Dec 3, 2021

Supervisor Peskin
Chair, Land Use and Transportation Committee
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

Re: Resolution "Urging Bicycle Share and Powered Scooter Share to Enhance User Compliance with Terms and Conditions Designed to Protect Pedestrians, Seniors and People with Disabilities," Agenda Item 3, No. 211208, December 6, 2021 Meeting - Condition Regulating User Agreements.

Dear Supervisors Melgar, Preston, and Chair Peskin:

We are writing to explain that the first condition ("Condition 1") proposed in the Committee's resolution ("[p]rohibit[ing] permittees from including in agreements with riders any provision by which the rider waives, releases, or in any way limits their legal rights, remedies, or forum under the agreement") could effectively render bike and scooter share companies unable to operate in San Francisco, and would fail to achieve the Committee's goal of better protecting public safety. We respectfully request that you strike Condition 1 from the resolution.

Implementation of this condition would deny shared mobility operators the same legal remedies afforded to *all* other California businesses. If implemented, the bike and scooter industry's general liability insurer will be unable to insure operators in San Francisco, meaning that operators will not be able to obtain the insurance necessary to protect riders and meet City requirements. The sole insurer of micromobility companies, Apollo, recently stated that it would be unable to provide insurance to any shared bike or scooter operator were such a rule to go into effect (see **Attachment A,** referencing a bill with similar language to Condition 1). Micromobility companies already negotiate high-rate insurance policies to ensure sufficient insurance is in place to respond to accidents and personal injury arising from their negligence.

Waiver and release provisions are standard contractual clauses found in nearly every user agreement in California and are governed by statute and case law.[1] California law already protects consumers by circumscribing the scope of such waivers.[2] No other consumer industry is subject to such a limiting provision; California upholds waivers of liability for local bike rental companies, rental of motor vehicles, skydiving, use of golf carts, skiing, and motorcycle racing. Condition 1 is an unfair and unprecedented legal standard that would substantially increase defense costs and potential liability to a young industry that provides the public with an all-electric, sustainable mode of personal transportation. In case law, no court to date has adopted the position that such provisions in micromobility user agreements are categorically void.

Moreover, safety data in no way supports treating shared micromobility disparately from all other industries and applying special limitations on their freedom of contract. To the contrary, our data shows medical incidents on shared scooters occur approximately once in 50,000 rides, which is comparable to standard bicycles. In fact, reducing the availability of micromobility would undermine public safety: as the OECD has found, cities that promote micromobility actually increase overall safety by replacing car trips, providing socially-distant transportation, and reducing harmful air emissions.[3]

Finally, proposed Condition 1 does not address the issue of *pedestrian* safety driving these additional provisions because it relates to agreements with riders*,* not the public. If an accident involves a pedestrian due to an alleged scooter malfunction, operator insurance will offer coverage. If the accident involves a pedestrian and is caused by the rider, 1) the rider is responsible and can be pursued and 2) the operator agreement does not and cannot apply to the pedestrian because the pedestrian is not a party to the rider-operator agreement. In this regard, Condition 1 does nothing to improve pedestrian safety since it only involves the relationship between the rider and the operator. Operators are working at lightning speed to innovate and develop new methods to enhance user and public safety, such as sidewalk detection technology (which we demonstrated to SFMTA staff on Dec. 1, 2021), and we welcome ongoing dialog and partnership with the City to continue improving safety outcomes for all road users, particularly pedestrians and those with disabilities.

For the reasons above, a nearly identical provision was rejected and struck from a 2020 bill (AB 1286) by the California Assembly. Because Condition 1 would immediately make shared micromobility operators in San Francisco uninsured, treat the industry differently from all other industries without justification for doing so, and fail to meaningfully enhance public safety, we ask that you remove this condition from consideration.

Sincerely,

Scoot
Spin
Lime
Chamber of Progress

---

[1] *See, e.g.,* California Civil Code § 1668; Buchan v. United States Cycling Federation, Inc., 227 Cal.App.3d 134 (1991).
[2] *See, e.g.,* California Civil Code 1668.
[3] *See* https://www.itf-oecd.org/safe-micromobility

Attachment A

APOLLO
SYNDICATE MANAGEMENT LIMITED

Apollo Syndicate Management
One Bishopsgate
London
EC2N 3AQ

21st August 2020

To Whom It May Concern,

Apollo insures the micromobility operations of the largest micromobility companies in California, including Spin.

At the current time, the passing of AB 1286 would make it very hard, if not impossible, to continue to provide micromobility insurance in California. Removal of such provisions clearly has a significant impact on how we view the risk and liability exposure, particularly as we are not aware of a similar legal standard applicable to comparable industries.

If we were able to gain sufficient comfort to provide the coverage in the longer term, then the only way that this would be possible would be at many multiples of the current rates.

Apollo Syndicate Management Limited for and on behalf of Syndicate 1969 at Lloyd's