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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES

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Superior Court of California  
County of Los Angeles

NOV 01 2018

Sherri R. Carter, Executive Officer/Clerk of Court  
By: Judi Lara, Deputy

12  
13 BIRD RIDES, INC.,  
14 Plaintiff-Petitioner,  
15 v.  
16 CITY OF BEVERLY HILLS, a municipal  
corporation; BEVERLY HILLS CITY  
17 COUNCIL, an administrative agency; and  
BEVERLY HILLS POLICE DEPARTMENT,  
18 an administrative agency,  
19 Defendants-  
20 Respondents.

Case No.

18STCP02762

VERIFIED COMPLAINT AND  
PETITION FOR WRIT OF  
ADMINISTRATIVE MANDATE

(C.C.P. § 1094.5)

21  
22 Plaintiff-Petitioner Bird Rides, Inc. ("Bird") brings this action against Respondents City of  
23 Beverly Hills (the "City"), Beverly Hills City Council ("City Council"), and Beverly Hills Police  
24 Department ("BHPD") for violations of statutory and constitutional law, a Writ of Mandate  
25 pursuant to California Code of Civil Procedure §§ 1085 and 1094.5, and attorneys' fees pursuant  
26 to California Government Code §§ 800 and 54960.5, California Code of Civil Procedure  
27 § 1021.5, and 42 U.S.C. 1988. By this verified complaint and petition, Bird alleges as follows:  
28

1  
2 NATURE OF ACTION

3 1. Bird is a Los Angeles company that rents battery-powered scooters to the public.  
4 The company brings affordable, inclusive, environmentally friendly transportation solutions to  
5 more than 100 communities across the world. Its fleet of shared electric scooters can be accessed  
6 via smartphone. Birds give people a new way to take a short journey across town or complete the  
7 “last mile” from public transportation to their destination without adding to traffic or polluting the  
8 air. Bird works closely with the cities in which it operates to be a reliable and affordable  
9 transportation option for people who live and work there. For many, Bird is more than a  
10 transportation alternative, it is a means to consistent employment and economic empowerment.

11 2. This pioneering transportation service is not only affordable, convenient, and  
12 simple, but it is also an antidote to two of the biggest challenges looming over Southern  
13 California’s future: congestion and pollution. Bird offers a practical new option to commuters  
14 struggling with the worst traffic in America. And it stands as an example of environmentally  
15 responsible innovation in a state that prides itself on leading the fight against the worldwide  
16 problem of climate change.

17 3. In more than a dozen cities across California—and in dozens more from coast to  
18 coast—many thousands of people have flocked to Bird’s scooters, recognizing them as an  
19 affordable and sustainable alternative to carbon-powered transport. But some municipalities have  
20 sought to frustrate Bird’s business and thwart the many residents, visitors, and workers who rely  
21 on Bird’s service. Beverly Hills has gone to the extreme.

22 4. On July 24, 2018, in a hasty and deceptive proceeding riddled with violations of  
23 California’s open-meeting, public-participation, and environmental laws, the Beverly Hills City  
24 Council voted to impose an outright ban on motorized scooters offered for rent in contradiction of  
25 state law, which promotes motorized scooters. Emboldened, the Beverly Hills Police Department  
26 has embarked on a campaign of indiscriminate seizure, snatching up Bird’s property anywhere  
27 officers spot a scooter, even where no signage restricts scooter parking. Each time Bird has  
28 sought due process and protested these unlawful impounds, it has faced an opaque and unfair

1 administrative hearing—conducted without evidence, without notice, and without written  
2 decisions—before the very agency that seized Bird’s property.

3 5. For all these violations of California statutory law, as well as Bird’s rights under  
4 the state and federal constitutional law, the Court should issue a writ, reverse the impounds, and  
5 declare both the Ordinance banning the scooters and the seizures unconstitutional and preempted.

6 6. Bird’s service is popular because it offers a simple, affordable way out of Southern  
7 California gridlock. Anyone with a smartphone can rent a scooter for as brief as a single ride or  
8 as long as a whole day. Riders download the Bird app, check a map in their area for available  
9 scooters, select the one they wish to rent, and unlock it. Riders are instructed to follow all local  
10 laws for parking and leaving scooters when they are done, just as a bicyclist might. Bird collects  
11 each scooter at the end of the day for recharging, maintenance, and redistribution to distribution  
12 areas—what Bird calls “Nests.”

13 7. Bird can supply the entirety of a Californian’s commute or it can fill the crucial,  
14 “last mile” gap in public transportation. As anyone who has relied on bus routes or rail lines  
15 knows, public transportation often stops just a bit too far from the desired destination, a  
16 shortcoming that tends to keep would-be passengers bound to their cars. Driving a single-  
17 occupant vehicle may have once symbolized freedom and mobility, but in a county with more  
18 than seven million cars and trucks, it is a prescription for misery. Waiting in traffic wastes time  
19 and fuel, imposing tremendous burdens on regional economic productivity.<sup>1</sup> At the same time,  
20 for many workers the cost of owning, maintaining, and parking a car is itself prohibitive.

21 8. Bird’s clean-energy scooters serve an even higher purpose: helping the State of  
22 California reach its goal of zero-carbon emissions by the year 2045. Nineteen years ago, a  
23 farsighted California Legislature recognized that electric scooters “produce no emissions and,  
24 therefore, do not contribute to increased air pollution,” and promoted their use as part of a  
25 mission to address air-quality problems, “particularly in cities.” In setting an ambitious  
26

27 <sup>1</sup> Los Angeles area drivers lead the nation in suffering from congested roads, spending an average  
28 of 102 hours per year sitting in traffic, which is estimated to cost more than \$19 billion in lost  
productivity, increased shipping fees, and wasted fuel.

1 environmental goal, California sought the partnership and innovation of businesses and  
2 communities.<sup>2</sup> The technology Bird has developed to deliver a low-cost, zero-emission vehicle to  
3 consumers is what California had in mind.

4 9. Many of Bird's riders work in Beverly Hills but live outside Beverly Hills's  
5 boundaries and struggle with the lack of accessible options to cross into the City. It is no secret  
6 that most of the cashiers, clerks, servers, maids, gardeners, and other workers who work in the  
7 stores and homes of Beverly Hills do not live in Beverly Hills. Beverly Hills's solution has been  
8 no solution at all, as the City has privileged those who drive and park over those who are  
9 dependent on sustainable methods of entering the City. Indeed, Beverly Hills has famously spent  
10 over a decade fighting the extension of the Purple Line subway, preferring instead to keep transit  
11 riders in communities to the east from reaching Beverly Hills. Many of the workers who make up  
12 the backbone of the Beverly Hills economy lose valuable time and productivity in traffic, either  
13 forced to take multiple buses or pay high parking fees.

14 10. Disregarding the needs of the many workers and shoppers in Beverly Hills who  
15 have embraced Bird, the City Council has taken the draconian step of prohibiting the service.  
16 Rather than meaningfully study the issue or consider proposals for regulating the scooter market,  
17 it abruptly convened a Special Meeting and passed an Urgency Ordinance banning "shared"  
18 mobility devices altogether. Apparently apprehensive of inviting public participation, the City  
19 Council did not raise the ban in a regularly scheduled meeting, did not provide notice on any  
20 agenda that a ban was under consideration, did not publish the text of the Ordinance until hours  
21 before the Special Meeting, and did not offer any factual support to justify putting the ban into  
22 immediate effect.

23 11. The City Council also refused to invite any environmental review. California  
24 encourages both motorized scooters and strategic innovation as part of a plan to combat air  
25

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26 <sup>2</sup> California has set a goal of 5 million zero-emission vehicles by 2030, a far cry from the 350,000  
27 currently on the road. Paul Rogers, "Brown calls for 5 million electric vehicles by 2030, \$2.5  
28 billion for charging stations," *San Jose Mercury News* (Jan. 26, 2018), available at  
<https://www.mercurynews.com/2018/01/26/brown-sets-goal-of-5-million-electric-vehicles-in-california-by-2030/>.

1 pollution and climate change. But to avoid even a cursory initial study of the impact of banning  
2 shared motorized scooters, and thus to privilege car travel to Beverly Hills, the City Council  
3 rashly declared “with certainty that there is no possibility that prohibiting” motorized scooters  
4 “will have a significant effect on the environment.” This unsupported proclamation defies both  
5 the findings of the California Legislature and common sense, and it runs afoul of the California  
6 Environmental Quality Act.

7       12. As soon as the Ordinance passed, BHPD began seizing hundreds of Bird  
8 scooters—a tactic it had started to employ even before the City Council’s improper action. These  
9 seizures were illegal and unconstitutional for many reasons.

10       13. First, the Ordinance is clearly preempted by the state statute promoting motorized  
11 scooters. The State Legislature has declared its intent in regulating motorized scooters “to  
12 promote the use of alternative low-emission or no-emission transportation.” Cal. Vehicle Code  
13 § 21220. For that reason, “[e]very person operating a motorized scooter upon a highway has all  
14 the rights and is subject to all the provisions applicable to the driver of a vehicle,” and a local  
15 entity may only “regulat[e] the registration of motorized scooters and the parking and operation  
16 of motorized scooters on pedestrian or bicycle facilities and local streets and highways, if  
17 that regulation is not in conflict with this code.” Cal. Vehicle Code §§ 21221, 21225. By putting  
18 cars above scooters, the new Ordinance does not promote scooters or treat operators of motorized  
19 scooters as it does drivers of cars, and a prohibition on all shared mobility devices does not  
20 constitute “regulation” of scooters.

21       14. Second, Beverly Hills has no statutory authority to seize Bird scooters under a  
22 local ordinance if it does not provide Bird riders notice in the form of signage. Bird clearly tells  
23 its riders to follow local laws when riding and ending their ride, and for a rider to know that  
24 parking a scooter in a particular location is not permitted, there must be signage. This is  
25 especially so if a rider sees bicycles or privately owned scooters parked—undisturbed by policy—  
26 nearby. Because California recognizes a due-process problem if there is no signage to alert a  
27 driver that a spot is illegal, the Vehicle Code permits impound under a local ordinance only where  
28 signage is present. Beverly Hills refused to post signage, and then seized the scooters anyway.





1 powered by an electric motor.” Bird’s scooters are therefore “motorized scooters” under  
2 California Vehicle Code § 407.5.

3 27. California’s motorized scooter regulations ensure that “[e]very person operating a  
4 motorized scooter upon a highway has all the rights and is subject to all the provisions applicable  
5 to the driver of a vehicle.” Cal. Vehicle Code § 21221. They also exempt persons operating  
6 motorized scooters from the registration and license plate requirements otherwise applicable to  
7 motor vehicles. *Id.* § 21224(a). They allow motorized scooters to “be operated on a bicycle path  
8 or trail or bikeway, unless the local authority or the governing body of a local agency having  
9 jurisdiction over that path, trail, or bikeway prohibits that operation by ordinance.” *Id.* § 21230.

10 28. The California Vehicle Code allows local authorities to pass ordinances that  
11 regulate “the parking and operation of motorized scooters on pedestrian or bicycle facilities and  
12 local streets and highways, *if that regulation is not in conflict with [the Vehicle Code].*” Cal.  
13 Vehicle Code. § 21225 (emphasis added).

14 29. To further promote the use of motorized scooters, the Vehicle Code was amended  
15 in 2018 to remove helmet requirements for persons operating motorized scooters. *See An Act to*  
16 *amend Section 21235 of the Vehicle code, relating to vehicles*, AB 2989 (2018).

17  
18 *Bird Provides Affordable Zero-Emissions Transportation in the Los Angeles Metro Area*

19 30. Bird is a scooter rental service that reduces traffic congestion and greenhouse-gas  
20 emissions. Bird scooters are zero-emission, electric battery-powered scooters that are throttled to  
21 a maximum speed of 15 miles per hour. To rent, Bird users must be over 18 years old and  
22 possess a driver’s license. Bird users locate an available scooter through Bird’s smartphone  
23 application and unlock the scooter with their phone by scanning a code on the scooter. Users can  
24 then ride the battery-powered scooter to their destination. To end a ride, Bird users lock the  
25 scooter electronically through the Bird app, which makes the scooter available for a new user.  
26 Alternatively, users can have Bird scooters delivered to their homes for a full-day rental. As a  
27 “last-mile” transportation solution, Bird provides transportation that connects users from their  
28 home or final destination to public transportation, mass transit hubs, or the place where they



1 parked their car. Bird's "last-mile" transportation solution is also ideal for short trips where there  
2 is no public transportation, mass transit route, or where parking or traffic makes car travel  
3 impractical or inefficient.

4 31. Bird's scooters are collected at the end of each day for overnight recharging. The  
5 next morning, they are redistributed to multiple Nests throughout each city in which Bird  
6 operates. Nests are concentration points where users can locate Birds and where Birds are staged  
7 at the beginning of each day. Often, Nests are located at private property locations, including at  
8 locations like retail stores, hotels, and restaurants, where customers and workers need convenient,  
9 low-cost, and low-emission last-mile transportation.

10 32. Bird first launched its service in Santa Monica, California. Over the last year, Bird  
11 has expanded into over a dozen cities across the state, including Los Angeles, Culver City, and  
12 Long Beach. Bird has experienced rapid growth and has transformed transportation networks in  
13 the cities where it is available, including cities in the Los Angeles metropolitan area. Bird  
14 currently operates in some 70 cities across the country.

15 33. Thousands of people use Birds to ride to work, to meet up with friends, or to link  
16 with public transportation in the areas surrounding Beverly Hills. For many, Bird provides an  
17 affordable, efficient, and fun way to get around Southern California.

18  
19 *Beverly Hills Passes "Urgency" Legislation and To Ban Shared Scooters*

20 34. On July 24, 2018, the Beverly Hills City Council passed an ordinance titled  
21 "Ordinance Of The City Of Beverly Hills Adding Chapter 6 (Shared Mobility Devices) To Title 7  
22 (Traffic, Parking, and Public Transportation) Of The Beverly Hills Municipal Code To Prohibit  
23 Shared Mobility Devices From Being Placed In Any Public Right-Of-Way Or On Public  
24 Property, Operated In Any Public-Right-Of-Way Or On Public Property, Or Offered For Use  
25 Anywhere In The City" (**Exhibit 1**) (the "Ordinance"). The Ordinance "prohibit[s] Shared  
26 Mobility Devices [such as Bird scooters] from being placed in the public right-of-way or on  
27 public property, operated in the public right-of-way or on public property, or offered for use  
28 anywhere in the City." The Ordinance, by its terms, went into effect immediately upon passage.

1           35.     Because it is a ban on shared motorized scooter services, the Ordinance conflicts  
2 with the state law scheme to promote the use of motorized scooters.

3           36.     The Ordinance that has undermined Bird's business in Beverly Hills was passed  
4 with virtually no notice, and consequently with no opportunity to be heard, at a Special Meeting  
5 whose agenda was incomplete at best and misleading at worst. The City Council dispensed with  
6 legal requirements that would have given the residents and workers of Beverly Hills an  
7 opportunity to comment before the Ordinance was effective. It heard no testimony about, and  
8 made no formal finding of, the purported urgency that allowed the Ordinance to go into effect  
9 immediately. And it made no attempt to comply with the California Environmental Quality Act  
10 ("CEQA").

11           37.     The posted agenda for the July 24, 2018, Special Meeting was misleading. It did  
12 not announce that the City Council would consider a ban on shared mobility devices. It did not  
13 provide the text of the proposed Ordinance. It announced only that the City Council members  
14 would consider an ordinance to *regulate* shared mobility devices. (**Exhibit 2.**)

15           38.     That afternoon, the City Council held a "study session" during which council  
16 members were scheduled to discuss "options to *regulate* shared mobility systems and devices in  
17 the City." (**Exhibit 3** (emphasis added).) The agenda for the study session did not announce that  
18 the City Council would consider a ban on shared mobility devices, nor did it provide the text of  
19 the proposed Ordinance. During the study session there was no discussion of any sensible system  
20 of regulation that would promote motorized scooters consistent with state law. Instead, the  
21 council members instead quickly reached a consensus favoring a six-month total *prohibition* on  
22 shared mobility devices. (**Exhibit 4.**)

23           39.     Within a few hours of the "study session," the Beverly Hills City Attorney  
24 somehow produced a fully drafted ordinance effectuating the shared scooter ban. The City  
25 Attorney did not state during the City Council meeting whether the Ordinance had already been  
26 drafted before the "study-session," or whether the Ordinance had been drafted in haste between  
27 the "study session" and the City Council meeting. It was titled "Ordinance Of The City Of  
28 Beverly Hills Adding Chapter 6 (Shared Mobility Devices) To Title 7 (Traffic, Parking, and

1 Public Transportation) Of The Beverly Hills Municipal Code To **Prohibit** Shared Mobility  
2 Devices From Being Placed In Any Public Right-Of-Way Or On Public Property, Operated In  
3 Any Public-Right-Of-Way Or On Public Property, Or Offered For Use Anywhere In The City.”  
4 (Emphasis added.)

5 40. At the 7 p.m. Special Meeting, the City Council got exactly what it asked for: a  
6 quick rubber stamp without public participation. Without an opportunity for any citizen group to  
7 mobilize, the City Council heard public comment from just four individuals: (1) Brad Ducorsky,  
8 who spoke on behalf of Uscooters, a company that sells electric scooters; (2) Tom Schreiber, who  
9 spoke on behalf of Perch Mobility, a company that provides scooter charging logistics to Lime, a  
10 competitor service to Bird; (3) AJ Willmer, a member of the public; and (4) Kory Klem, a  
11 member of the public. (**Exhibit 5.**) Each speaker was allowed to speak for no more than three  
12 minutes. In addition to the public comment, BHPD Police Chief Sandra Spagnoli also spoke.  
13 She stated that scooters are a “distraction” to police staff and created a public safety concern as a  
14 result of the City’s poor infrastructure for bikes and scooters. Chief Spagnoli cited only a single  
15 example of a scooter rider purportedly hurting himself on a shared mobility device.

16 41. Although the City Council heard no evidence of widespread public danger or any  
17 immediate need to prohibit an otherwise lawful and beneficial activity, several Councilmembers  
18 cited only vague and speculative concerns about public safety. At the Special Meeting,  
19 Councilmembers focused instead on the “chutzpah” of Bird and other shared mobility device  
20 companies introducing their businesses in Beverly Hills without first getting permission from—  
21 and sharing revenue with—the City.

22 42. The City Council unlawfully passed the Ordinance on an “urgency” basis,  
23 dispensing with the state law requirement that prohibits any municipal ordinance from going into  
24 effect until 30 days after enactment. Cal. Gov. Code § 25123. Section 25123 of the California  
25 Government Code requires that all ordinances shall become effective 30 days from the date of  
26 final passage, subject to certain exceptions. Where an exception applies, the ordinance shall  
27 become effective immediately. Where a statute becomes effective immediately, the public’s right  
28 of participation is hindered. The public loses the opportunity to mobilize and demand the

1 ordinance be reviewed, revised, or repealed before it becomes effective. More concretely, if an  
2 ordinance goes into effect immediately under one of Section 25123's enumerated exceptions, the  
3 public loses its right under the California Constitution to seek repeal of the ordinance by  
4 referendum. Cal. Const. art. II, § 9(a) ("The referendum is the power of the electors to approve or  
5 reject statutes or parts of statutes except urgency statutes."); *see also Voters for Responsible Ret.*  
6 *v. Bd. of Supervisors*, 8 Cal. 4th 765, 778 (1994).

7 43. Because the invocation of urgency under Section 25123 strips the public of its  
8 constitutional right to check a legislature, claims of urgency require a meaningful "declaration of  
9 the facts constituting the urgency." *Id.* § 25123(d). Here, there was no such meaningful  
10 declaration. No testimony was given or findings made justifying urgency. Not a single witness  
11 or council member who spoke at the City Council hearing indicated that electric scooters posed a  
12 serious and immediate danger to the public. The so-called urgency ordinance was enacted with  
13 only a bare recitation of the statutory urgency exception: "[T]he City Council has initiated  
14 urgency legislation to address the hazards posed by shared mobility devices placed in and  
15 operated on public property." This was not sufficient and it deprived Bird and other members of  
16 the public of their rights under Section 25123.

17 44. The City Council also circumvented California's open-meeting requirements. The  
18 Brown Act, Cal. Gov. Code § 54950 *et seq.*, was enacted in 1953 in response to mounting public  
19 concerns over informal, undisclosed meetings held by local elected officials. Indeed, one of the  
20 chief cited concerns was that city councils and other local bodies were avoiding public scrutiny  
21 by holding "study sessions" of the sort employed here.

22 45. The Ordinance cites three reasons shared scooters are purportedly unsafe, none of  
23 which had any urgency, demonstrated any reason to single out *shared* mobility devices from  
24 *personal* mobility devices, or actually demonstrated any real problem at all. None of the three  
25 justified a *ban* on *shared* scooters.

26 46. *First*, the City Council argued that the scooters are "unregulated." This is plainly  
27 untrue. The State of California has adopted a comprehensive regulatory scheme for motorized  
28 scooters. Cal. Vehicle Code § 21220 *et seq.* Subject to certain enumerated exceptions, state law

1 provides that the operators of motorized scooters are “subject to all provisions applicable to the  
2 driver” of a conventional automobile in Division 11 of the Vehicle Code entitled “Rules of the  
3 Road,” and other divisions that govern standard automobiles. Motorized scooters are thus  
4 regulated by the State with the same breadth as automobiles. Beverly Hills apparently disagrees  
5 with state regulations and state policies governing motorized scooters, but that does not make  
6 scooters unregulated. If they were unregulated, the solution would be *regulation*, which was what  
7 the agenda for the Special Meeting listed, but not what the City Council actually considered. The  
8 City Council did not then nor have they since contemplated the idea of regulating scooters to  
9 promote their use, as the State scheme contemplates.

10         47.     *Second*, the City Council alleged that Bird scooters are “abandoned”—by which  
11 they really just meant parked, not abandoned as that term is used under State law—“by users in  
12 streets, sidewalks, and other public places.” But that is true of scooters owned by private  
13 individuals and bicycles owned by both ride-share services and private individuals, neither of  
14 which the Ordinance addressed.

15         48.     *Third*, the City Council cited the “appeal to young people” as a problem, without  
16 explanation or support why it was a problem, and pointing out that “shared mobility devices are  
17 nearly always operated by users . . . without helmets.” Of course, Beverly Hills has no authority  
18 to regulate helmets on shared or private mobility devices or bicycles, because that area is entirely  
19 regulated by the State. State law also sets the minimum age for motorized scooter riders—  
20 16 years old—although Bird requires its users to be 18 and over.

21         49.     After the Ordinance was passed, the City and BHPD compounded the notice  
22 problem by refusing to even supply the final text of the Ordinance to give Bird notice of its terms.  
23 The Ordinance was amended during the Special Meeting, but the text of the Ordinance was not  
24 made available promptly after it was enacted. In response to Bird’s request, BHPD Captain Mark  
25 Miner provided Bird an unsigned, draft version of the Ordinance on July 26, after BHPD had  
26 already seized dozens of Bird scooters. The City Council did not immediately publish the final  
27 text of the signed Ordinance. Despite multiple efforts to obtain the text of the final Ordinance,  
28 Bird was not able to do so until August 6, 2018, when Beverly Hills City Attorney Laurence

1 Wiener provided it to Bird. Upon information and belief, signage was not posted and, as of the  
2 date of this filing, still has not been posted within the City notifying shared scooter riders of the  
3 Ordinance or of the possibility of impound.

4         50. The Ordinance is not regulation of scooters or motorized scooters in Beverly Hills;  
5 it is a complete ban of a particular kind of business. It purports to prohibit shared mobility  
6 devices from “being placed in the public right-of-way or on public property, operated in the  
7 public right of way or on public property, or offered for use anywhere in the City.” The  
8 Ordinance defines “Shared Mobility Device” as “any wheeled device, other than an automobile or  
9 motorcycle, that is powered by a motor; is accessed via an on-demand portal, whether a  
10 smartphone application, membership card, or similar method; is operated by a private entity that  
11 owns, manages, and maintains devices for shared use by members of the public; and is available  
12 to members of the public in unstaffed, self-service locations, except for those locations which are  
13 designated by the City.” As a result, *personally owned* motorized scooters may be used  
14 throughout Beverly Hills and parked on the sidewalk. Both *personally owned* and *shared*  
15 bicycles may be used, and parked on the sidewalk. And *non-motorized* scooters may be used and  
16 parked on the sidewalk.

17         51. The Ordinance purports to authorize the impound of “any shared mobility device  
18 that has been offered for use, placed in a public right-of-way or on public property, or operated in  
19 a public right-of-way or on public property” by “Peace officers, Traffic Control Officers, Parking  
20 Enforcement Officers, those City officials designated by the City Manager, and any party  
21 contracted by the City to specifically impound shared mobility devices.”

22         52. Violations of the Ordinance are punishable as misdemeanors, infractions, or civil  
23 administrative actions in the discretion of the Beverly Hills City Attorney or City Prosecutor. *See*  
24 Beverly Hills Mun. Code § 1-3-101.

25         53. In perhaps the most remarkable omission and attempt to avoid public participation  
26 and comment, the City Council waved away its requirements of conducting an environmental  
27 review. The Ordinance states: “The Ordinance is exempt from the requirements of [CEQA]  
28 pursuant to CEQA Guidelines § 15061(b)(3) because it can be seen with certainty that there is no

1 possibility that prohibiting shared mobility devices from being placed in the public right-of-way  
2 or on public property, operated in the public right of way or on public property, or offered for use  
3 anywhere in the City will have a significant effect on the environment. The Ordinance is  
4 additionally exempt from CEQA pursuant to CEQA Guidelines § 15301(c), as it involves no  
5 expansion of the use of existing facilities, a category that includes streets and sidewalks.”

6 54. It is unclear, given the City’s apparent position that the Ordinance was drafted in  
7 the few hours before the special meeting, how it concluded that banning from Beverly Hills a  
8 category of electric devices that produce no carbon or other emissions could have “no possibility”  
9 of a “significant effect on the environment.” It can only stand to reason that when a municipality  
10 bans a method of travel that does not pollute, a significant portion of commuters who relied on or  
11 would rely on the clean method will turn to personal cars and ride-share services,<sup>3</sup> each of which  
12 will have an effect on the air in Beverly Hills and impact climate change throughout California,  
13 and the globe, and would increase the use of current road “facilities” by cars. At a minimum,  
14 some study or analysis would have been needed to judge the environmental impact of banning a  
15 popular zero-emissions transportation mode that reduces car congestion.

16 55. The City’s argument, made without study, that there is *no possibility* of a  
17 significant effect on the environment by banning motorized scooters, is contradicted the explicit  
18 and considered findings of the California Legislature. In enacting the motorized scooter statute, it  
19 found that California “has severe traffic congestion and air pollution problems, particularly in its  
20 cities,” that motorized scooters “produce no emissions and, therefore, do not contribute to  
21 increased air pollution or increase traffic congestion,” and promoted their use as part of its effort  
22 of “finding ways to reduce [traffic congestion and air pollution].” Cal. Vehicle Code § 21220(a).  
23 But with no study, debate, or findings whatsoever, and with almost no notice or public  
24 participation, the City Council concluded that the California Legislature was not only wrong, but  
25

26 \_\_\_\_\_  
27 <sup>3</sup> A recent survey by the Portland Bureau of Transportation of participants in Portland, Oregon’s  
28 e-scooter pilot program suggests that Bird riders are replacing car trips with zero-emission scooter  
rides. See Portland Bureau of Transp., *2018 E-Scooter Pilot User Survey Results at 2*, available  
at <https://www.portlandoregon.gov/transportation/article/700916>.

1 that there was “no possibility” that the State of California was right, and rejected motorized  
2 scooters as a way of improving the environment.

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*Beverly Hills and its Police Department Begin Seizing Bird Scooters*

56. Within hours of the Ordinance’s passage, and without warning, BHPD began enforcing the City Council’s ban on shared mobility devices, impounding Bird scooters and even using the ban to justify impounds that happened before the ban was passed.

57. On July 26, 2018, Bird received eight vehicle release forms in connection with dozens of scooters that BHPD had seized. (**Exhibit 6.**) These notices indicated that several impounds had occurred on July 19, before the Ordinance was passed, and on July 24, just hours after it was passed. Later in the day on July 26, Bird received an impound invoice for 70 scooters. (**Exhibit 7.**) Bird promptly indicated to BHPD that it intended to contest the impounds. (*See Exhibit 8.*)

58. Thereafter, Beverly Hills and its Police Department commenced a campaign of seizure, taking Bird’s scooters off Beverly Hills sidewalks without pre-seizure notice, often without post-seizure notice, and most frequently without providing any of the basic information necessary for Bird to respond to the notices. BHPD impounded many other scooters without issuing any notice of impound. Many of the notices that Bird received lacked basic factual information, such as the location of the scooter or the circumstances of how it was parked. BHPD’s notices of impound cited a varied and changing group of supposed legal authorities for the impounds, including the Ordinance and various sections of the California Vehicle Code.

59. To date, BHPD has impounded more than one thousand Bird scooters. Bird has received over 950 citations in total that demand payment of more than \$100,000 in fines. The City and BHPD have imposed on Bird an impound fee of \$123 per scooter. Although the City and BHPD have thus far waived daily storage fees, Bird is potentially also subject to such fees in the amount equivalent to the fees charged to store automobiles.



1                   *Bird Takes Action to Inform Riders About Beverly Hills's New Restriction*

2           60.     Promptly after Bird first learned of the Ordinance's passage, Bird acted to inform  
3 riders to stay out of Beverly Hills and to collect wayward scooters from within the city limits.

4           61.     Bird reprogrammed its smartphone app so that the map of the Los Angeles area  
5 would show the city limits of Beverly Hills shaded in red.

6           62.     Bird deployed drivers and vans around Beverly Hills, collecting scooters that had  
7 been ridden into the city limits.

8           63.     Bird considered and rejected other means of addressing the City's scooter ban. For  
9 instance, Bird considered programming the scooters to lock automatically when the GPS device  
10 on the scooter indicated it had crossed into Beverly Hills. Bird determined that this option was  
11 not technologically feasible with Bird's current equipment, and that it would be potentially  
12 dangerous to riders.

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14                   *Bird Repeatedly Appeals the City's Impounds and BHPD Finds No Probable Cause*

15           64.     Bird has appealed the City's impounds as illegal and unconstitutional deprivations  
16 of Bird's property. Every day a Bird scooter is illegally impounded by the City, it is not on the  
17 roads elsewhere in the Los Angeles metropolitan area, and Bird loses potential revenue from that  
18 scooter. Without proper, timely notice that the Bird scooter has been seized by BHPD, Bird is  
19 impeded from recovering its property and return it to profitable use. As a result, Bird is at the  
20 mercy of BHPD's delayed timing for notifying Bird and setting a hearing. When Bird does  
21 request a hearing, they are scheduled on an *ad hoc* basis with little or no notice, and the hearings  
22 proceed in front of the very agency that illegally impounded the property. The City Attorney  
23 refuses to appear at these proceedings to clearly state the City's position and the evidence that it  
24 asks the hearing officer to rely on, and instead hearing officers—BHPD Sergeants—consult with  
25 the City Attorney separately about the City's position, on an *ex parte* basis and without any notice  
26 or disclosure to Bird.

*Bird's First Administrative Appeal*

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65. On August 3, 2018, Bird requested an impound hearing pursuant to BHPD's internal process for contesting vehicle impounds. (**Exhibit 9.**) The same day, Bird submitted a letter brief to BHPD Sergeant Jay Kim, which set forth Bird's legal argument for why the impounds were unlawful. (**Exhibit 10.**)

66. In its letter brief, Bird argued that the impounds violated due process, that the Ordinance was invalid for a host of reasons, and that Vehicle Code § 22651(b), which BHPD had cited as its authority for impounding some of the scooters, was inapplicable because BHPD provided no evidence any of the scooters were parked on a "highway."

67. On Saturday, August 4, 2018, BHPD Sergeant Jay Kim called Bird's counsel at her home, on her cell phone, with no prior notice that a telephonic hearing would take place at on that date or at that time. Sgt. Kim asserted that the phone call constituted the impound hearing, notwithstanding the total absence of notice. Bird's counsel disagreed, and noted that the City had provided no evidence to support probable cause. Sgt. Kim rescheduled the hearing for a later date.

68. The rescheduled impound hearing took place telephonically on August 9, 2018. Prior to this hearing, BHPD provided Bird with no evidence in support of the legality of the impounds apart from the notices of impound themselves. Indeed, Bird had not even been provided at that point with any citations to support the impounds. Rather, Bird had received only summary notices of impound without any itemized information about what scooters were seized and why.

69. On August 14, 2018, Sgt. Kim issued a written decision under which the City reimbursed Bird for *all* impound fees for scooters that were impounded prior to the enactment of the Ordinance, "as a courtesy" to Bird. (**Exhibit 11.**) Although the order essentially dismissed all of the citations and reversed all of the impounds, Sgt. Kim's written decision rejected each of Bird's legal arguments for why the impounds were improper.





1 did not apply to motorized scooters with no registration requirements and because the City and  
2 BHPD had posted no signage as required by Section 22651(n).

3 83. On September 20, 2018, BHPD Sgt. Mader held two telephonic hearings. During  
4 the hearings, Bird argued that the City had failed to hold a hearing within 48 hours of its request,  
5 as required by law. Sgt. Mader took the position that the 48-hour requirement merely requires  
6 that the City schedule a hearing within 48 hours of receiving a hearing request. After Bird's  
7 counsel read the text of Vehicle Code § 22852 aloud, Sgt. Mader cited Yom Kippur as the reason  
8 the City missed its deadline. Bird's counsel pointed out that Yom Kippur began September 18,  
9 2018, which was more than 48 hours after Bird's hearing request, and that Yom Kippur is not a  
10 state holiday. Bird also reiterated its other arguments that, among other things, the Ordinance is  
11 invalid, the scooters are not abandoned, and that the cited Vehicle Code sections do not apply to  
12 Bird.

13 84. After those hearings, Sgt. Mader found there was no probable cause with respect to  
14 the impound of 55 scooters, but there was probable cause with respect to 68 scooters.

15 85. When Bird responded to the decision to ask Sgt. Mader for findings of fact or  
16 conclusions of law in connection with that decision, Sgt. Mader responded only that "The  
17 impound notices for the scooters that Bird will not be charged for were sent to the wrong address.  
18 As for the others, statements from officers contained in the case reports satisfy probable cause."  
19 (Exhibit 17.)

20 *Bird's Fifth Administrative Appeal*

21 86. On September 26, 2018, Bird requested another impound hearing, and on  
22 September 27 submitted a letter brief in support of its appeal. (Exhibits 18 & 19.)

23 87. In its letter brief, Bird argued that the impounds violated due process, that the  
24 Ordinance was invalid for a host of reasons, and that the Vehicle Code sections cited by BHPD as  
25 its authority for impound were not applicable. Specifically, Vehicle Code § 22669(a) was  
26 inapplicable because none of the impounded Birds had been abandoned and BHPD had provided  
27 no evidence that they had been. And Vehicle Code §22651(j) was inapplicable both because it  
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1 did not apply to motorized scooters with no registration requirements and because the City and  
2 BHPD had posted no signage as required by Section 22651(n).

3 88. BHPD Sgt. Mader held a telephonic hearing on October 2, 2018, which lasted  
4 approximately 10 minutes. After that hearing, Sgt. Mader concluded there was no probable cause  
5 for 20 of the impounded scooters at issue, and there was probable cause for 92 scooters.  
6 **(Exhibit 20.)**

7 89. Bird never received a written decision in connection with this appeal. Sgt.  
8 Mader's analysis was limited to his assertion that "[s]tatements from officers contained in these  
9 case reports satisfy probable cause."

10 *Bird's Sixth Administrative Appeal*

11 90. On October 5, 2018, Bird requested another impound hearing and submitted a  
12 letter brief in support of its appeal. **(Exhibits 21 & 22.)** On October 8, Bird supplemented its  
13 hearing request and letter brief to address additional scooters that had been seized up to that date.  
14 **(Exhibit 23.)**

15 91. In its letter brief, Bird argued that the impounds violated due process, that the  
16 Ordinance was invalid for a host of reasons, and that the Vehicle Code sections cited by BHPD as  
17 its authority for impound were not applicable. Specifically, Vehicle Code § 22669(a) was  
18 inapplicable because none of the impounded Birds had been abandoned and BHPD had provided  
19 no evidence that they had been. Vehicle Code § 22651(j) was inapplicable both because it did not  
20 apply to motorized scooters with no registration requirements and because the City and BHPD  
21 had posted no signage as required by Section 22651(n). And Vehicle Code § 22659(a), which  
22 Bird presumed to have been cited in error, did not apply because Bird scooters had not entered  
23 any agricultural association property in Beverly Hills. Bird further argued that BHPD's  
24 continued unlawful impound of its property constituted a violation of Bird's civil rights.

25 92. Sgt. Mader held a telephonic hearing on October 11, which lasted approximately  
26 10 minutes. Sgt. Kim and BHPD Lieutenant Giovanni Trejo also attended the hearing.

27 93. Just hours later, Sgt. Mader issued his decision, which found probable cause  
28 lacking for 28 scooters but found probable cause for 79 scooters. **(Exhibit 24.)** Sgt. Mader's

1 analysis was limited to his assertion that “[s]tatements from officers contained in these case  
2 reports satisfy probable cause.”

3 *Bird's Seventh Administrative Appeal*

4 94. On October 19, 2018, Bird requested another impound hearing, and on October 24  
5 submitted a letter brief in support of its appeal. (Exhibits 25 & 26.)

6 95. In its letter brief, Bird noted that BHPD had failed to hold a hearing within 48  
7 hours of its October 19 request, as required by law, and that it “considers the failure to hold a  
8 hearing as a violation of its rights and a concession by the City that probable cause did not exist to  
9 impound its property.” Bird argued that the impounds violated due process, that the Ordinance  
10 was invalid for a host of reasons, and that the Vehicle Code sections cited by BHPD as its  
11 authority for impound were not applicable. Specifically, Vehicle Code § 22669(a) was  
12 inapplicable because none of the impounded Birds had been abandoned and BHPD had provided  
13 no evidence that they had been. Vehicle Code § 22651(j) was inapplicable both because it did not  
14 apply to motorized scooters with no registration requirements and because the City and BHPD  
15 had posted no signage as required by Section 22651(n). And Vehicle Code § 22659(a), which  
16 Bird presumed to have been cited in error, did not apply because Bird scooters had not entered  
17 any agricultural association property in Beverly Hills. Bird further argued that BHPD’s  
18 continued unlawful impound of its property constituted a violation of Bird’s civil rights, and an  
19 unconstitutional taking under both state and federal law.

20 96. BHPD did not schedule a hearing in connection with this appeal until October 25,  
21 2018, six days after Bird’s hearing request. Sgt. Mader did not answer his phone at the scheduled  
22 time. Later that afternoon, Sgt. Mader held a rescheduled, untimely telephonic hearing. At that  
23 hearing, Bird argued it should prevail on its challenges because BHPD had failed to hold a timely  
24 hearing. Sgt. Mader took the position that Beverly Hills has no obligation to hold a hearing  
25 within 48 hours of the hearing request, and that it is obligated only to notify Bird within 48 hours  
26 of whether it is *denying* a hearing request. Bird’s counsel cited Vehicle Code § 22852(c) (“The  
27 poststorage hearing shall be conducted within 48 hours of the request, excluding weekends and  
28 holidays.”), and asked Sgt. Mader to cite authority for his position. Sgt. Mader indicated that he

1 would respond later in writing. To date, Sgt. Mader has not responded to cite authority for his  
2 position on the 48-hour hearing requirement, in writing or otherwise. Bird also argued at the  
3 hearing that several notices of impound had inconsistent dates and insufficient descriptions of the  
4 circumstances of the impounds, and in some instances failed to itemize the impounds.

5 97. The next day, Sgt. Mader issued his decision, which found probable cause lacking  
6 for 5 scooters “due to the incorrect impound authority, or BHMC, on the impound report,” but  
7 found probable cause for 37 scooters. (**Exhibit 27.**) Sgt. Mader’s analysis of probable cause was  
8 limited to his assertion that “[s]tatements from officers contained in these case reports satisfy  
9 probable cause.”

10 *Bird's Eighth Administrative Appeal*

11 98. On October 29, 2018, Bird requested another impound hearing, and on October 30  
12 submitted a letter brief in support of its appeal. (**Exhibits 28 & 29.**)

13 99. On October 30, Sgt. Mader held a telephonic hearing. Bird’s counsel reiterated its  
14 legal arguments against the validity of the impounds, the Ordinance, and the other legal  
15 authorities that BHPD cited. Bird’s counsel also reiterated Bird’s request for additional  
16 information, apart from the citations and impounds notices themselves, that supported probable  
17 cause for the impounds. Bird’s counsel noted that a number of impound notices contained errors  
18 that rendered the impounds wrongful. Sgt. Mader agreed to reconsider those impounds. During  
19 the hearing, Bird’s counsel asked if Sgt. Mader had identified a legal authority that justified  
20 BHPD’s past failures to hold probable cause hearings within 48 hours. Sgt. Mader reported that  
21 he had discussed the matter with the Beverly Hills City Attorney, who provided code provisions  
22 and case law to Sgt. Mader. Sgt. Mader declined to share those code sections and cases with Bird  
23 on the ground that the City Attorney had instructed him not to do so. Sgt. Mader advised Bird to  
24 contact the City Attorney directly for this information.

25 100. On October 30, Sgt. Mader issued his decision, in which he found probable cause  
26 for all 36 scooters at issue on that appeal. (**Exhibit 30.**) Sgt. Mader’s analysis of probable cause  
27 was limited to his assertion that “[s]tatements from officers contained in these case reports satisfy  
28 probable cause.”





1 impounds, pick up the impounded scooters, and otherwise spend time and resources to adjust  
2 Bird's operations based on the impounds.

3 106. Due process was lacking in several respects. *First*, the notice of the impounds was  
4 inadequate under the City's own rules, and did not individually identify the vehicles that had been  
5 seized. *Second*, the citations made no attempt whatsoever to set forth probable cause sufficient to  
6 justify the impounds. Indeed, the notices lacked basic information such as the time, location, and  
7 circumstances of the impound. No other justification or evidence to justify impounds (other than  
8 the citations) was ever provided to Bird, despite multiple requests. *Third*, when Bird requested  
9 hearings, the City often did not timely provide them within 48 hours, as it is required to do by  
10 Vehicle Code § 22852. *Fourth*, even when obvious errors were brought to the City's attention  
11 before the hearing, the City refused to acknowledge error unless Bird appeared at the hearing and  
12 incurred the costs associated with doing so. *Fifth*, at the hearings, there was no neutral fact  
13 finder, only a BHPD Sergeant representing the very agency who impounded the scooters, who in  
14 some instances indicated that he would confer *ex parte* with the City Attorney, outside of the  
15 hearing and with no opportunity for Bird to hear the City's arguments or respond to them before  
16 ruling on Bird's evidence and arguments, if at all. Despite Bird's request that the City Attorney  
17 appear *at* the telephonic hearings, he never did so.

18 107. Nor would the hearing officer ever articulate at the hearing any of the reasoning on  
19 which the City would rely. Repeatedly, the City acknowledged in rulings on these hearings that  
20 many of the impounds were not supported by probable cause because the citations contained  
21 inadequate information, because no notice was provided to Bird, or because of some other error.

22 108. Nevertheless, the impounds continued on the same insufficient basis, unsupported  
23 by anything other than admittedly insufficient summary citations, and often with the same  
24 deficiencies in notice, or with failure to provide a timely hearing. For at least 168 citations, over  
25 a thousand scooters, and in eight administrative hearings, the City admitted that no probable  
26 cause existed for at least some of the impounds, with the result that the City admitted error,  
27 returned scooters, and waived fines. But the City did so only after harming Bird by seizing its  
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1 property, holding its property, and requiring it to incur the costs of appealing the citations, which  
2 the City simply continued to issue with the very same admitted deficiencies.

3 109. The seizure of the motorized scooters also violated the Fourth Amendment to the  
4 U.S. Constitution's prohibition on warrantless seizures. The most basic constitutional principle  
5 under the Fourth Amendment is that a seizure conducted outside the judicial process, without  
6 prior approval by judge or magistrate, is *per se* unreasonable under the Fourth Amendment,  
7 subject to a few specifically established and well-delineated exceptions. It is the responsibility of  
8 the City, *for each Bird impounded*, to identify why a Fourth Amendment exception applies,  
9 including what evidence supports the exception. BHPD made no attempt to do so, and there is no  
10 basis for any such exception on the face of any of the citations or case reports on which the City  
11 relies to justify the impounds.

12 110. The impounds of Bird scooters without probable cause were also temporary  
13 takings without just compensation that violate the Fifth Amendment. Impoundment is a form of  
14 direct physical seizure, and is therefore a *per se* taking, entitling Bird to compensation.

15 111. The seizures were also unlawful under California law. California Vehicle Code  
16 § 22561 sets out a limited number of enumerated circumstances under which vehicles may be  
17 impounded. None of the justifications on which the City relied are sufficient to meet the  
18 requirements of this law.

19 112. The impounds are not justified by the Ordinance, because the Ordinance is not  
20 valid and not enforceable for multiple reasons. *First*, the Ordinance conflicts with and is  
21 preempted by the State law, including pervasive regulation of motorized scooters, by the State's  
22 grant to operators of motorized scooters the same rights as drivers of automobiles, and by the  
23 State's limited grant to localities to regulate *consistent* with that grant to operators. *Second*, the  
24 Ordinance was passed in violation of CEQA, without an environmental impact review, and  
25 without a proper exemption. *Third*, the Ordinance was passed in violation of California  
26 Government Code § 25123. *Fourth*, the Ordinance was passed in violation of California  
27 Government Code § 54856.

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1           113. Any impounds under the Ordinance also violate the requirements of California  
2 Vehicle Code § 22561(n). Section 22561(n) requires that if a locality prohibits parking by  
3 Ordinance, it may not impound unless it also has posted signage that gives notice to the public of  
4 possible removal. The City made no attempt in any of the citations, case reports, or other  
5 information on which the hearing officer relied to demonstrate that the City ever posted signs  
6 giving the public notice of possible impounds.

7           114. Nor did the City make any attempt to actually show probable cause of any  
8 violation of the Ordinance by Bird. Indeed, many of the notices of impound and citations totally  
9 fail to itemize the Birds impounded or to say when and where they were impounded. (Some even  
10 failed to say whether the Birds were impounded within the City of Beverly Hills.) All fail to  
11 describe the circumstances of the impound, include how the Birds were parked, circumstances  
12 that would show violation of any law by Bird, or the presence of any signage required by  
13 California Vehicle Code § 22651(n). BHPD therefore abused its discretion in determining that  
14 any of the impounds were justified by probable cause of a violation of the Ordinance.

15           115. BHPD acted outside its jurisdiction and abused its discretion because it found  
16 probable cause to impound scooters based on Section 22651(j) of the California Vehicle Code.  
17 Section 22651(j), which allows impound of vehicle that are “illegally parked” if “there are no  
18 license plates or other evidence of registration.” Section 22651(j) does not apply to Bird’s  
19 motorized scooters, which are not required to be registered under California law and which  
20 clearly indicate that Bird is the owner of the scooters. Even if Section 22651(j) could apply to  
21 motorized scooters, Vehicle Code § 22651(n) only allows impound of vehicles “where local  
22 authorities . . . have prohibited parking” only if “signs are posted giving notice” that vehicles are  
23 subject to removal. The Ordinance, which is invalid, purports to prohibit parking of “shared  
24 mobility devices” on any public street in Beverly Hills. But the City and BHPD have posted no  
25 signage indicating to riders that scooters are subject to impound pursuant to the Ordinance.

26           116. BHPD acted outside its jurisdiction and abused its discretion because it found  
27 probable cause to impound scooters based on Section 22669 of the California Vehicle Code,  
28 which provides for impound of abandoned vehicles. Section 22669(a) authorizes the removal of a

1 vehicle from the public right-of-way where there are “reasonable grounds to believe that the  
2 vehicle has been abandoned” or a “determination . . . that the vehicle has been abandoned.” A  
3 finding of abandonment requires that the owner intended to relinquish its rights and interests in  
4 the property, never again to reclaim such rights. BHPD made no attempt to make any such  
5 showing, and never presented any evidence that could support probable cause that Bird had  
6 abandoned the scooters, including among other deficiencies, any evidence regarding where the  
7 Birds were impounded, for how long they were there, the circumstances under which they were  
8 parked. Indeed, for dozens of the scooters impounded under Section 22669, BHPD determined  
9 that the City had not demonstrated probable cause. Nor could the City. Bird presented evidence  
10 that, among other things, the impounded scooters were ridden into Beverly Hills against Bird’s  
11 express instructions.

12           117. BHPD acted outside its jurisdiction and abused its discretion because it found  
13 probable cause to impound scooters based on Section 22651(b) of the California Vehicle Code.  
14 Section 22651(b) authorizes the removal of a vehicle that is “parked or left standing upon a  
15 highway in a position so as to obstruct the normal movement of traffic or in a condition so as to  
16 create a hazard to other traffic upon the highway.” BHPD presented no evidence that Birds were  
17 parked in a manner that obstructed traffic. Bird scooters are typically parked in a manner similar  
18 to bicycles, that is, in a manner that does *not* obstruct traffic.

19           118. BHPD abused its discretion because it found that the fines and fees imposed on  
20 Bird were not excessive. These findings are unsupported by evidence. The impound and storage  
21 fees are grossly disproportionate to both to the actual costs of impound and storage of scooters  
22 and to the purported gravity of the offense of parking scooters in Beverly Hills in a manner  
23 identical how bicycles or privately owned scooters are parked. The fees charged to Bird are  
24 identical to those charged in connection to the impound and storage of automobiles,  
25 notwithstanding that scooters are easy to pick up and that many scooters can fit in the same space  
26 devoted to one automobile.

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1           126. The Ordinance constitutes a “project” which may have a significant effect on the  
2 environment and thus requires preparation of a legally adequate EIR by Respondents pursuant to  
3 the California Environmental Quality Act (“CEQA”). Respondents violated their legal duty  
4 under CEQA, Public Resources Code §§ 21000 *et seq.*, and the CEQA Guidelines, 14 Cal.  
5 Admin. §§ 15000 *et seq.*, by declaring the Ordinance exempt from CEQA.

6           127. Respondents had a clear, present, and mandatory duty to conduct an initial review  
7 of the Ordinance’s environmental effects that fully complies with the requirements of CEQA and  
8 the CEQA Guidelines before they made a decision to proceed with the Ordinance. Respondents  
9 conducted no such review; instead, and without justification, they declare that “there is no  
10 possibility that prohibiting shared mobility devices from being placed in the public right-of-way  
11 or on public property, operated in the public right-of-way or on public property, or offered for use  
12 anywhere in the City will have a significant effect on the environment,” and that the Ordinance  
13 “involves no expansion of the use of existing facilities, a category that includes streets and  
14 sidewalks.”

15           128. Bird scooters replace car trips and act as a zero-emissions last-mile transportation  
16 solution. Widespread use of Bird scooters would have a significant effect on the air quality in  
17 Beverly Hills, both through emitting no emissions themselves and by helping to reduce road  
18 congestion. Moreover, the effect of the Ordinance is to increase the number of car trips and  
19 thereby increase the use of current facilities.

20           129. On information and belief, Respondents did not conduct any environmental  
21 analysis in connection with the Ordinance. Moreover, the City Council’s hasty and unwarranted  
22 use of urgency procedures foreclosed a full, public debate on the merits of dockless electric  
23 scooters.

24           130. On information and belief, Respondents did not comply with the procedural  
25 requirements related to making a determination that the Ordinance is exempt from CEQA.

26           131. On information and belief, Respondents did not file a notice with the County Clerk  
27 of Los Angeles County in connection with the City Council’s determination that the Ordinance is  
28 exempt from CEQA.





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**FIFTH CAUSE OF ACTION**

**Declaratory Relief - Violation of Brown Act (Gov. Code § 54856)**

139. Bird re-alleges and incorporates by reference each and all of the allegations contained in paragraphs 1 through 138 of this Complaint, as if fully set forth herein.

140. The Ralph M. Brown Act (“Brown Act”) is designed to encourage public participation in government. To achieve this objective, the Brown Act requires public agencies to take their actions and conduct their deliberations openly.

141. The City Council was required to comply with the Brown Act in conducting its afternoon study session on July 24, 2018. On information and belief, the City Council failed to comply with the Brown Act’s notice requirements.

142. The City Council violated Section 54856 of the Brown Act when it held a special meeting late in the evening on July 24, 2018, without at least 24 hours prior to the meeting posting the required call and notice specifying the time and place of the meeting and the business to be transacted or discussed. The text of the Ordinance was not published anywhere until just hours before the meeting. By considering and passing an ordinance without adhering to the notice requirements contained in Section 54856, the City Council deprived Bird and the general public of an opportunity to comment on or challenge the Ordinance.

143. The City Council further attempted to mask its actions and circumvent the Brown Act’s openness requirements by describing its proposed action on the meeting agenda as an ordinance “to regulate shared mobility devices.” The Ordinance does not regulate shared mobility devices; it bans them.

144. There was no emergency to justify the City Council ignoring the Brown Act’s notice and posting requirements. “[E]mergency has long been accepted in California as an unforeseen situation calling for immediate action.” *Sonoma County Organization etc. Employees v. County of Sonoma*, 1 Cal. App. 4th 267, 277 (1991). The use of Bird scooters in Beverly Hills was not unforeseen and did not call for immediate action. In fact, Bird has operated in Los Angeles, and specifically in areas bordering Beverly Hills, since fall 2017. Further, the City

1 Council provided no declaration of facts to explain how the use of environmentally friendly  
2 electric scooters severely impairs public health, safety, or both. Instead, it recited boilerplate and  
3 conclusory language that purported to justify the ordinance as necessary for the “preservation of  
4 the public peace, health, and safety.”

5 145. The City’s hasty passage of the Ordinance prevented Bird and other members of  
6 the community from presenting their views on Bird’s popular, affordable, and sustainable  
7 transportation service. By providing less than 24 hours’ notice, the City Council all but ensured  
8 that only the Ordinance’s proponents could present evidence and opinion.

9 146. This is precisely the type of governmental action that the Brown Act was enacted  
10 to prevent. As the Brown Act states, the “people, in delegating authority, do not give their public  
11 servants the right to decide what is good for the people to know and what is not good for them to  
12 know.” Gov. Code § 54950. Instead, it is “the intent of the law that [our public servants’] actions  
13 be taken openly and that their deliberations be conducted openly.” *Id.* By providing inadequate  
14 notice and rushing the vote, the City Council’s deliberations were limited and one-sided. Bird  
15 and other proponents of sustainable transportation options were effectively shut out of the debate.

16 147. Because the City Council violated the Brown Act’s open meeting requirements  
17 without justification, the Ordinance is invalid and unenforceable.

18  
19 **SIXTH CAUSE OF ACTION**

20 **Violation of Due Process**

21 148. Bird re-alleges and incorporates by reference each and all of the allegations  
22 contained in paragraphs 1 through 147 of this Complaint, as if fully set forth herein.

23 149. The City and BHPD have impounded Bird’s scooters in violation of the City’s  
24 own procedural requirements and the most basic elements of due process under Article 1, Section  
25 6, of the California Constitution and the Fourth Amendment to the U.S. Constitution.

26 150. The Ordinance is invalid, and all vehicle impoundment under its authority is  
27 unlawful.

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1           151. Before impounding vehicles pursuant to local ordinance, the City is required to  
2 post signage that notifies members of the public that vehicles may be subject to impound under  
3 particular circumstances. On information and belief, the City has posted no signage that would  
4 indicate to Bird's users, or any member of the public, that shared mobility devices are subject to  
5 seizure if parked anywhere in the City.

6           152. After its scooters are impounded, Bird frequently does not receive notices of  
7 vehicle impounds. When it does, those notices often lack basic information that would indicate  
8 probable cause for the impound, such as the date, location, and circumstances of the vehicle  
9 seizure. The City and BHPD did not provide this information even when Bird specifically  
10 requested it in connection with its administrative appeals. Without this information, Bird had no  
11 way to challenge the City's and BHPD's varied and changing justifications for impound, such as  
12 that its scooters were "abandoned."

13           153. When Bird exercises its appeal rights following the impound of its vehicles, the  
14 City and BHPD have not provided administrative hearings within 48 hours, as they are required  
15 to under local ordinance.

16           154. When the City and BHPD issue rulings through their administrative hearings, they  
17 do not provide any meaningful reasoning for why probable cause was present in connection with  
18 some impounds but not others, and often do not issue a written decision at all.

19           155. BHPD's impound of Bird scooters and its collection of fines and fees imposed on  
20 Bird were and continue to be in violation of state and federal guarantees of due process.

21           156. The City's and BHPD's unlawful impound of Bird scooters has resulted in lost  
22 revenue and unnecessary time and expense spent collecting impounded scooters and defending  
23 itself in multiple administrative appeals.

24           157. Bird has been irreparably harmed through the City's unlawful actions, and will  
25 continue to experience such harm as BHPD continues to seize Bird's scooters. The City's actions  
26 have disrupted Bird's business outside the City's geographical boundaries, and damaged Bird's  
27 goodwill with its users, potential users, and the general public.

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**SEVENTH CAUSE OF ACTION**

**Violation of Civil Rights (42 U.S.C. § 1983)**

158. Bird re-alleges and incorporates by reference each and all of the allegations contained in paragraphs 1 through 157 of this Complaint, as if fully set forth herein.

159. Bird has a right to enjoy the use of its property without unlawful interference by the City and BHPD.

160. Since July 2018, the City and BHPD have continuously seized Bird's scooters from streets and sidewalks in Beverly Hills under color of law.

161. Each time BHPD has seized Bird's scooters, Bird has objected to their impound and requested an administrative appeal.

162. For each administrative appeal, BHPD has concluded some, most, or all of the scooters were seized without probable cause. Yet BHPD continues to seize Bird's scooters under identical circumstances.

163. Under the circumstances, the City and BHPD are knowingly and willfully depriving Bird of its property under color of law with the intent to deprive Bird of its constitutional rights.

164. Respondents have acted as a matter of policy and practice and have with deliberate indifference seized Bird's property without due process of law.

165. Respondents' conduct has deprived Bird of rights secured by the Fourth and Fifth Amendments to the United States Constitution and Article 1, Sections 7 and 19.

**EIGHTH CAUSE OF ACTION**

**Violation of Bane Act (Cal. Civ. Code § 52.1)**

166. Bird re-alleges and incorporates by reference each and all of the allegations contained in paragraphs 1 through 165 of this Complaint, as if fully set forth herein.

167. The Bane Act provides a private remedy when a person or persons "interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation or coercion, with

1 the exercise or enjoyment by any individual or individuals of the rights secured by the  
2 Constitution or laws of the United States, or of the rights secured by the Constitution or laws of  
3 this state . . . .” Cal. Civ. Code § 52.1(a),

4 168. Bird has the right to enjoy the use of its property without unlawful interference by  
5 the City and BHPD.

6 169. Since July 2018, Respondents have used threats, intimidation, and coercion to  
7 wrongfully deprive Bird of its right to use its property.

8 170. The City Council first rushed through an “urgency” ordinance in an attempt to  
9 coerce Bird off the streets of Beverly Hills. The City Council then acted on its threat and engaged  
10 in the intimidating practice of impounding Bird scooters.

11 171. Despite Bird’s attempts to challenge the impounds and request an administrative  
12 appeal, BHPD continues to intimidate Bird through its seizure of scooters and imposition of  
13 grossly disproportionate fines.

14 172. Respondent’s conduct constitutes an intentional interference with Bird’s  
15 constitutional right to use its property without unlawful interference.

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## NINTH CAUSE OF ACTION

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### Unlawful Takings – Inverse Condemnation

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20 173. Bird re-alleges and incorporates by reference each and all of the allegations  
21 contained in paragraphs 1 through 172 of this Complaint, as if fully set forth herein.

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23 174. Beverly Hills and BHPD have seized and impounded Bird’s scooters without  
24 lawful authority.

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26 175. The temporary and routine seizure of Bird’s scooters constitutes a taking. Even a  
27 temporary taking is compensable under the Fifth Amendment to the U.S. Constitution and  
28 California Constitution. When BHPD seizes Bird’s scooters, Bird suffers the loss of physical  
possession of its property and lost rents it would otherwise have received if it had possession of  
the property. When BHPD physically takes Bird’s property, Bird cannot recover that property

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1 until and unless BHPD notifies Bird that the property has been seized, BHPD schedules and holds  
2 a hearing, and Bird pays a fine.

3 176. By seizing and impounding Bird's scooters without lawful authority, the City and  
4 BHPD have effected a temporary and categorical taking by prohibiting, for the duration of  
5 impoundment, all economically beneficial use of the seized scooters. While the City and BHPD  
6 detain Bird's scooters, Bird is unable to rent or deliver those scooters to other users.

7 177. The City has not compensated Bird for the value of its scooters. Instead, the City  
8 has demanded impound and storage fees, which Bird pays to regain the use of the scooters.

9 178. The unlawful impound of Bird's personal property constitutes an unconstitutional  
10 taking under the Fifth Amendment of the U.S. Constitution, and Article I, Section 19, of the  
11 California Constitution.

12 179. The City's and BHPD's unlawful impound of Bird scooters has resulted in lost  
13 revenue and unnecessary time and expense spent collecting impounded scooters and defending  
14 itself in multiple administrative appeals.

15 180. Bird has been irreparably harmed through the City's unlawful actions, and will  
16 continue to experience such harm as BHPD continues to seize Bird's scooters. The City's actions  
17 have disrupted Bird's business and damaged Bird's goodwill with its users, potential users, and  
18 the general public.

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#### **TENTH CAUSE OF ACTION**

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#### **Unconstitutionally Excessive Fines in Violation of the Eighth Amendment to the U.S.**

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#### **Constitution and Article 1 Section 17 of the California Constitution**

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24 181. Bird re-alleges and incorporates by reference each and all of the allegations  
25 contained in paragraphs 1 through 180 of this Complaint, as if fully set forth herein.

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26 182. BHPD has assessed impound fees against Bird of \$123 per scooter. BHPD also  
27 charges a daily storage fee of \$125 per scooter, which it has waived for Bird scooters prior to  
28 November 1, 2018.

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- the impound of Bird scooters violates the Fourth Amendment of the U.S. Constitution.

D. For actual damages, including but not limited to the amount of all fines and fees paid by Bird in connection to the Respondents' impound of its scooters;

E. For restitution of all fines and fees paid by Bird in connection to Respondent's unconstitutional conduct;

F. For just compensation for the City's deprivation of Bird's property;

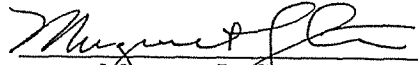
G. For the Court to retain continuing jurisdiction over the matter to ensure the City, City Council, and BHPD comply with applicable law;

H. For costs of suit, fees, expenses, and attorneys' fees pursuant to California Government Code § 800, 42 U.S.C. 1988, California Government Code § 54960.5, and California Code of Civil Procedure § 1021.5; and

I. For such other and further relief as the Court may deem just and proper.

Dated: November 1, 2018

STEVEN J. OLSON  
MARGARET L. CARTER  
DIMITRI D. PORTNOI  
JASON A. ORR  
O'MELVENY & MYERS LLP

By:   
Margaret L. Carter  
Attorneys for Plaintiff-Petitioner  
Bird Rides, Inc.



VERIFICATION

I, Christopher Nakutis Taylor, am the Senior Vice President of Global Operations at Bird Rides, Inc., the plaintiff in this action, and have been authorized to make this verification for and on its behalf. I have read the foregoing Verified Complaint and Petition for Writ of Administrative Mandate and am familiar with its contents. The matters stated therein are true to the best of my knowledge, information and belief, and I make this Verification on that basis.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed this   1   day of November, 2018, at Los Angeles, California.



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Christopher Nakutis Taylor