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MUNICIPAL LAW

THE ABILITY OF MUNICIPALITIES TO REGULATE ELECTRIC SCOOTERS, SEGWAYS, ELECTRIC BICYCLES, AND OTHER LIGHT MOTORIZED VEHICLES

by Erica A. Morris

As dockless electric scooters from companies like Bird, Lime, Razor, and Spin gain popularity and notoriety in municipalities across the country, towns and cities should be aware of the scope of their ability to regulate these and other light motorized vehicles, and what they can and cannot do under local, state, and federal law.

Where should municipalities look to determine regulatory scope?

1. **Town or City Code and Ordinances**
Take a good look into your own town or city codes and ordinances. Many codes have provisions regulating what kind of vehicles are allowed on sidewalks and streets, and other relevant traffic regulations. You may already have some useful tools at your disposal.
2. **County Codes, Ordinances, and Regulations**
The county (or counties) in which your town or city is located likely has rules and regulations regarding vehicles or devices permitted in county parks and trails. Counties may also specify whether the county or the municipality officials (or both) have the ability to determine locations for signage and time-of-day restrictions permitting or disapproving of various vehicles.
3. **State Statutes**
Before looking anywhere else, look for definitions sections in your state, county, and municipality laws. Before you can determine whether something is worth regulating, you need to know precisely what that “something” is. In Arizona, the majority of these definitions will be found in state statute. See A.R.S. § 28-101. Importantly, look at how “pedestrian” is defined and what devices (devices that in non-lawyer speak would never be confused with human beings) are legally characterized as pedestrians. See A.R.S. § 28-908. In Arizona, for example, Segways, wheelchairs, electric wheelchairs, and other “electric personal assistive mobility devices” are legally considered pedestrians.
4. **Federal Law**
Perhaps the most relevant federal law to consider in regulating light motorized vehicles is the Americans with Disabilities Act (ADA). The ADA has clarified that regardless of the laws and regulations a local authority may enact about other power-driven mobility devices (or “OPDMD” as used by the ADA), when such a device is being used by a person with a mobility disability, different rules apply than when such a device is used by a person without a disability. Reasonable accommodations must be made for those with mobility disabilities. If pedestrians are allowed to

be in a particular area, so is the OPDMD when used by a person who affirms he or she has a mobility disability, unless there is a true danger in doing so.

What kind of regulations are permissible?

As an example, Arizona municipalities are permitted to enact the following types of restrictions:

- Time of day restrictions
- Age-based restrictions (the State of Arizona also created an age limitation that a person must be at least sixteen years old to operate an electric personal assistive mobility device. See A.R.S. § 28-911)
- Location of use restrictions (both temporary and permanent)
- Safety restrictions (such as requiring closed toed shoes and helmets)
- Parking restrictions

What kind of regulations are not permissible?

A municipality may not ban the use of Segways or electric personal assistive mobility devices across the board. Under some state laws (such as in Arizona), certain devices (like Segways and wheelchairs) are considered pedestrians; but they are subject to all applicable laws to which pedestrians are subject. Under federal law, municipalities must make exceptions—even for devices other than electric personal assistive mobility devices that normally could be regulated *en masse* by a municipality—when such a device is used by a person with a mobility disability.

What considerations should municipalities take into account?

As with almost any new invention, there are positives and negatives with light motorized vehicles such as dockless electric scooters and electric bicycles. Articles such as <https://slate.com/technology/2018/12/electric-scooter-bird-lime-lakes-rivers-environment-vandalism.html> from Slate.com highlight both sides. Before enacting regulations or ordinances, take time to consider your overarching goals in regard to these light motorized vehicles and note the positives and negatives that each proposed regulation would have on your community. Don't overlook the possibility that some of the electric scooter companies, for example, are also trying to think of innovative solutions to problems with their devices, and may be willing to work creatively with municipalities on how to use and regulate these devices appropriately. For example, articles like the one above indicate that companies have the ability to continue charging riders' credit cards until the devices are parked in permissible locations.

Is there currently pending legislation on this issue?

Yes. Pending in the Arizona Legislature is S.B. 1398, a bill that would add two new electric device categories and definitions for state and local regulation: “Electric Miniature Scooters” and “Electric Standup

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Scooters.” The bill adds “handlebars” as one of the defining features of these devices, and separates the two based on speed and weight.

As revised by the bill, A.R.S. § 28-819 would place operators of “Electric Miniature Scooters” and “Electric Standup Scooters” in the same category as operators of “Electric Bicycles” and would grant them all the rights and privileges of, and subject them to all the duties of, a person riding a bicycle. The devices themselves (rather than the operators) would also be regulated as bicycles. The proposed bill includes language that these devices would be subject not only to state statute, but also to local regulation. The bill specifically states, “A local authority may consider the environmental benefits and traffic benefits of electric bicycles, electric miniature scooters and electric standup scooters when regulating the electric bicycles, electric miniature scooters and electric standup scooters.” See S.B. 1398 (proposed revisions to A.R.S. § 28-819(A)).

Although neither category of devices would be required to comply with statutory provisions related to certificates of title, registration, vehicle license tax, driver licenses or vehicle insurance, “Electric Standup Scooters” are required to have “a unique identification that consists of both letters and numbers and that is visible from a distance of at least five feet.” For more information, see S.B. 1398 (proposed revisions to A.R.S. § 28-819(F)) and the Arizona State Senate Fact Sheet for S.B. 1398 available here: <https://www.azleg.gov/legtext/54leg/1R/summary/S.1398TPS.pdf>.

The sponsor of the bill stated in testimony before the Arizona Senate on February 13, 2019 that the bill is a collaborative effort between Bird, Lime, other scooter entities, cities, towns, and the League of Arizona Cities and Towns. While there may still be revisions to the bill, such as additional language affirming the powers of the local authorities to regulate, the cities, towns, and scooter companies present at the Senate hearing all agreed that having common definitions would be beneficial. For more information on the purpose of the bill, see: <https://www.azcentral.com/story/news/politics/arizona/2019/02/12/arizona-senate-bill-1398-could-put-electric-scooter-definitions-state-law/2796250002/> (explaining that one of the bill’s purposes is to distinguish between children’s scooters and those used by adults).

Until the bill becomes law, the devices in these new categories remain subject to current statutes and regulations for various types of light motorized vehicles discussed in this Client Alert.

In a world of new technology, it pays to think outside the box. As always, your Dickinson Wright attorneys are here to help with any questions you may have in navigating this difficult area.

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