To regulate, but how much to regulate; that is the question!

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An E-bike?!

The essence of dockless mobility...
2019 Assembly Bill 132 says..

- An electric bike is a bicycle that is equipped with fully operative pedals for propulsion by human power and an electric motor of less than 750 watts
- There are three classes of electric bikes based off whether the rider is pedaling and/or the bike is simply being operated via the motor

Information regarding the bill proposal can be found below:

Is an E-Bike a motor vehicle?

- According to proposed amendments to Wis. Stat. 340.01 (35), e-bikes are not considered motor vehicles
- And unlike motor bicycles (see Wis. Stat. 340.01 (30)), there is no operator’s license requirement for it’s use
Other important information...

E-Bikes and operators are afforded the same privileges as other bikes and operators except:

• <16 of age, may not operate a class three e-bike
• Unless the class three e-bike is equipped with a speedometer, it may not be operated

• Municipalities and the operator will know the classification of the e-bike because manufacturers must affix a label containing the classification of the e-bike, i.e. 1, 2, or 3

Additionally

• Manufacturers must also detail at what speeds will the e-bike’s motor cease to render assistance
• As well as, display the wattage of the motor
• Keep in mind that there will be citizens in your community that will purchase an e-bike to own outside of taking advantage of the rental share provided by dockless mobility companies
So, can we regulate these things?

- Wis. Stat. 349.18(4) was created so that the governing body of a municipality or county, may by ordinance prohibit the operation, with the power unit in operation, of e-bikes on bikeways.

- Bikeways are public path, trails, etc. and also includes the “bicycle lane” (see wis. stat. 84.60).

What to do about those scooters?
MAIN TAKEAWAYS

– Exempt from vehicle registration by DOT
– Not defined as a motor vehicle under proposed legislation
– 20 mph maximum speed requirement
– No age requirement
– No helmet requirement
– No driver’s license requirement
– May use the bikeways aka bicycle lanes
– It isn’t considered a EPAMD, motorcycle, motor bicycle or moped

So basically they’re going to rule the streets, right?!

Under its jurisdiction, a municipality will have express authority to,

• restrict or prohibit the operation of electric scooters on any roadway under its jurisdiction having a speed limit of more than 25 miles per hour
• restrict or prohibit the operation of the scooters on any sidewalk or bicycle way
• establish requirements for and limitations on the parking of electric scooters on roadways, sidewalks, bicycle lanes
• restrict or prohibit the short-term commercial rental of electric scooters to the general public
Major concerns

• How will your city legitimately enforce the operation of scooters – how will your governing body view it (as a toy or a transportation option)

• Under our current OWI laws, the operation or either e-bikes or scooters would not apply, and this could be an issue in areas of your city that have a large concentration of licensed premises that provide alcohol

Now ask yourself

• Do you prohibit users from operating scooters on sidewalks?
• Do you prohibit users from operating scooters on certain streets that are over 25 mph? And does that make logistical sense for your city?
Weighing your options

- Ultimately, a pilot study to determine whether your city can accommodate e-bikes and scooters as tools for your transportation system is recommended as well as incorporating restrictions when necessary.
- For more information regarding the proposed legislation on electric scooters please see below: [https://docs.legis.wisconsin.gov/2019/proposals/ab159](https://docs.legis.wisconsin.gov/2019/proposals/ab159)
WHAT TO DO ABOUT A →

City of Milwaukee Pilot Studies for Dockless Bikes and Scooters

Dockless Bike Pilot can be found here.

Dockless Scooter Pilot will be available once state law passes.
Four Major Concerns

- Logistical Issues
- Insurance and Liability Issues
- American with Disabilities Act Concerns
- Environmental Protections

Logistical Concerns

- Urban Clutter
- Fair and Equal Distribution
- Fees, Forfeitures, and Municipal Courts
Urban Clutter: Where are you going to put these things?

- What are we going to do with the broken ones?
- Who is going to put these back where they belong at night?
- Do you want to draw (relatively inexpensive) painted parking squares?
- Is the company willing to incorporate lock-to technology for bikes?
- Does the municipality want geofencing near landmarks or high traffic areas?

Fair and Equal Distribution

- Equal access to citizens without credit cards or smart phones?
- Equal access across all income strata?
- Reasonably equal access in all areas of the city?
- Does your municipality view this as a real and important part of your transportation network, or toys?
WINTER IS COMING...
(and will last longer than one 80 minute episode.)

- Operation at discretion of DPW Commissioner.
- City must provide notice to operator, operator has fixed period of time to remove devices from right of way.
- If not, City will remove at cost to operator.

Logistical Concerns, Cont'

Solutions

- Divided city into service zones.
  - Five zones for bikes.
  - Three zones for scooters.
- Placed cap on number of bikes and scooters.
  - Can be increased or decreased based on amenities offered by company.
  - “Lock to” technology
  - Adaptive Cycles
- Cap on number of devices in each service zone to start the day.
- Require rebalancing on nightly basis.
Fines, Fees, Enforcement, And Muni Court

- Built a fee system into the pilot that goes through DPW, not muni court.
- Fees for corporate failings rather than citations for individual failings:
  - Failure to remove equipment.
  - Broken equipment on roadways.
  - Equipment removed by DPW instead of company.
- Can appeal fees assessed to the DPW Commissioner.
- Once fees pass a certain threshold ($1000.00), operator is automatically disqualified.
- Because this is an administrative decision, there may be a certiorari review of disqualification, but not each individual fee.

INSURANCE AND LIABILITY

How much insurance should the company carry in your municipality?

What to do about data and privacy?
How Much Can You **Really** Account For?

How much insurance should the company carry?
(And how much do you want to fight???)

- Review peer cities.
  - Size
  - Location
  - Natural hazards in your municipality.
- Upper limits seem to be in major cities on West Coast.
- No consistency here.
- Have gotten extraordinary pushback from the companies.

What has the City of Milwaukee required so far?

- Commercial General Liability
  - $2,000,000.00 per occurrence.
- Medical Expense
  - $5000.00 per occurrence.
- City must be named as an additional insured on the policy.
- Complete indemnification for City of Milwaukee.
- How does your municipality view these devices?
  - As toys are as a part of your transportation system?
What has the City of Milwaukee required so far?

- Umbrella (excess) Liability
  - $5,000,000.00 per occurrence.
  - $5,000,000.00 aggregate.
- Medical Expense
  - $5000.00 per occurrence.
- Consider adjusting your requirements as you get more data.
- Also, are you taking into account your municipality's natural features?
  - Bodies of water or hills?
  - High concentration of speed humps?
  - Traffic signals?

<table>
<thead>
<tr>
<th>How Dangerous Are Electric Scooters?</th>
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</thead>
<tbody>
<tr>
<td>Most common electric scooter injuries</td>
</tr>
<tr>
<td>27.7% Cuts, sprains, bruises</td>
</tr>
<tr>
<td>40.2% Bone fractures</td>
</tr>
<tr>
<td>31.7% Head trauma</td>
</tr>
<tr>
<td>Most common electric scooter accidents</td>
</tr>
<tr>
<td>83.2% Fall</td>
</tr>
<tr>
<td>11% Collision with object</td>
</tr>
<tr>
<td>Share of riders wearing a helmet</td>
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<tr>
<td>4.6%</td>
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</tbody>
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Insurance and Liability, Con’t

Privacy

- Milwaukee requires that companies carry Cyber Insurance that covers:
  - Notification
  - Identity Protection and Repair Insurance for citizens affected.
- Our City does not have data protection impositions, but does require:
  - A privacy policy.
  - Notification to the DPW of changes in the privacy policy.
  - City collects anonymized GPS data from the companies in order to adjust zones for distribution and location of devices.
    - Not to assist with accident reporting.
    - Do not want to be provided with personal, financial, information of citizens.
- That being said, companies must agree that all records submitted may by disclosed under the open records law.

Insurance and Liability, Con’t

Bears, Beets, Battlestar Galactica.

Identity theft is not a joke - millions of families suffer every year!
Americans with Disabilities Act Compliance

Obligations Surrounding Access

Right of Way and Roadways

What obligations does the municipality have to made sure disabled persons have access to dockless bikes and scooters?

Title III of the ADA was designed to provide disabled persons with meaningful access to private businesses that nonetheless are “places of public accommodation.” See, 42 U.S.C. § 12182(b)(2)(A)(ii), and Larsen v. Carnival Corp., 242 F. Supp. 2d 1333, 1342 (S.D. Fla. 2003)

Title III is not applicable to public entities, including any entity which is an “instrumentality of a State.” 42 U.S.C. §§ 12131(1)(B), 12181(6)… [T]he individual defendants, Raab, Escott and Chin, are improper defendants as in their official capacities they do not operate, own or lease a private entity which offers public accommodation. Goonewardena v. New York, 475 F. Supp. 2d 310, 321–22 (S.D.N.Y. 2007)

Municipality has no obligation to make sure that citizens can use these devices.

ADA Compliance, Con’t
Title II and the Right of Way

- Cities do have a general obligation to keep right of way clear for disabled persons.

- "A public entity shall make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the public entity can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the public entity has adopted pursuant to §35.130(h)." §35.137(b)(1) Mobility devices.

- Has your municipality built in the cost of employees removing scooters from the right of way?
  - Municipalities may include cost of "administration" in the cost of the license.

ENVIRONMENTAL PROTECTION

- Most scooters have between 12 and 36 volt batteries that must be disposed of in a safe manner.

- Is there a disposal plan for the scooters if the municipality has to collect them?

- Is there a disposal plan for the scooters if (WHEN) they end up in a body of water?