

RESOLUTION R-5328

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND
REVISING POLICY G-10 OF THE PUBLIC WORKS DEPARTMENT'S PRE-
APPROVED PLANS TO ALLOW PERMITTING FOR BIKE SHARE
OPERATION USE OF RIGHT-OF-WAY.

1 WHEREAS, the City Council recognizes that Policy G-10 in the
2 Public Works Department Pre-Approved Plans ("Policy"), does not
3 currently allow bike share operations as a permissible use in the public
4 rights-of-way; and

5
6 WHEREAS, the City Council recognizes bike share programs
7 enhance fitness, provide access to transit and alternatives to vehicle
8 travel, help reduce greenhouse gas emissions, and promote tourism,
9 economic vitality, and livability in Kirkland; and

10
11 WHEREAS, the City Council desires to encourage and permit bike
12 share options in Kirkland; and


13
14 WHEREAS, Policy G-10 must be amended in order to permit
15 bike share operators to occupy and use the public rights-of-way.

16
17 NOW, THEREFORE, be it resolved by the City Council of the City
18 of Kirkland as follows:


19
20 Section 1. The City Manager is authorized and directed to revise
21 Policy G-10 (Guidelines for Temporary use of the Right-of-Way) of the
22 General Policies in the Public Works Department's Pre-Approved Plans
23 as shown in Exhibit 1.

24
25 Passed by majority vote of the Kirkland City Council in open
26 meeting this 19th day of March, 2019.

27
28 Signed in authentication thereof this 19th day of March, 2019.


Penny Sweet, Mayor

Attest:


Kathi Anderson, City Clerk

**CITY OF KIRKLAND
TERMINABLE RIGHT-OF-WAY USE PERMIT**

 All Rights-of-Way in the City of Kirkland (location of site)

In consideration of the fees, covenants, conditions and agreements herein contained the **CITY OF KIRKLAND**, a Washington municipal corporation (the "City"), hereby grants **LEGAL COMPANY NAME (a/k/a COMPANY DBA)** a Washington corporation ("Permittee"), a non-exclusive terminable right-of-way use permit (the "Permit") to use public right-of-way, per KMC Section 19.04.050, in the City of Kirkland, King County, Washington, subject to the following and Attachment A: Bike Share Permit Requirements:

1. The Permit Area.

The Permit Area includes any and all rights-of-way in the City of Kirkland. It does not include privately owned properties or other Public Property. Permittee is responsible for obtaining formal approval from the owner to operate on privately owned properties.

2. Use of Permit Area.

The Permit is granted to Permittee for the purpose of allowing Permittee's free-floating bike share bicycles to temporarily be parked on City right-of-way, in City parks, and on the Cross Kirkland Corridor during the period of time between rides by customers, subject to requirements in Exhibit 1-A. Violation of these requirements are subject to code enforcement under the Kirkland Municipal Code, including but not limited to, KMC Section 1.12.020 (j), (k), and (m) or other applicable law.

3. Term of Permit.

The initial term of this Permit shall be for twelve (12) months, commencing on the date of this Permit. This Permit may be renewed upon the mutual written consent of the City and the Permittee.

4. Fees.

The Permittee shall pay to the City an annual permit fee of \$2,032 and a program fee of \$35 per bike at the commencement of the term. If the bike share program is extended beyond the pilot, an additional permit fee would be required.

5. Required Attachments to Permit

Any company interested in applying for a permit shall submit an application to the City of Kirkland. The application must include a Bike Share Management Plan in

accordance with the requirements as defined in Attachment A. In summary and not as a limitation on what is required under Attachment A, the below elements are required in the Bike Share Management Plan:

- A. Table listing all the policies in the Bike Share Permit Requirements document and the applicant's response;
- B. Size of fleet at launch, and size of fleet desired to roll out if given approval to expand;
- C. Plan for educating users on proper bicycle parking;
- D. Plan for encouraging compliance with the King County Helmet Law 9.10.010;
- E. Company's waste, recycling and battery charging policies
- F. Plan for addressing unbanked, low-income and limited English speaking groups
- G. Deposit including the permit fee and the total amount of the program fee for the fleet size.
- H. Proof of approved city of Kirkland Business License upon issuance of permit.

If the application meets all the requirements, operators will need to submit the items below prior to issuance of the permit.

- A. Bond (Requirement O11);
- B. Two account logins for City oversight;
- C. Deposit check made payable to City of Kirkland;
- D. Program fee (Requirement F2) to City of Kirkland.

7. Indemnification.

In consideration for the City's permission to use or occupy the public right-of-way that permits free-floating bike share according to the submitted terminable right-of-way use permit application, the Permittee agrees as follows:

1. The Permittee, and its successors, heirs, and assigns shall forever defend, indemnify, and hold harmless the City of Kirkland and its officials, officers, employees, and agents from and against all liabilities, claims, causes of action, suits, loss, costs, expenses, judgments, reasonable attorney fees and necessary litigation expenses, and damages of every kind and description brought by third parties including but not limited to actual or alleged bodily injury including death, or actual and alleged damage to property; resulting directly or indirectly from any act or omission of the permittee, its subcontractors, anyone directly or indirectly employed by them, and anyone for whose acts or omissions they may be liable for; arising out of or in connection with Permittee failing to respond to a public records request where it has a legal obligation to do so or failing to provide records to the City needed for City to respond to a public records request, the permittee using or occupying the public right-of-way or any person operating the permittee's bicycle or other device who is or is not wearing a helmet.

2. The Permittee's, successors', heirs', and assigns' indemnification obligations under this Agreement do not apply to any liabilities, claims, causes of action, judgments, or expenses resulting from bodily injury or property damage to the extent caused by the negligence of the City, its officers, employees, elected officials, agents, or subcontractors.

3. If a claim is made or filed against the Permittee, the City will provide notice to the Permittee of the claim in writing, and the Permittee will have sole control over and will defend, compromise, or settle the claim at its sole expense. Notwithstanding the foregoing, the Permittee may not settle any claim, suit or action without the prior written consent of the City, which shall not be unreasonably withheld.

4. The Permittee, successors, heirs, and assigns acknowledge that permission to use or occupy the public right-of-way is of a temporary nature and vests no permanent rights in the Permittee or the Permittee's successors, heirs, or assigns to use or occupy the public right-of-way. Upon 30 - days' notice, the City may revoke the permission to use or occupy the public right-of-way. If the use or occupation becomes dangerous, or if the use or occupation is not being maintained or used, the City may revoke permission to use the public right-of-way without providing the 30-day notice.

5. The Permittee, on behalf of the Permittee and Permittee's successors, heirs, and assigns, specifically and expressly agrees to waive Permittee's and Permittee's successors', heirs', and assigns' immunity under industrial insurance, Title 51 of the Revised Code of Washington, to the extent necessary to provide the City with a full and complete indemnity from claims for which the City is entitled to indemnity under this Indemnity Agreement. Permittee, on behalf of Permittee and Permittee's successors, heirs, and assigns, specifically and expressly agrees this provision was mutually negotiated by the parties.

6. The Permittee and its successors, heirs, and assigns acknowledge that if the City revokes the permission to use or occupy the public right-of-way; the Permittee and its successors, heirs, and assigns shall at its sole expense, remove the use or occupancy within 10 days from notification by the City.

7. The Permittee makes this Agreement on behalf of the Permittee and Permittee's heirs, successors, and assigns for the benefit of the City and its successors and assigns.

8. Assumption of Risk

Permittee acknowledges and assumes all risk of damage to its property in City right of way.

9. Insurance.

A. Permittee shall procure and maintain Commercial General Liability insurance, as required in this Section, without interruption from commencement of this Permit through its termination, including insurance against claims for injuries to persons or damage to property which may arise from or in connection with this permit. A failure to obtain and maintain such insurance or to file required certificates and endorsements shall be a material breach of this Permit.

Permittee's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of Permittee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

B. The Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit

C. Permittee's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of Permittee's insurance and shall not contribute with it.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Contractor shall furnish the City with original certificates and a copy of the amendatory endorsement, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Permittee before commencement of operations or activities under this Permit.

F. Public Entity Full Availability of Contractor Limits

If Permittee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella Liability maintained by the Permittee, irrespective of whether such limits maintained by Permittee are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by Permittee.

10. Notice of Cancellation of Insurance.

Permittee shall provide the City with written notice of any policy cancellation within two business days of Permittee's receipt of such notice.

11. Failure to Maintain Insurance.

Failure on the part of the Permittee to maintain the insurance as required in this Permit shall constitute a material breach of the Permit, upon which the City may, after giving five business days' notice to the Permittee to correct the breach, immediately terminate the Permit or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City.

12. Maintenance and Repair.

Permittee shall, at its sole cost and expense, and throughout the term of this Permit, keep its bicycle equipment in good condition and in a good state of maintenance and repair.

13. Assignment.

This Permit and all rights hereunder shall not be transferable by Permittee for any reason whatsoever without the prior consent of the City.

14. Termination.

Either party may terminate this permit on 30 days written notice to the other and Permittee is responsible for removing all bikes from the City's right of way within that period of time.

In the event the Public Work's Director determines 1) Permittee's operation poses an immediate threat to public health, safety or welfare or 2) at the Director's sole discretion, a sufficient number of private property owner's complain about the bikes being left on their property, then the Director may immediately terminate the permit by giving notice as provided in Section 15. In either event, Permittee agrees to permanently remove its bikes from Kirkland's rights of way, parks and the CKC by the date given in the notice of termination.

In the event of termination, Permittee agrees the City may remove and store or dispose of Permittee's bikes if they have not been removed within the applicable period of time and Permittee will reimburse the City for any costs it incurs.

14. Attorneys' Fees.

In the event that either party shall be required to bring any action to enforce any of the provisions of this Permit, or shall be required to defend any action brought by the other party with respect to this Permit, and in the further event that one party shall entirely prevail in such action, the non-prevailing party shall, in addition to all other payments required therein, pay all of the prevailing party's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorneys' fees in the trial court and in any appellate courts.

15. Notices.

All notices and payments hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses or to such other respective addresses as either party may hereafter designate in writing:

To the City: City of Kirkland
 123 Fifth Avenue
 Kirkland, Washington 98033
 Attention: Department of Public Works

To Permittee: _____

Notices and payments sent by certified or registered mail shall be deemed to have been given when and if properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

16. Compliance with Laws.

Permittee shall comply with all applicable State, Federal, and City laws, ordinances, regulations, and codes. Permittee must maintain a City of Kirkland business license or otherwise comply with Kirkland Municipal Code Chapter 7.02.

IN WITNESS WHEREOF, the parties hereto have signed this Permit as of the _____ day of _____, 2019 (the "Commencement Date").

CITY OF KIRKLAND

Kathy Brown, Public Works Director

Approved as to form:

City Attorney

PERMITTEE

By: _____

Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Kathy Brown, to me known to be the Public Works Director of The CITY OF KIRKLAND, the Washington municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Print Name: _____

Notary Public in and for the State of
Washington, residing: _____

My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of _____,

the Washington corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Print Name: _____

Notary Public in and for the State of
Washington, residing: _____

My Commission Expires: _____