeshare operators for a permit under this new program, the SFMTA issued an 18-month permit to Social Bicycles or JUMP effective January 9, 2018 until July 9, 2019; and,

WHEREAS, On April 16, 2019, the SFMTA Board amended the Transportation Code to update the Stationless Bikeshare permit program to create a more useful, safe, sustainable, equitable, and accountable citywide Stationless Bikeshare Permit Program; and,

WHEREAS, On June 7, 2019, Bay Area Motivate LLC, owned by Lyft (“Motivate” or “Lyft”), sued the SFMTA alleging that a 2015 Coordination Agreement signed by SFMTA and Motivate, among other parties, gave Motivate the exclusive right to operate a bike share program in San Francisco; and,

WHEREAS, On July 23, 2019, the San Francisco Superior Court issued an Order Granting Preliminary Injunction enjoining the SFMTA from issuing Stationless Bikeshare Permit Program permits to any other operator than Lyft for bikeshare, without first engaging in a 90-day Right of First Offer process regarding e-bikes; and,

WHEREAS, The Court’s order recognized that SFMTA could continue to allow JUMP to operate its pilot program with a maximum of 500 e-bikes for up to 100 days from the date of the Order; and,

WHEREAS, On July 18, 2019 the Director extended JUMP’s permit, but could not issue a new permit under the revised legislation due to the Court’s Order; and,

WHEREAS, The proposed action is not a “project” pursuant to CEQA as defined in CEQA Guidelines Sections 15060(c) and 15378(b) because the action would not result in a direct or a reasonably foreseeable indirect physical change to the environment; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors ratifies the Interim Permit extension of Stationless Bicycle Share Permit Program No. 01, with Social Bicycles (also known as JUMP), on the terms of the Pilot, consistent with a court order in related litigation, including any terms that may conflict with the new permit requirements adopted by the SFMTA Board in April, 2019.

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I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of August 20, 2019.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

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2019 Stationless Bicycle Share Program Permit

Ryan Rzepecki, Chief Executive Officer  
Social Bicycles  
55 Prospect Street #410  
Brooklyn, NY 11201

July 18, 2019

Dear Mr. Rzepecki:

This letter constitutes a third amendment of Stationless Bicycle Share Permit Program number 01, authorizing Social Bicycles' JUMP electric assist bikeshare to continue in the City.

The San Francisco Superior Court has preliminarily enjoined SFMTA from issuing any new stationless bikeshare permits to any operator other than Lyft, without first providing Lyft a "Right of First Offer" and negotiating with Lyft pursuant to Section 32 of the parties' 2015 Coordination Agreement. The negotiation process is expected to take up to 90 days.

Under the terms and conditions of this amended permit, Social Bicycles (Permittee) is authorized to continue operating a Stationless Bicycle Share Program consisting of up to 500 electric-assist Stationless Shared Bicycles through the completion date of the Right of First Offer negotiation process between the SFMTA and Lyft.

Consistent with the court's preliminary ruling, the SFMTA will hold off on reviewing stationless bikeshare permit applications received under our May 28, 2019 call for applications, and will refrain from issuing any permits based on any applications received. This permit extension is separate and independent from JUMP's permit application dated June 24, 2019, and should not be taken as a representation of SFMTA's review and/or assessment of the quality or completeness of JUMP's application.

Permittee shall continue to abide by all requirements of the Amended Permit, including all the Amended Permit Terms and Conditions, issued on January 1, 2019, and existing Stationless data feed requirements, which are still in full force and effect, and are hereby incorporated by reference as though fully set forth herein. The SFMTA may revoke this



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permit at any time based on failure to comply with any of the Permit Terms & Conditions set forth herein. This permit also is contingent on any further approvals that the SFMTA deems necessary.

Terms and Conditions

I. SFMTA Contact

Permittee agrees to contact Adrian Leung (adrian.leung@sfmta.com, 415-646-2533) or his designee with any changes to Permittee's information as required in the attached Permit Terms and Conditions.

II. Permit Term

The permit term starts on July 18, 2019, and expires on the completion date of the Right of First Offer process.

AMENDED STATIONLESS BICYCLE SHARE PERMIT NO. 01, reissued July 18, 2019

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Tom Maguire  
Director of Sustainable Streets  
San Francisco Municipal Transportation Agency

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Ryan Rzepecki  
Chief Executive Officer  
Social Bicycles