

---


---

**MEMORANDUM**

---

---

**TO:** CITY COUNCIL

**FROM:** JOHN AGNEW, CITY ATTORNEY 

**SUBJECT:** ELECTRIC VEHICLE USE ON SHARED USE PATH

**DATE:** 1/14/19

**CC:** JUDIE ZIMOMRA, CITY MANAGER

---

This memo is intended to provide some preliminary information in response to various questions posed regarding electric vehicle use on Sanibel's Shared Use Path (SUP). Based upon City Council's discussions at the December 2018 City Council Meeting, and subject to City Council's final review and approval at its January 2019 City Council Meeting, it appears likely that the number one or two priority goal for the Department of Community Services and the Planning Commission in 2019 will be to update the transportation element of the Sanibel Plan. Further, as Council is aware, there is also an MPO SUP study currently underway. As a result, in the near future, I expect a thorough review of all the issues pertaining to non-traditional modes of transportation, both on the SUP and the public roadways. In the interim, I offer the following information and guidance.

Florida Statutes expressly recognize and define "bicycle path" and "sidewalk" but not "shared use path." "Shared use path" is defined in the *Manual of Uniform Standards for Design, Construction and Maintenance (Florida Greenbook)*.

F.S. 316.003(5) defines a bicycle path as "any road, path, or way that is open to bicycle travel, which road, path, or way is physically separated from motorized vehicular traffic by an open space or by a barrier and is located either within the highway right-of-way or within an independent right-of-way. F.S. 316.003(74) defines a sidewalk as "that portion of a street between the curblin, or the lateral line, of a roadway and the adjacent property lines, intended for use by pedestrians." Thus, based upon these statutory definitions, the location of the SUP, and the fact the SUP is open to both bicycle travel and pedestrians, the majority of the SUP can be characterized (by statutory definitions) as both a bicycle path and also a sidewalk.

*Florida Greenbook* defines "shared use path" as "paved facilities physically separated from motorized vehicular traffic by an open space or barrier. May be within the highway right of way or an independent right of way, with minimal cross flow by motor vehicles. Users are non-motorized and may include: pedestrians, bicyclists, skaters, people with

disabilities, and others.” Thus, it appears the SUP, likewise, clearly falls under the Florida Greenbook definition of a shared use path.

As a result of the overlap in characterizations of the SUP as a bicycle path, sidewalk, and shared use path, the SUP could be regulated under any of these three categories, to the extent regulation is permissible and not preempted by state law Chapter 316 of the Florida Statutes is known as the Florida Uniform Traffic Control Law. The purpose of the chapter is to “make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities.” Accordingly, state law preempts municipalities from regulating traffic laws except as expressly provided under Section 316.008. Among the powers enumerated to local authorities under Section 316.008 include the following:

(1)(h) Regulating the operation of bicycles.

...

(j) Altering or establishing speed limits within the provisions of this chapter(s) regulating persons upon skates, coasters, and other toy vehicles.

...

(s) Regulating persons upon skates, coasters, and other toy vehicles.

...

(7)(a) A county or municipality may enact an ordinance to permit, control, or regulate the operation of vehicles, golf carts, mopeds, motorized scooters, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law. The ordinance must restrict such vehicles or devices to a maximum speed of 15 miles per hour in such areas.

....

Furthermore, F.S. 316.0085(3)(a) provides that if a governmental entity desires to allow permission for a person to engage in skateboarding, inline skating, freestyle bicycling or mountain biking on property owned by a governmental entity, then it must specifically designate permitted areas to do so and post applicable rules.

In addition to the definitions provided above, some additional definitions pertinent to this discussion include the following, found in F.S. 316.003:

(4) BICYCLE.—Every vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may

ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position or a scooter or similar device. A person under the age of 16 may not operate or ride upon a motorized bicycle.

22) ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE.—Any self-balancing, two-nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of 750 watts (1 horsepower), the maximum speed of which, on a paved level surface when powered solely by such a propulsion system while being ridden by an operator who weighs 170 pounds, is less than 20 miles per hour. Electric personal assistive mobility devices are not vehicles as defined in this section.

(27) GOLF CART.—A motor vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes.

(40) MOPED.—Any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels, with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters.

(44) MOTORIZED SCOOTER.—Any vehicle not having a seat or saddle for the use of the rider, designed to travel on not more than three wheels, and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground.

(51) PEDESTRIAN.—Any person afoot.

(81) STREET OR HIGHWAY.—

(a) The entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic;

99) VEHICLE.—Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks.

Among the important information to glean from the definitions above is that a bicycle is considered a vehicle, and a bicycle propelled by a combination of human power and an

electric motor (e-bike) that ceases to engage/assist at 20 mph is still considered a bicycle. Such e-bikes and mopeds, so long as the motor is not engaged, are permitted on sidewalks (See F.S. 316.2065(9) and 316.208(4)). With regard to other electric or motorized vehicles (including motorized scooters), with limited exceptions for motorized wheelchairs and electric personal assistive mobility devices or as otherwise permitted by local ordinance, “a person may not drive any vehicle other than by human power upon a bicycle path, sidewalk, or sidewalk area...” (F.S. 316.1995).

In summary, the City has the authority to ban any electric or motorized vehicles from the SUP, other than disengaged e-bikes and mopeds, or motorized wheelchairs or electric personal assistive mobility devices. Furthermore, it appears clear that the City may adopt regulations for the safe operation of any vehicles or users on the SUP, including bicycles, skates (including skateboards, roller skates, and inline skates), coasters and other toy vehicles, as well as any motorized vehicles, if any, it chooses to allow to use the SUP. It appears those regulations could include, among others, restraints on certain types of use/users, reasonable constraints on the timing for such use or users, and speed limits.

If there are any questions on the above or further clarifications are required at this time, please let me know.