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Legal Opinion 2019-014

TO: City Council, Mayor John Engen, Dale Bickell, Mike Brady, Scott Hoffman, Mike Colyer, Chris Odlin, Richard Stepper, Laurie Clark, Greg Amundsen, Tiffany Brander, Donna Gaukler, Mike Haynes, Ben Weiss, Jeremy Keene, Kevin Slovarp, Troy Monroe, Chad Pancake, Ginny Merriam, Marty Rehbein, Kirsten Hands, Kelly Elam

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE May 17, 2019

RE: Montana traffic regulations pertaining to bicycle traffic authorizes bicycles to be ridden on sidewalks unless there is in place official traffic control devices that prohibit bicycle riding on the sidewalk at that location.

FACTS:

City council is considering multiple ordinances pertaining to bicycles, electrically assisted bicycles and scooters. Riding of bicycles and electrically assisted bicycles on sidewalks in the central business district is a topic of discussion. Montana state traffic regulations pertaining to bicycle traffic allow bicycles to be ridden on a sidewalk unless there is in place official traffic control signage prohibiting bicycle riding on sidewalks at the location in question.

ISSUE(S):

Pursuant to Montana state traffic regulations pertaining to bicycle traffic are bicycles allowed to be ridden on sidewalks?

CONCLUSION(S):

Montana state traffic regulations pertaining to bicycle traffic allow bicycles to be ridden on sidewalks unless there are official traffic control devices in place that prohibit riding a bicycle on a sidewalk at that location.

LEGAL DISCUSSION:

Montana state traffic regulation law defines the term bicycle pursuant to subsection 61-8-102(2)(b) MCA as meaning:

“(2)(b) ‘Bicycle’ means a vehicle propelled solely by human power on which any person may ride irrespective of the number of wheels, except scooters, wheelchairs, and similar devices. The term includes an electrically assisted bicycle.”

Montana’s traffic regulations are generally set forth in title 51, chapter 8 MCA entitled “TRAFFIC REGULATION”. Title 61, chapter 8, part 6 MCA is entitled “BICYCLE TRAFFIC”. Section 61-8-608 MCA is entitled “BICYCLES OR MOPEDS ON SIDEWALKS AND BIKE LANES.

Pursuant to section 61-8-608 MCA Montana state traffic regulation law allows or authorizes bicycle riding on sidewalks unless there are official traffic control devices prohibiting the riding of bicycles on sidewalks at that specific location. Section 61-8-608 MCA states as follows:

“**61-8-608. Bicycles or mopeds on sidewalks and bike lanes.** (1) Subject to the provisions of subsection (3)(b), a person operating a bicycle or moped on and along a sidewalk or across a roadway on and along a crosswalk shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing any pedestrian.

(2) A person may not ride a bicycle or moped on and along a sidewalk or across a roadway on and along a crosswalk where the use of a bicycle or moped is prohibited by official traffic control devices.

(3) (a) Except as provided in subsections (1) and (2), a person operating a vehicle by human power on and along a sidewalk or across a roadway on and along a crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances.

(b) A moped may be operated on and along a sidewalk or a bicycle path only under human propulsion and may not be operated on or along a sidewalk or bicycle path if the moped is under power from an independent power source.

(c) A moped may be operated under human propulsion or an independent power source on a highway, in a designated bicycle lane on a highway, or on the shoulder of a highway.”

Senate Bill-249 (2019) effective October 1, 2019 does not amend section 61-8-608 MCA. Pursuant to Montana state traffic regulations bicyclists continue to be allowed to ride on sidewalks. In fact, Senate Bill-249 (2019) actually further recognizes that bicycles may be ridden on sidewalks pursuant to section 3 of Senate Bill-249 (2019) amending section 61-8-368 MCA pertaining to the opening and closing of vehicle doors by inserting language twice into section 61-8-368 MCA that provides that a person may not open any door of a motor vehicle unless it is safe to do so without interfering with the movement of other traffic OR OF

PEDESTRIANS OR BICYCLES ON A SIDEWALK OR A SHOULDER”. (emphasis added). The capitalized language is new language added to section 61-8-368 MCA pursuant to Senate Bill-249 (2019)

Title 61, chapter 8, part 2 MCA is entitled “TRAFFIC CONTROL DEVICES”. Subsection 61-8-201(2) MCA of Montana’s traffic regulations pertaining to “TRAFFIC CONTROL DEVICES” requires that in order for a traffic regulation in title 61, chapter 8 MCA to be enforceable where traffic control devices are required at the time and place of the alleged violation an official traffic control device or flag person must be in proper position and sufficiently legible or visible to be seen by an ordinarily observant person.

Subsection 61-8-201(2) MCA pertaining to traffic control devices states:

“61-8-201(2) A provision of this chapter for which traffic control devices or flag persons are required MAY NOT BE ENFORCED AGAINST AN ALLEGED VIOLATOR IF AT THE TIME AND PLACE OF THE ALLEGED VIOLATION AN OFFICIAL TRAFFIC CONTROL OR FLAG PERSON IS NOT IN PROPER POSITION AND SUFFICIENTLY LEGIBLE OR VISIBLE TO BE SEEN BY AN ORDINARILY OBSERVANT PERSON.” (emphasis added)

Title 61, chapter 12, part 1 MCA is entitled “POWERS OF LOCAL AUTHORITIES”. Section 61-12-101 MCA pertaining to sidewalks, streets and highways under the local government’s jurisdiction provides local governments with the reasonable exercise of police power when enacting ordinances that “are not in conflict with state law”. See subsection 61-12-101(1)(n) MCA.

Further, section 7-1-113 MCA pertaining to local governments with self-government powers is entitled “CONSISTENCY WITH STATE REGULATION REQUIRED”. Pursuant to subsection 7-1-113(1) MCA local governments with self-government powers are prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control.

CONCLUSION(S):

Montana state traffic regulations pertaining to bicycle traffic allow bicycles to be ridden on sidewalks unless there are official traffic control devices in place that prohibit riding a bicycle on a sidewalk at that location.

OFFICE OF THE CITY ATTORNEY

/s/ Jim Nugent

Jim Nugent, City Attorney
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