

1 Mathew D. Freeman, Esq.  
2 State Bar No. 296855  
3 1200 Third Avenue  
4 San Diego, CA 92101  
5 *Administrative Hearing Officer*

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8 ADMINISTRATIVE HEARING  
9 FOR THE CITY OF SAN DIEGO  
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11 In the Matter of The Revocation of Shared  
12 Mobility Device Permit No. 2313123, Neutron  
13 Holdings, Inc. dba. Lime,

14 Appellant,

15 vs.

16 City of San Diego, Development Services  
17 Department, Code Enforcement Section,

18 Complainant.

**ADMINISTRATIVE ENFORCEMENT  
DECISION**

Date: October 24, 2014

Time: 10:00 a.m.

Hearing Officer: Matthew D. Freeman

☒ Hearing by Personal Appearance

☐ Hearing by Written Declaration

19  
20 **ADMINISTRATIVE ENFORCEMENT DECISION**

21 **I. STATEMENT OF THE CASE**

22 Matthew D. Freeman, was assigned as the Administrative Hearing Officer for this matter,  
23 in accordance with the San Diego Municipal Code (SDMC) §§ 12.0403(a).

24 On October 24 and October 28, 2019, evidence was received, testimony was presented.  
25 On November 7, 2019, the City of San Diego (City) submitted its reply brief, the record was  
closed, and the matter submitted.

1 The purpose of this hearing was to determine the following issues related to the City of  
2 San Diego, Development Services Department, Code Enforcement Section's, revocation of  
3 Shared Mobility Device (SMD) Permit No. 2313123 for an alleged violation of SDMC §  
83.0308 (Geofencing Speed and Operating Restrictions).

4 **A. Issues**

5 (1) Whether the Notice of Violation issued by the Complainant gave proper notice of  
6 the alleged violation in accordance SDMC § 12.0103.

7 (2) Whether Appellant failed to comply with the geofencing requirement of SDMC §  
8 83.0308.

9 **B. Parties**

10 Deanna Walker and William Dauphin appeared on behalf of Complainant, City of San  
11 Diego ("the City"). The following also appeared and testified on behalf of the City: Leslie  
Sennett, Morris Dye, Officer Lopez, Detective Michael Gottfried, Raynard Abalos, Rimah  
Khoury-Velez, Edric Doringo, and Raquel Torres.

12 Leslie Devaney and Sue Mason appeared on behalf of Appellant Neutron Holdings, Inc.  
13 DBA, Lime, the Appellant, (hereinafter, "Lime.") The following also appeared and testified on  
behalf of Lime: Kimia Talebian and Thomas Blackburn.

14 **C. Witnesses and Evidentiary Exhibits**

15 Individual witnesses and evidentiary exhibits are indexed and identified on the  
16 Exhibit/Witness List attached to this Administrative Enforcement Order. The evidentiary  
17 exhibits admitted into evidence on the record during the hearing are incorporated by reference as  
though set forth in full here<sup>1</sup>.

18 **II. FACTUAL FINDINGS**

19 **A. Procedural Background**

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21 1. On July 17, 2019, Lime was issued a Notice of Violation for violation of SDMC §  
22 83.0308, alleging failure to comply with geofencing speed and operating restrictions. The City  
gave Lime a deadline of July 29, 2019 to cease operation of any Shared Mobility Devices unless  
23 it could show it met all Geofencing Permit requirements. The Notice of Violation indicated  
Lime's failure to comply may result in its permit being revoked. (City's Exhibit 1)

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<sup>1</sup> Only exhibits with an "X" or other similar mark in the "EV" column of the Exhibit/Witness List were admitted  
into evidence during the hearing.

1           2.       On August 16, 2019, The City emailed Lime a letter indicating the City intended  
2 to revoke Lime's permit and the City would schedule a hearing.

3           3.       On September 30, 2019, the Notice of Hearing was served upon Lime in  
4 accordance with SDMC § 11.0301 in that the Respondent was served via U.S. and certified mail  
5 with the date, time, and location of its hearing. The record contained evidence of proof of  
6 service.

7           4.       On October 1, 2019, Lime requested a continuance. The City granted that  
8 continuance.

9           5.       The hearing was rescheduled to October 24, 2019.

### 10           **B.       General Factual Background**

11           6.       On July 13 and July 14, 2019, Detective Michael Gottfried, San Diego Police  
12 Department Traffic Investigations Unit, conducted field investigations performing speed checks  
13 on Shared Mobility Devices. The results of his investigations are summarized in an undated  
14 document (see City's Exhibit 4).

15           In that report, Detective Gottfried indicated that on July 13, 2019, from 2:20 p.m. until  
16 3:20 p.m., he was "at the boardwalk in Seaport Village just east of the vehicle entrance to the  
17 Embarcadero Marina Park North." The area is also identified in the report as the "North/South  
18 Embarcadero." During that time, he observed seven SMDs he identified as belonging to Lime.  
19 He used "a laser" to measure speed and alleged one Lime scooter travelling at eight miles per  
20 hour and another travelling at six miles per hour." His report indicated the speed limit in the area  
21 was three miles per hour.

22           The report also indicated that on July 13, 2019, from 6:10 p.m. until 7:10 p.m., Detective  
23 Gottfried was at "Petco Park Ballpark Zone," in "two areas both around the perimeter of the  
24 ballpark. [He] was at the east side of the ballpark on 10<sup>th</sup> Avenue and the north side of the  
25 ballpark on J St (just outside Park at the Park)." The report does not indicate the speed limit in  
the area. The report alleges eight SMDs Detective Gottfried determined belonged to Lime  
travelling at ten miles an hour or more.

            Finally, the report indicated that on July 14, 2019, between 10:30 a.m. and 11:20 a.m.,  
Detective Gottfried was at "Ocean Front Walk in Mission Beach Public Walkway," on "the  
boardwalk on the ocean side at San Jose Place." His report indicated the speed limit for SMDs in  
the area is eight miles per hour. The report indicated he observed 16 SMDs he identified as  
belonging to Lime. The report alleges he measured two Lime SMDs travelling at nine miles per  
hour, one travelling at 10 miles per hour, and one travelling at 15 miles per hour.

            7.       Detective Gottfried testified that he is assigned to investigate fatal and serious  
automobile accidents. He testified he measured the speeds of the SMDs using a laser device  
known as Lidar. Although he is certified in the use of Lidar and laser devices, his duties do not  
include making speed measurements of automobiles or SMDs. He testified that he last used

1 Lidar approximately four years ago and prior to July 13, 2019, never used it to measure the speed  
2 of SMDs.

3 Detective Gottfried testified the Lidar device used did not belong to him and was given to  
4 him by his supervisor. He testified that to measure the speed of the SMDs he would aim the  
5 Lidar device at them until he got a signal indicating the device had locked onto the target. He  
6 testified that sometimes he would get a lock off the SMD's back wheel, sometimes off the front  
7 wheel, and sometimes off the SMD's rider. Detective Gottfried provided no specific testimony  
8 about where he locked onto any of Lime's SMDs identified in his report.

9 Detective Gottfried provided no specific testimony about where he was in relation to any  
10 of Lime's SMDs identified in his report.

11 8. Detective Gottfried testified he determined he was in Geofenced areas by looking  
12 at google maps. The City introduced no evidence showing the boundaries of the Geofenced  
13 areas, nor did the City submit any evidence other than Detective Gottfried's report showing  
14 where he was in relation to the boundaries of the Geofenced areas.

15 9. The City's records show the Lidar device used by Detective Gottfried was last  
16 certified to be accurate within one mile per hour at speeds exceeding 35 miles per hour.

17 10. On July 17, 2019, Leslie Sennett issued a Notice of Violation to Lime (City's  
18 Exhibit 1). The notice also listed several locations where Detective Gottfried's report did not  
19 allege any violations by Lime. The notice did not describe how the SMDs violated SDMC §  
20 83.0308, nor did the notice provide a list of necessary corrections.

21 The Notice of Violation did not include Detective Gottfried's report. The City first  
22 provided the report to Lime on September 30, 2019, more than one month after the City notified  
23 Lime by email that the City intended to revoke Lime's permit (City's Exhibit 9.) There is no  
24 evidence the City provided any other description of how the SMDs violated SDMC § 83.0308, or  
25 a list of necessary corrections prior to September 30, 2019.

11. At the hearing, Lime argued these deficiencies constituted a violation of Due  
Process.

12. Lime also argued the speed measurements taken by Detective Gottfried were  
inaccurate. Lime introduced Thomas Blackburn as an expert witness by education, training, and  
experience in the fields of Geofencing and Lidar technology. Mr. Blackburn's CV was admitted  
into evidence as Lime's Exhibit 25. The City did not object to Mr. Blackburn's testimony as an  
expert witness.

Mr. Blackburn testified that Lidar equipment should be calibrated just before use. He  
further testified that Lidar relies on reflective signal like a license plate to measure speed.  
Detective Gottfried testified that to measure the speed of motor vehicles accurately the license  
plate is targeted. Mr. Blackburn estimated properly taken speed measurements from a calibrated

1 Lidar on vehicles traveling at approximately eight miles per hour would be accurate to within  
2 plus or minus three or four miles per hour.

3 13. Lime submitted a user manual for the type of Lidar used by Detective Gottfried  
4 (Lime's Exhibit 74). The manual shows the distance from a vehicle and the angle to the vehicle  
5 can significantly impact the accuracy of Lidar.

6 14. On July 31, 2019, and August 1, 2019, the City conducted compliance testing of  
7 SMDs. The City submitted the results of the testing as City's Exhibit 7. Leslie Sennett, Morris  
8 Dye, Raynard Abalos, Rimah Khouri-Velez, Edric Doringo, and Raquel Torres all appeared as  
9 witnesses for the City. They all testified that they participated in the testing. They all testified  
10 that they are not Code Enforcement Investigators, no part of their job involves testing SMDs, and  
11 they received no training on testing.

12 All the witnesses testified that they measured the speed of the SMDs by looking at the  
13 speedometers on the SMDs. The City introduced no evidence to demonstrate the speedometers  
14 on the devices were accurate.

15 None of the witnesses who rode non-compliant SMDs provided detailed testimony of  
16 where they were in relation to the Geofenced areas when they noticed SMDs exceeded the speed  
17 restrictions.

18 15. Lime introduced evidence showing portions of the testing took place outside  
19 Geofenced areas (Lime's Exhibit 72).

20 16. On September 6, 2019, Officer Lopez and Detective Gottfried conducted speed  
21 testing of SMDs. Detective Gottfried issued a report (City's Exhibit 14). That report alleged  
22 two of Lime's SMDs exceeded the speed limit in geofenced areas. Officer Lopez testified that  
23 Detective Gottfried used the Lidar and told him the speeds. The report also identified one SMD  
24 by serial number. The report alleges that one rider of a Lime SMD stated the SMD let him travel  
25 in excess of eight miles an hour.

Detective Gottfried's testimony did not indicate where he was in relation to the two Lime  
SMDs.

### 26 C. Administrative Costs

27 17. The City submitted a Request for Administrative Costs in connection with the  
28 preparation for the Administrative Hearing. The costs are broken down into two categories: City  
29 Personnel costs totaling \$745.37, and Non-Personnel Costs, such as mailing and copies, totaling  
30 \$96.49. Combined, these two categories total \$841.86.

31 18. Lime argued neither San Diego Municipal Code or the City Manager's Policies  
32 and Procedures ("CMPP") authorize recovery of Administrative Costs for the revocation of SMD  
33 permits.

### III. DETERMINATION OF ISSUES AND LEGAL CONCLUSIONS

#### A. Due Process Requirements

1. “The Due Process Clause of the Fourteenth Amendment is the chief limitation on the exercise of police power. If the attempted exercise of power is unreasonable or arbitrary, i.e., not sufficiently justified by public necessity, or too drastic in its methods, it is a violation of due process.” 8 Witkin, *Summary of California Law* § 983 (10<sup>th</sup> Ed. Thompson-West 2012). “It has been said that the police power is simply the power of sovereignty or power to govern—the inherent reserved power of the state to subject individual rights to reasonable regulation for the general welfare.” *Id.* § 976.

2. An adjudicative (quasi-judicial) proceeding before an administrative officer or board is sufficient if basic due process requirements are met, including notice and an opportunity for hearing. *See Anderson Nat. Bank v. Lueckett*, 321 U.S. 233 (1944); *Mohilef v. Janovici*, 51 Cal.App.4<sup>th</sup> 267, 276 (1996). The notice and opportunity to be heard must be given at a meaningful time and in a meaningful manner. *See Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). This requirement has generally been interpreted to mean that the individual must at least be given notice of the impending deprivation and the facts on which it is based and some opportunity to present an argument against the administrative action. *See Goss v. Lopez*, 419 U.S. 565 (1975); *Skelly v. State Personnel Bd.*, 15 Cal.3d 194 (1975); *see also* Ruth S. Astle, *et al.*, *California Administrative Hearing Practice*, § 1.63 (2<sup>nd</sup> Ed. C.E.B. 2011).

#### B. Authority Governing the Issuance of Notices of Violations

3. SDMC §12.0103 describes the required contents of a Notice of Violation:

- (a) The name of the property’s record owner;
- (b) Street address;
- (c) The code sections in violation;
- (d) A description of the property’s condition which violates the applicable codes;
- (e) A list of necessary corrections to bring the property into compliance;
- (f) A deadline or specific date to correct the violations listed in the Notice of Violation;
- (g) Reference to the potential consequences should the

property remain in violation after the expiration of the compliance deadline including, but not limited to: criminal prosecution, civil injunction, administrative abatement, civil penalties, revocation of permits, recordation of the Notice of Violation and withholding of future municipal permits.

4. SDMC § 11.0210 defines the term “Responsible Person” as follows:

... [A] person who a Director determines is responsible for causing or maintaining a public nuisance or a violation of the Municipal Code or applicable state codes. The term, ‘Responsible Person’ includes but is not limited to a property owner, tenant, person with a legal interest in real property or person in possession of real property.

5. SDMC § 83.0302 defines *Geofencing* as “the creation of a virtual geographic boundary, defined by Global Positioning System (GPS), radio-frequency identification (RFID), or other technology, that enables an operator to regulate speed, issue notifications, and take other actions, when a shared mobility device in its fleet enters or leaves an area.”

6. SDMC § 83.0302 defines Operator to mean “a person who manages, owns, or operates a shared mobility device business.”

7. SDMC § 83.0302 defines *Shared mobility device* (SMD) as “any motorized scooter, electric bicycle, or motorized bicycle by which a natural person can be propelled or moved, that is displayed, offered, or made available for rent to the public.”

8. SDMC § 83.0306 describes the Terms and Issuance of Permits of SMDs. It requires the permit to contain “the number of each type of shared mobility device permitted in the operator’s fleet...”

9. SDMC § 83.0308 sets forth Geofencing Speed and Operating Restrictions as follows:

(a) Through geofencing or similar technology, an operator shall reduce the speed of any motorized scooters and motorized bicycles in the operator’s fleet to eight miles per hour or less at the following locations:

- (1) on the public walkways within Balboa Park;
- (2) on the public walkways within Liberty Station NTC Park;  
and
- (3) on the public walkways within Spanish Landing Park and Trail.

1 (b) Through geofencing or similar technology, an  
2 operator shall prevent any motorized scooters and motorized  
3 bicycles in the operator's fleet from being locked, parked, or  
4 ending a ride, and shall reduce the speed of its motorized scooters  
and motorized bicycles to eight miles per hour at the following  
locations:

5 (1) on the public walkway on Ocean Front Walk in Mission  
6 Beach, beginning at the South Mission Beach Jetty northward to  
the terminus of the public walkway at Ocean Boulevard at Law  
7 Street in Pacific Beach;

8 (2) on the public walkway on the west side of Mission Bay  
9 Park from San Diego Place (adjacent to the South Mission Beach  
Jetty) to Corona Oriente Road (terminus of Crown Point Park),  
known as Bayside Walk;

10 (3) on the public walkway on the east side of Mission Bay Park  
11 from De Anza Road southward to the South Shores Boat Launch  
and Park;

12 (4) on the boardwalk from Avenida De La Playa (adjacent to  
13 La Jolla Shores) north to the terminus of La Jolla Shores Park at its  
14 northeast corner; and

15 (5) on the public right-of-way within the Petco Ballpark Zone,  
as defined in Chapter 8, Article 3, Division 1 of this Code.

16 (c) Through geofencing or similar technology, an  
17 operator shall prevent any motorized scooters and motorized  
18 bicycles in the operator's fleet from being locked, parked, or  
19 ending a ride, and shall reduce the speed of any motorized scooters  
and motorized bicycles in its fleet to three miles per hour at the  
following locations:

20 (1) Martin Luther King Promenade, as defined in Chapter 8,  
21 Article 3, Division 1 of this Code;

22 (2) North and South Embarcadero pedestrian walk; and

23 (3) The pedestrian area on West Date Street east of India Street  
24 and west of Columbia Street, known as the Piazza della Famiglia.  
25



1 (d) The City Manager may adopt additional locations  
2 subject to geofencing or similar technology consistent with section  
3 83.0308(a), section 83.0308(b), or section 83.0308(c).

3 (e) The City Manager may require operators, through  
4 geofencing or similar technology, to temporarily lock down and  
5 prevent the operation of shared mobility devices in a specific area  
6 during an emergency situation or within the perimeter of a  
7 permitted Special Event, as defined in Chapter 2, Article 2,  
8 Division 40 of this Code, when necessary to maintain public health  
9 and safety.

7 (f) When a rider operates a shared mobility device in  
8 the operator's fleet within a location subject to geofencing, the  
9 operator shall notify the rider of the reduced speed limit and any  
10 other applicable conditions of this section.

10 10. SDMC § 83.0312 governs the revocation of SMD permits and states:

11 [i]n addition to the remedies provided in Chapter 1 of this  
12 Code, the City Manager may revoke an operator's permit if the  
13 operator violates any provision of this Division or the terms of the  
14 permit. If the City revokes an operator's permit, the operator shall  
15 wait at least six months from the date the permit was revoked  
16 before applying for a permit pursuant to section 83.0305.

15 11. SDMC § 12.0907 states as follows.

16 . . .

17 (b) As part of the Administrative Enforcement Order,  
18 the Enforcement Hearing Officer may reduce, waive or  
19 conditionally reduce the penalties assessed by the citation.

19 (c) The Enforcement Hearing Officer may also impose  
20 conditions and deadlines to correct the violations or require  
21 payment of any outstanding penalties.

21 (d) The Enforcement Hearing Officer shall assess  
22 reasonable administrative costs. Costs include, but are not limited  
23 to: staff time to investigate and document violations; laboratory,  
24 photographic, and other expenses incurred to document or  
25 establish the existence of a violation; and scheduling and  
processing of the administrative hearing and all related actions.  
Any determination that documented costs are not reasonable must  
be supported by written findings.

1           12.     SDMC § 12.0408 states, “Administrative enforcement hearings are intended to be  
2 informal in nature. Formal rules of evidence and discovery do not apply. The procedure and  
3 format of the administrative hearing shall follow the procedures promulgated by the City  
4 Manager.”

5           13.     SDMC § 12.0408(b) states, “[t]he City bears the burden of proof at an  
6 administrative enforcement hearing to establish the existence of a violation of the Municipal  
7 Code or applicable state code.”

## 8                   **C.       Evaluation of Evidence and Argument**

### 9                   **1.       The Defects in the Notice Were Not Cured**

10           14.     The Notice of Violation, as initially issued, was defective in two ways. First,  
11 SDMC § 12.0103(d) required that the notice contain “a description of the property’s condition  
12 which violates the applicable codes.” The area on the notice designated for the violation only  
13 stated “[f]ailure to comply with geofencing speed and operating restrictions.” And second,  
14 SDMC § 12.0103(e) required that the notice provide “[a] list of necessary corrections to bring  
15 the property into compliance.” This section of the notice simply stated, “before July 29, 2019,  
16 you shall cease the operation of any Shared Mobility Devices until all Geofencing Permit  
17 requirements have been met.” These descriptions on the notice were insufficient.<sup>2</sup>

18           A description of Lime’s offending conduct is necessary in order to comply with both  
19 Section 12.0103(d) and Constitutional due process requirements because Lime is entitled to  
20 meaningful notice of what it is alleged to have done wrong. The City’s argument that even a  
21 single violation of SDMC § 83.0308 is sufficient grounds to revoke a SMD permit makes the  
22 absence of any meaningful facts in the notice even more troubling. Lime is left to guess which of  
23 its SMDs are not compliant and the manner in which they were alleged to be non-compliant.  
24 Were the SMDs alleged to have exceeded the speed limit by one mile an hour or ten? Or did the  
25 SMDs violate SDMC § 83.0308 by being parked, locked, or ending a ride a prohibited zone?  
Given that Lime faced revocation of its SMD permit for even a single violation, both Section  
12.0103(d) and Constitutional due process demanded it be given more information than simply  
stating it was in violation of “geofencing speed and operating restrictions.”

          Similarly, the command that before “before July 29, 2019, you shall cease the operation  
of any Shared Mobility Devices until all Geofencing Permit requirements have been met,” is  
insufficient. Lime again has no way of knowing what needs to be done to fix the problem.

          The defects were not cured by the City providing Lime with Detective Gottfried’s report  
on September 30, 2019. Unlike a situation where Lime was facing a fine for violating SDMC §

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<sup>2</sup> This assumes a Notice of Violation is even a valid method of enforcing the provisions SDMC § 83.0308. The  
required contents of a Notice of Violation appear to refer to violations found to exist on real property. SDMC §  
12.1002 declares the issuance of and recordation of Notices of Violation as the appropriate method of enforcement  
for violations found to exist on real property. Because Lime did not raise this issue it was not adjudicated.

83.0308 and could still present evidence that it was not in violation at the hearing, the defects here prevented Lime from knowing what actions to take to bring its SMDs into compliance. Lime's alleged failure to bring the SMDs into compliance was the basis of the City's attempt to revoke Lime's permit. As such, the defects in the notice denied Lime due process.

## **2. Evaluation of Evidence of Violation of Geofencing Restrictions**

15. Respondent is a "Responsible Person" for alleged violation of the Geofencing restrictions because it operated the SMDs alleged to be in violation.

16. Under SDMC § 12.0408(b), the City bears the burden of establishing that a violation of SDMC § 83.0308 occurred. The City must prove its case by a preponderance of the evidence. Here, the City alleged violations occurred on July 13, 2019, and July 14, 2019. These allegations are based solely on the observations and measurements of Detective Gottfried.

Detective Gottfried testified he has never taken Lidar measurements on SMDs before and that he no longer uses Lidar in the course of his regular duties. He testified that he had not tested the Lidar on SMDs to ensure it was accurate prior to his investigations. The Lidar he used was only certified at 35 miles per hour and higher. Here, the SMDs were all traveling at a speed of less than 20 miles per hour.

Detective Gottfried only testified in general terms. He did not provide any specific testimony on his measurements of Lime's SMDs. He did not indicate whether he took the measurements of Lime's SMDs from the front wheel, the back wheel, or the rider. He did not indicate where he was in relation to the SMDs. There is insufficient evidence to determine that Detective Gottfried's speed measurements in his reports were accurate. Additionally, there is insufficient evidence to determine the SMDs Detective Gottfried observed were within the Geofenced areas when he measured them. As such, the City failed to meet its burden to prove Lime's SMDs violated SDMC § 83.0308.

## **3. Evaluation of Evidence from Compliance Testing**

17. The City conducted compliance testing on July 31, 2019, and August 1, 2019. None of the testers had code compliance enforcement as part of their job descriptions. None of the testers had conducted testing of SMDs before. The City determined non-compliance simply by looking at the speedometers on the SMDs, but never checked the accuracy of those speedometers. Moreover, Lime's uncontradicted evidence showed portions of the tests took place outside of Geofenced areas. As such, the City failed to show the SMDs it tested on July 31, 2019 and August 1, 2019 were in violation of SDMC § 83.0308.

18. On September 6, 2019, Detective Gottfried and Officer Lopez conducted speed enforcement testing. Detective Gottfried took the measurements in a similar manner to the testing he performed in July. As with the testing in July, the City failed to establish Detective Gottfried's September 6 testing was accurate. Nor did the City establish the SMDs were within the Geofenced zone. As such, the City failed to show the SMDs it tested on September 6, 2019 were in violation of SDMC § 83.0308.

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**4. Administrative Costs**

19. Lime objected to the administrative costs. Because there was insufficient factual support for the underlying allegations in the notice, requiring Lime to pay the administrative costs is not appropriate.

**IV. Order**

1. The Revocation of Shared Mobility Device Permit No. 2313123 is denied.

2. Lime is not liable for the Administrative Costs in the amount of \$841.86.

DATED: December 3, 2019

BY: /s/ Matthew D. Freeman  
Matthew D. Freeman  
Administrative Hearing Officer