



City of Wauwatosa

Department of Public Works

Dockless Scooter Program

Terms and Conditions

Approved by the Board of Public Works

March 1, 2021

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1. Introduction

Purpose

The City of Wauwatosa has initiated a Dockless Scooter Program (Program) to allow the use of dockless scooters in Wauwatosa.

Dockless scooters, as defined herein, means a system of self-service scooters made available for shared use to individuals on a short-term basis, which may be rented via a smart-phone app, vendor website, vendor customer service number, or a pre-paid PIN and which do not require structures at permanent, fixed locations where rides must begin and end.

Dockless scooters may provide many benefits to residents and visitors of Wauwatosa. They have the potential to help the City improve outcomes related to equity, congestion mitigation, health, and access to opportunity. The City also realizes the potential for disruption to pedestrian ways and other public rights of way if the Program is not managed well. Dockless scooters have the potential to reduce reliance on motor vehicles and ride sharing services for short trips, decreasing congestion and air quality impacts. Dockless scooters may provide links to public transit, assisting with connectivity and solving the first-mile/last-mile problem.

2. Terms

2.1. Agreement

These Terms and Conditions are made in conjunction with each Participant's Application. Together, these documents record our agreement in relation to use of the Public Right of Way in Wauwatosa.

2.2. Priority

If there is any inconsistency between these Terms and Conditions and/or any other agreements, the Terms and Conditions shall prevail.

2.3. Program Subject to Change

A. The terms and conditions of the Dockless Scooter Program (Program) are subject to change, without limitation, by the Director of Public Works. These changes may include, but are not limited to: changes in the minimum or maximum number of dockless scooters allowed in the City, changes to the number of participants allowed in the Program, or changes to the parking requirements.

B. Participants will be notified by electronic mail of any changes to the Program. Participants unwilling or unable to comply with proposed changes may voluntarily suspend or terminate participation in the Program. The Director of Public Works must submit written notice (written notice shall include electronic mail correspondence) to all Participants 30 days prior to any change coming into effect.

C. Participants terminating participation in this Program must cease offering their equipment for rent and remove their equipment from the City of Wauwatosa's streets within seven (7) days.

2.4. Application

A. Completed applications shall be submitted via email to David Simpson, Director of Public Works, dsimpson@wauwatosa.net.

3. Definitions

"Applicant" means any person who submits an application to the Department of Public Works for

the Program.

“Application” means a formal request filed with the Department of Public Works for participation in the Program.

“Business” means engaging in activities over time for the purpose of sustained financial gain.

“Customer” means a person who has downloaded the operator’s app to their smart phone or other device.

“Deploy” means to make available to users in a public place.

“Dockless” means a system of self-service mobility devices made available for shared use to individuals on a short-term basis, which may be rented through a smart-phone app, vendor website, vendor customer service number, or a pre-paid PIN and which do not require structures at permanent, fixed locations where rides must begin and end.

“Equipment” means dockless scooters.

“Fleet” means equipment owned or leased by the operator which is intended for use as part of a dockless scooter system in the city.

“Holidays” means New Year’s Eve, New Year’s Day, Martin Luther King Jr. Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving and the day after, and Christmas and the day before.

“Mobility device” means a vehicle, whether motorized or not, including a bicycle, a scooter, a skateboard, or any other micro-mobility vehicle which is exempt from state registration under ch. 341, Wis. Stats.

“Objection” means any information that could form the basis of denial, non-renewal, suspension or revocation of participation in the Program. An objection may result from information provided by any resident or from written reports filed by the Chief of Police.

“Operator” means any person engaged in the activities of owning or operating a dockless scooter system.

“Participant” means any individual or partner, and any officer, director or agent of any corporate applicant which has been approved by the Department of Public Works for entry into the Program.

“Person” means any individual, firm, corporation, limited liability company, partnership or association acting in a fiduciary capacity.

“Scooter” means a device weighing less than 100 pounds that has handlebars and an electric motor, is powered solely by the electric motor and human power, and has a maximum speed of not more than 20 miles per hour on a paved level surface when powered solely by the electric motor.

“Service area” means the entire city.

“Service zone” means a geographic area of the city, the boundaries of which are described herein.

“Unsafe” means any dockless equipment that could cause harm or injury to a user or anyone else within the public right-of-way despite being operated in a reasonable manner.

“User” means an individual who pays a fee to unlock dockless equipment for the purpose of transportation or recreation.

“Unused dockless equipment” means any dockless scooter parked in one location for more than 7 consecutive days without being used.

4. Program Duration

4.1. Initial Term

- A.** Participation in the Program shall commence upon review and approval of a participant's application by the Board of Public Works.
- B.** Initial term shall be approved by the Board of Public Works and shall be no greater than two years.

4.2. Extension

- A.** The City of Wauwatosa reserves the right to extend the participant's term at the discretion of the Board of Public Works.
- B.** If a participant chooses not to extend their participation in the Program, the participant shall notify the City of termination at least two (2) weeks prior to the expiration of the then-current term.
- C.** Upon notice of an extension of the Program, participation will automatically renew upon notice served to the applicant.

4.3. Termination

- A.** The Program may be terminated at any point, by a vote of the Wauwatosa Board of Public Works. Upon termination of the Program, participants shall be provided written notice of said termination by the Director of Public Works via certified and electronic mail.
- B.** Participants shall cease to offer equipment for rent in the City of Wauwatosa immediately upon receiving notice of termination. Participants shall have 72 hours from the time of receipt of the termination notice to physically remove equipment from the City streets.
- C.** If participants fail to retrieve equipment within 72 hours of receipt, the City will remove said equipment.

4.4. Modification and Suspension

- A.** Participation in this Program may be modified or suspended, at any point, and for any reason, without limitation, by the Director of Public Works. Should participation be modified or suspended, participants shall be notified in writing via certified and electronic mail by the Director of Public Works of the nature and the reasons for the change.

5. Program Participation

5.1. Voluntary Participation

- A.** Participation in this Program is mandatory.

5.2. Local Operations

- A.** Participants shall have a locally based operations manager who is able to respond to Wauwatosa.

5.3. Outstanding Fines and Forfeitures

- A.** The City of Wauwatosa will not process any application for participation in the Program made on behalf of an individual or corporation that owes outstanding fines or forfeitures to the City of Wauwatosa.

5.4. Number of Participants

- A.** The Director of Public Works reserves the right to cap the number of participants and/or scooters at any time. Notice of any such cap or change will be provided to all Participants at least fourteen (14) days prior to coming into effect.

6. Insurance Requirements

6.1. General Requirements

- A.** A certificate of insurance acceptable to the City evidencing the insurance requirements is to be provided. The certificate shall state that the issued insurance policies meet the requirements as outlined below. All certificates are to be provided before a participant places any dockless equipment in the City of Wauwatosa. If such certificate is not received, the City of Wauwatosa has the authority to remove the participant from the Program. If such certificate expires prior to the end date of this Program, a current certificate shall be provided and must demonstrate that no lapse in coverage has occurred.
- B.** Insurance companies must be acceptable to the City and should have a current A.M. Best rating of A-VIII or better.
- C.** All policies shall be written on an occurrence form.
- D.** Applicants must provide the City either a copy of their Commercial General Liability and Auto Liability insurance policies, including all endorsements, or policy language and endorsements showing the Commercial General Liability and Auto Liability insurance policies meet the requirements of the Terms and Conditions. A COI provided by the applicant, if reviewed and approved by the City Attorney may also be acceptable.
- E.** Applicants must provide the City with a copy of their user agreements.

6.2. Minimum Insurance Requirements

A. Workers' Compensation and Employer's Liability

1. Workers' Compensation – Statutory Limits

B. Commercial General Liability*

Commercial General Liability	\$1,000,000 each occurrence
General Aggregate	\$3,000,000 aggregate

1. Coverage must be equivalent to ISO form CG0001 or better.
2. The City of Wauwatosa shall be added as an additional insured via blanket endorsement.
3. Coverage shall apply to the risks associated with or arising out of the services provided under this Program.

C. Auto Liability

Combined Single Limit	\$1,000,000 each accident
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1. If the Applicant owns or has any long term leased vehicles, coverage must be for Any Auto (Symbol 1) or Any Owned Auto (Symbol 2). If there are no owned or long term leased vehicles, then coverage must be for Hired and Non-Owned Auto Liability (Symbols 8 and 9).
2. Coverage shall apply to the risks associated with or arising out of the services provided under this Program/Application.

7. Indemnification

Notwithstanding any references to the contrary in the application documents, Applicant assumes full

liability for all of its acts in the performance of the Program. Applicant will save and indemnify and keep harmless the City against all liabilities, judgments, costs and expenses which may be claimed by a third party against the City which may result from the negligence or willful misconduct of the Applicant, or the Applicant's agents, employees, or workmen, except to the extent arising out of or resulting from the City's negligence or willful misconduct. If judgment is recovered, whether in suits of law or in equity, against the City by reason of the negligence or willful misconduct of the Applicant or Applicant's agents, employees, workmen, the Applicant assumes full liability for such judgments not only as to the amount of damages, but also for the cost, attorneys fees, or other reasonable expenses resulting there from. The City shall notify the Applicant promptly following receipt or notice of any indemnifiable claim—no later than thirty days of notice of the claim. Applicant shall be entitled to have control over the defense and settlement of tendered lawsuits, including the selection of counsel; provided that Applicant may not settle any lawsuit on behalf of the City without the City's written consent that either (1) requires the City to admit liability, or (2) exceeds the limits of Applicant's insurance policies. City shall cooperate in all reasonable respects with the Applicant and its attorneys in the defense or settlement of such lawsuit; provided, that City shall be entitled to reasonably participate in the defense of such lawsuit and to employ its own counsel at its own expense to assist in the handling of such lawsuit. Applicant shall have no obligation to indemnify, defend or hold harmless the City from and against any claims resulting from or arising out of the conditions within the Right of Way, including, but not limited to, the design, construction, or maintenance failure of the roadway, roadway infrastructure, roadway projects, or other rights of way, including, but not limited to, sidewalks, medians, curbs, and bridges, controlled, maintained, or owned by the Indemnitee.

8. Limitation of Liability

Except as expressly provided herein, neither party shall be liable for any indirect, incidental or consequential damages (including without limitation, damages resulting from loss of use, loss of profits, interruption or loss of business, lost goodwill, lost revenue and lost opportunity) arising out of any of the terms or conditions of this agreement, or with respect to its performance hereunder. Notwithstanding anything contained herein to the contrary, and to the maximum extent permitted by applicable law, the maximum aggregate liability of Applicant arising out of or in connection with the agreement, the Code of the City of Wauwatosa, or any rules, regulations, or guidelines (whether in contract, breach of warranty, tort (including negligence), product liability, strict liability, breach of statutory duty, indemnity or otherwise) shall not exceed three hundred fifty thousand U.S. dollars (\$350,000) in the aggregate.

9. Public Records

Applicant understands that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Program are subject to and conditioned on the provisions of Wis. Stat. sec. 19.21 *et. sec.* Applicant acknowledges that it is obligated to assist the City in retaining and producing records that are subject to the Wisconsin Public Records Law and that the Applicant must defend and hold the City harmless from liability due to its fault under that law. Except as otherwise authorized, those records shall be maintained for a period of seven years. This provision shall survive termination of this application, Applicant's right to participate in the Program, and the Program itself.

10. Privacy

Participants shall provide a copy of their user agreements and privacy policies with their application. Participants must provide notice to the City regarding any changes to their terms of service, user

agreements, or privacy policies throughout the duration of the Program. Relevant portions of participants' user agreement or terms of service must be consistent with the provisions of this Application, the Wauwatosa Code of Ordinances, Wisconsin State Law, and applicable federal law. Changes to a participant's user agreement or terms of service inconsistent with the provisions of this Application, the Wauwatosa Code of Ordinances, Wisconsin State Law, or applicable federal law may be grounds for termination from participation in this Program.

11. Operating Regulations

11.1. Minimum Equipment Requirements

A. Safety

1. Each dockless scooter shall meet the requirements described in Sections 347.489 (1), 347.489 (2), and 347.489 (3) of the Wisconsin State Statutes.
2. The maximum motor-assist speed for dockless scooters shall be 15 MPH.
3. All operators shall have visible language on each dockless scooter and on the operator's website and smartphone application which notifies the user that:
 - Helmet use is encouraged while riding a dockless scooter
 - Sidewalk riding is prohibited
 - Users are required to follow all rules of the road
 - Scooters must be parked responsibly

B. Technology

1. The operator shall equip each dockless scooter with an on-board GPS device capable of providing real-time location data to the operator and the Director of Public Works.

C. Dockless Scooter Identification

1. Each dockless scooter must be assigned a unique identifying number which shall be provided to the Director of Public Works prior to placing the dockless scooter into service.
2. Each dockless scooter must be clearly and visibly labeled with the operator's name, a toll-free phone number for 24-hour customer support, and the dockless scooter's unique identification number.

11.2. Allowable Fleet Size

A. The Director of Public Works shall establish the maximum number of dockless scooters per operator that may be deployed.

1. All requests for changes in fleet size or distribution should be sent by electronic mail to the Department of Public Works.

B. Winter Fleet.

1. Operators must ensure that deployed scooters do not impede City of Wauwatosa or resident snow removal and ice control operations.
2. The operator may be required to decrease the amount of equipment deployed during winter months.

- C. Operators may remove equipment without prior authorization in the case of severe weather.
- D. The Director of Public Works reserves the right to cap the number of dockless scooters at any time.

11.3. User Fees

User fees must be clearly and understandably communicated to the user prior to dockless scooter use.

11.4. Dockless Scooter Parking

A. General

1. The operator shall provide instructions for properly parking dockless scooters to customers and users in easily understandable formats through multiple media types.
2. The operator shall keep the sidewalk free from obstructions to pedestrians by requiring users to park dockless scooters such that a walk space not less than 5 feet wide shall at all times be kept open for pedestrians.
3. All dockless scooters shall be parked in an upright position with 2 wheels making a point of contact with the ground.
4. Operators must use geo-fencing to prohibit parking in the following areas:
 - a. Bridges
 - b. Other areas as reasonably directed by the Director of Public Works
5. Dockless scooters shall be parked in accordance with the following guidelines.
 - a. Where possible, without impeding the flow of pedestrian traffic, a dockless scooter may be parked on a sidewalk or in a bicycle rack or other similar area designated for bicycle parking.
 - b. Dockless scooters shall not be parked between the sidewalk and the curb where such area is less than 3 feet wide.
 - c. Dockless scooters shall not be parked on the sidewalk at the intersection of two or more streets between the points of curvature, measured along the curb.
 - d. On blocks without sidewalks, dockless scooters may be parked in the roadway if the right-of-way and the pedestrian way are not obstructed.
 - e. Except at existing, permitted bicycle facilities, dockless scooters shall not be parked in the terrace or furniture zone where adjacent to or within the following locations:
 1. Parklets
 2. Loading zones
 3. Accessible parking spaces
 4. Curb ramps
 5. Entryways
 6. Driveways
 7. Street furniture requiring pedestrian access
 8. Transit stops, including bus stops, shelters, and passenger waiting areas

B. Improper Parking

1. Access to parking meters shall not be obstructed.

2. Upon notification by the Director of Public Works or the Chief of Police, or a designee, of any dockless scooter that is improperly parked, the operator shall relocate the dockless scooter in accordance with the following requirements:

- a.** Within 2 hours of notice between 7 a.m. and 7 p.m.
- b.** By 9 a.m. for notices received between 7 p.m. and 7 a.m.

3. The City may relocate improperly parked dockless scooters as discussed in section 11.50.040 of the City's municipal code.

C. Unused Dockless scooters

1. Unused dockless scooters shall be relocated by the operator. The City may relocate unused dockless scooters that are not remedied in accordance with section 11.50.040 of the City's municipal code.

11.5. Submerged Scooters

Participants acknowledge that submerged scooters may discharge a hazardous substance so the operator must remove scooters from waterways within 24 hours of receiving notice. If the operator fails to comply with the removal requirements, the City may cause removal and require reimbursement for actual expenses incurred.

11.6. Equipment Maintenance

A. Any dockless scooter deemed unsafe or inoperable shall be placed out of service immediately upon notice to the participant and removed from the public right-of-way by the operator within 2 hours of notice. Notice to the participant includes notification from the general public, or electronic mail notification from the City of Wauwatosa.

B. The city may impound dockless scooters that are deemed unsafe or inoperable and not remedied in accordance with this provision per section 11.50.040 of the City's municipal code.

11.7. Reporting and Data Sharing

A. Participants shall be required to provide periodic reports as requested by the Director of Public Works.

B. Aggregate customer demographic data that does not identify individual customers, individual payment methods, or their individual trip history, gathered by the system application shall be provided to the Director of Public Works on at least a quarterly basis using anonymized keys.

C. The following information shall be reported quarterly throughout the duration of the Program, or as directed by the Director of Public Works:

- 1.** List of reported parking complaints including: description, location of incident, description of company response, response time
- 2.** Incidents of dockless scooter theft and vandalism
- 3.** Vehicle maintenance complaints
- 4.** Number of users participating in discount programs disaggregated by program type (low income, students, etc.), if applicable
- 5.** Accident/crash information
- 6.** Aggregate payment method information
- 7.** Trip origination and destination information

11.8. Community Outreach

A. Participants shall implement any community outreach plans at their own cost.

B. The operator shall provide a website, a call center, and a mobile application customer interface that is available 24 hours a day, 7 days a week.

12. Program Fees

12.1. Program Fees

- A.** Participants shall pay a fee as determined by the Board of Public Works.
- B.** Fees will be used to address costs incurred by the City related to administration and monitoring of the program, including monitoring and use of the public way.
- C.** Payments shall be received by the date/s set by the Board of Public Works. Payments

City of Wauwatosa
Attn: Dept. of Public Works
11100 W. Walnut Road
Wauwatosa, WI 53226

shall be mailed to:

- D.** If payment to the City is not received, or payment arrangement is not made within ten (10) business days after notification via electronic mail, participation in the program shall be automatically terminated by the Director of Public Works. Upon termination, operator must remove all equipment within 7 days.

13. Acknowledgement of Receipt

The undersigned declares that the information provided in this application is true, that they have read and agree to the Terms and Conditions as described herein, and that they agree to all rules and regulations set forth in the Wauwatosa Code of Ordinances.

Company: _____

Name (Printed): _____

Title: _____

Signature: _____

Date: _____