

SHARED VEHICLE SYSTEM OPERATOR PERMIT



2021-2022

v.2

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BACKGROUND

Operators interested in obtaining a Permit must submit a complete application as well as meet requirements in the Standard Conditions of Approval.

APPLICATION INSTRUCTIONS

The following Permit Application and Standard Conditions of Approval set out the City of Emeryville requirements for a Shared Vehicle System Operator, including data collection, insurance, and indemnification.

One hard copy must be submitted in-person or by mail, and one digital copy (PDF) must be sent by email to sharedmobility@emeryville.org. Permit Applications must be submitted in-person or by mail to:

Mail Address:
Shared Vehicle System Permit
Public Works Department
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

In addition to this Permit Application, applicants must submit documentation of insurance and the items listed below. A Permit Application Fee of \$2,500 for initial applications or \$1,000 for renewal applications in consecutive years must be sent with the application or delivered to the Business License Counter at 1333 Park Avenue, Emeryville. The application will not be considered complete until all attachments and documentation have been received, and Vehicles have been inspected, if applicable.

Permit processing will take 10-15 business days upon receipt of complete application, including insurance information. A complete permit application must include:

- Permit Application Checklist
- Executed Application Agreement
- Executed Indemnification Agreement
- Proof of Insurance Requirements and Executed Insurance Agreement
- Application Fees
- Vehicle information including compliance with all local, state, and federal laws and regulations
- Completed Fleet Information Form
- Service area information with shape files and PDF
- Privacy and data use policies
- Proof of Business Tax compliance
- Organizational chart and 24 hour contact information

APPLICANT AGREEMENT

(I/We) the undersigned, declare, under penalty of perjury under the laws of the State of California, that (I am/we are) the owner(s) or authorized representative(s) of the entity in this application; that the information on all plans, drawings, and sketches attached hereto and all the statements and answers contained herein are, in all respects, true and correct.

(I/We) agree that any Vehicle that is parked in one (1) location for more than three (3) consecutive days without moving may be removed by the City and taken to a City facility for storage and/or eventual disposal at the expense of the Operator. The City will notify Operator that a Vehicle has been removed, and Operator shall have 72 hours to retrieve the Vehicle. (I/We) agree to pay the fees arising from removal, storage, and/or disposal of Operator Vehicles by the City of Emeryville, as those fees are described in the City of Emeryville Master Fee Schedule.

(I/We) certify the information provided in this application is true and correct.

OPERATOR

Date
Company Name
Address, Phone, Email
Name / Title
Authorized Signature

APPLICATION AND PERMIT FEES

Fees:

- Initial Application Fee: \$2,500 (non-refundable)
- Permit Renewal Application Fee in consecutive years: \$1,000 (non-refundable)
- Permit Fee: \$5,000 (annual, non-refundable, per operator without designated parking spots)
- Permit Fee: \$5,000 (annual per designated parking spot, plus signage/stripping at cost)

INDEMNIFICATION AGREEMENT

AGREEMENT TO INDEMNIFY, DEFEND AND HOLD HARMLESS ("Agreement")

INDEMNIFICATION. Operator agrees to defend, indemnify, and hold harmless the City, its officers, elected or appointed officials, employees, agents, and volunteers from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands, and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses, and amounts paid in compromise, settlement, or judgment, and reasonable legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of, in connection with, or which are in any way related to, the City's issuance of or decision to approve a Permit, the process used by the City in making decisions, Operator's participation in the Shared Vehicle System, the Operator's (including its officers, managers, employees, contractors, agents, and volunteers) business conduct and operations, any violation of any laws by the Operator (including its officers, managers, employees, contractors, agents, and volunteers) or its users, or any bodily injury including death or damage to property arising out of or in connection with any use, misuse, placement or misplacement, including but not limited to placement or misplacement resulting in alleged violations of the Americans with Disabilities Act (ADA), of any of the Operator's Vehicles or equipment by any person, except such loss or damage which was caused by the sole willful misconduct of the City. Operator will conduct all defenses at its sole cost and expense, and City shall reasonably approve selection of the counsel to represent City as proposed by Operator. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of the Operator, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of Operator, its affiliates or other parties are not a limitation upon the obligation of Operator, including without limitation, the amount of indemnification to be provided by Operator. The provisions of this section shall survive the termination of this Agreement.

SEVERABILITY AND GOVERNING LAW. If any provision or portion of this Permit or Permit Application shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law. This Permit and Permit Application shall be governed by and construed and enforced in accordance with the laws of the State of California applicable to contracts made and to be performed in California. The exclusive venue for any dispute arising from, relating to, or concerning this Permit or Permit Application shall be the Superior Court of the State of California for the County of Alameda.

INTERPRETATION OF THIS Permit. This Permit represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. The City at its sole discretion may impose conditions as part of Permit issuance, pursuant to Emeryville Municipal Code Section 4-13.03(f). This Permit shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Permit or any of its provisions.

CALIFORNIA PUBLIC RECORDS ACT (CPRA) INDEMNITY LANGUAGE. Applicant undertakes and agrees to defend, indemnify and hold harmless the City of Emeryville and any of its boards, officers, agents, and employees (collectively, the "City") from and against all suits, claims, and causes of action brought against the City for the City's refusal to disclose Operator's trade secrets or other technical or financial information, or Operator's personally identifiable customer data, to any person making a request pursuant to the State of California Public Records Act (California Government Code Section 6250 et seq.). Operator's obligations herein include, but are not limited to, all reasonable attorney's fees (both in house and outside counsel), reasonable costs of litigation incurred by the City or its attorneys (including all actual, costs incurred by the City, not merely those costs recoverable by a prevailing party, and specifically including costs of experts and consultants) as well as all damages or liability of any nature whatsoever arising out of any such suits, claims, and causes of action brought against the City, through and including any appellate proceedings. Operator's obligations to the City under this indemnification provision shall be due and payable on a monthly, on-going basis within thirty (30) days after each submission to Operator of the City's invoices for all fees and costs incurred by the City, as well as all damages or liability of any nature. Operator shall receive prompt notice from the City of any (1) communication to the City challenging the City's refusal to disclose Operator's information, and (2) any complaint or petition to the court challenging the City's refusal to disclose Operator's information. Further should Operator choose to intervene in any court action relating to the City's refusal to disclose Operator's information, the City shall not oppose Operator's motion to intervene. Operator shall be discharged of its obligations to the City under this provision in any circumstance where Operator provides written confirmation to the City that: 1) all of the requested records at issue are not Operator trade secrets, technical, financial or other similar information or personally identifiable customer data; and 2) the City may release said records to the requester.

I have reviewed, understand, and agree to comply with the above indemnification language

OPERATOR

Date
Company Name
Authorized Signature
Name / Title:

INSURANCE REQUIREMENTS AND AGREEMENT

Operator shall procure and maintain for the duration of the Permit insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Operator, its agents, representatives, employees or subcontractors. Prior to issuance of a Permit, Operator shall submit proof of insurance.

Minimum Scope and Limits of Insurance

- Proof of General Commercial Liability insurance with a minimum liability limit of five million dollars (\$5,000,000) and that lists the “City of Emeryville, its officers, agents and employees” as Primary additional insureds.
- Workers Compensation: As required by the State of California.
- Proof of automobile insurance with limits of liability not less than one million dollars (\$1,000,000) and that lists the “City of Emeryville, its officers, agents and employees” as Primary additional insureds.

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): insurance Service Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed: operations, property damage, bodily injury and personal and advertising injury, with limits of no less than \$5,000,000 per occurrence and at least a \$5,000,000 aggregate.
2. Workers' Compensation: Workers' Compensation insurance as required by the State of California, with Statutory Limits and Employers' Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

If the Operator maintains broader coverage or higher limits than the minimums shown above, the City of Emeryville requires and shall be entitled to the broader coverage or higher limits maintained by the Operator. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Emeryville.

Other Insurance Provisions

1. The insurance policies are to contain, or be endorsed to contain, the following provisions:

- a) **Additional Insured Status:** The City of Emeryville, its officers, officials, and employees are to be covered as additional insureds on the CGL policy. CGL coverage can be provided in the form of an endorsement to the Contractor's insurance consistent with the City's standard insurance requirements.
- b) **Primary Coverage:** For any claims related to this Permit, the Operator's insurance shall be primary coverage as respects the City of Emeryville, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City of Emeryville, its officers, officials, employees or volunteers shall be in excess of the Operator's insurance and shall not contribute with it.
- c) **Notice of Cancellation:** Each insurance policy required herein shall show that coverage shall not be canceled except after notice has been given to the City of Emeryville.
- d) **Waiver of Subrogation:** Operator hereby grants to the City of Emeryville a waiver of any right of subrogation which any insurer of said Operator may acquire against the City of Emeryville by virtue of payment of any loss. Operator agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Emeryville has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Emeryville for all work performed by the Operator, its employees, agents and subcontractors.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of Emeryville. Operator shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) Operator shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in California with current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the City of Emeryville.

Verification of Coverage

Operator shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before Permit issuance. The City reserves the right to require

complete, certified copies of all required insurance policies, at any time.

Failure to Maintain Insurance Coverage

If Operator, for any reason, fails to maintain insurance coverage which is required pursuant to this Permit the same shall be deemed a material breach of the Permit. The City, at its sole option, may suspend or terminate this Permit and obtain damages from the Operator resulting from said breach.

I have reviewed, understand, and agree to comply with the above Insurance requirements for the duration of the Permit.

OPERATOR

Date
Company Name
Authorized Signature
Name / Title:

***May take 7 to 10 business days to receive and verify insurance requirements.**

FLEET INFORMATION

Proposed Total Deployed Fleet Size

#

Vehicle Type and Quantity

Vehicle	Quantity	Model/Description

Service Deployment Area(s)

- ESRI Shapefile with initial deployment area(s)
- PDF map of deployment area

For questions about geofenced operation areas or regarding the map file formats, please contact: sharedmobility@emeryville.org

MOBILITY DATA SPECIFICATION

For verification of compliance with Data Sharing Requirements, Applicant must provide a URL for both a “Production” API as well as a “Staging” API with demonstration data. The API URLs may be submitted in a written attached document, or via email to sharedmobility@emeryville.org

Data Sharing APIs must be compatible with the City of Emeryville’s Adopted Mobility Data Specification (MDS), which is detailed at <https://github.com/openmobilityfoundation/mobility-data-specification>.

Any MDS-compatible API must expose data where:

- The trip starts in the City of Emeryville, or
- The trip ends in the City of Emeryville.
- Must also provide a link to your open GBFS feed.

Operators must comply with the personal data and privacy requirements in EMC 4.13.09.

For questions about compliance with the data sharing requirements, please contact:

sharedmobility@emeryville.org

Attn: MDS in the subject line

BUSINESS TAX COMPLIANCE

Operators seeking to participate in the Shared Vehicle Permit are required to obtain and maintain a Business Tax Certificate from with the City.

- Operators must register in person at 1333 Park Avenue, Emeryville, from 9-12 and 1-5 on business days.
- Operators must be in compliance and in good standing with tax payments or the Permit may be revoked or denied reissuance.

ORGANIZATIONAL CHART 24-HOUR CONTACT INFORMATION

Provide:

- a) Organizational structure of operations team, including title, and their specific responsibilities on the project
- b) An email address and phone number for City of Emeryville to use as the direct point of contact 24 hours a day for notifications.
- c) Customer Service Contact Number: () _____ - _____
- d) 24-Hour Contact Number for EPD/City use: () _____ - _____
- e) 24-Hour Contact Email for EPD/City use: _____

PERMIT APPLICATION CHECKLIST

COMPANY INFORMATION	COMPANY NAME												
	BUSINESS ADDRESS				MAILING ADDRESS (IF DIFFERENT THAN BUSINESS ADDRESS)								
	CITY, STATE, ZIP CODE				CITY, STATE, ZIP CODE								
	EMERYVILLE BUSINESS LICENSE NUMBER												
	PRIMARY CONTACT NAME				TITLE								
	PHONE NUMBER				EMAIL ADDRESS								
	ALTERNATE CONTACT NAME				TITLE								
	PHONE NUMBER				EMAIL ADDRESS								
	GENERAL CONTACT PHONE NUMBER				GENERAL FAX NUMBER								
CONTACT INFORMATION	GENERAL CONTACT EMAIL ADDRESS												
	BUSINESS TAX COMPLIANCE		INITIAL	APPLICANT AGREEMENT		INITIAL	PROOF OF INSURANCE		INITIAL	FLEET INFORMATION		INITIAL	
	DATA SHARING REQUIREMENTS		INITIAL	PERMIT FEES		INITIAL	ORGANIZATIONAL CHART		INITIAL	INDEMNIFICATION		INITIAL	
	24 HOUR CONTACT INFORMATION		INITIAL										
	I CERTIFY, BY SIGNING BELOW, EACH CRITERION OUTLINED IN THE Permit HAS BEEN MET AND WILL BE CORRECT AND ACCURATE UPON AN AUDIT CONDUCTED BY THE CITY OF EMERYVILLE												
	PLEASE PRINT NAME												
	TITLE OF SIGNOR						DATE						
	SIGNATURES	DATE STAMP DOCUMENTS RECEIVED			DOCUMENTS RECEIVED By			APPLICATION FULFILLS MATERIAL REQUIREMENTS (INITIAL, DATE)					
					PERMIT APPROVED BY			PERMIT DENIED			ISSUED Permit DATE		
PERMIT APPROVED													
NUMBER OF APPROVED VEHICLES			FULL DEPLOYMENT DATE										
APPLICATION MATERIALS													
City of Emeryville USE													

STANDARD CONDITIONS OF APPROVAL

Goal

Shared mobility is a beneficial mode of transportation that reduces demand for private vehicles, decreases per-capita greenhouse gas emissions, and creates more affordable mobility options for the Emeryville community. The City of Emeryville (“City”) is taking a proactive approach to integrate shared mobility and data technologies into the fabric of its transportation system. This document and the program described herein is part of a broader effort to understand on-demand technology and the implications on the City and its residents. This allows the City the tools to make informed, data-driven decisions to ensure transportation options that are safe and that deliver on the City’s goal of socioeconomic and racial equity. These Standard Conditions of Approval are applicable to Shared Vehicles, or Vehicles, as defined in Chapter 14 of Title 4 of the Emeryville Municipal Code.

Definitions

The definitions in EMC 4-14.101 apply, along with these additional terms:

Program: The operation and implementation of: a Shared Vehicle System, any Permit issued pursuant to Chapter 14 of Title 4 of the Emeryville Municipal Code, these Standard Conditions of Approval, and any Conditions of Approval relating to a Permit.

Purpose

The purpose of the Shared Vehicle System Standard Conditions of Approval is to establish regulations that govern and permit the operation of Shared Vehicle Systems in the City.

Relationship to City

- a) In rendering service hereunder, the Operator shall be and remain an Independent Contractor. It is expressly understood and acknowledged by the parties that any amounts payable hereunder shall be paid in gross amount, without reduction for penalties, taxes, or charges. Operators are responsible for assuming any applicable federal or state withholding taxes, estimated tax payments, or any other fees or expenses whatsoever.
- b) Permits issued under this Program shall not be assigned, transferred or delegated to a substitute provider, a successor in interest, or a purchaser of the Permit.
- c) The City may revoke or suspend Permits as provided in EMC 4-14.106.

Universal Requirements

- a) No Vehicle shall be put in service until a Permit is obtained from the City.
- b) Permits shall be valid from the date of issue and all Permits will expire on June 30 of each year.
- c) Operators are advised that application for a Permit does not guarantee issuance of a Permit.

Vehicle Identification

Each Vehicle shall have a unique identifier that is readily visible to the any member of the public. Operators shall provide easily visible contact information, including toll-free phone number and e-mail address, on each Vehicle for the members of the public to make relocation requests or to report other issues with the Vehicles.

Vehicle Specifications

Vehicles must use all-electric or electric hybrid fuel sources. Other alternative fuel sources may be allowable at the discretion of the City.

Fleet Size

All Operator applicants to the Program shall include the anticipated fleet size in their application.

Service Area and Geo-Fencing

Operators shall serve the public right of way in the entire City of Emeryville, and must comply with all requirements in EMC 4-14.102.

- a) The Program is valid only for operations within the City's rights-of-way. At the City's discretion, additional operating zones may be established including but not limited to locations within on-street parking spaces, off-street parking lots/garages, or campuses. However, permission to do so shall require coordination with the appropriate department, agency, or property owner; and shall be communicated to the Customer through signage approved by the respective entity and/or through the Operator's mobile and web application.
- b) The City reserves the right to determine where Vehicle parking is prohibited or to create geo-fenced stations within certain areas where Vehicles shall be parked. The City will make this information available via the check-parking API or alternative method.

Affordability

Operators shall offer a discounted membership for those with low incomes, and must implement a marketing and outreach program for that membership type, or pay an in-lieu fee to the City for that outreach. Quarterly reports must include data on the status of the low-income membership.

Reporting / Data Sharing

Operators shall provide anonymized rea-time data compliant with Federal, State and Local data privacy provisions available to the City and designated third parties as described in EMC 4-14.104.

- a) Raw data supplied by an Operator shall be held confidentially between the City and the Operator to the extent that is permitted by law. However, summaries, program utilization data, and trend data may be made public.
- b) Users' personally identifiable information collected by Operators may not be transmitted to, processed or stored at a destination outside of the United States.
- c) The City is permitted to use all data the Operator provides in accordance with the MDS including, but not limited to, displaying real-time data and real-time Vehicle availability data to the public. Third parties are permitted to republish any data the City publishes.
- d) All Permitted Operators shall provide a publicly accessible API that meets the requirements of the General Bikeshare Feed Specification (<https://github.com/NABSA/gbfs>). The Operator may not change the API URL without notifying the City with at least 30 days' notice. Operators are required to make the API endpoint available for public consumption.

Compliance with Mobility Data Specification

- a) All Operators shall abide by the Mobility Data Specification ("MDS") as described in EMC 4-14.104 and published online at <https://www.ci.emeryville.ca.us/1293/Requirements-For-Permit-Applicants>
- b) As part of the Program Permit application process, all Operators shall demonstrate compliance with the MDS requirement.
- c) The City may, in its sole discretion, release subsequent versions and/or updated versions of the MDS and require Operators to use the most current version by releasing an automatic update and/or disabling support for the previous version.
- d) The City may conduct maintenance on, stop providing, and/or change the method of access to the Services, Software, and/or Content at any time, with or without notice to the Operator. For avoidance of doubt, the City, in its sole discretion, may temporarily or permanently suspend Operator's access to the Services, Software, and/or Content under this Agreement.
- e) Notwithstanding the returned results of any of the Mobility Data APIs, it shall be the sole responsibility of the Operator to comply with the City's Program requirements listed herein.

Marketing / Advertising

Operator shall not display third party advertising on its Vehicles.

Operator Customer Service and Community Engagement

- a) All Operators shall provide a mechanism for Users to notify the Operator when there is a safety or maintenance issue with the Vehicle.
- b) Operator shall maintain an updated organizational chart and contact information of operations team via the City's Program portal.
- c) Requirements for community outreach and engagement are detailed in EMC 4-14.105.

Operations & Maintenance

- a) All Operators shall have a staffed operations center and a 24-hour contact person available for emergency removals and improper parking.
- b) Operators shall remedy inoperable or improperly parked Vehicles within three hours.
- c) An Operator shall repair any inoperable Vehicle or any Vehicle that is not safe to operate before returning the Vehicle into revenue service.
- d) If the City of Emeryville incurs any costs addressing or abating any violations of the Permit, or incurs any costs of repair or maintenance of public property, and upon receiving written notice of City costs, the Operator shall reimburse the City for such costs within thirty days of receipt of an invoice detailing such costs.
- e) Operators will attend an on-site meeting with City staff to discuss the program and show a demonstration Vehicle that will be deployed prior to Permit approval.
- f) Operators shall submit maintenance schedule and maintenance logs to the City via the report-maintenance API.

Parking

- a) Operators shall ensure their Vehicles are not parked in a way that impedes the regular flow of travel in the public right of way, or in a way that impedes the clearance on sidewalks needed for ADA compliance.

Enforcement and Termination

- a) If data is falsified or the City suspects dishonest reporting, the City reserves the right to suspend or revoke the Permit. In the case of a Permit being so revoked, Operator will not have an opportunity to reapply for a Permit for at least one year.
- b) If Vehicle parking standards are not met on a quarterly basis, the City reserves the right to suspend or revoke the Permit.
- c) Grounds for suspending or revoking Permits include, but are not necessarily limited to:
 - Failure to put Vehicles into service within 30 days;
 - Failure to share data;
 - Failure to abide by the Mobility Data Specification; and
 - Failure to move Vehicles located outside of the defined geo-fenced area; and
 - Failure to comply with the City's insurance requirements throughout the duration of the Permit period.
 - Failure to comply with the Emeryville Municipal Code, including but not limited to Chapter 14 of Title 4, or any applicable state or federal laws;
 - Failure to comply with the Standard Conditions of Approval and/ or any conditions of the Permit.

Waiver

The City's decision not to insist upon strict performance by the Operators of any provision of the Permit in every one or more instances shall not constitute a waiver of such provision by the City, nor shall, as a result, the City relinquish any rights that it may have under the terms of the Program.

Liquidated Damages – Forfeiture

As actual damages would be difficult, if not impossible to determine, the City and any Operator accepting Permits agree that penalty for noncompliance with any provision of the Rules and Guidelines and other Permit issuance requirements may result in termination of all or one Program Permits, at the election of the City, without refund, reimbursement or adjustment or any and all fees paid to the City as of the date forfeiture for breach is determined. Determination shall be written notice from the City to the Operator.