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August 29, 2019

Hon. Garrett L. Wong
Presiding Judge
San Francisco Superior Court
400 McAllister Street
San Francisco, CA 94102

Re: City Attorney's Office Response to the July 16, 2019 Civil Grand Jury Report entitled, "Pedestrian Safety in the Era of Electric Mobility Devices"

Dear Judge Wong:

In accordance with Penal Code Sections 933 and 933.05, the Office of the City Attorney submits the following response to the July 2019 Civil Grand Jury Report entitled, *Pedestrian Safety in the Era of Electric Mobility Devices*. The Grand Jury requested that this office respond to the report.

For each Civil Grand Jury finding for which the Grand Jury has requested a response, the statutes require the respondent to either:

1. agree with the finding; or
2. disagree with it, wholly or partially, and explain why.

For each Civil Grand Jury recommendation for which the Grand Jury has requested a response, the statutes require the respondent to report:

1. that the recommendation has been implemented, with a summary explanation of how it was implemented;
2. the recommendation has not been implemented, but will be implemented in the future, with a time frame for the implementation;
3. the recommendation requires further analysis, with an explanation of the scope of that analysis and a time frame for the officer or agency head to be prepared to discuss it (less than six months from the release of the report); or
4. that the recommendation will not be implemented because it is not warranted or reasonable, with an explanation of why that is.

Findings 5 and 6, and Recommendation 5 seek a response from the City Attorney, among others. The City Attorney submits the following responses on behalf of the City Attorney's Office:

Finding 5.

The Pilot terms between the City and permittees require them to indemnify the City from injury and damage claims. However, Scoot and Skip Terms of Service put responsibility for injury, damage, and equipment inspection on the User.

City Attorney's Office Response To Finding 5.

Partially agree and disagree. It is correct that the permittees in the City's Powered Scooter Share Pilot Program, including Skip and Scoot, are required to indemnify the City. While Scoot and Skip in their Terms of Service pass down responsibility for liability to their individual users, Scoot and Skip are still each primarily responsible to the City through the indemnity for any claims against the City related to activity authorized under the respective operator's permit with the City.

Finding 6.

Current terms and conditions in the Skip agreement expose a contractual gap that delegates initial responsibility for scooter inspection and maintenance to their independent contractors, Skip Rangers, who receive no specific training from Skip. Scoot, however, hires and trains its employees to provide the inspection and maintenance services.

City Attorney's Office Response To Finding 6.

Partially agree and disagree. While it appears that the Skip Charger Agreement referenced in the report does not contain an express training requirement, that omission does not necessarily mean that the Skip Rangers lack the requisite training or experience to properly inspect its scooters. Moreover, the SFMTA informs us that the Skip Rangers are made up of 80% independent contractors and 20% Skip employees, and that Skip employees are trained. We do not know about the training or experience of the independent contractors and do not express an opinion about that.

Recommendation 5.

SFMTA, City Attorney, and TNCs should review and if necessary modify the City-Permittee agreement, the TNC-User agreement, and any other related agreements to assure that responsibility for risk management is allocated to the party/parties best able to manage such risks. This review and potential modification of terms across all agreements should be initiated prior to the end of the existing Pilot. Any necessary revisions should be incorporated and implemented in all agreements for the replacement program to follow at the conclusion of the Pilot.

City Attorney's Office Response To Recommendation 5.

Recommendation #5 has been implemented in part. In consultation with the SFMTA, the City Attorney's Office has reviewed the City permits, the agreements between the Powered

Scooter Share Operators¹ and their users, and the Skip Charger Agreement referenced in the report before the end of the existing Pilot Program.

In consultation with the SFMTA, the City Attorney's Office has specifically reviewed whether to modify the permit terms to fill any potential gap in responsibility as between the Powered Scooter Share Operators and their independent contractors. At the end of July 2019, SFMTA issued a new permit application for the replacement permit program, and the SFMTA informs us that it anticipates issuing the next round of permits with a term to commence after the Pilot Program concludes in mid-October 2019. The permit application contains anticipated terms and conditions for the new program, and includes the following new clause in the permit terms to address any potential gap in responsibility between permittee and its independent contractors for obligations under the permit:

Permittee may subcontract or delegate portions of its obligations only upon prior written approval of SFMTA. Permittee is responsible for, and must supervise, its personnel and all subcontractors, including independent contractors, who perform obligations under the permit. Any agreement made in violation of this provision shall be null and void.

Also, SFMTA added a provision requiring that permittees "educate and train" any independent contractors who perform any part of the permittee's maintenance, cleaning, staffing, and repair plan.

Recommendation #5 has not been implemented as to modifying the City permits to allocate risk as between the Powered Scooter Share Operators and users to the party best able to manage such risks. The City Risk Manager recommended that it is not advisable for the City to insert itself into the risk allocation as between the Powered Scooter Share Operators and their customers because the City could face unwarranted risk exposure for assessments for which it does not have the authority to manage. Based on that recommendation, the SFMTA did not modify the permits to allocate risk between the operators and users.

We hope this information is helpful.

Very truly yours,


DENNIS J. HERRERA
City Attorney

¹ The Grand Jury Report refers to the Powered Scooter Share Operators as "Transportation Network Companies" or "TNCs." We do not use that term because, under State law, that term has a specific meaning and refers to "prearranged transportation services ... to connect passengers and drivers using a personal vehicle." (Cal. Pub. Util. Code § 5431.)