



AGENCY:	City Council
MEETING DATE:	March 28, 2016
DEPARTMENT:	Public Works
PRESENTED BY:	Tom Varga

AGENDA ITEM SUMMARY REPORT

TITLE:

RECEIVE REPORT AND PROVIDE DIRECTION TO STAFF REGARDING USE OF ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES ON THE FORT BRAGG COASTAL TRAIL

ISSUE:

An Electric Personal Assistive Mobility Device (EPAMD) is a self-balancing, non-tandem, two-wheeled vehicle with a low-powered electric motor. EPAMDs are commonly known as "Segways," the brand name of one of the commercial products. A local entrepreneur has applied for and received a business license for a guided tour business with tour participants using Segways. Her business plan identifies Coastal Trail tours as the primary activity of the business. Staff is bringing this issue to Council because motorized vehicles are not permitted on the Coastal Trail except "for temporary access for activities as may be approved by the City." [FBMC Section 9.68.010(A)]

It should be noted that California Vehicle Code Section 467 defines a "pedestrian" as "a person who is afoot or who is using any of the following...(2) An electric personal assistive mobility device".

One interpretation of Section 467 is that EPAMDs are actually pedestrians, such that they are not captured by a ban on motorized vehicles.¹

Additionally, the business license application raises the broader issues of commercial use of the Coastal Trail and, if commercial use is to be allowed, how the City wishes to regulate it.

RECOMMENDED ACTION:

Provide direction to staff regarding commercial use of the Coastal Trail and Noyo Headlands Park, including the use of EPAMDs. If the Council wishes to authorize such use, the Council should provide additional direction to staff regarding the scope and nature of the authorized activity.

ALTERNATIVE ACTION(S):

No alternatives have been identified. Council direction will determine the desired course of action.

ANALYSIS:

Currently, the use of motorized vehicles is prohibited in all parks in Fort Bragg, except for emergency vehicles and motorized strollers and wheelchairs, or if the City issues a permit for temporary access for such use. FBMC Section 9.68.010(A) states:

Motorized vehicles of any kind or nature shall be prohibited from accessing any portion of a park (other than parking lots and/or access roads), except for the following: emergency vehicles; vehicles of the City and its duly authorized representatives or agents; strollers and similar children's

¹ The City of Healdsburg has addressed this argument in Section 12.16.020(C), the portion of its Municipal Code regulating EPAMDs: "'Pedestrian' shall not, for any purposes, be deemed to include a person who is using an 'electric personal assistive mobility device,' as defined in Section 313 of the Vehicle Code, as the same may be amended from time to time."

carriages; wheelchairs; and vehicles whose owners have first obtained a permit from the Director of Public Works for temporary access for activities as may be approved by the City.

Further, FBMC Section 9.68.010(J) states:

Motorized bicycles and scooters are prohibited in all City parks.

While Section 9.68.010(J) does not specifically address EPAMDs, the prohibition of motorized bicycles and scooters is indicative of the Council's intent to prohibit motorized recreational vehicles in City parks.

A local entrepreneur has requested and obtained a business license to operate a business that would like to provide guided tours along the Coastal Trail in Noyo Headlands Park, with tour participants using Segways for transportation. While the business license permits the establishment of the business at an appropriately-zoned location on West Spruce Street, the question remains as to whether or not Segway tours may be conducted on the Coastal Trail. In hindsight, the business license should not have been issued until this policy issue was addressed by the City Council. Nevertheless, pursuant to the FBMC, the business may not operate Segways on the Coastal Trail without a specific permit from the City to allow temporary access. If the use is to be allowed on a long-term basis, it is advisable for the City to modify the Code accordingly. (See **Attachment 1: FBMC Chapter 9.68 "Preservation of Parks."**)

This request gives the Council the opportunity to consider several questions regarding commercial use of the Coastal Trail, including:

- (1) Whether EPAMDs should be permitted on the Coastal Trail;
- (2) Whether the FBMC should be amended to specifically address the use of EPAMDs in City parks and elsewhere in the City; and
- (3) Broader issues regarding commercial use of the Coastal Trail.

State Law Allows Local Regulation of EPAMDs

A Segway is considered an "Electric Personal Assistive Mobility Device," or EPAMD, as defined by Section 313 of the California Vehicle Code. Other EPAMDs include hoverboards and Rascals. (See **Attachment 2: Photos of various EPAMDs.**)

The Cal. Vehicle Code permits EPAMDs to operate on sidewalks, bike paths, pathways, trails, bike lanes, streets, roads, or highways, subject to certain restrictions, including:

- The EPAMD cannot be operated at a speed greater than that which is reasonable and prudent given the surroundings;
- The EPAMD cannot be operated at a speed that endangers the safety of persons or property;
- The person operating the EPAMD must yield the right-of-way to all pedestrians on foot.

In addition to the above, Cal. Vehicle Code Section 21282 specifically authorizes a city to regulate the time, place, and manner of EPAMDs, including by limiting or prohibiting entirely their operation in certain areas of the city, or in the entire city. (See **Attachment 3: Cal. Vehicle. Code sections related to EPAMDs.**)

Coastal Trail Deed Restriction

The prospect of Segway tours on the Coastal Trail raises the question as to whether or not such use is consistent with the State Coastal Conservancy's restrictions on use of the parkland. One of

the requirements of the \$4.065 million grant from the State that the City used to purchase the parkland was that uses of the property be restricted:

“For the purposes of public access, passive recreation and natural resource, open space and scenic protection, as permitted by the bond act and the terms of the special deposit fund; and no use of the real property inconsistent with these purposes is permitted. As used in the paragraph, ‘passive recreation’ means those recreational activities typically associated with coastal open space that generally are non-structured and require minimal or no developed facilities or improvements to land. Such activities include walking, biking, jogging, hiking, dog walking, bird watching, tide-pooling, beach combing, informal sports activities such as Frisbee or ball throwing and kite-flying, nature viewing, picnicking, and public events that avoid impact to significant cultural and natural resources. Some improvements and ancillary facilities necessary to support visitor access to the coastal open space are permitted in connection with passive recreation uses, including, but not limited to, parking lots interpretive signage, visitor kiosks, trail and stairway improvements, benches and restrooms. Passive recreational activities do not include activities such as: playgrounds, community gardens, ball-fields, and skate parks. The uses enumerated in this paragraph as being included in or excluded from ‘passive recreation’ are by way of example only, and are not an exhaustive list of permitted or unpermitted uses, but may be used to illustrate the types of uses and facilities contemplated as being consistent with ‘passive recreation.’”

Staff asked State Coastal Conservancy Project Manager Joel Gerwein whether Segway tours on the Coastal Trail would be consistent with the deed restriction. He responded:

“I would say that the deed restriction would preclude anything motorized except for wheelchairs. My thinking is that Segway tours would be great if they got people out on the trail who otherwise would not be physically able to get out there. However, it would change the feel of the park to have groups of people zipping around on Segways rather than walking and biking. I am guessing the tours are targeted at people who would rather not walk and who might have fun riding Segways, rather than people who are not physically able. I can check with our legal staff if you would like me to pursue this further.”

Staff requested that the Conservancy’s legal counsel weigh in on the interpretation of the deed restriction. As of the writing of this staff report, we have not heard back. If the Conservancy concludes that Segway tours are not consistent with the deed restriction, the City must abide by its interpretation.

Risk Issues Associated with Segway Use on Coastal Trail

As with any wheeled vehicle, there is a potential for a Segway accident to occur on the Coastal Trail. The risk may be higher for Segways than bicycles due to the fact that users may be unfamiliar with operation of the vehicle. Furthermore, the Coastal Trail is an 8-foot wide paved path with a 4-foot wide rocked shoulder. Segway use was not contemplated when the trail was designed and there are some locations (particularly the area between the Elm Street parking lot and the Glass Beach stairway) that are very congested in the summer months and during other peak visitor periods.

California law (Cal. Gov. Code Section 831.4) protects public landowners from lawsuits filed by citizens using public roads and trails for recreational purposes. That immunity does not apply if the landowner was paid or given consideration for granting permission to enter the property for recreational purposes. Furthermore, nothing in the law limits the liability of an independent concessionaire, whether or not that person has a contractual relationship with the public entity to use the property, for injuries or damages suffered as a result of operation of a hazardous recreational activity on public property. While conditions could be imposed on the operation of Segway tours to reduce risks, the possibility of an accident and a claim against the City remains. The general manager of the Redwood Empire Municipal Insurance Fund (the City’s pooled insurance) has indicated that the City should require a Segway tour operator to provide

indemnification and to maintain in effect a \$2 million commercial general liability policy with an endorsement adding the City as an “additional insured.”

Regulation of Segways in Other Communities

Several communities, including Healdsburg, Coronado, and San Francisco have adopted regulations addressing the use of EPAMDs on public paths. Examples of regulations include:

- The City of Healdsburg prohibits the use and operation of EPAMDs on sidewalks, walkways, and pathways located within the downtown business district. The ordinance (Healdsburg Municipal Code Chapter 12.16) notes that “The City Council finds that the use and operation of EPAMDs on all sidewalks, walkways and pathways in the downtown business district jeopardizes public health and safety because such use and operation puts pedestrians at risk of being injured or being forced off public sidewalks, walkways and pathways to avoid injury.” The prohibition does not apply if the EPAMD is being used as part of an activity or event for which a permit allowing such devices has been issued by the City.
- The City of Coronado prohibits the use of EPAMD businesses within the City limits unless a “business operations permit” has been issued for the business (Coronado Municipal Code Chapter 20.42). The Code establishes regulations requiring that customers wear helmets; establishing age limits; prohibiting use, lease or rent of an EPAMD to a customer under the influence of alcohol, drugs or controlled substances. The businesses are also required to provide on-site education and safety training to customers; require tours to travel in single-file process; maintain in effect commercial general liability insurance coverage; etc. The Code also prohibits the use and operation of EPAMDs along Orange Avenue, a beachfront thoroughfare (Chapter 56.90).
- The City of San Francisco has enacted a ban on the use of Segways on bike trails or any other places intended for foot- or bicycle traffic.

Fort Bragg’s Options

As explained above, the CVC authorizes cities to regulate (or even prohibit) the use of EPAMDs on City paths, sidewalks and streets. The City could thus ban the use of Segways entirely. Or, the City could maintain its current park regulations as found in FBMC Chapter 9.68, which prohibit operation of motorized vehicles (including EPAMDs) in any park, except on a temporary basis and with a specific permit from the City. This approach would allow the City to evaluate each requested use on a case-by-case basis. This approach does not, however, address the overall policy question of commercial use of the Coastal Trail.² Moreover, given the (albeit slight) ambiguity in the City’s Municipal Code, and the argument that EPAMDs are pedestrians, if the City wishes to ban EPAMDs entirely, it is advisable that it amend its Code accordingly. The Council could also direct staff to prepare amendments to Chapter 9.68, which could include regulations governing the use of EPAMDs, similar to those enacted in other communities and referenced above. If the Council is interested in pursuing this option, it may want to remand the matter to a Council standing committee or an ad hoc committee to obtain more public input and to work with staff on developing specific recommendations for an ordinance.

² The Department of Justice has determined that EPAMDs may be used as assistive devices for persons with mobility, circulatory, respiratory, or neurological disabilities. If the City wishes to ban Segway, or any EPAMD, use entirely, it should direct staff to ensure any revised Ordinance, or the application of the current Ordinance, appropriately addresses the needs of persons with disabilities.

FISCAL IMPACT:

Beyond the expense of staff's time to develop the desired regulations, there is no fiscal impact expected at this time. There could be some revenues generated from business licenses and, if required, special concessionaire permits issued to businesses to operate along the Coastal Trail.

IMPLEMENTATION/TIMEFRAMES:

Any follow up actions will be consistent with Council's direction.

ATTACHMENTS:

1. Fort Bragg Municipal Code Chapter 9.68
2. Photographs of EPAMDs
3. California Vehicle Code sections pertaining to EPAMDs

NOTIFICATION:

1. Lynn Baumgartner

City Clerk's Office Use Only

Agency Action	<input type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input type="checkbox"/> Approved as Amended
Resolution No.:	_____ Ordinance No.: _____		
Moved by:	_____	Seconded by:	_____
Vote:	_____		
<input type="checkbox"/> Deferred/Continued to meeting of:	_____		
<input type="checkbox"/> Referred to:	_____		