

Appendix A: **Managing Mobility Data**

2019 E-Scooter Findings Report

Contents:

- Memo to PBOT Director Chris Warner on Data Privacy and Information Protection for E-Scooters
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Chloe Eudaly Commissioner **Chris Warner** Director

Date: September 14, 2020

To: Chris Warner, PBOT Director

CC: Noah Siegel, Director of Public Affairs

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Kristin Hull, Planning Division Manager

Catherine Ciarlo, Active Transportation & Safety Division Manager

From: Jacob Sherman, New Mobility Program Manager

Subject: Update on data privacy and information protection for e-scooters

In June 2019, City Council adopted Resolution No. 37437 which directed the Bureau of Planning and Sustainability (BPS) to work with City bureaus to apply new Privacy and Information Protection Principles. As a result of that resolution, PBOT inventoried its practices (see Table 1) and has been actively engaged in developing privacy standards in conjunction with our work to regulate new mobility services, like e-scooters, on Portland's physical right-of-way. E-scooters offer cities like Portland valuable data about the transportation system—our digital right-of-way—which the City can then use to work more efficiently, make smart investments, and implement regulations that serve the public interest. For example, mobility data offers PBOT the ability to do everything from targeting investments to the bus lines with the most delay to identifying places where dedicated e-scooter parking could reduce conflicts or new bicycle and pedestrian infrastructure improvements could improve safety in East Portland.

The use and protection of mobility data continues to be a rapidly evolving space. Transportation agencies in peer cities, including Los Angeles (LADOT) and Seattle (SDOT), are establishing protocols about collecting, protecting, and sharing information about their digital rights-of-way. In late May 2019, the National Association of City Transportation Officials (NACTO) and the International Municipal Lawyers Association released a report offering guidelines for cities to protect privacy as we collect and use mobility data. As you are aware, last year PBOT became a founding-member of the Open Mobility Foundation (OMF) as a way to more fully engage in conversations around mobility data and data privacy. In the past year, OMF has grown to encompass dozens of public-sector members from around the globe, start-ups and well-established tech companies, micromobility operators, firms developing self-driving cars, and other supporters and thought partners. Through OMF, PBOT has been engaged in dialogue with stakeholders about best-practices in protecting and managing mobility data.

With the release of our 2019 E-Scooter Findings Report, I would like to provide a brief update about how the E-Scooter Pilot Programs have offered lessons for developing more robust, bureau-wide data policies. Key aspects of the E-Scooter Pilot that will inform continued mobility data privacy policy development includes:



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- PBOT only collects e-scooter user information that was either directly provided to PBOT or resulted from a user opting into companies' location-based services. In collecting this data, PBOT minimizes the information collected to that which is essential to our public function and actively works to prevent discriminatory uses of data.
- PBOT protects individual privacy of e-scooter users, specifically, by:
 - Aggregating the e-scooter data by both geography and time and only reporting on aggregated data.
 - Mapping scooter routes to the nearest street segment, focusing analysis on the volume of trips using our streets rather than on individual trips. This approach protects user privacy while producing a data set that is useful to City staff and researchers.
 - Using data sharing agreements/non-disclosure agreements to guide and protect the release of information that mobility service providers share with the City.
 - Using data sharing agreements/non-disclosure agreements to guide and protect the release of mobility data with third parties supporting the City, like consultants, state agencies, or researchers.
- PBOT seeks to continue to release the de-identified, aggregated e-scooter data that has resulted from our process above so that researchers and community members can use this "open data."
- PBOT uses data for well-defined purposes including to enforce City regulations, to refine scooter operational regulations, and to inform decisions about planning and allocation of right-of-way space.

PBOT recognizes that its responsibility is two-fold: we must demonstrate how we are using new mobility data for public benefit, and we must protect personally identifiable data (including geospatial data) to protect privacy for community members. As PBOT continues to expand its data privacy practices in alignment with the Council-adopted privacy principles, we will:

- Use PBOT's Data Governance Committee to create new policies and procedures around data management, including examining ways to make raw data received from mobility service providers confidential and exempt from Oregon's public records law.
- Limit access to raw trip data beyond what is required by the law, such as through a court order or subpoena.
- Use Bureau of Technology Services guidance and policies to ensure data security.
- Provide transparency in what data we collect, how long it is retained, and how we are using it.
- Support open data standards that allow the City to own, transform, and share aggregated and non-personally identifiable data without restrictions.

Within the City, PBOT is a recognized leader in protecting privacy and we remain committed to the responsible use and protection of mobility data to work more efficiently, make smarter investments, and better implement regulations that serve the public interest. It is important to recognize that PBOT collects data in many venues outside of mobility data. In those spaces, PBOT will continue to use its Data Governance Committee to develop Bureau-wide data governance policies and seek to ensure that this process results in both privacy policies and outcomes that are fully aligned with the BPS privacy principles.

Table 1: 2019 Inventory of alignment between E-Scooter Data Mgmt. Practices and the City's Privacy & Information Protection Principles

Privacy & Information Protection Principle	Details	What are the current practices that PBOT has in place for E-Scooter data?	What questions need to be answered to help PBOT better align its current practices with these new Privacy and Information Protection Principles?	Are there existing City policies that can guide PBOT's current practices?
Transparency & Accountability	How the City uses, manages and collects information is described clearly, accurately, and shared in an accessible way	Aggregated data collected from E-Scooters during pilot 1.0 was shared on PBOT's website in a publicly accessible report. This report has been viewed tens of thousands of times and it was described by the New York Times as the most comprehensive look at the impact of e-scooters on a city to date. This data informed the decision to launch a second scooter pilot in 2019.	Will BPS develop or recommend a city-wide process for bureaus to consistently describe how they use, manage, and collect information? If so, when? If not, are there best practices from other cities that PBOT should look at for guidance about how to promote transparency and accountability?	BTS-2.18 relates to information management, specifically the classification of information as public, restricted, or confidential. However, it does not appear to guide bureaus about how to describe and share information about how data are classified. It is unknown if there are other policies that provide additional guidance on this principle.
	Who creates, contributes to, and has access to that information is also clearly documented and communicated	PBOT has put in place practices to determine who creates, contributes to, and has access to E-Scooter data, but we currently do not document and communicate those practices. Additionally, under the City's Open Data Ordinance (No.188356) the City-wide Data Governance Team is responsible for developing standards for which data is appropriate for public disclosure and providing city-wide guidance. PBOT's Data Governance Team has been working with the Citywide Team to pilot a data inventory for PBOT, which includes E-Scooter data.	Will BPS develop or recommend a city-wide process for bureaus to consistently describe and document who creates, contributes to, and has access to information? If so, when? If not, are there best practices from other cities that PBOT should implement to promote transparency and accountability?	

Full Life Cycle Stewardship	Data, metadata, and information will be secured and protected throughout its lifecycle. That includes collection, storage, use, control, processing, publication, transfer, retention, and disposition.	Working with the City Attorney, PBOT created and executed Data Sharing Agreements with E-Scooter providers. These agreements outline how the data are secured and protected. PBOT is currently developing a retention schedule for aggregated scooter data too.	Will BPS develop or recommend a city-wide process for full life cycle stewardship? If so, when? If not, are their best practices from other cities that PBOT should implement to advance this principle? Are there existing retention schedules for geolocation data?	City Archives sets record retention and preservation policies and serves as the city's expert on records issues. BTS-2.01 relates to security, but not full life cycle stewardship. It is unknown if there are other policies that provide additional guidance on this principle.
Equitable Data Management	Prioritize the needs of marginalized communities regarding data and information management	PBOT has shared information about E-Scooter use in Portland with community organizations, including communities of color, historically underserved areas, and people with disabilities. The data from Scooter 1.0 was used to design a second scooter pilot that addressed equity issues by encouraging companies to deploy scooters in East Portland through price signals and incentives.		The Office of Equity and Human Rights (OEHR) is currently working to develop city-wide policy about how city data will comply with Title I and II of the Americans with Disabilities Act. PBOT has been working with OEHR on making E-Scooter data more accessible for over six months now.
Ethical & Non-Discriminatory Use of Data	Ethical responsibility to provide good and fair stewardship of data and information	By riding E-Scooters, users agree to share their data with companies and their affiliated third parties, including cities. PBOT is committed to being a good steward of E-Scooter data and to protecting personal privacy. PBOT is an active participant in national conversations about how cities can best collect, store, use data information for planning and regulatory purposes, while protecting privacy. PBOT is evolving its practices based on emerging methodologies.		

	Commits to due diligence to understand the unintended consequences	<p>PBOT is committed to understanding and mitigating unintended consequences. For example, PBOT does not passively collect information about users, like demographics, helping mitigate against any potential discriminatory uses of data. PBOT only collects this data actively, through opt-in user surveys for example. Additionally, information that users provide via opt-in surveys cannot be attributed to individual trips.</p>		
Data Openness	Data that are made public must comply with all applicable legal requirements	<p>To promote data openness, PBOT is preparing to publicly release aggregated E-Scooter data, which could be of use to researchers or community members.</p>	<p>What actions will the City take to ensure that raw geolocation data that are needed for PBOT's operational and regulatory purposes are protected from public release?</p>	<p>BTS-2.18; BTS-2.01; HRAR 11.04; BTS-2.02</p>

	<p>Data must not not expose any confidential, restricted, private, personal information or aggregated data that may put communities, individuals, or sensitive assets at risk</p>	<p>PBOT currently minimizes the data it collects by aggregating E-Scooter data, which protects individual privacy. PBOT also protects E-Scooter information through Data Sharing Agreements with e-scooter companies and PBOT's third party contractors, which limits access to the data and outlines how the data are managed and used. For example, PBOT de-identified user route data by fragmenting users' routes to street segment elements, and then published the aggregated data as a heat map to inform itself and the public. Law enforcement and other government agencies, whether local, regional, state or federal agencies will not have access to raw trip data other than as required by law, such as a court order, subpoena, or other legal process. To be clear, PBOT will make no data available to law enforcement agencies that is not already available to them from operators now.</p>	<p>What does "at risk" mean? How is this being operationalized? Is it the mere possibility of a risk, the actual presence of a threat, or some other metric?</p> <p>How will City staff be trained to identify whether sharing data violates this principle? What structures might the City, or an individual bureau, put in place to help staff? Will those structures be funded? If so, when?</p>	<p>BTS-2.18; BTS-2.01; HRAR 11.04; BTS-2.02</p> <p>According to BTS-2.18, are these geolocation data classified as "restricted" or "confidential"?</p> <p>According to BTS Sensitive Information Table (Rev 3.7), "Confidential fields" include: email addresses, Internet protocol addresses, vehicle identifiers and serial numbers (including license plate), and device identifiers and serial numbers.</p>
<p>Automated Decision Systems</p>	<p>Create procedures for reviewing, sharing, assessing, and evaluating City Automated Decision System tools, including technologies referred to as artificial intelligence, through the lens of equity, fairness, transparency, and accountability</p>	<p>PBOT's E-Scooter Program uses Automated Decision Systems to ensure that private companies which are creating profits from publicly funded infrastructure are held accountable and help advance City equity goals. The program also uses Automated Decision Systems to disincentivize riding e-scooters in places that are not allowed, like parks or trails.</p>	<p>Will BPS develop or recommend a city-wide process for bureaus to consistently review, share, assess, and evaluated Automated Decision System tools? If so, when? If not, are their best practices from other cities that PBOT should look at for guidance?</p> <p>How will equity, fairness, transparency, and accountability lenses be operationalized? Will lenses be provided?</p> <p>Who will be responsible for applying these procedures? How will they be supported?</p>	

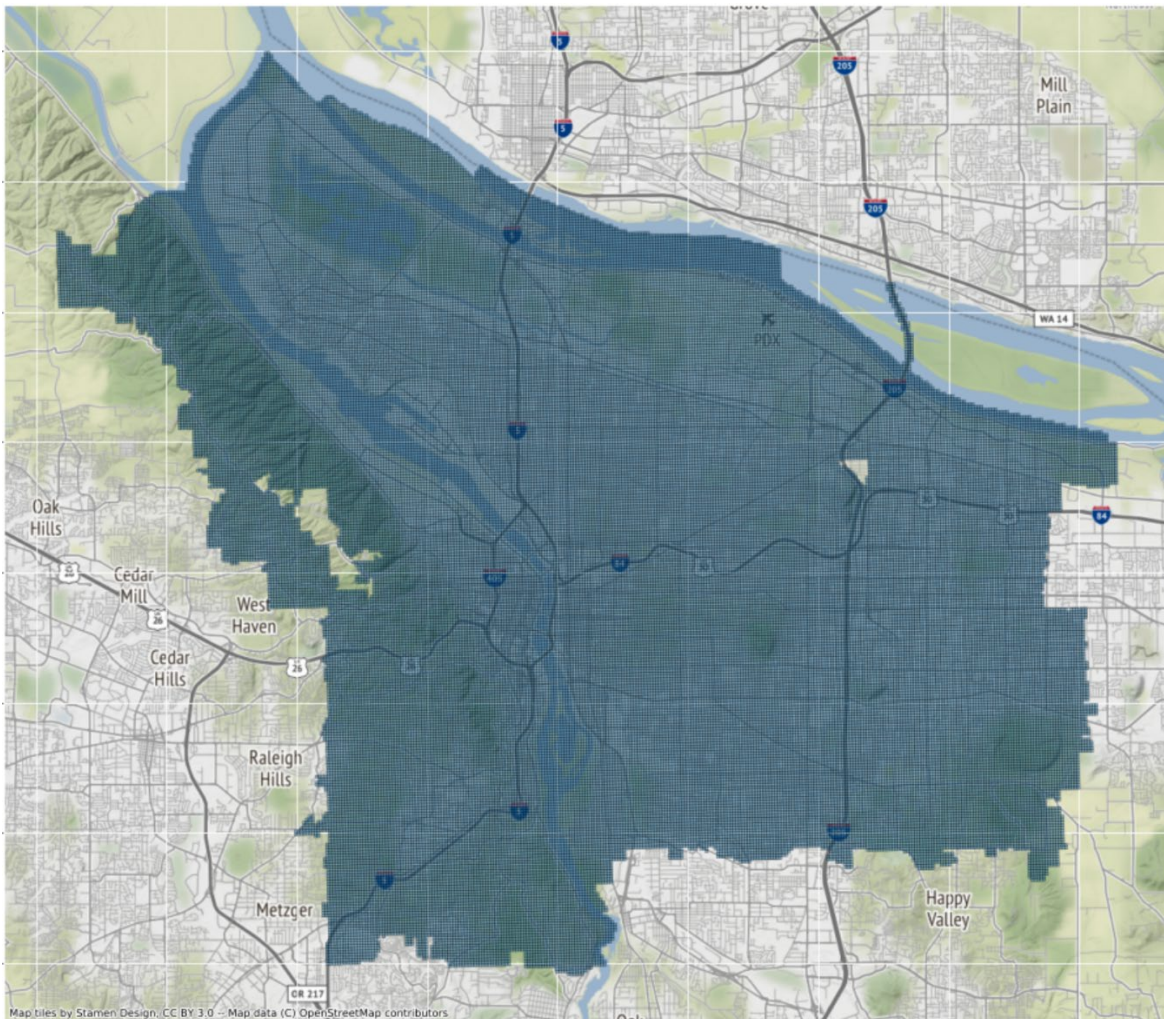
Data Utility	Information brings value to the City and the communities we serve	Information from E-Scooters is needed to fulfill PBOT's responsibility to manage and regulate the right of way, further City goals, and to ensure the health, safety, and welfare of the public. Information from E-Scooters is also used to enforce City rules and is valuable for future planning and allocation of right-of-way space. Additionally, analysis of E-Scooter Pilot 1.0 data was used to refine and correct issues for E-Scooter Pilot 2.0.	Are there recommendations for how city bureaus should best to share this information with stakeholders?	
	City will only collect the minimum amount of personal information	PBOT minimizes the information it collects. For example, PBOT does not collect information that companies have about users like first or last name, address, ethnicity, or banking information.	What training will City staff be given to help ensure they are well-prepared to best implement the data utility principle? Which definition of Publicly Identifiable Data (PII) will the City use (i.e. Oregon, California, U.S., or European Standards)?	
	Fulfills a well-defined purpose	Information from E-Scooters are used to manage the program to ensure that goals including safety, equity, and mitigating climate change are met. Data are used to ensure Operators meet City fleet cap requirements and equity requirements. Data help reduce riding in restricted places, like parks and trails. Data are also used to prevent parking in problematic places and to issue fines to riders for improper behavior. Information from E-Scooters is also used for planning purposes, such as identifying places to create dedicated e-scooter parking and to inform the upcoming Broadway Weidler Corridor Plan Update (starting Summer 2019).		

PBOT's E-Scooter Data Aggregation Methodology

Background: In order to protect privacy while still maintaining data that can be used for compliance and planning, e-scooter events such as trip origins and destinations are aggregated to a custom polygon system developed by PBOT. The goals for the aggregation methodology were to anonymize data to enhance privacy in lower-density residential areas while maintaining higher-resolution in the data in areas like downtown Portland that are more dense, have higher traffic, or have more shared use and, thus, are more anonymous by their very nature. The process for developing this custom aggregation methodology involved gathering data inputs from multiple City bureaus, processing those multiple sources of data, and using geospatial algorithms to develop a final set of geometries for aggregation across Portland.

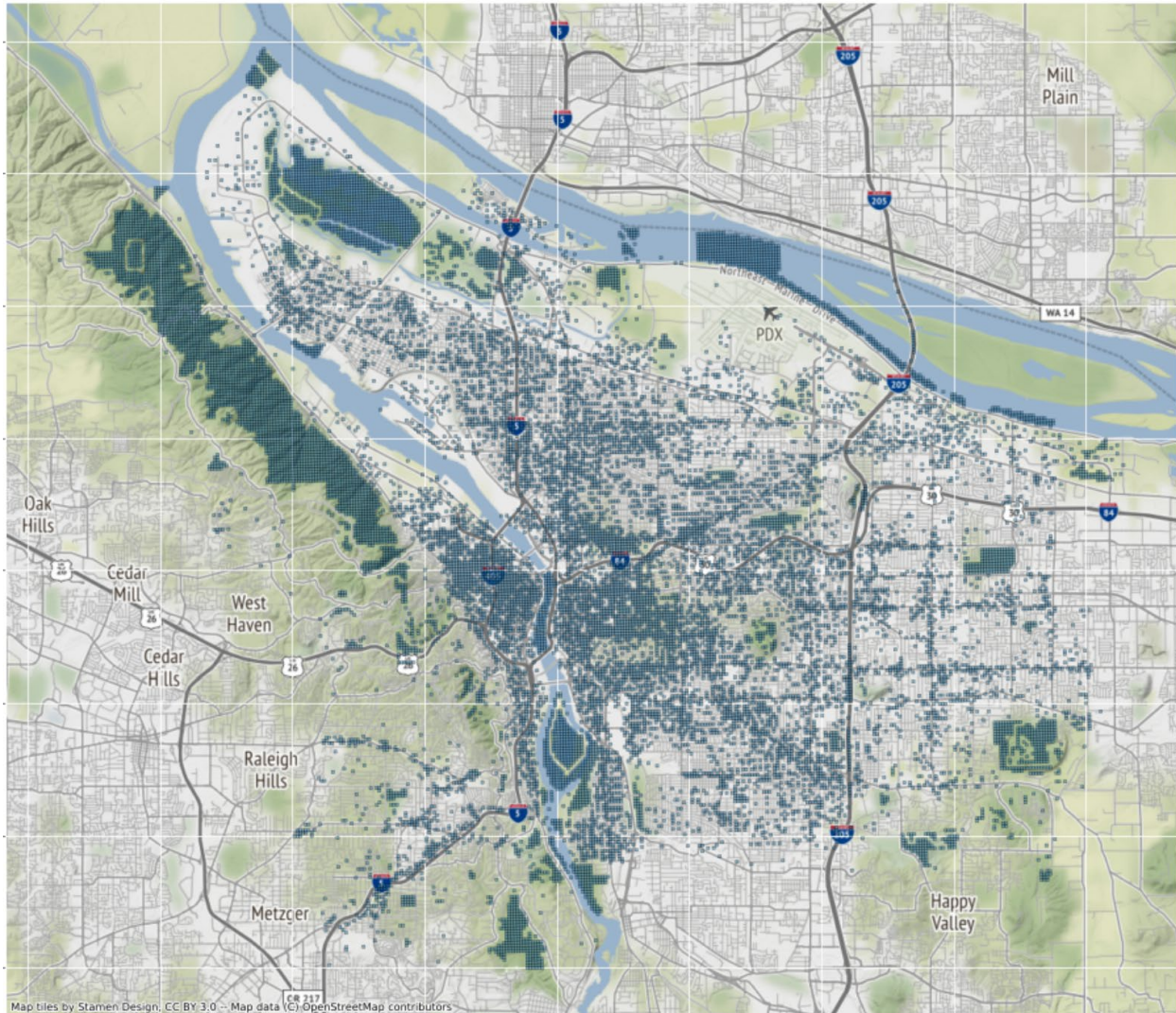
Methods: In order to create polygons for aggregating data, PBOT started from a set of 250-foot squares that covered Portland's city limits. Each square was then intersected with housing and employment data by the Bureau of Planning and Sustainability to create a dataset that contained a square, the number of housing units, and the average number of employees for tax lots that intersected each square. The geospatial output for that data is shown below in Map 1:

Map 1: Initial Set of Polygons for Aggregating E-Scooter Trip Data



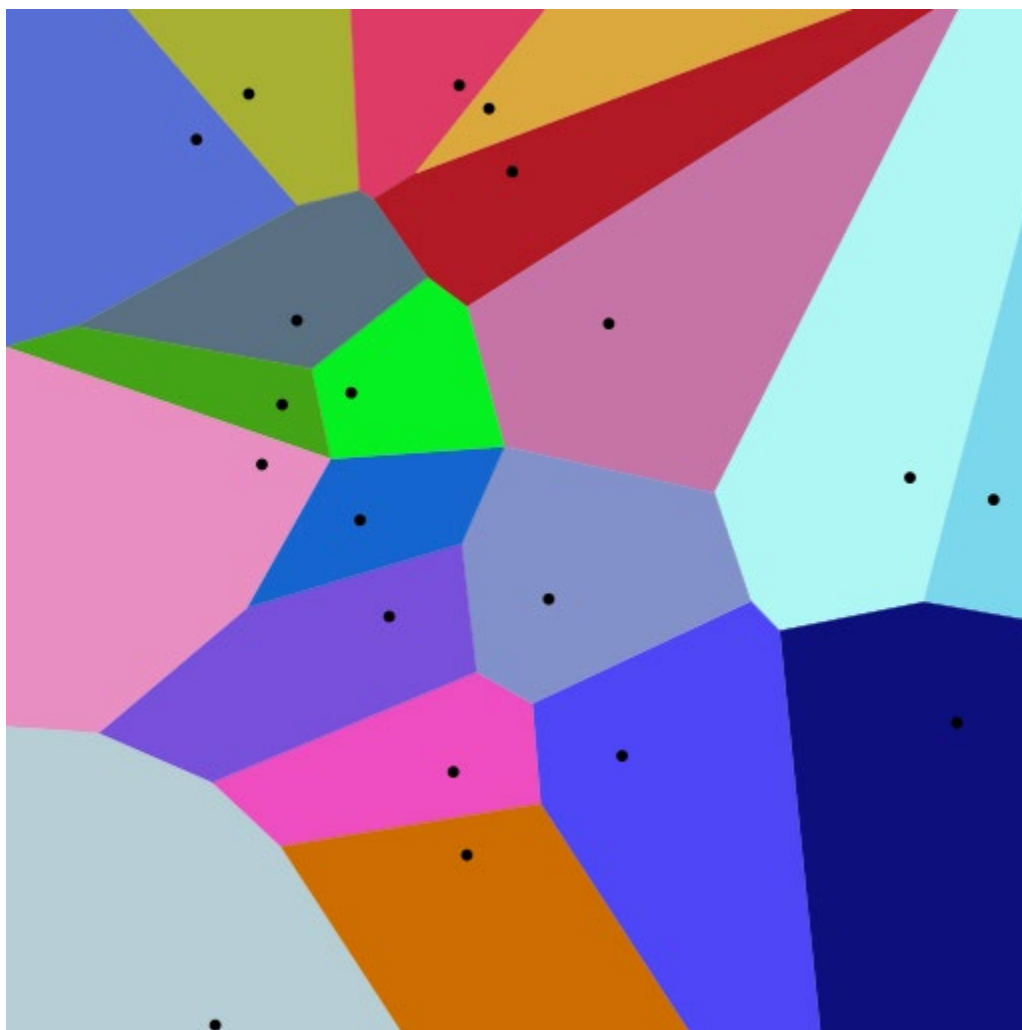
Next, this dataset was filtered to only retain those squares that had ten or more housing units or ten or more employment opportunities. Squares that did not have ten or more housing units or ten or more jobs were combined with nearby squares until those thresholds were met. Those squares that intersected areas zoned as 'Open spaces' were added back. This resulted in a set of squares that served as the basis for the aggregation polygons shown below in Map 2:

Map 2: Secondary Set of Squares for Aggregating E-Scooter Trip Data



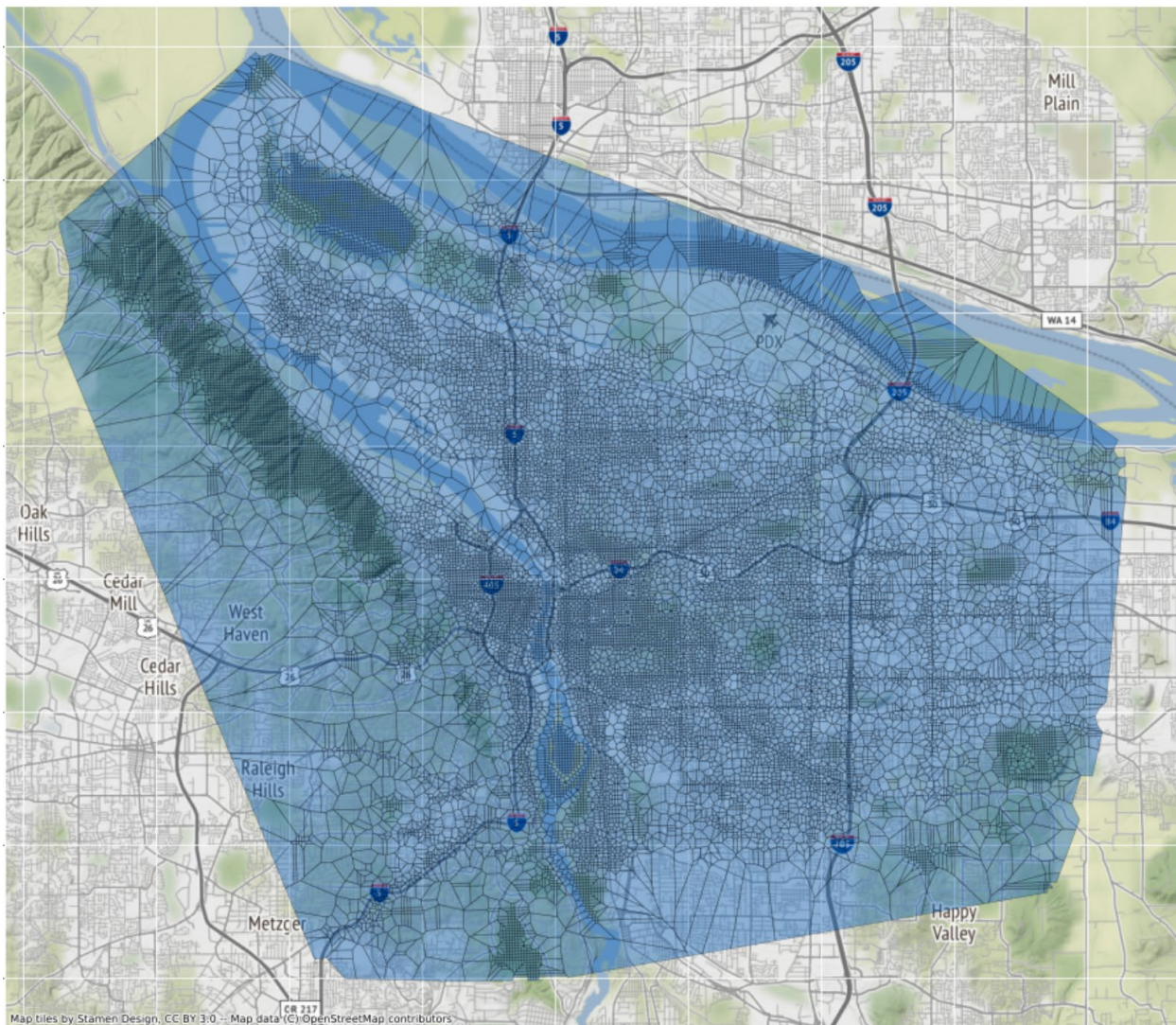
The center point of each of these squares was used to divide the Portland city limits into a set of polygons called “Voronoi polygons”, where each polygon is guaranteed to be the area where any point within it is closest to the center point which we started from. In other words, any point that is left has become “greedy” and will absorb anything that is nearest to it. The following is an image from Wikipedia on Voronoi diagrams that shows this relationship:

Illustration 1: Close up of Voronoi polygons



The result is the set of polygons shown in Map 3, below, which PBOT uses to aggregate E-Scooter origin and destination trip data:

Map 3: Final Set of Polygons for Aggregating E-Scooter Trip Data



The smallest polygons left over are the original 250-foot squares, while the largest polygons seen along the edges of the city limits encompass square miles in distance. Looking at the result in Map 3, above, we can see that smaller polygons tend to follow major streets and areas zoned for business while they increase in size/area as the area starts to become more residential.

Finally, PBOT maps each scooter trip origin and trip destination to the closest center point using these polygons. Using this method, PBOT is not storing the original, raw geospatial information that scooter companies are required to provide but instead aggregating data to protect privacy and storing that aggregated trip data.

As academic research and policy continue to evolve, PBOT remains committed reviewing and updating its aggregation methods to continue to advance data privacy.

DATA SHARING AGREEMENT

This Data Sharing Agreement (this “Agreement”) is between the City of Portland, a municipal corporation of the State of Oregon (the “City”) and _____, a _____ corporation with its principal place of business at _____ (“Company”), (each a “Party” and collectively the “Parties.”) This Agreement is effective on _____.

RECITALS

WHEREAS, Company is a provider of Shared Electric Scooters (“Shared Scooters”) and has been issued a permit by the City to operate Shared Scooters under the City’s pilot program.

WHEREAS, Company desires to share certain data, including proprietary and sensitive commercial data, with the City to help support City planning, the advancement of policy goals, and to serve the public interest.

WHEREAS, the City is responsible for management of the public right of way and access to such data to fulfill those responsibilities are within the City's rights.

WHEREAS, the City believes that this data will help City government policymakers, planners and researchers develop a more detailed understanding of Shared Scooters, traffic implications, economic implications, environmental implications, commute patterns and the location of thousands of weekly trips.

WHEREAS, the Parties believe that Company sharing this data with the City can help improve traffic planning, congestion reduction, pedestrian safety, passenger safety, movement of residents across the City, emergency and disaster planning and beneficially contribute to other activities related to City transportation, as well as assist in identifying zoning changes and needs, opportunities to create or reduce parking, prioritize street remediation projects, facilitate additional transportation solutions for marquee City initiatives such as festivals and many more possibilities (the “Purpose”).

WHEREAS, the Parties desire to document the terms and conditions governing the sharing, usage and confidentiality of the data.

NOW, THEREFORE, in consideration of the mutual agreements, covenants, terms and conditions contained herein, the Parties agree as follows:

AGREEMENT

1. Definitions.

- 1.1 “Aggregated Data” means Data generalized to remove information that could potentially be used to identify individual Shared Scooter trips.

- 1.2 “Anonymized Data” means Data not containing information relating to an identified or identifiable natural person (personal information), or information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context (personally identifiable information).
- 1.3 “API” means application programming interface.
- 1.4 “Charger” means a person employed or contracted by Company to provide services to re-charge and re-deploy Shared Scooters or Shared Scooter batteries.
- 1.5 “Confidential Information” is defined in Section 4.
- 1.6 “Data” means all data related to the City’s Shared Scooter program and provided by Company to City under this Agreement.
- 1.7 “Third Party Contractor” is defined in Section 2.2.
- 1.8 “User” means the person who has rented a Shared Scooter and is in actual physical control of the device.

2. Data Sharing.

- 2.1 Company will disclose to the City or a Third Party Contractor (as defined below) the following Data on a monthly basis:
 - a. Anonymized Data regarding Chargers and Users, including:
 - i. Total number of Users;
 - ii. Total number of Users who receive a low-income fare, total number of Users who receive any other discounted fare; and
 - iii. Total number of Chargers.
 - b. Anonymized Data regarding complaints or issues submitted by Users and non-Users as follows:
 - i. Unique reporter ID (required field);
 - ii. Address, intersection, or coordinates of the complaint or issue filed (required field);
 - iii. Scooter ID (required field);
 - iv. Permit ID (optional field);
 - v. Issue type (required field)
 - Response options should include, at minimum: parking, maintenance, hazard, collision, sidewalk riding, parking obstruction, other dangerous behavior, other;
 - vi. Report Description (optional field); and

vii. Form submission timestamp (required field.)

2.2 Company agrees that the City may use one or more third-party researchers or contractors selected by the City in its sole discretion (“Third Party Contractors”) to evaluate the Shared Scooter pilot program. Company will share Data with Third Party Contractors upon the City’s request for purposes of evaluating the goals, objectives, and requirements of the City’s program, provided that the City and Third Party Contractor have entered into a data sharing agreement containing confidentiality and data security protections at least as protective of the Data as those contained herein.

2.3 Company will provide the City and any City-identified Third Party Contractor access to Data and APIs in accordance with the requirements specified in the City’s Mobility Data Specification published at <https://github.com/CityofPortland/mobility-data-specification/tree/master>.

2.4 Company will maintain publicly accessible APIs with real-time availability in accordance with the requirements specified in the City’s mobility data specification published at <https://github.com/CityofPortland/mobility-data-specification/tree/master/provider#realtime-data>.

2.5 Company agrees to maintain and provide access to Data generated under this Agreement during the duration of the City’s pilot program.

2.6 Company will begin reports of Data enumerated in Sections 2.3 and 2.4 upon issuance of a permit by the City as directed by the City.

2.7 On or before the fifteenth (15th) day of each subsequent month following the issuance of a permit, Company will provide the City a monthly report of Data enumerated in Section 2.1. For example, January’s report must be provided by February 15.

2.8 Company’s failure to provide monthly reports as required by this Agreement will be considered a material breach of this Agreement entitling the City to terminate this Agreement pursuant to Section 8.2(c)

2.9 Upon written request by the City, Company will provide the City with additional Data identified by the City to verify the Company’s compliance with the City’s permit requirements or incentives, including but not limited to operational vehicle miles traveled.

2.10 Upon written request by the City, Company will distribute, in a manner consistent with the City’s criteria, City surveys to Shared Scooter Users and employees and contractors hired to deploy, re-charge or swap batteries or repair Shared Scooters.

3. Rights to Data.

3.1 Company hereby grants the City a non-exclusive, irrevocable, worldwide, royalty free license for the Purpose and for any other municipal purpose deemed to be in the public interest as determined by the City:

- a. to use, reproduce and modify Data and combine and analyze Data alone or with data from other providers;
- b. to allow access to Data to Third Party Contractors, who have entered into data sharing agreements with the City as provided in Section 2.2.
- c. disclose publicly at any time Anonymized Data or Aggregated Data. The City will remove specific location information through a process of aggregation before disclosure of such Data as follows:
 - i. The process will generalize all specific Shared Scooter trip origin and destination locations (points) to areas (polygons) designed to obscure information about individual trips.
 - ii. The process will generalize all route information to volume counts based on a network of street, bike and trail segments.
 - iii. The City will provide written notice to Company if such process undergoes significant changes.

3.2 Except as set forth herein, the Parties recognize that no other rights to Data, by license or otherwise, is granted to the City.

4. Confidential Information.

4.1 The Parties acknowledge and agree that any Company identifying information included in Data will be considered the confidential information (“Confidential Information”) of Company. Confidential Information also includes any all other non-public data, materials, or information of any variety owned or controlled by Company or otherwise related to Company, or any affiliate of Company, including without limitation non-public business, financial, commercial and technical data or end user or customer data, that is provided or made available to the City pursuant to this Agreement, in Company’s sole discretion. Confidential Information disclosed in written or other tangible form will be marked “Confidential” or its equivalent, or, if the Confidential Information is disclosed orally or visually, it must be identified as confidential or proprietary at the time of disclosure.

4.2 Except as set forth in Section 6, the City will protect the confidentiality of the Confidential Information using the same degree of care to avoid disclosure of

such information as it employs with respect to its own proprietary and confidential information of like importance, but not less than reasonable care. The City may disclose Confidential Information only to its employees, agents and Third Party Contractors who need to know such information and have agreed to obligations of confidentiality with respect to Confidential Information at least as protective as those contained in this Agreement.

4.3 The City's confidentiality obligations under this Agreement will remain in effect for a period of one (1) year from the expiration of Company's Shared Scooter permit.

4.4 Exclusions. Confidential Information will not include information that:

- a. Is information that was in the possession of the City prior to its receipt from Company without an obligation to maintain its confidentiality;
- b. Is or becomes generally known to the public without violation of this Agreement;
- c. Is obtained from a third party without an obligation to maintain its confidentiality;
- d. Is independently developed by the City without use of Company's Confidential Information;
- e. Is disclosed by the City with the prior written consent of the Company;
or
- f. Is disclosed pursuant to Section 6.

5. Data Security.

5.1 Each Party will comply with the Oregon Consumer Identity Protection Act, as applicable. In the event of any data security breach involving Data, Company will notify the City in the same manner as provided in ORS 646A.600 to ORS 646A.628.

5.2 The City will comply with the following data security procedures:

- a. Data will be hosted in a secure, City managed cloud and/or on-premise environment, and access will be limited to City employees and contractors working on behalf of the City to manage this environment.
- b. The City's relevant Bureau of Technology Services Information Security Administrative Rules are as follows: BTS-2.01, BTS-2.02,

BTS-2.04, BTS-2.08, BTS-2.12, BTS 2.13, BTS-2.14, BTS-2.15, BTS-2.17, and BTS-2.18. These rules are located at: <https://www.portlandoregon.gov/citycode/26821?>.

6. Public Records Law.

6.1 The Parties agree that Confidential Information may constitute Company's trade secrets and may be exempt from disclosure pursuant to ORS 192.345(2) and ORS 646.461(4).

6.2 The Parties agree that Company is providing such Confidential Information voluntarily for use in developing the City's governmental policies and the Confidential Information may be exempt from disclosure pursuant to ORS 192.355(4).

6.3 The Parties further agree that Confidential Information is not required to be submitted by law.

6.4 If the City receives a request for Confidential Information pursuant to ORS 192.420 or any other applicable law or is sued in order to obtain the disclosure of Confidential Information, the City will promptly notify Company upon receipt of such request or lawsuit so as to afford Company the opportunity to take steps to prevent disclosure.

6.5 In the event the City is ordered by a court of competent jurisdiction that a portion or all of Confidential Information is not required to be kept confidential or does not constitute trade secrets or confidential information exempt from disclosure, or disclosure is otherwise required by law, the City shall provide Company prompt notice before complying with the court order or law, so that Company may take appropriate actions, including seeking an injunction, appeal and stay of the court order or otherwise challenge the law.

6.6 The City may disclose Company's Confidential Information pursuant to a valid, legally binding subpoena; provided, however, that the City shall provide Company prompt notice before complying with a subpoena so that Company may seek to quash the subpoena, if so desired.

7. No Warranty. Data is provided "as is" and without warranty of any kind, express or implied.

8. Term; Termination.

8.1 This Agreement will remain in effect during the term of Company's Shared Scooter permit granted by the City, including any renewals.

8.2 This Agreement may be terminated:

- (a) At any time, upon the mutual written agreement of the Parties;
- (b) By the City, for any reason, upon a minimum of ten (10) days written notice to Company; or
- (c) By the City in the event of a material breach of this Agreement by Company and such breach is not cured within ten (10) days from receipt of written notice from the City.

8.3 The City's rights to use Confidential Data pursuant to this Agreement will survive for a period of one (1) year after the expiration of Company's Shared Scooter permit. The City's rights to use non-Confidential Data (which can be disclosed publicly by the City under Section 3.1(c)) pursuant to this Agreement will survive indefinitely.

9. General Provision.

9.1 Order of Precedence. The Parties acknowledge and agree that the terms of this Agreement supersede and prevail over any prior or subsequent click through or similar agreements or terms of use of Company in relation to Data and the subject matter of this Agreement.

9.2 City Seal and IP. Company may not use the City seal or other City trademarks without permission from the City's Auditor or Office of Management and Finance.

9.3 Relationship of the Parties. The City and Company are independent contractors. Nothing in the Agreement creates a joint venture, partnership, franchise, employment or agency relationship or fiduciary duty of any kind. Neither Party will have the power, and will not hold itself out as having the power, to act for or in the name of or to bind the other Party. Except as expressly provided, this Agreement is not for the benefit of any third parties.

9.4 Limitation of Liability. The City and its directors, officers, employees and agents will not be liable to Company, or anyone else, for any loss or damage, including any direct, indirect, incidental and consequential damages, whether foreseeable or not, based on any theory of liability, resulting in whole or in part from the City's access to or use of Data.

9.5 Waiver; Severability. The failure of either Party to enforce any provision of this Agreement shall not be deemed a waiver of that or any other provision of this Agreement. If any provision contained in this Agreement is determined to be invalid or unenforceable, in whole or in part, the remaining provisions and any partially enforceable provision will, nevertheless, be binding and enforceable, and the Parties agree to substitute for the invalid provision a valid provision which most closely approximates the intent and effect of the invalid provision.

9.6 Assignment. This Agreement may not be assigned in whole or in part by Company, by operation of law or otherwise, without the prior written consent of the City. Any attempted assignment in violation of this Section shall be void.

9.7 Governing Law; Jurisdiction and Venue. The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon without reference to its conflict of laws provisions. Any action or suits involving any question arising under this Agreement shall be brought in the appropriate court in Multnomah County, Oregon.

9.8 Entire Agreement. This Agreement is the entire agreement between the Parties with regard to the subject matter and supersedes any prior representations, communications, undertakings, or discussions between the Parties relating to the subject matter herein. This Agreement may only be modified by a writing signed by both Parties.

9.9 Counterparts. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the Parties have caused their duly respective authorized representatives to sign this Agreement.

CITY OF PORTLAND

COMPANY:

By:

By:

Name:

Title:

Name:

Title:

Date: _____

Date: _____

Approved as to Form:

City Attorney

Date: _____