



CITY OF FORT BRAGG

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COUNCIL COMMITTEE ITEM SUMMARY REPORT

MEETING DATE: APRIL 27, 2016
TO: PUBLIC WORKS & FACILITIES COMMITTEE
FROM: TOM Z. VARGA, PUBLIC WORKS DIRECTOR
AGENDA ITEM TITLE: Receive Report and Provide Recommendation to City Council
Regarding Use of Electric Personal Assistive Mobility
Devices (EPAMDs) on Sidewalks and Streets in Fort Bragg

ISSUE:

At its meeting of March 28, 2016, the City Council considered the use of Electric Personal Assistive Mobility Devices (EPAMDs) on the Fort Bragg Coastal Trail within the Noyo Headlands Park. The use of EPAMDs on the Coastal Trail was denied by Council as it conflicted with a deed restriction prohibiting the use of active recreational activities on the Coastal Trail property. At the conclusion of its discussion, Council directed that the larger question of EPAMD use elsewhere in the City. That following this review, the Committee forwards its recommendations to the Council for its consideration.

BACKGROUND:

An Electric Personal Assistive Mobility Device (EPAMD) is a self-balancing, non-tandem, two-wheeled vehicle with a low-powered electric motor. As a self-balancing device, it does not use brakes. Standing straight up brings the machine to a neutral and balanced position with all motion stopped. EPAMDs include devices commonly known as "Segways," the brand name of a particular commercial product.

At the March 28th Council meeting, the Coastal Trail deed restriction was discussed. One of the requirements of the \$4,065,000 grant from the State, (as administered by the Coastal Conservancy), that the City used to purchase the parkland was that uses of the property be restricted to passive recreation and similar activities. Upon reviewing the original proposal of using the Coastal Trail for Segway tours, the Conservancy's legal counsel advised the City that the restriction applied to the operation of Segways within the property acquired by the City. These devices are considered mechanical devices used for active recreation and are not allowed by the deed restriction. The City must abide by this interpretation.

Another issue identified during the meeting involved the scope of the exception in FBMC Section 9.68.010 (A) regarding temporary access. The exception should have a better definition of what constitutes “temporary access”. This exception should not allow for an indefinite life to temporary access.

Outside of the Noyo Headlands Park, (containing the Coastal Trail), lie other public facilities that can potentially accommodate Segways or other similar EPAMDs. These facilities include: sidewalks, bike paths, pathways, trails, bike lanes, streets, roads, or highways, etc.

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 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 indicates the Council's intent to prohibit motorized recreational vehicles in City parks.

As a point of information, FBMC Section 10.58.160 permits the riding of bicycles on sidewalks outside of the Central Business District or not explicitly prohibited by posted signs elsewhere.

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.

The California Vehicle Code (CVC) 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, CVC 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 1**: CVC sections related to EPAMDs.)

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.

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.

Healdsburg addressed the question of whether EPAMDs are pedestrians directly by including the following language in their code, “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.”

- 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.

In addition, there are risk management issues associated with EPAMDs to be considered. Some of the public facilities that might be used by EPAMDs can be very congested, especially during the summer. Other facilities may share space with other vehicles that is not desired. California law, (Government Code Section 831.4), protects public landowners from lawsuits filed by citizens using public roads and trails for recreational purposes. This immunity does not apply if the landowner was paid or given consideration for granting permission, (e.g. permit fee), 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."

REGULATORY OPTIONS:

The City can choose to ban the use of EPAMDs outright. The United States Department of Justice has determined that EPAMDs may be used as assistive devices for persons with mobility, circulatory, respiratory, or other neurological disabilities. If EPAMDs are banned, then staff should be directed to ensure that any existing or revised Ordinance provide the appropriate provision(s) for disabled persons. 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.

At the other end of the regulatory spectrum, the City could choose to not add any new local regulations or restrictions. The State regulations as shown in **Attachment 1** would also apply. 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. The definition of what constitutes a temporary basis needs to be clarified. A maximum duration can be specified. Staff suggests that this duration be less than one year and potentially as short as 90 days. This approach would allow the City to evaluate each requested use on a case-by-case basis.

The City can choose a middle ground between these two ends of the regulatory spectrum. Examples from Healdsburg, Coronado, and San Francisco have been included in this report. Generally, these restrictions are geographically based to prohibit EPAMDs in busy or congested areas like downtowns or other high traffic locations. Requirements for adequate safety equipment can be included. Insurance, required by the City, is not recommended. EPAMD operators should solely shoulder liability without the City's participation.

RECOMMENDATION:

Review and consider the issues concerning the operation of EPAMDs within the City. Recommendations should be developed that can be forwarded to the full Council for their consideration and action. A recommendation can be made for the Council to 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.

The Committee's assistance and guidance is requested in directing staff on what goals to be achieved in drafting any policies or Ordinances that will implement the Council's decisions.

ATTACHMENTS:

1. CVC sections related to EPAMDs
2. Michelle Robb letter regarding Segways