

# Regulating E-Bicycles and E-Scooters: Issues and Options

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## *A Guide for New York Communities*

(including draft ordinances)

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## I. Introduction

### A. Background

On April 3, 2020, while the state was under assault by COVID-19 and traffic reduced to a trickle, New York’s governor signed into law a statute that both authorizes and regulates the use of specifically defined categories of e-bicycles and e-scooters on its streets and highways.<sup>1</sup> This occurred through the largely opaque process by which the state’s budget for the new fiscal year was adopted. (Under New York’s unusual constitutional framework, numerous non-fiscal bills are routinely bundled together with those that have a direct impact on revenue and expenditure in an annual Executive Budget submitted by the governor for approval by the New York Assembly and Senate.) The enactment wrapped up some unfinished legislative business at a time when the issues it addressed were miles from anyone’s mind and a swift or carefully studied municipal response appeared most unlikely.<sup>2</sup>

### B. The 2020 Law—An Executive Summary

Prior to the pandemic, electrically powered bicycles and scooters were proliferating rapidly in other parts of the country, propelled by commercial firms that distributed these devices throughout communities, where they were available for smartphone discovery, activation, and rental. Enterprises named Bird and Lime, plus a host of competitors, pursued a rapidly growing market for this type of mobility service. To their consternation, New York remained out of bounds for the simple reason that e-bicycles and e-scooters fell within the definition of “motor vehicle” contained in its statutes. Since they fit in none of the motor vehicle categories that New York law allowed to be ridden on public streets or roads, they were not “street legal” in the state. Nor could they lawfully be ridden on New York sidewalks. Eager though the rental companies were to

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<sup>1</sup> The statute, which is included in the appendix, was Part XX of S. 7508 / A. 9508. Upon signing, it became 2020 N.Y. Chapt. 58, Part XX, §§ 1-10. All of this guide’s citations to its details will refer both to the section or sections of the N.Y. Vehicle & Traffic Law added or amended and the provision in 2020 N.Y. Chapt. 58, Part XX making the change. [Note: The part designations in Chapter 58 are capital letters not Roman numerals.]

<sup>2</sup> The governor had included an e-bicycle and e-scooter bill in his 2019 budget submission. It encountered opposition in the legislature and was omitted from the final package. In late June 2019, the legislature passed its own bill only to have the governor veto it the day after Christmas.

enter the state and some communities were to welcome their service, the entire state remained off limits in the absence of legislative change.

The 2020 law changes that, but cautiously and with great deference to local preferences and policies. Its most important step is to distinguish between personally owned and operated or conventionally rented e-bicycles and e-scooters and those offered for on-demand, short-term rental on public sidewalks and streets (operations the legislation terms “shared systems”). Under law’s terms, no New York city, town, or village is forced to accept “shared system” bicycles, e-bicycles, and e-scooters. Before any such enterprise can enter a community, the local governing body must affirmatively authorize it. If an e-bicycle or e-scooter is not part of a “shared system” and meets the act’s specifications, the act renders it “street legal” (although not “sidewalk legal”). The law contains numerous safety regulations and limitations on the use of these devices, and authorizes every New York city, town, and village to add to or modify them. Available options extend to enacting a complete ban. However, any local ban or other curtailment of the scope of use set out in the statute for legal e-bicycles and legal e-scooters that are not part of a “shared system” must be adopted affirmatively.

### C. This Guide’s Purpose and Approach

This guide has been prepared to assist mayors, council and board members, planning personnel, law enforcement officials, together with interested citizens of New York’s cities, towns, and villages. It covers issues posed for communities and some steps they may wish to take to adjust its terms within their boundaries. As to both legal e-bicycles and legal e-scooters, the statute grants the state’s municipalities wide, although not unlimited, authority to determine whether and on what terms these forms of powered personal transportation and any businesses offering them for on-demand rental should be allowed to operate.

Since statute places fundamental questions about where, when, and how legal e-bicycles and legal e-scooters can lawfully be ridden in the hands of each New York community, topography, climate, size, demographics, existing transportation infrastructure, and administrative capacity are likely to lead to some very different regulatory responses. Quite possibly this will be true of neighboring municipalities within the same metropolitan area.



The guide endeavors to lay out issues and options, rather than prescribe a single “model” approach. It is accompanied by a set of draft ordinances—templates designed to furnish a framework for cities, towns, and villages as they weigh exactly how they wish to respond to and regulate these particular means of short-range mobility. These cover a full range of options. One draft ordinance bans both legal e-bicycles and legal e-scooters altogether. Another draft ordinance bans only commercial rental operations that distribute bicycles, legal e-bicycles, and legal e-scooters throughout a community, for use on a self-service basis (“shared systems”). A third draft ordinance admits both legal e-bicycles and legal e-scooters onto a municipality’s streets, while setting out regulations governing their operation that go beyond those contained in the state statute. The fourth contains a framework for licensing shared systems. Finally, the state law was drafted with little attention to the role that these new modes of individual transportation can play in commuting from and through more rural towns and villages to nearby urban areas. Its ban on using e-bicycles on roadways and highways with speed limits exceeding 30 mph (a restriction that does not apply to conventional bicycles) is particularly problematic. A fifth draft ordinance removes that cap. A final option for New York communities is to take no legislative or regulatory action at all, at least for now. Part II of this guide begins with a discussion of the consequences of taking that course.

The statute addresses legal e-bicycles and legal e-scooters in near perfect parallel. There are a number of reasons, however, why a community might decide to treat them differently, even to the point of banning one while allowing the other. The draft ordinances address legal e-bicycles and legal e-scooters jointly, but each draft can easily be adjusted to apply solely to one or the other.

#### D. Slightly Different Terms for Different Parts of the State

Like so much New York legislation, this treats the New York City metropolitan area as a special case. To begin, it contains two provisions that apply only to New York City itself. A class of faster e-bicycles is authorized for the City but nowhere else in the state.<sup>3</sup> Second, while it provides that New York cities, villages, and towns can authorize “shared systems” of legal e-scooters to operate within their

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<sup>3</sup> [N.Y. Vehicle & Traffic Law § 102-c\(c\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 1).

boundaries, it contains one exception, Manhattan.<sup>4</sup> Finally, the law grants three counties in the New York metropolitan area (Nassau, Suffolk, and Westchester) a measure of control over the degree to which local governments within their boundaries can regulate the time, place, and manner of legal e-bicycle and legal e-scooter use.<sup>5</sup> With those exceptions, the law applies uniformly to the more than 1,500 cities, towns, and villages across the state, without regard to size or degree of urbanization.

## E. Terminology

The term “micromobility,” now widely employed in transportation policy and planning circles, embraces all sorts of powered, light-weight, low-speed personal mobility devices. Prior to 2020, nearly all of them fell within the definition of “motor vehicle” contained in New York’s Vehicle & Traffic Law and were, as a result, not “street legal.” The statute changes that, but only for two specific modes of micromobility: “bicycles with electric assist” and “electric scooters,” which it defines quite specifically. The legislation’s means of rendering them “street legal” was to remove both from the statutory definition of “motor vehicle.”<sup>6</sup> For the sake of consistency, this guide and its draft ordinances avoid using the phrase “motor vehicle” when referring to them. For each type, individually as defined in the statute, the guide employs either “legal e-bicycle” and “legal e-scooter” or the statutory terminology: “bicycle with electric assist” and “electric scooter.” The modifier “legal” is intended as a reminder that not all devices marketed or referred to by the public as e-bicycles or e-scooters are covered by this statute. In referring to them collectively, the guide uses the phrase “legal electric mobility device.” (Since the term “micromobility” encompasses numerous modes of transportation to which this statute does extend, *see* section VI, it will not be used for that purpose.)

As previously noted, the act uses the term “shared systems” to refer to commercial operations that offer bicycles, bicycles with electric assist, or electric

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<sup>4</sup> [N.Y. Vehicle & Traffic Law § 1282\(10\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>5</sup> [N.Y. Vehicle & Traffic Law §§ 1242\(3\)\(b\), 1242\(3\)\(c\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8), §§ 1281(2)(b), 1281(c) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>6</sup> [N.Y. Vehicle & Traffic Law §§ 125\(e\), 125\(f\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 2). These devices remain within the statutory definition of “vehicle.” As a consequence, they are subject to all traffic laws that apply to the broader category, including the prohibition of reckless driving in [N.Y. Vehicle & Traffic Law § 1212](#) which extends to the use of all vehicles “propelled by any power other than muscular power.”

scooters for rental by the public, on demand, with rides beginning or ending on a public thoroughfare. This guide does as well.

## F. Timetable

The new law's provisions governing legal e-bicycles took effect immediately. Those governing use and local regulation of legal e-scooters had an effective date of August 1, 2020. The legislation is clear, however, that local implementing laws passed earlier are valid.<sup>7</sup> Finally, anticipating the difficulty that law enforcement will have in distinguishing between legal e-bicycles and legal e-scooters and similar devices with disqualifying levels of speed or power the statute contains labeling requirements with an effective date of June 1, 2022.<sup>8</sup>

## G. Updates and Revisions

The author welcomes suggestions for revision. It is also his hope that, as New York municipalities pass ordinances or issue regulations under this 2020 legislation, the guide can be updated to reflect their actions and subsequent experience. The most recent version of the guide, together with any updating notes, is available for free download, at:

<http://access-to-law.com/nyguide/>

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<sup>7</sup> 2020 N.Y. Laws ch. 58, Part XX, § 11.

<sup>8</sup> [N.Y. Vehicle & Traffic Law § 1242\(11\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8) (legal e-bicycles); [N.Y. Vehicle & Traffic Law § 1282\(9\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10) (legal e-scooters).

## II. The Law's Effect in Communities Where the Local Governing Body Takes No Action

### A. Shared Systems Cannot Be Introduced without Local Approval

Shared rental systems for these legal electric mobility devices or conventional bicycles cannot be introduced into any New York community without its permission. The law is explicit on this point: “No ... shared systems shall operate within a city, town or village except as authorized by ... [its] local law, ordinance, order, rule or regulation.” Identical language appears in the sections governing legal e-bicycles and legal e-scooters.<sup>9</sup> Importantly, the provision that applies to legal e-bicycles is not limited to them but extends to “shared bicycle systems” as well (that is, those offering conventional bicycles, powered solely by the rider).

In other states, to date, the companies providing such short-term bicycle, e-bicycle, and e-scooter rentals have concentrated on larger urban centers and college communities. Moreover, the pandemic has had a devastating effect on the industry. Shielded by the ban in the New York statute, many towns and villages of modest population may feel little pressure to take further action. Smaller communities adjacent to municipalities that proceed to authorize “shared systems” may be an exception. They could face enforcement challenges should they seek to prevent such operations from crossing into their territory (more of that dimension in section IV of this guide). Even though no city, town, or village is under an obligation to allow “shared system” bicycles, legal e-bicycles, or legal e-scooters rented in a neighboring jurisdiction to be driven on their streets or parked on their sidewalks, they may, nonetheless, find it useful to enact a ban backed by persuasive remedies.

### B. In the Absence of Local Action, Operation of Individually Owned and Conventionally Rented E-Bicycles and E-Scooters Covered by the Statute Will Become Lawful on Most Streets but not on Sidewalks

Once the new law takes effect (immediately for legal e-bicycles, August 1, 2020 for legal e-scooters), unless a New York municipality has acted to ban or regulate

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<sup>9</sup> [N.Y. Vehicle & Traffic Law § 1243](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8) (legal e-bicycles and conventional bicycles); [N.Y. Vehicle & Traffic Law § 1282\(10\)\(a\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10) (legal e-scooters).

them, the operation of individually owned and conventionally rented legal e-bicycles and legal e-scooters falling within its terms (as distinguished from those offered by a shared system) will be lawful on most of that municipality's public roads, streets, and alleys. Importantly, though, its sidewalks are excluded. The legislation prohibits the operation of either type of device on sidewalks unless a municipality has specifically authorized that "by a local law or ordinance."<sup>10</sup> Similarly, their operation on public lands other than a highway (park paths, for example) requires affirmative action by the local government or public agency with jurisdiction.<sup>11</sup>

### C. What Qualifies as a Legal E-Bicycle or E-Scooter under the 2020 Law

Only electric bicycles and electric scooters that meet the 2020 law's definitions will, so long as they are not banned by a locality, become "street legal." The operation of a variety of other motorized mobility devices continues to be unlawful on all New York roads, streets, and sidewalks.<sup>12</sup>

#### *1. Class One and Class Two "Bicycles with Electric Assist"*

With the exception of New York City, just two types of "bicycles with electric assist" are covered by the law.<sup>13</sup> They share the following characteristics:

- First, they must meet the standards for bicycles adopted by the federal Consumer Product Safety Commission. ([16 C.F.R. Part 1512](#))
- Second, by definition they must have pedals capable of propelling the device.
- Third, their motor must be electric and rated at less than 750 watts (approximately 1 h.p.).
- Fourth, they must be no wider than 36 inches. (Under both state and federal definitions electric bicycles can have three wheels,<sup>14</sup> which creates the possibility of greater width.)

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<sup>10</sup> [N.Y. Vehicle & Traffic Law § 1242\(5\)\(a\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8) (legal e-bicycles); [N.Y. Vehicle & Traffic Law § 1282\(7\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10) (legal e-scooters).

<sup>11</sup> [N.Y. Vehicle & Traffic Law § 1242\(4\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8) (legal e-bicycles); [N.Y. Vehicle & Traffic Law § 1282\(8\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10) (legal e-scooters).

<sup>12</sup> To be clear, however, nothing in the new law affects the longstanding exception for "electrically-driven mobility assistance devices operated or driven by a person with a disability." [N.Y. Vehicle & Traffic Law § 125\(a\)](#). See section VI-B-3.

<sup>13</sup> [N.Y. Vehicle & Traffic Law § 102-c](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 1).

- Fifth, the motor must cease to provide assistance once the device has attained a speed of 20 miles per hour.

The two different types are distinguished from one another according to how the rider controls the motor. With “class one” devices, the “electric assist” is provided only while the rider is pedaling.<sup>15</sup> “Class two” devices have a throttle and draw power from the motor even when the rider is not pedaling.<sup>16</sup> Although the law does not set out different rules for these two types, by establishing the separate categories, it invites New York municipalities that see some reason to draw a distinction to do so.

(The law defines a third, faster, class of “bicycle with electric assist,” with power cutting out at 25 miles per hour.<sup>17</sup> That definition has application in New York City, the only place in the state where such devices can be operated lawfully.<sup>18</sup>)

## *2. Electric Scooters*

Legal e-scooters are less well defined. To begin, there is no federal Consumer Protection Safety Commission standard. Neither is there a clear commercial understanding of the term. In the consumer market and on urban streets, the “e-scooter” category appears to be evolving.

To qualify as an “electric scooter” under the New York statute, a device must have a floorboard “that can be stood upon by the operator” or a seat that can “be sat upon;” it must have handlebars; and it must have an electric motor capable of propelling the device (and rider) no faster than 20 miles per hour on a “paved level surface.”<sup>19</sup> Unlike the definition of “bicycle with electric assist,” the “electric scooter” definition places no limit on the power of the motor. Maximum speed “when powered solely by the electric motor” is the sole measure. Lastly, an “electric scooter” must weigh less than 100 lbs.

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<sup>14</sup> [N.Y. Vehicle & Traffic Law § 102](#); [16 C.F.R. 1512.2\(a\)\(2\)](#).

<sup>15</sup> [N.Y. Vehicle & Traffic Law § 102-c\(a\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 1).

<sup>16</sup> [N.Y. Vehicle & Traffic Law § 102-c\(b\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 1).

<sup>17</sup> [N.Y. Vehicle & Traffic Law § 102-c\(c\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 1).

<sup>18</sup> [N.Y. Vehicle & Traffic Law § 1242\(10\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 1).

<sup>19</sup> [N.Y. Vehicle & Traffic Law § 114-e](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 2).



The laws of several other states define e-scooters in terms of the number of wheels or wheel size, excluding, for example, devices with three or four wheels or those with wheels larger than 12 inches. The New York statute does neither. Both devices shown in Figure 1 would, therefore, meet its terms. Further, while most contemporary e-scooters have no seat, the new law explicitly includes those that do,<sup>20</sup> like the second device shown in Figure 1.

#### D. State wide Restrictions on Bicycle with Electric Assist and Electric Scooter Operation that Apply in Municipalities not Banning the Devices

##### *1. State Regulations Subject to Local Adjustment*

The law's approach is to lay down a set of default rules—regulations that apply to the operation of legal e-bicycles and legal e-scooters in the absence of different or more specific municipal requirements. These rules address the equipment itself, as well as, who can ride these devices, where they can be ridden, how they should be operated (rules of the road and prohibited practices), and a number of additional safety requirements. With both, the starting point is the set of state laws governing operation of conventional bicycles. These are, in differing degrees, added to or rendered more specific.

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<sup>20</sup> N.Y. Vehicle & Traffic Law § 114-e (added by 2020 N.Y. Laws ch. 58, Part XX, § 2).

## 2. Equipment Standards

The statute mandates several equipment items in addition to those contained in the “bicycle with electric assist” and “electric scooter” definitions themselves (e.g., for legal e-bicycles, the Consumer Product Safety Commission standards). They include the following:

- Bicycles with electric assist
  - The motor must cease to furnish power when the rider applies the brakes or stops pedaling (class one) or releases the throttle (classes two and three).<sup>21</sup>
  - The device must have the lights, bell or equivalent signal, and reflectors required of conventional bicycles.<sup>22</sup>
- Electric scooters
  - The brake must enable the operator to bring the device to a “controlled stop.”<sup>23</sup>
  - The device must have a bell or equivalent signal equal to those required of conventional bicycles and legal e-bicycles and, if operated at night, lights of specified capacity.<sup>24</sup>

## 3. Who May Operate the Device or Be a Passenger

- The law sets a minimum age of sixteen for both legal e-bicycle and legal e-scooter operators.<sup>25</sup> Passengers are not permitted on legal e-scooters, including children carried in a pack.<sup>26</sup> Passengers are allowed on legal e-bicycles, subject to the same conditions that apply to conventional bicycles.<sup>27</sup>
- The law contains no license, vision, traffic rule mastery, road test, or insurance requirements.

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<sup>21</sup> [N.Y. Vehicle & Traffic Law § 1242\(1\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8).

<sup>22</sup> [N.Y. Vehicle & Traffic Law § 1242\(1\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8); [N.Y. Vehicle & Traffic Law § 1236](#).

<sup>23</sup> [N.Y. Vehicle & Traffic Law § 1285\(3\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>24</sup> [N.Y. Vehicle & Traffic Law § 1285](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>25</sup> [N.Y. Vehicle & Traffic Law § 1242\(2\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8); [N.Y. Vehicle & Traffic Law § 1282\(4\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>26</sup> [N.Y. Vehicle & Traffic Law § 1282\(1\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>27</sup> These include both the requirement that the bicycle be designed and equipped for one or more additional passengers and helmet and age requirements that apply to child passengers. [N.Y. Vehicle & Traffic Law §§ 1232, 1238](#).



#### 4. Helmets and Other Safety Gear

- Bicycles with electric assist
  - Helmets must be worn by all operators of class three e-bicycles (the speedier category limited to New York City).<sup>28</sup>
  - As is the case with conventional bicycles, all passengers on a legal e-bicycle who are under the age of fourteen must wear a helmet.<sup>29</sup> (Individuals that young can ride as passengers on but not be operators of legal e-bicycles, see section II-D-3 above.)
- Electric scooters
  - Helmets must be worn by operators who are sixteen or seventeen years old.<sup>30</sup>

#### 5. How Fast the Devices May Be Ridden and Where

- Bicycles with electric assist
  - Not only are legal e-bicycles defined by the top speed at which their motor will provide propulsion (20 miles per hour for class one and class two devices, 25 miles per hour for class three), but those also operate as speed limits.<sup>31</sup> This means that legal e-bicycles propelled by gravity and pedaling can violate the applicable speed limit. It also means that an electrical bicycle that is traveling on flat terrain at a speed greater than the state speed limit is, by definition, not “street legal.”
  - In comparison with automobiles and other motor vehicles these are relatively slow speeds. Subject to modification by “local law, ordinance, order, rule or regulation” legal e-bicycles can only be ridden “on highways with a posted speed limit of thirty miles per hour or less ... and designated bicycle or in-line skate lanes.”<sup>32</sup>
  - On those highways, they must be operated in a “usable bicycle or in-line skate lane” or, where such a lane does not exist, on the right hand edge of the road or shoulder. If there is no bicycle lane, they

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<sup>28</sup> [N.Y. Vehicle & Traffic Law § 1238\(5-c\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 5).

<sup>29</sup> [N.Y. Vehicle & Traffic Law § 1238](#).

<sup>30</sup> [N.Y. Vehicle & Traffic Law § 1286](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>31</sup> [N.Y. Vehicle & Traffic Law § 1242\(9\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 9).

<sup>32</sup> [N.Y. Vehicle & Traffic Law § 1242\(8\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8).

must be ridden single file.<sup>33</sup> If in a bicycle lane and not passing and “sufficient space is available,” they can be ridden two or more abreast.<sup>34</sup>

- In comparison with pedestrians, however, legal e-bicycles move quite rapidly. “[E]xcept as may be authorized by a local law or ordinance” legal e-bicycles may not be ridden on sidewalks.<sup>35</sup>
- Electric scooters
  - Legal e-scooters are subject to the same restrictions as to where they can be ridden, but they are subject a lower speed limit of fifteen miles per hour.<sup>36</sup>

## 6. *Yielding the Right of Way*

- Bicycles with electric assist and electric scooters
  - Legal e-bicycles and legal e-scooters must “yield the right of way to pedestrians.” In addition, when entering “a roadway from a private road, driveway, alley or over a curb,” both must “come to a complete stop.”<sup>37</sup>

## 7. *Other Specific Traffic Rules*

- Bicycles with electric assist and electric scooters
  - Under the new law, legal e-bicycles are subject to “all of the rules, regulations, and provisions applicable to bicycles.”<sup>38</sup> These include not only compliance with all general traffic laws, including the giving of turn signals,<sup>39</sup> but specific prohibitions on:
    - clinging to or attaching to another vehicle,<sup>40</sup> and
    - carrying “any package, bundle, or article which prevents the driver from keeping at least one hand upon the handle bars.”<sup>41</sup>

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<sup>33</sup> [N.Y. Vehicle & Traffic Law § 1242\(7\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8).

<sup>34</sup> [N.Y. Vehicle & Traffic Law § 1234](#); [N.Y. Vehicle & Traffic Law § 1242\(7\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8).

<sup>35</sup> [N.Y. Vehicle & Traffic Law § 1242\(5\)\(a\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>36</sup> [N.Y. Vehicle & Traffic Law § 1282](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>37</sup> [N.Y. Vehicle & Traffic Law § 1234\(c\)](#); [N.Y. Vehicle & Traffic Law § 1242\(6\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>38</sup> [N.Y. Vehicle & Traffic Law § 1242\(1\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8).

<sup>39</sup> [N.Y. Vehicle & Traffic Law § 1237](#).

<sup>40</sup> [N.Y. Vehicle & Traffic Law § 1233](#).

<sup>41</sup> [N.Y. Vehicle & Traffic Law § 1235](#).

- The statute's sections governing the operation of legal e-scooters contain equivalent language.<sup>42</sup>

## *8. Behavior at the Scene of a Crash or Similar Incident*

- Bicycles with electric assist and electric scooters
  - Bicyclists, in-line skaters, skate-boarders and others operating "a wheeled non-motorized means of conveyance" who cause physical injury to another are required by law to furnish their contact information to the injured party and report the incident to the police.<sup>43</sup> That provision now applies to those operating legal e-bicycles, since they are subject to "all of the rules, regulations, and provisions applicable to bicycles."<sup>44</sup>
  - Comparable sections in the new law place the same obligations on individuals operating legal e-scooters.<sup>45</sup>

## *9. Operating a Device While under the Influence of Alcohol or Drugs*

- Bicycles with electric assist and electric scooters
  - By excluding legal e-bicycles and legal e-scooters from the statutory definition of "motor vehicle," the new law removes them from the state's general DWI law.<sup>46</sup> It substitutes detailed, separate and distinct DWI provisions for legal e-bicycles<sup>47</sup> and legal e-scooters.<sup>48</sup> Both conclude with an important limitation: "Notwithstanding any provision of this section, no part ... may be enforced unless in conjunction with a crash involving the operator ...."<sup>49</sup> The general DWI statute contains no such limitation.<sup>50</sup>

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<sup>42</sup> [N.Y. Vehicle & Traffic Law § 1282\(2\)](#) (carrying a package) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8); [N.Y. Vehicle & Traffic Law § 1283](#) (clinging to another vehicle) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8).

<sup>43</sup> [N.Y. Vehicle & Traffic Law §§ 1240, 1241](#).

<sup>44</sup> [N.Y. Vehicle & Traffic Law § 1242\(1\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8).

<sup>45</sup> [N.Y. Vehicle & Traffic Law §§ 1287, 1288](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>46</sup> [N.Y. Vehicle & Traffic Law § 1192](#).

<sup>47</sup> [N.Y. Vehicle & Traffic Law § 1242-a](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 9).

<sup>48</sup> [N.Y. Vehicle & Traffic Law § 1289](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>49</sup> [N.Y. Vehicle & Traffic Law § 1242-a\(9\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 9); [N.Y. Vehicle & Traffic Law § 1289\(9\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>50</sup> [N.Y. Vehicle & Traffic Law § 1192](#).

## 10. Reckless Operation

- Bicycles with electric assist and electric scooters
  - Since New York’s reckless driving statute is not restricted to “motor vehicles” but extends to other vehicles “propelled by any power other than muscular power,”<sup>51</sup> it applies to both legal e-scooters and legal e-bicycles.

## 11. Parking Restrictions

- Bicycles with electric assist
  - Parking restrictions on legal e-bicycles vary according to ownership and use:
    - Legal e-bicycles that are “owned by a natural person” (i.e., not a corporation) that are “engaged in personal use” may be parked on a sidewalk.<sup>52</sup>
    - Those that are being used for commercial deliveries may park on a sidewalk while loading and unloading.<sup>53</sup>
    - In all other cases, parking on sidewalks is permitted only to the extent that it is permitted by a municipality, that it is consistent with the federal Americans with Disabilities Act, and that it does not “interfere with the free passage of pedestrians.”<sup>54</sup>
- Electric scooters
  - There is no “commercial delivery” exception for legal e-scooters. In all other respects, their parking restrictions are comparable.<sup>55</sup>

Because of the sidewalk parking rights granted individuals using their own legal e-bicycle or legal e-scooter and those using e-bicycles for commercial deliveries,

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<sup>51</sup> [N.Y. Vehicle & Traffic Law § 1212.](#)

<sup>52</sup> [N.Y. Vehicle & Traffic Law § 1242\(5\)\(b\)\(i\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8).

<sup>53</sup> [N.Y. Vehicle & Traffic Law § 1242\(5\)\(b\)\(ii\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8).

<sup>54</sup> [N.Y. Vehicle & Traffic Law § 1242\(5\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8).

<sup>55</sup> [N.Y. Vehicle & Traffic Law § 1282\(7\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

the law requires local communities to “provide a method by which” such devices can “be identified as such.”<sup>56</sup>

### III. Steps a New York Municipality (City, Town, or Village) Can Take to Control the 2020 Law’s Impact within its Borders

#### A. Any Locality Can Enact a Ban

##### 1. *Banning Bicycles with Electric Assist, Electric Scooters, or Both*

The law explicitly authorizes any New York city, town, or village to enact an ordinance banning either type of legal electric mobility device or both of them.<sup>57</sup> A complete ban of this sort reaches beyond shared-system devices and prohibits the operation of individually owned and operated or conventionally rented legal e-bicycles and legal-e-scooters. Such an ordinance might read quite simply:

The operation of a bicycle with electric assist or an electric scooter on the public highways, sidewalks, and other public spaces within this [city/town/village\*] is prohibited.

\* Select the appropriate noun.

(See the draft ordinance, Appendix-p. 3, for a more complete version.)

As discussed in section III-D, below, for such a ban to be fully effective it must be backed by meaningful penalties for non-compliance. Furthermore, the law requires that “adequate signage [be] visibly posted.”<sup>58</sup> If a neighboring community permits use of the prohibited devices, communicating the ban effectively through signage (see Figure 2) and other means will be especially important.

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<sup>56</sup> [N.Y. Vehicle & Traffic Law § 1242\(5\)\(b\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8); [N.Y. Vehicle & Traffic Law § 1282\(7\)\(b\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>57</sup> [N.Y. Vehicle & Traffic Law § 1242\(3\)\(a\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8); [N.Y. Vehicle & Traffic Law, 1281\(2\)\(a\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>58</sup> [N.Y. Vehicle & Traffic Law § 1242\(3\)\(a\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8); [N.Y. Vehicle & Traffic Law, 1281\(2\)\(a\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

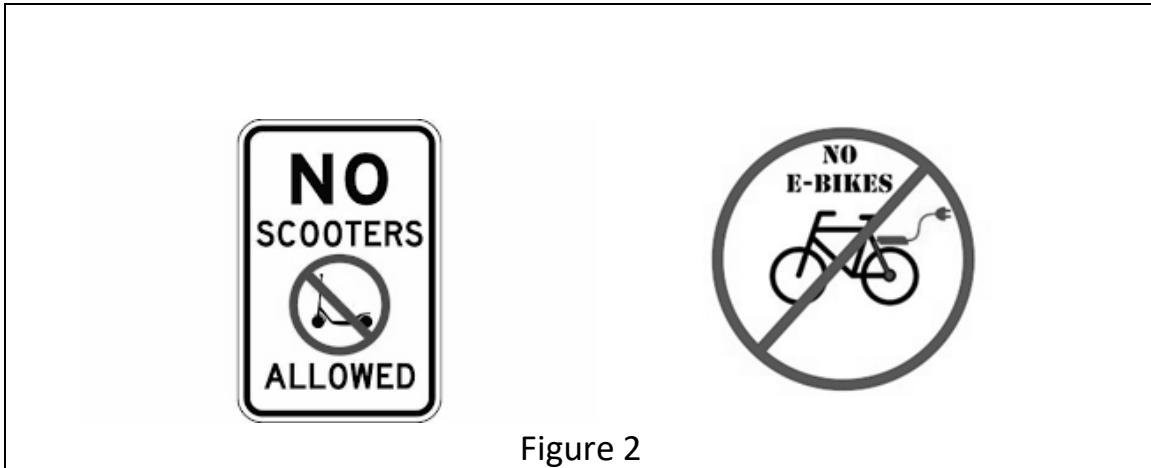


Figure 2

Before banning all legal electric mobility devices, a community should consider whether its concern isn't limited to those that are part of a "shared system." Legal e-bicycles and e-scooters are widely available for individual purchase. For some New York residents they offer an attractive and economic way to commute, run errands, or enjoy the out-of-doors during favorable weather. Indeed, significant numbers were in use throughout the state before they became "street legal." During March and April of 2020, national sales of these devices increased as people were attracted to a mobility option that allowed them to avoid mass transit and maintain physical separation from others. Parked either at home or at a bicycle rack, personal legal electric mobility devices do not pose the pedestrian hazard that shared-system devices may. And at present their numbers are likely to be relatively small.

## *2. Banning Shared Systems*

As noted previously, a city, town, or village that does not wish to allow shared systems need do nothing. However, if shared system bicycles, bicycles with electric assist, or electric scooters from a nearby community are being ridden into its territory and parked there, a municipality may wish to pass an ordinance that fines the owner and authorizes impounding the device at the owner's expense. (See the draft ordinance, Appendix-p. 4, for an example.)

## B. Types of Authorized Municipal Time, Place, and Manner Regulation Short of a Total Ban

### 1. Time

#### *a. Nighttime*

Once it is dark, road hazards are harder to detect and legal electric mobility devices become less visible. Nighttime also increases the likelihood of impaired riders. For these and other reasons, operating a legal e-scooter or legal e-bicycle at night poses greater accident risks than use during daylight hours. Those factors (in some cases highlighted by a string of nighttime casualties) have led numerous communities elsewhere to restrict the use of electric scooters, in particular, to daytime. Alternatively, they may justify explicitly requiring that nighttime riders use lights and that they wear reflective clothing. (See section III-B-3-c.)

#### *b. Weather Conditions, Special Events*

Municipalities throughout New York State experience days of winter weather during which operation of all legal electric mobility devices, but legal e-scooters especially, would be hazardous. Some localities hold annual events that draw large crowds of visitors. Any shared systems regulatory scheme should probably reserve authority for the municipality to order removal of all shared devices from public availability when their operation would be unsafe and to adjust parking and operating rules when a particular area or facility will be drawing an unusually large number of prospective riders. An ordinance covering all legal electric mobility devices, including those individually owned, could do the same.

### 2. Place

#### *a. Taking Account of Pedestrians*

Bicycles with electric assist and electric scooters are capable of moving several times faster than the average pedestrian's pace. No doubt, that is one of the reasons the new law forbids operation of both categories of legal electric mobility devices on sidewalks.<sup>59</sup> That prohibition can, however, be lifted or limited by

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<sup>59</sup> [N.Y. Vehicle & Traffic Law § 1242\(5\)\(a\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8); [N.Y. Vehicle & Traffic Law, 1282\(7\)\(a\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

“local law or ordinance.”<sup>60</sup> It can also be and may need to be reinforced by ordinance, education, and signs.



Local regulations on the parking of these devices must, at a minimum, take account of the requirements of the federal Americans with Disabilities Act (ADA).<sup>61</sup> Experience with shared systems in other states suggests that when a community allows the parking of shared devices on sidewalks, subject only to a

<sup>60</sup> [N.Y. Vehicle & Traffic Law § 1242\(5\)\(a\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8); [N.Y. Vehicle & Traffic Law, § 1282\(7\)\(a\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>61</sup> [42 U.S.C. §§ 12101 – 12213](#).



general requirement that their placement not interfere unreasonably with pedestrian flow or even, more specifically, that it leave path of specified width (such as three feet, the ADA minimum) for pedestrians, the result is too often inadequate protection. Increasingly, municipalities have turned to restricting the parking of shared devices to publicly designated parking areas (sometimes termed “corrals”) marked by paint, signs, and geofencing.<sup>62</sup> The parking of individually owned bicycles with electric assist and electric scooters in public areas may reasonably be brought under local regulations governing the parking of conventional bicycles.

*b. Suitability of Terrain and Road Surfaces*

There are communities in the state that have streets with a greater than 10% slope. Upstate winter weather can generate serious road surface hazards, especially along road edges (see Figure 4), exactly where the law and safety concerns direct bicycles, e-bicycles, and e-scooters to travel.



Figure 4

Especially if shared systems will be putting fair numbers of inexperienced operators and visitors lacking familiarity with a community’s roads on legal e-scooters, it might reasonably limit their use to flatter areas and roads that are well maintained.

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<sup>62</sup> See note 80.

*c. Speed and Density of Motor Vehicle Traffic*

High speeds, heavy traffic, and limited access are all solid grounds for excluding legal e-bicycles and legal e-scooters from a roadway, unless it has a separate bicycle lane. The statute draws one such line at 30 miles per hour, prohibiting the operation of legal e-bicycles and legal e-scooters on roads posted for higher speeds. Communities may wish to set a different threshold or identify specific roads for exclusion. Any road from which bicycles are already excluded is presumptively one on which legal electric mobility devices should be banned as well. The statute does require that “adequate signage” be posted outside any prohibited area.<sup>63</sup>

*d. Integration with Other Modes of Transportation*

A strong case for shared systems offering app-based self-service rental of bicycles, legal e-bicycles, or legal e-scooters is that they enable users of public transit to get from their residence to a transit stop and, at the other end, to travel “the last mile” onward to their place of work or some other destination. The extent to which this pattern fits a community’s transportation plans may bear on its willingness to accept shared systems, how it requires shared system operators to deploy their devices, and where it directs users to park them.

*e. Commercial Interests*

Commercial areas that thrive on heavy foot traffic will, almost certainly, be disturbed by any riding and parking of legal electric mobility devices that inhibits or otherwise interferes with its flow. Pedestrian shopping districts, outdoor dining establishments, and the like will, very likely, want these devices kept at a distance. No business will be pleased to have parked shared system devices blocking their entrance. On the other hand, to the extent that limited and expensive automobile parking or distance from the nearest public transit stop is a constraint on an area’s economic activity, the introduction of legal e-bicycles and legal e-scooters, including those that are part of a shared system, may be viewed by local businesses as a positive development, so long as parking is effectively controlled.

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<sup>63</sup> [N.Y. Vehicle & Traffic Law § 1242\(3\)\(a\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8); [N.Y. Vehicle & Traffic Law, 1281\(2\)\(a\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

*f. Educational Institutions and Similar Zones with Distinct Requirements*

Schools, colleges, universities, and other large-scale campus-like facilities are likely to call for special attention. Whether or not they are, as a legal matter, located on private land or public land that is independently governed, their distinctive priorities for pedestrian safety and motor vehicle access will warrant consideration. Some institutions of this sort may want to ban all legal electric mobility device use within their territory. Others may be comfortable with allowing the presence of shared systems but only on more restrictive terms than apply in the surrounding area. At the same time, experience in other states indicates that students will be eager users of legal electric mobility devices, for travel to and from campus and, if permitted, on it. To balance these interests, communities and educational institutions elsewhere have implemented campus-specific “slow down,” “no go,” “parking,” and “no park” zones.

Shopping malls, parking facilities, and entertainment or athletic venues that draw large crowds may warrant similar special treatment.

*g. Clarity Concerning Multiuse Paths*

Waterfronts, wooded areas, and urban centers may include multiuse paths designed for and currently used by a mix of runners, walkers, cyclists, and inline skaters. If the governing regulations and signs express this intent through use of the phrase “motor vehicles” (see Figure 4) they need to be reconsidered. Since the new law removes bicycles with electric assist and electric scooters from that legal category, such terminology, standing alone, could now be understood as opening the path in question to these devices. That may be exactly what the municipality wants, but especially if it is preparing to admit shared systems the result may be quite upsetting to current users of the path. The question warrants attention and a clear resolution. A related question is whether legal e-bicycles are welcome on a “bike trail” (see Figure 5). Unless adjusted by a local ordinance or regulation, bicycles with electric assist and electric scooters cannot lawfully be

operated “on public lands or property, other than a highway.”<sup>64</sup> Only the state agency or city, town or village with jurisdiction has authority to lift that ban.<sup>65</sup>



<sup>64</sup> [N.Y. Vehicle & Traffic Law § 1242\(4\)\(a\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8); [N.Y. Vehicle & Traffic Law, 1282\(8\)\(a\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>65</sup> [N.Y. Vehicle & Traffic Law § 1242\(4\)\(b\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8); [N.Y. Vehicle & Traffic Law, 1282\(8\)\(b\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

### 3. Manner

#### *a. Speed*

Devices capable of 20 miles per hour mix poorly with pedestrians who rarely exceed 3. If a community decides to allow legal e-bicycles or e-scooters onto sidewalks (which, as previously noted, requires affirmative authorization by ordinance) or into other predominantly pedestrian zones, experience elsewhere suggests the importance of imposing a speed limit of 12 miles per hour or less. With shared e-bicycles and e-scooters, this can, within limits, be enforced by means of geofencing.<sup>66</sup>

#### *b. Various Forms of Potential Distraction*

The New York statute applies a version of one restriction that already applies to bicycles, inline skates, and skateboards by prohibiting anyone operating a legal e-bicycle or e-scooter from carrying “any package, bundle or article which prevents the operator from keeping at least one hand upon the handle bars or which obstructs his or her vision in any direction.”<sup>67</sup> In the case of legal e-scooters in particular, interference with balance, concentration, or the ability to hear traffic is at least equally important. Unless restrained, riders will “walk” their dogs (see Figure 6), send and receive text messages, use navigation apps, and listen to music while in motion. Unfortunately, by removing legal e-bicycles and legal e-scooters from the statutory definition of “motor vehicle” the new law exempts them from recently enacted statutory provisions that address driving while phoning, texting, or otherwise operating an electronic device.<sup>68</sup> The draft ordinance accompanying this guide contains several provisions that target such dangerous riding behaviors. (Appendix-p. 11, § CCC-5 Safe Operation.)

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<sup>66</sup> For more on geofencing, see note 80.

<sup>67</sup> [N.Y. Vehicle & Traffic Law, 1282\(2\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10) (legal e-scooters). With legal e-bicycles this is the result of their being made subject to the same rules, regulations, and provisions as bicycles.

<sup>68</sup> [N.Y. Vehicle & Traffic Law §§ 1225-c, 1225-d](#).



Figure 6

### *c. Whether to Require Use of a Helmet or Reflective Clothing*

Public health studies highlight the value of a helmet in protecting legal electric mobility device operators from serious and potentially fatal head injuries.<sup>69</sup> New York law requires that those operating most mopeds wear helmets.<sup>70</sup> A number of states and communities require that e-bicycle and e-scooter riders do so as well. All e-scooter shared system operators recommend their use. In actuality, however, the vast majority of riders do not comply.<sup>71</sup> New York's new law requires only that operators of class three e-bicycles (limited to New York City) and legal e-scooter operators under the age of eighteen wear helmets.<sup>72</sup> In weighing whether to impose a local helmet requirement, communities will have to consider the wisdom of enacting a regulation that will be widely flouted, a regulation designed solely to protect riders and not others.

<sup>69</sup> See, e.g., Austin Public Health, Dockless Electric Scooter-Related Injuries Study (2019), [https://austintexas.gov/sites/default/files/files/Health/Epidemiology/APH\\_Dockless\\_Electric\\_Scooter\\_Study\\_5-2-19.pdf](https://austintexas.gov/sites/default/files/files/Health/Epidemiology/APH_Dockless_Electric_Scooter_Study_5-2-19.pdf).

<sup>70</sup> N.Y. Dept. of Motor Vehicles, Register a Moped, <https://dmv.ny.gov/registration/register-moped>.

<sup>71</sup> Bruce Brown, Despite high injury rates, 80% of e-scooter riders refuse to wear helmets, Digital Trends (8/14/2019), <https://www.digitaltrends.com/cars/despite-high-injury-rates-80-of-e-scooter-riders-wont-wear-helmets/>.

<sup>72</sup> N.Y. Vehicle & Traffic Law § 1238(5-c) (added by 2020 N.Y. Laws ch. 58, Part XX, § 5); N.Y. Vehicle & Traffic Law § 1286 (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

If ridden at night, the new law requires that both bicycles with electric assist and electric scooters have lights. Strangely, it does not require their use. Nor does it mandate that operators wear highly visible or reflective clothing. These are additional safety measures that communities allowing nighttime operation of these devices might require.

*d. Other Forms of Operation Posing Danger to Others (as well as the Operator)*

Those crafting local restrictions will want to contemplate banning other risky practices. Among those offered in the draft ordinance are prohibitions on riding:

- the “wrong way” in a bicycle lane, and
- between vehicles in a highway.

As noted in a prior subsection, the removal of legal e-bicycles and legal e-scooters from the “motor vehicle” definition renders several existing safety provisions in New York law inapplicable to the devices. These include:

- [N.Y. Vehicle & Traffic Law § 1225-c](#) which prohibits the driver of a “motor vehicle” from engaging in a call using a hand-held phone while the vehicle is in motion, and
- [N.Y. Vehicle & Traffic Law § 1225-d](#), which prohibits the driver of a “motor vehicle” from using any portable electronic device while the vehicle is in motion.

The same holds for [N.Y. Vehicle & Traffic Law § 375 \(24-a\)](#) which includes bicycles as well as motor vehicles (but not legal e-scooters) in its ban on driving or riding while “wearing more than one earphone attached to a radio, tape player or other audio device.” Communities will wish to address these matters by ordinance. The draft ordinance contains provisions that do so. (Appendix-p. 11, § CCC-5 Safe Operation.)

*4. Operator Qualifications*

New York law allows young children to ride conventional bicycles. It limits motor vehicle operators, including those who ride motorcycles and low-powered mopeds, to licensed individuals sixteen and over who have passed both a written test and a road test. Significant additional restrictions apply to operators under the age of eighteen.



The new law requires only that those operating bicycles with electric assist and electric scooters be at least sixteen.<sup>73</sup> Communities may wish to set a higher age threshold or add further qualifications. Although noncompliance is widespread, several of the national shared system operators require that riders be at least eighteen and possess a valid driver's license. Possessing a license provides little assurance that the individual will be a capable and safe operator of either type of legal electric mobility device. Nonetheless, if incorporated in an ordinance and enforced it should, at least, limit riders to individuals who have been screened for knowledge of general traffic rules and safe driving practices.

### *5. Possible Grounds for Treating these Two Types of Legal Electric Mobility Devices Differently*

As defined by the New York statute, bicycles with electric assist (with the exception of the class three e-bicycles allowed in New York City) and electric scooters have the same maximum speed. On the other hand, they are, under that statute, subject to different speed limits. Simplicity might seem to argue for a municipality's applying the same regulations to both. A number of factors, however, including the differential speed limits, may justify subjecting electric scooters to separate, more stringent requirements.

#### *a. Comparative Suitability in Hilly Terrain*

As defined in the act, bicycles with electric assist and electric scooters have the same top speed on level ground, 20 miles per hour. As is true of conventional bicycles, depending on design, both may be capable of much greater speed coming down a hill. (Moreover, lacking pedals, electric scooters are likely to have greater difficulty climbing an incline.) For these reasons, any municipality with seriously hilly terrain may want to consider confining electric scooter operation to the locality's flatter portions or banning electric scooters altogether (even while allowing bicycles with electric assist).

#### *b. Different Wheel Size*

The standard diameter of a bicycle wheel with tire is 28 inches. The wheels on electric scooters currently range from 8 to 12 inches. Road irregularities

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<sup>73</sup> [N.Y. Vehicle & Traffic Law § 1242\(2\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8); [N.Y. Vehicle & Traffic Law § 1282\(4\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).



(potholes) and weather conditions (rain or snow and ice) that pose serious hazards for electric scooters are somewhat less threatening to cyclists, with and without power. These considerations may warrant a municipality's prohibiting electric scooter operation on certain roads or at certain times of day or during harsh weather seasons even while continuing to allow legal e-bicycles to be ridden in those places and at those times.

*c. Ability to Slow and Stop*

Brakes are a critical component of both types of devices, especially when operated on a downhill. All things equal, because of their larger wheel-size bicycles with electric assist should be able to slow and stop more ably than electric scooters. Furthermore, the Consumer Products Safety Commission standard for the brakes on new bicycles<sup>74</sup> (incorporated by reference in the New York statute<sup>75</sup>) sets down specific performance requirements (bring to a stop from 15 miles per hour within 15 feet). The only scooter counterpart is the statute's specification that legal e-scooters "be equipped with a brake that enables the operator to bring the electric scooter to a controlled stop."<sup>76</sup>

*d. Center of Gravity or Mass*

A stand-up electric scooter with operator has a different center of gravity or mass than a rider on a bicycle with electric assist. Its relationship to the front wheel combined with that wheel's smaller size makes a scooter more susceptible to spills upon encountering a bump, pothole, or other obstacle. That vulnerability is compounded when the scooter is in the hands of an inexperienced operator. As one medical researcher observed in connection with a study of electric scooter injuries: "E-scooters have a narrow platform, can travel up to 15 to 20 miles per hour and require a level of coordination and skill that is often not native to many users."<sup>77</sup>

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<sup>74</sup> [16 C.F.R. § 1512.5](#).

<sup>75</sup> [N.Y. Vehicle & Traffic Law § 102-c](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 1).

<sup>76</sup> [N.Y. Vehicle & Traffic Law § 1285\(3\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>77</sup> New study looks at motorized scooter injuries, Radiological Society of North America (Dec. 3, 2019), [https://www.eurekalert.org/pub\\_releases/2019-12/rson-ns112019.php](https://www.eurekalert.org/pub_releases/2019-12/rson-ns112019.php).

### *e. Thinner (and Unfamiliar) Profile*

At least until they become commonplace in a community, electric scooters' unfamiliar, thin side profile renders them less visible to motorists than conventional bicycles or bicycles with electric assist.

### *6. The Role of County Governments in Nassau, Suffolk, and Westchester Counties*

The statute grants a measure of coordinating authority to the governing bodies of Nassau and Suffolk counties. Municipalities in those counties have the full range of regulatory options available to cities, towns, and villages elsewhere in the state. They can ban legal e-bicycles and legal e-scooters. They can set the terms for any shared systems operating within their jurisdiction. But before they can set more restrictive terms for the “time, place and manner of the operation” of these devices, “including, but not limited to, maximum speed, requiring the use of protective headgear, and the wearing of readily visible reflective clothing or material” their county’s governing body must adopt “a local law or ordinance.”<sup>78</sup> Towns and villages (but not cities) within Westchester County are subject to the same constraint.<sup>79</sup>

### **C. Localities Have Wide Discretion in Licensing Shared Systems of: Bicycles, Bicycles with Electric Assist, and Electric Scooters**

Throughout 2019, the business of app-based, self-service e-scooter, e-bicycle, and bicycle rental remained highly competitive in major portions of the United States. Then the pandemic hit and companies offering such rentals incurred huge losses. They withdrew from any number of communities. Some went out of business. At present it seems unlikely that New York municipalities, even those perceived to be promising markets, will have the same ability to exact large fees, control the pace at which shared devices are introduced, set standards, stipulate the composition of fleets (how many bicycles, how many legal e-bicycles, and how many legal e-scooters), and select among a wide range of contending proposals that other localities had before COVID-19 struck. Yet in some areas where

<sup>78</sup> [N.Y. Vehicle & Traffic Law, § 1242\(3\)\(b\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8); [N.Y. Vehicle & Traffic Law, § 1281\(2\)\(b\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

<sup>79</sup> [N.Y. Vehicle & Traffic Law, § 1242\(3\)\(c\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8); [N.Y. Vehicle & Traffic Law, § 1281\(2\)\(c\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10).

shared-systems were well established prior to “shelter in place” orders, they have continued in operation. Levels of use reveal, during a time of drastically reduced automobile traffic and social distancing requirements, that individual mobility devices of all types offer distinct advantages. Initial evidence from South Korea suggests that as public health restrictions are eased, use of shared system devices will rebound so long as the companies offering them remain in business.

To move from allowing individually owned or rented legal e-bicycles and legal e-scooters, on city, town, or village roads, to issuing permits to companies that will make them available on streets or sidewalks throughout a community for on-demand rental constitutes a major step. Obviously, it has the potential to result in a significant jump in magnitude—from a few devices to tens, hundreds, even thousands in New York’s larger cities. The ease with which one can rent a shared device invariably leads to spontaneous use by inexperienced riders. Where the operator’s customers should be allowed to park and thereby end the rental becomes a serious question. If the community draws seasonal visitors or is the site of events that attract a large audience, enforcement of use and parking regulations will likely prove even more challenging.

Many municipalities in other states have found it useful to explore this new and promising, but potentially disruptive mode of mobility by way of small-scale pilot programs—with licenses set to run for a year or less and the program subject to evaluation and revision prior to renewal. Such an approach allows a community to adjust to the unfamiliar, to learn where issues lie and how to address them, and to build an adequate administrative and enforcement structure. Designing and managing a shared system program—evaluating applications from potential system operators, monitoring subsequent performance, adjusting program parameters in response to usage patterns and new equipment capabilities, adjusting fees and device allocations—will require a significant deployment of staff, staff capable of responding to an evolving phenomenon.

Those who have faced these challenges elsewhere advise beginning with a small shared system program, one with tight limits on system operators, the total number of shared devices, and where, when, and how those devices can be ridden and parked. Communities that have taken a more laissez faire approach or been caught without adequate regulations in place have, in general, experienced

higher levels of negative public reaction, more widespread disregard of traffic laws, and substantial difficulty in subsequently tightening restrictions on riders and operators.

Fortunately, a shared system's underlying technology can be harnessed in the service of enforcement and assessment of the impact of the new service. The companies offering shared systems all track the location of their bicycles, bicycles with electric assist, and electric scooters electronically. That makes it possible to employ geofencing<sup>80</sup> to enforce regulations specifying areas of lower speed limits or zones in which legal electric mobility devices may not be operated or parked. A community's fee structure can be used to hold system operators responsible for their customers' violations, leaving it to the operators to pass any resulting charges back onto the responsible parties. Fines and tolls imposed on rented automobiles have long followed this path.

Tracking also makes it possible, through data-access or reporting requirements, to monitor shared system use in order to evaluate the performance of an individual operator, the utilization of its current fleet, and, more broadly, how shared devices are being used by a community's citizens and visitors. Future permit cycles can be adjusted in the light of this information.

A review of the draft shared system ordinance, included in the appendix, will suggest additional issues a community may want to consider as it deliberates over whether, when, and how to allow shared systems to operate within its boundaries. (Appendix-p. 16.)

Shared systems will be drawn to New York's largest population concentrations. All of the most likely metropolitan areas are segmented into multiple cities, towns, and villages. Many riders of shared-system devices will be blind or indifferent to these communities' respective boundaries and differing regulations. For this reason, neighboring municipalities may find it useful to consult with one another when developing their approaches to shared systems. As previously observed, when one community that is ready to proceed adjoins one that is not,

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<sup>80</sup> "Geofencing" refers to the use of GPS and other forms of geolocation to signal to a device when it has passed into territory with distinct rules of operation or parking. The programmed response can range from simply alerting the operator to limiting speed or continuing the rental until the device is parked in an authorized location.

the latter may find it necessary to enact and publicize a ban backed by effective enforcement measures. (See section II-A.)

An increasing number of communities with shared-system programs are regulating the nightly redeployment of shared bicycles, bicycles with electric assist, and electric scooters in order to assure that areas populated by the young and affluent are not served to the exclusion of minority and low-income neighborhoods. Common approaches include specifying proportions of each operator's fleet that must be deployed to various neighborhoods each night and providing financial encouragement in the form of daily fees that vary according to where a device is operated and parked. The same policy concerns have led communities to require that shared system operators make provision for subscribers to pay in cash (rather than by personal credit or debit card). Some have gone further and arranged for subsidized use by low income individuals.

#### **D. Local Regulations Will Need to Include Meaningful Penalties for Non-Compliance**

The most carefully tailored rules for e-bicycle and e-scooter use will founder if they are not communicated effectively and enforced. Fines and the removal and impoundment of improperly ridden or parked legal electric mobility devices are key ingredients of a complete regulatory scheme. Furthermore, placing such remedies on the books will have little effect if law and code enforcement officials are fully occupied with other duties. Having even small numbers of enforcement personnel focused on these new devices as they are introduced can have a large effect. Funding such positions along with overall program management is an important use of shared-system fees. Furthermore, as already suggested, to the extent that shared systems are involved, giving operators a meaningful financial stake in the level of compliance by their customers warrants consideration. An operator that will be fined and bear expenses upon the removal and storage of its devices should feel pressure to educate its users about local parking requirements and rules of the road and to drop subscribers who violate them repeatedly.

## E. Reviewing Local Regulation of Bicycles, Skateboards, EPAMDs, and In-line Skates for Consistency

New York communities vary enormously in the degree to which they regulate the use of bicycles and other non-motorized personal mobility devices. Absent local prohibition, bicycles, skateboards, and in-line skates can be ridden on sidewalks, the default position under New York Law.<sup>81</sup> Segways and their more recent variant, hoverboards, cannot be, unless authorized by local ordinance.<sup>82</sup> If legal e-bicycles and e-scooters are being kept off sidewalks and out of other pedestrian zones or subjected to speed limits, arguments of consistency may point toward comparable treatment of these other forms of wheeled mobility that routinely attain speeds greater than most pedestrians.

## F. Adjusting Existing Ordinances Limited to “Motor Vehicles”

As previously noted, the new law removes bicycles with electric assist and electric scooters from the “motor vehicles” category contained in the state’s Vehicle and Traffic Law. As a consequence, any ordinance that employs that phrase such as one authorizing and regulating the towing and impounding of illegally parked motor vehicles or defining moving traffic or parking violations may not, unless modified, be understood as applying to these legal electric mobility devices. Communities may wish to amend some of them in order to reach legal e-bicycles, legal e-scooters, or both.

# IV. The Enforcement Challenge

Experience in other states instructs that no matter how clear the rules, signs, and electronic reminders, significant numbers of those riding these legal electric mobility devices will fail to comply. That has proven true of such clear-cut mandates as “wear a helmet,” “don’t ride on sidewalks,” and “one person per scooter.” It has also been the case with the universal insistence that e-bicycles and e-scooters adhere to rules of the road applicable to motor vehicles and conventional bicycles, including observance of all traffic signals and signs.

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<sup>81</sup> Only motor vehicles are banned. [N.Y. Vehicle & Traffic Law § 1225-a](#). [N.Y. Gen. Mun. Law § 180](#) does authorize municipalities to regulate the use of bicycles, and some New York cities have limited their use on sidewalks to young children.

<sup>82</sup> [N.Y. Vehicle & Traffic Law § 1271\(2\)](#).

To the extent that a community cares about traffic safety and minimizing the risk to those who ride legal e-bicycles and legal e-scooters, and also the risk of injury or death their behavior can pose for bicyclists and pedestrians, especially pedestrians with impaired vision or mobility, it must treat enforcement of the rules laid down by state law and its regulations as a serious matter. Education in safe and lawful riding, conducted both on the street and electronically, will be one important ingredient; clear signage, another. But without the full engagement of law enforcement and other city personnel responsible for the spaces where these vehicles will be operated and parked, those measures alone will be insufficient.

With legal e-bicycles and legal e-scooters that are part of shared systems, “no-ride,” “no-park,” and “slow-down” zones can be enforced (although hardly with perfect precision) by geofencing. In addition, as previously suggested, shared-system operators can and should be licensed on terms that give them a stake in the level of their customers’ compliance. Several provisions in the draft shared system ordinance attempt to do this. (Appendix-p. 16.)

Such leverage is possible because the shared system operators employ GPS tracking. As a consequence, with the time and location of a traffic or parking violation and the unique identification number of the legal e-bicycle or e-scooter involved, a shared system operator can associate the incident with a specific customer. Just as car rental companies can and do charge their customers for fines and tolls accumulated during a rental, shared system operators can, if they choose, do the same.

## V. Liability Issues

Predictably, legal e-bicycle and legal e-scooter riders will be involved in accidents resulting in injury or death to themselves. How they ride and park will also, inevitably, cause harm to others. State law does not require insurance of either shared-system operators or individual owners of a personal legal electric mobility device. Under the terms of service imposed by most shared system companies, the customer assumes all risk, absolves the operator of liability, and agrees to indemnify the operator against all claims arising out of a ride.



At a minimum, most communities are likely to want to require that any licensed shared system operator agree to indemnify the municipality against any and all claims arising out of its customers' use of shared devices (including any liability asserted under New York law for damage resulting from road defects). Many will also want to insist that shared system operators maintain substantial levels of liability insurance. The draft shared system ordinance does both. (Appendix-p. 30, § DDD-13.)

## VI. The Legal Status of Micromobility Devices not Covered by the New Law

### A. Devices that Remain “Street Illegal”

#### *1. Those without Pedals or Otherwise Failing to Qualify as Legal E-Bicycles and Weighing More than 100 Pounds*



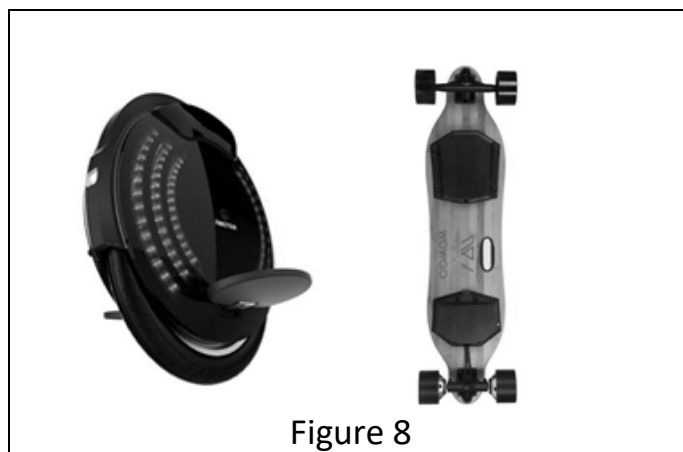
Figure 7

The “scooter” shown in Figure 7 illustrates an uncertain case. Its lack of pedals removes it from the bicycle with electric assist category. Consequently, the power of the electric motor is not a factor so long as it is constrained to propel the device no faster than 20 miles per hour. Having a seat does not prevent it from qualifying as a legal e-scooter under the new law. However, if, as is likely,



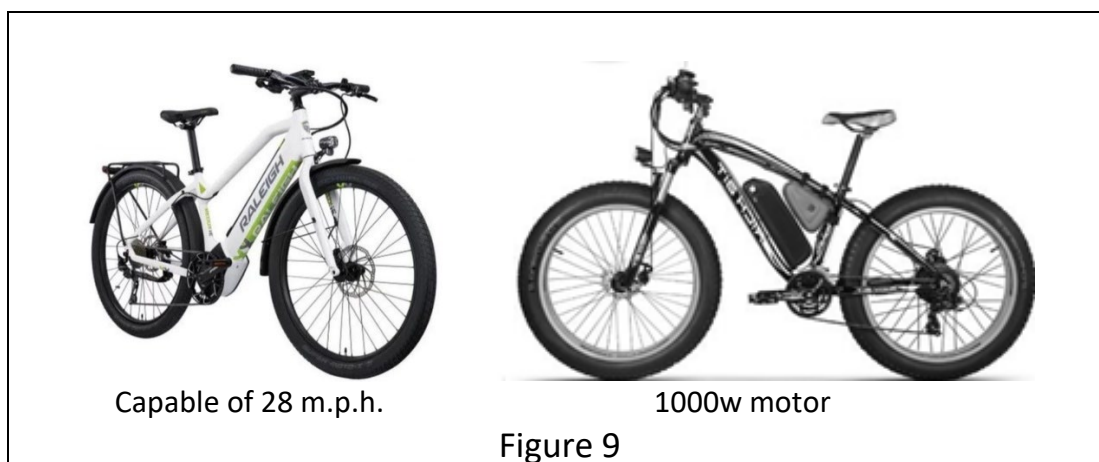
this scooter weighs more than 100 pounds, that alone would disqualify it.<sup>83</sup> Assuming that to be true, the vehicle in Figure 7 might qualify as a “limited use motorcycle” under New York law (see section VII-B-1). If so, to be ridden legally in New York, the vehicle would have to be registered and the operator would need to hold a driver’s license.

## *2. Devices without Pedals and Handlebars*



The handlebar requirement prevents powered mono-cycles and powered skateboards (Figure 8) from qualifying as electric scooters. Lacking pedals, they cannot be legal e-bicycles. In New York, their use on public streets or sidewalks remains illegal.

## *3. Devices that are too Fast or too Powerful*



<sup>83</sup> [N.Y. Vehicle & Traffic Law § 114-e](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 2).

The power or potential speed of a bicycle with electric assist (Figure 9) or the maximum speed of an electric scooter (Figure 10) can, alone, prevent the device from qualifying under the act. An operator's holding a more powerful device to a slow speed does not render it legal. Since maximum speed and wattage are far less obvious to law enforcement than, say, the presence of handlebars, New York's legislation contains a labeling mandate that takes effect on June 1, 2022. As of that date, all bicycles with electric assist operated on a public highway or street in the state will be required to carry a manufacturer's label providing their class, maximum motor-assisted speed, and wattage.<sup>84</sup> A comparable label on all electric scooters must state their maximum motor-assisted speed, wattage, and the number of riders for which the scooter was designed.<sup>85</sup>



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<sup>84</sup> [N.Y. Vehicle & Traffic Law § 1242\(11\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8).

<sup>85</sup> [N.Y. Vehicle & Traffic Law § 1282\(9\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 10). Neither the “number of passengers for which designed” nor “wattage” bear on the legality of a device under the “electric scooter” definition in the 2020 law. They appear to be an inadvertent carryover from the 2019 bill that the governor vetoed in December.

## B. Some Exceptions

### 1. Those that Qualify as a “Limited Use Motorcycle” but only if Registered



Classic “mopeds,” scooters of the Vespa style (see Figure 7) and other low powered motorcycles—which fail to qualify as bicycles with electric assist because they are powered by internal combustion engines or because they lack pedals (Figure 10) or as electric scooters because of weight or speed—are likely to fall within the motor vehicle category of “limited use motorcycle” under New York law.<sup>86</sup> Limited-use motorcycles must be registered with the Department of Motor Vehicles, and their operator must be licensed. Depending on their maximum speed, insurance may also be required.<sup>87</sup>

### 2. The Segway and its Successors

Like most other states, New York amended its Vehicle and Traffic law over a decade ago to allow use of Segways. The pertinent section defines the generic category, “Electric Personal Assistance Mobility Device” (EPAMD), as follows:

Every self-balancing, two non-tandem wheeled device designed to transport one person by means of an electric propulsion system with an average output of not more than seven hundred fifty watts (one horsepower), and the maximum speed of which on a paved level

<sup>86</sup> [N.Y. Vehicle & Traffic Law §121-b.](#)

<sup>87</sup> N.Y. Dept. of Motor Vehicles, Register a Moped, <https://dmv.ny.gov/registration/register-moped>.

surface, when propelled solely by its electric propulsion system while ridden by an operator weighing one hundred seventy pounds, is less than twelve and one-half miles per hour.<sup>88</sup>

Although the statutory provisions governing the operation of EPAMDs<sup>89</sup> are not identical to those that the new law applies to legal e-scooters, they appear to have served as an influential template. There is one important difference. EPAMD operators, of all ages, must wear a helmet.<sup>90</sup> The 2020 e-bicycle and e-scooter legislation contains such requirement only for those operating a “class three bicycle with electric assist” (the category limited to New York City) and for electric scooter operators sixteen or seventeen years old. In addition, since those operating legal e-bicycles must comply with the statutory provisions governing conventional bicycles,<sup>91</sup> they are required to assure that any young passengers (under 14) whom they are carrying on it wear a helmet.<sup>92</sup> (As discussed in section III-B-3, the statute also specifically authorizes New York cities, towns, or villages to impose a helmet requirement on all e-bicycle and e-scooter operators.)

As is now the case for bicycles with electric assist and electric scooters, New York law gives cities, towns, and villages broad authority to regulate whether, where, when, and how EPAMDs are operated on the public roads and sidewalks within their boundaries.<sup>93</sup>

Although hoverboards and other self-balancing devices with two non-tandem wheels may fail to qualify as legal e-scooters due to their lack of handlebars, they may, nonetheless, fit the EPAMD definition. It has no such requirement. (See Figure 12.) If a community has EPAMD regulations, it may want to reconcile them with any legal e-scooter ordinance it adopts.

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<sup>88</sup> [N.Y. Vehicle & Traffic Law § 114-d.](#)

<sup>89</sup> [N.Y. Vehicle & Traffic Law §§ 1270 – 1277.](#)

<sup>90</sup> [N.Y. Vehicle & Traffic Law § 1276.](#)

<sup>91</sup> [N.Y. Vehicle & Traffic Law § 1242\(1\)](#) (added by 2020 N.Y. Laws ch. 58, Part XX, § 8).

<sup>92</sup> [N.Y. Vehicle & Traffic Law § 1238.](#)

<sup>93</sup> [N.Y. Vehicle & Traffic Law § 1271.](#)



Non-tandem wheels plus self-balancing with a maximum speed of 12.5 m.p.h. equals an EPAMD

Figure 12

### *3. Electrically Powered Devices Used by Individuals with Impaired Mobility*



Figure 13

Electric mobility assistance devices of all kinds, weights, speeds, and sizes can be operated on sidewalks and, where necessary, on roads and streets throughout

the state so long as they are, to use the words of the statute, “operated or driven by a person with a disability.”<sup>94</sup>

## VII. Helpful Resources

Several national organizations have developed materials designed to assist communities to plan for and regulate shared systems. Examples include:

- Transportation for America, which has produced a “Shared Micromobility Playbook,” online at: <https://playbook.t4america.org/>
- The National Association of City Transportation Officials (NACTO), which offers Guidelines for the Regulation and Management of Shared Active Transportation at: <https://nacto.org/home/shared-active-transportation-guidelines/>
- The Mobility on Demand Learning Center: <https://learn.sharedusemobilitycenter.org/>
- The Open Mobility Foundation, focused on the development of open-sourced software to be employed in the management of shared systems: <https://www.openmobilityfoundation.org/>

Anyone desiring to consult the collection of ordinances governing e-scooters and e-scooter rental (and underlying state statutes) upon which this guide drew will find it, together with a wide range of commentary on developments in the business, technology, law, and transportation planning for e-scooters, e-bicycles, and other micromobility devices, at: <http://scooter-regulation.access-to-law.com/>.

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<sup>94</sup> [N.Y. Vehicle & Traffic Law § 125\(a\)](#).

## Appendix

### Five Draft Ordinances – An Introduction

The following draft ordinances have been prepared to accompany *Regulating E-Bicycles and E-Scooters: Issues and Options* (2022).

They are intended to serve as “templates” rather than “models.” That is true for three reasons. First, at bottom they lay out alternatives instead of presenting a single approach. Differences in climate, topography, degree of urbanization, and the amount of previous integrated transportation planning will result in communities having very different responses to the options presented by New York State’s new legislation. Some communities may be ready to embrace the presence of legal e-bikes, legal e-scooters, and their being offered for rent in scattered public locations—locations where the devices have been left by previous riders. Others may choose to ban either or both of these legal electric mobility devices from their streets and sidewalks, at least for the time being, or to allow them in but exclude app-based rental services. The draft ordinance regulating shared systems does assume, however, that a community admitting one or more of them will also want to regulate individually owned devices of the same types, the subject of a second template. Standing by itself the shared system draft ordinance lacks general provisions governing the safe operation and parking of legal e-bicycles and e-scooters.

A second reason these should be viewed as templates, not models, is that their approach and language will need to be integrated with and conformed to a community’s treatment of conventional bicycles, skateboards, and the like. That may well require altering the language employed in these sections and adding specific cross-references. Finally, these provisions remain subject to ongoing revision, influenced by the pace of change in the personal mobility sector and the range of approaches adopted by New York cities, towns, and villages. As new patterns emerge in the ordinances adopted under this recently adopted state law, they will be reflected here, in the form of additions to or revisions of the templates, through amendments to the accompanying guide, or both. All such changes will be indicated by way of date and version number.

That leads to a request that any suggested improvements to one or more of the templates be sent to the author: [peter.martin@cornell.edu](mailto:peter.martin@cornell.edu).

Currently, there are five draft ordinances. All ignore the 2020 law's provisions that are limited to New York City. Their aim is to assist state's other cities, towns, and villages. The first four treat legal e-bicycles and e-scooters equivalently except on those points where the New York statute makes a distinction. Since communities may, quite reasonably, decide to subject bicycles, legal e-bicycles, and legal e-scooters to different restrictions, some may wish to draw upon more than one of these draft ordinances.

New York's new law does not force legal e-bicycles, legal e-scooters, or shared systems on communities that are not ready for them. The set of templates includes one prohibiting the operation of both legal e-bicycles and e-scooters throughout a municipality. (Its provisions can readily be modified to ban one but not the other, legal e-scooters, for example, but not legal e-bicycles.) A second template, which may or may not be employed with the first, prohibits the operation of all bicycle, legal e-bicycle, and legal e-scooter shared systems. A community that desires to exclude rental operations of this type need do nothing under the new law. Their presence requires local authorization. The purpose of the template banning them is simply to provide some clarity about the remedies to which a municipality can and will resort if, for example, unauthorized shared e-scooters are ridden into and left within its boundaries.

The next two ordinances regulate the operation of these devices and establish a framework for the licensing of shared rental systems. Both contain provisions that resolve issues in ways with which communities may disagree. To repeat: these are templates, not models. Their aim is simply to flag issues that each of New York's cities, towns, villages will want to address in the light of its distinct situation. The invitation to revise, implicit throughout, is emphasized in the case of numerical provisions—such as speed limits and fines. The templates contain specific figures, but their placement in square brackets highlights the importance of considering whether different numbers would be more consistent with similar provisions in a community's code. Square brackets are also used to signal other template elements that need to be tailored to local needs and nomenclature.



The final template is offered for communities that desire to remove the restriction otherwise imposed by the 2020 law banning bicycles with electric assist from using highways with speed limits in excess of 30 miles per hour. In many of the state's non-urban areas that restriction (which does not apply to conventional bicycles) effectively amounts to a ban.

## **An Ordinance Prohibiting the Operation of Electric Scooters and Bicycles with Electric Assist**

### *Chapter AAA Bicycles with Electric Assist and Electric Scooters*

#### *§ AAA-1 Definitions*

Unless otherwise stated, the words and expressions used in this chapter shall have meanings as follows:

Bicycle with electric assist

A device meeting the definition of “class one” or “class two” bicycle with electric assist in N.Y. Vehicle & Traffic Law § 102-c.

Electric scooter

A device meeting the definition in N.Y. Vehicle & Traffic Law § 114-e.

Public highway

A public way meeting the definition in N.Y. Vehicle & Traffic Law § 134.

Sidewalk

A pedestrian way meeting the definition in N.Y. Vehicle & Traffic Law § 144.

#### *§ AAA-2 Prohibition*

Within this [city/town/village] no person shall operate or park a bicycle with electric assist or an electric scooter on any public highway, crosswalk, sidewalk, multiuse path, pedestrian mall or path, park or public space, municipal or private parking lot open to and used by the general public.

#### *§ AAA-3 Penalties*

(a) A person violating this chapter commits an offense.

(b) A police officer or other duly authorized public official may issue a citation for any violation of this chapter.

(c) A first violation of this chapter shall be punished by a fine of not less than [50] dollars per violation.

(d) A second violation of this chapter shall be punished by a fine of not less than [250] dollars per violation.

## **An Ordinance Prohibiting the Operation of Shared Bicycle, Shared Bicycle with Electric Assist, and Shared Electric Scooter Systems**

### *Chapter BBB Shared Bicycle, Bicycle with Electric Assist, and Electric Scooter Systems*

#### *§ BBB-1 Definitions*

Unless otherwise stated, the words and expressions used in this chapter shall have the following meanings:

##### Operator

A company or person that engages in or operates a shared system business or enterprise.

##### Public highway

A public way meeting the definition in N.Y. Vehicle & Traffic Law § 134.

##### Shared bicycle system

A network of bicycles available for public use meeting the definition in N.Y. Vehicle & Traffic Law § 1243.

##### Shared bicycle with electric assist system

A network of bicycles with electric assist available for public use meeting the definition in N.Y. Vehicle & Traffic Law § 1243.

##### Shared electric scooter system

A network of electric scooters available for public use meeting the definition in N.Y. Vehicle & Traffic Law § 1282-10(a).

##### Shared system

A shared bicycle system, shared bicycle with electric assist system, electric scooter system, or any network offering more than one of these types of mobility devices.

##### Sidewalk

A public pedestrian way meeting the definition in N.Y. Vehicle & Traffic Law § 144.

*§ BBB-2 General Prohibition*

No person shall operate a shared bicycle, shared bicycle with electric assist, or shared electric scooter system within this [city/town/village].

*§ BBB-3 Entry from a Neighboring Community*

(a) No person shall bring a bicycle, bicycle with electric assist, or electric scooter that is part of a shared system into this [city/town/village] and operate or park it on any public highway, crosswalk, sidewalk, multiuse path, pedestrian mall or path, park or public space, municipal or private parking lot open to and used by the general public.

(b) Any violation of subsection (a) shall constitute a violation of § BBB-2.

*§ BBB-4 Penalties*

(a) A person violating this chapter commits an offense.

(b) A police officer or other duly authorized public official may issue a citation for any violation of this chapter.

(c) A first violation of this chapter shall be punished by a fine of not less than [50] dollars per violation.

(d) A second violation of this chapter involving a bicycle, bicycle with electric assist, or electric scooter from the same shared system shall be punished by a fine of not less than [250] dollars per violation.

(e) A third or subsequent violation of this chapter involving a bicycle, bicycle with electric assist, or electric scooter from the same shared system shall be punished by a fine of not less than [500] dollars per violation.

(f) Each day any violation of this chapter continues shall constitute a separate offense.

*§ BBB-5 Impoundment*

(a) Bicycles, bicycles with electric assist, or electric scooters operated or parked in violation of this chapter may be impounded or relocated by municipal employees or a municipal contractor as necessary to protect the health, safety, and welfare of the public or as otherwise authorized by law.

(b) The owner of an impounded bicycle, bicycle with electric assist, or electric scooter shall bear the cost of the municipality's enforcement, investigation, storage, and impoundment through fees charged on any impounded device in accordance with the fee schedule established by resolution of the [city council/town board/village board].

(c) No operator may retrieve a bicycle, bicycle with electric assist, or an electric scooter without first demonstrating proof of ownership and payment of the applicable impoundment fee.

## **An Ordinance Governing the Operation of Electric Scooters, Bicycles with Electric Assist, and Bicycles**

### *Chapter CCC Bicycles with Electric Assist and Electric Scooters*

#### *§ CCC-1 Definitions*

Unless otherwise stated, the words and expressions used in this chapter shall have meanings as follows:

##### ADA ramp

A combined ramp and landing to accomplish a change in level at a curb or building entrance in order to provide access to pedestrians using wheelchairs.

##### Bicycle

A device meeting the definition in N.Y. Vehicle & Traffic Law § 102 and lacking a motor.

##### Bicycle with electric assist

A device meeting the definition of a “class one” or “class two” bicycle with electric assist as in N.Y. Vehicle & Traffic Law § 102-c. (The term does not include “class three” bicycles with electric assist, which cannot, under N.Y. Vehicle & Traffic Law § 1242(10), lawfully be operated in this [city/town/village].)

##### Electric mobility device

Any bicycle with electric assist or electric scooter. It does not include an electrically driven mobility assistance device operated or driven by a person with a disability, a bicycle, or an electric personal assistive mobility device.

##### Electric scooter

A device meeting the definition in N.Y. Vehicle & Traffic Law § 114-e.

##### Furnishings zone

That portion of a sidewalk adjacent to the curb that contains elements such as street trees, signal poles, street lights, bicycle racks or other street furniture. This area does not include the curb itself or the pedestrian through zone.

Multiuse path

A public way designed and designated for use by pedestrians, those riding bicycles, and, to the extent permitted, those employing other non-motorized conveyances (such as in-line skates, roller skates, skateboards, and kick scooters).

Pedestrian through zone

That portion of a sidewalk used primarily by pedestrians for travel and for accessing transit or buildings. It does not include the furnishings zone.

Public highway

A public way meeting the definition in N.Y. Vehicle & Traffic Law § 134.

Sidewalk

A pedestrian public way meeting the definition in N.Y. Vehicle & Traffic Law § 144.

*§ CCC-2 Scope*

The provisions of this chapter apply to any electric mobility device operated or parked on any public highway, crosswalk, sidewalk, multiuse path, pedestrian mall or path, park or public space, municipal or private parking lot open to and used by the general public.

*§ CCC-3 Age of Operator*

(a) No person under the age of [16] shall operate an electric mobility device.

(b) No person [16] years of age or older shall allow any person less than [16] years of age to operate an electric mobility device.

*§ CCC-3 General Applicability of Traffic Laws*

(a) Every person operating an electric mobility device is subject to all of the duties applicable to the driver of a vehicle and the rider of a bicycle under New York State law and the traffic regulations of this [city/town/village]. The operator shall yield the right-of-way to a pedestrian at all times.

(b) Before making a turn, slowing, or stopping, a person operating an electric mobility device shall employ the hand signals required of bicyclists by N.Y. Vehicle & Traffic Law § 1237.



*§ CCC-4 Where Operation Is Permitted*

(a) An electric mobility device may be operated in any bicycle lane or on a public highway if its maximum speed limit does not exceed [30] miles per hour.

(b) When operated on a public highway, an electric mobility device shall be operated as near to the right-hand side of the highway as judged safe by the operator to facilitate the movement of any overtaking motor vehicle, bicycle, other electric mobility device, or electric personal assistive mobility device.

(c) No person shall operate an electric mobility device on a highway with a maximum speed limit exceeding [30] miles per hour, unless the highway has a separately marked bicycle lane and the device is operated within that bicycle lane.

(d) No person shall operate an electric mobility device on a sidewalk or in any other public area or pathway specifically limited to pedestrians.

(e) No person shall operate an electric mobility device on public landscaping, amenities, or art.

(f) No person shall operate an electric mobility device on a multiuse path unless it has been officially posted for such use.

[(g)] [If there are other specific areas or public ways from which bicycles with electric assist, electric scooters, or electric mobility devices of all types should be excluded they can be added here.]

*§ CCC-5 Safe Operation*

No person shall operate an electric mobility device:

(a) in violation of posted restrictions set by local authorities,

b) in a bicycle lane traveling in the opposite direction to adjacent motor vehicles in the public highway, unless the lane is specifically designated otherwise,

(c) between vehicles traveling or standing in the same direction within marked lanes of a public highway,

(d) two or more abreast with another electric mobility device, an electric personal assistive mobility devices, or a bicycle,

(e) with any passenger in addition to the operator unless the bicycle with electric assist is designed and equipped for a second rider,

(f) with either the device or the operator attached, by any means, to any vehicle on the public highway,

(g) while carrying any package, bundle, or article that prevents the operator from keeping at least one hand upon the handlebars or engaging in any other activity that interferes with steering, balance, or the operator's attention,

(h) while wearing any headset covering both ears or wearing earplugs in both ears,

(i) while using any portable electronic device (as defined in N.Y. Vehicle & Traffic Law § 1225-d),

(j) while using a mobile telephone to engage in a call while in motion (as defined in N.Y. Vehicle & Traffic Law § 1225-c),

(k) while under the influence of alcohol or drugs (as defined in N.Y. Vehicle & Traffic Law §§ 1242-a, 1289),

[(l)] [If the municipality wishes to prohibit operation after a certain hour at night that could be added as an additional clause, *e.g.*, "between the hours of 9:00 p.m. and 6:00 a.m."]

#### *§ CCC-6 Equipment*

(a) No person shall operate an electric mobility device unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least [100] feet, except that it shall not be equipped with nor shall the operator use any siren or whistle.

(b) No person shall operate an electric mobility device unless it is equipped with a brake that will bring the device from its maximum speed to a full stop within a distance of [15] feet on dry, level, clean pavement.

(c) No person shall operate an electric mobility device during the period from one-half hour after sunset to one-half hour before sunrise unless it is equipped with and the operator has illuminated a lamp on the front which shall emit a

white light visible during hours of darkness from a distance of at least [500] feet to the front, with a red light visible to the rear for [300] feet, and at least one light visible for [200] feet on each side. The operator or device shall also be carrying reflective material of sufficient size and reflectivity to be visible from both sides for [500] feet when directly in front of lawful lower beams or head lamps on a motor vehicle or, in lieu of such reflective material, with a lighted lamp visible from both sides from a distance of at least [500] feet.

*§ CCC-7 Speed*

(a) No person shall operate an electric mobility device in excess of the following speeds:

- (1) an electric scooter in excess of [15] miles per hour, a bicycle with electric assist in excess of [20] miles per hour, or
- (2) a speed that is reasonable and prudent under the circumstances, taking conditions and actual and potential hazards into account, or
- (3) the speed limit posted for electric mobility devices on multiuse paths.

(b) A person shall control the speed of an electric mobility device as necessary to avoid colliding with any object, person, vehicle or other conveyance on, entering, or adjacent to the highway, in compliance with legal requirements and the duty of all persons to exercise reasonable care toward others.

*§ CCC-8 Emerging from Alley or Driveway and Entering a Public Highway*

The operator of a bicycle or electric mobility device emerging from an alley, driveway, or building shall, upon approaching a sidewalk, yield the right-of-way to all pedestrians approaching on the sidewalk and, upon entering the public highway, come to a full stop, yielding the right-of-way to all vehicles, bicycles, and electric mobility devices approaching on the public highway.

*§ CCC-9 Obedience to Traffic Control Devices*

(a) Any person operating a bicycle or electric mobility device shall obey the instructions of all traffic-control signals, signs and other control devices applicable to vehicles, unless otherwise directed by a police officer or other person duly authorized to regulate traffic.

(b) Whenever publicly authorized signs indicate that no right or left or U-turn is permitted, no person operating a bicycle or electric mobility device shall disobey the sign. Upon dismounting from the bicycle or electric mobility device to make such turn, such person may proceed in accordance with the regulations applicable to pedestrians.

*§ CCC-10 Parking*

(a) A person shall not park a bicycle or electric mobility device on private property of another without permission.

(b) A person may park a bicycle or electric mobility device in officially designated bicycle or electric mobility device parking areas, in a sidewalk furnishings zone, or any other place where it is not otherwise prohibited by this or another ordinance, state law, federal law, or publicly authorized signs.

(c) No person shall attach or secure a bicycle or electric mobility device to public or private property in a manner that may damage, impair, or render the property unusable.

(d) No person shall leave a bicycle or electric mobility device lying on its side on or adjacent to any sidewalk or multiuse path or park a bicycle or electric mobility device in any of the following places:

- (1) within a designated no-parking zone,
- (2) within a designated public transit stop, except in designated bicycle racks or designated bicycle or electric mobility device parking areas,
- (3) on a public sidewalk obstructing the pedestrian through zone or on a multiuse path,
- (4) on any part of an ADA ramp or in any other manner that would restrict the movement of persons with disabilities,
- (5) In designated and marked special use zones, including, but not limited to, commercial service zones, passenger loading zones, customer service zones, and valet zones,

- (6) In a manner that obstructs fire suppression appurtenances, building entryways, exits, or driveways,
- (7) in a manner that obstructs street furniture that pedestrians access, including but not limited to benches and parking pay stations,
- (8) on those public highways without curbs in a manner so as to force a pedestrian to walk in the traveled portion of the roadway,
- (9) within a designated handicapped parking space and adjoining clear zones,
- (10) in front of or within a public or private driveway or the entrance to an alley,
- (11) within any portion of a sidewalk, street, trail, or building entrance or exit that provides access to disabled persons in accordance with the American with Disabilities Act,
- (12) within [15] feet of a fire hydrant,
- (13) within a pedestrian crosswalk,
- (14) within [20] feet of the driveway entrance to any fire station or on the side of the street opposite the entrance to any fire station within [75] feet of the entrance when properly posted,
- (15) within a designated turn or bicycle lane,
- (16) within the traveled portion of a public highway, including an intersection and pedestrian crossing,
- (17). within a landscaped or planted area,
- (18). within a roadway median,
- (19). in front of public art, or
- (20). within an area scheduled and posted for cleaning or snow removal.

(e) If a bicycle or electric mobility device is part of a shared system issued a permit under Chapter DDD, a person shall park the device only in designated bicycle or electric mobility device parking areas. [Note: If the municipality has not adopted a shared system ordinance or it has but doesn't want to limit parking of the devices to specific designated areas, this subsection should not be included.]

*§ CCC-11 Penalties*

(a) A person commits an offense if the person performs an act prohibited by this chapter or fails to perform an act required by this chapter.

(b) A police officer or other duly authorized public official may issue a citation for any violation of this chapter.

(c) A first violation of this chapter shall be punished by a fine of not less than [50] dollars per violation.

(d) A second violation of this chapter shall be punished by a fine of not less than [200] dollars per violation.

(e) A third or subsequent violation of this chapter within [one] year of conviction of a first violation shall be punished by a fine of not less than [500] dollars per violation.

(f) Each day any violation of this chapter continues shall constitute a separate offense.

*§ CCC-12 Impoundment*

(a) Bicycles or electric mobility devices that are operated or parked in violation of this chapter or are inoperable or abandoned may be impounded or relocated by [city/ town/ village] employees or a [city/ town/ village] contractor as necessary to protect the health, safety, and welfare of the public or as otherwise authorized by law.

(b) The owner of an impounded bicycle or electric mobility device shall bear the cost of the [city/town/village]'s enforcement, investigation, storage, and impound through fees charged on any impounded device in accordance with the fee schedule established by resolution of the [city council/town board/village board].

(c) No person may retrieve an impounded bicycle or electric mobility device without first demonstrating proof of ownership and payment of the applicable impound fee.

## **An Ordinance Regulating the Operation of Shared Bicycle, Shared Bicycle with Electric Assist and Shared Electric Scooter Systems**

### *Chapter DDD Shared Bicycle, Bicycle with Electric Assist, and Electric Scooter Systems*

#### *§ DDD-1 Definitions*

Unless otherwise stated, the words and expressions used in this chapter shall have the following meanings:

ADA ramp

A combined ramp and landing to accomplish a change in level at a curb or building entrance in order to provide access to pedestrians using wheelchairs.

Allotted fleet size

The maximum number of permitted shared bicycles, shared bicycles with electric assist, and shared electric scooters that a permit holder is authorized to have available at any single point in time per day.

Applicant

An entity that has formally applied for a shared system permit but has not yet received one.

Application programming interface (API)

A set of functions and procedures allowing the creation of applications that access the features or data of an operating system, application, or other service.

Bicycle

A device meeting the definition in N.Y. Vehicle & Traffic Law § 102 and lacking a motor.

Bicycle with electric assist

A device meeting the definition of a “class one” or “class two” bicycle with electric assist in N.Y. Vehicle & Traffic Law § 102-c. (As used in this ordinance, the term does not include “class three” bicycles with electric assist, which cannot, under N.Y. Vehicle & Traffic Law § 1242(10), lawfully be operated here.)



Crosswalk

That portion of a public highway meeting the definition in N.Y. Vehicle & Traffic Law § 110.

Deployment

The initial placement of a shared bicycle, bicycle with electric assist, or electric scooter for availability on an individual day.

Driveway

An entrance to or exit from a public highway meeting the definition in N.Y. Vehicle & Traffic Law § 114.

Electric mobility device

Any bicycle with electric assist or electric scooter. It does not include an electrically driven mobility assistance device operated or driven by a person with a disability, a bicycle, or an electric personal assistive mobility device as defined in N.Y. Vehicle & Traffic Law § 114-d.

Electric scooter

A device meeting the definition in N.Y. Vehicle & Traffic Law § 114-e.

Extreme weather

Severe or unseasonal weather that may put shared device users at risk. Conditions may include but are not limited to snow events or icy conditions.

Free operator

A company, person, or philanthropic organization that engages in or operates a shared system but does not charge for its use.

Furnishings zone

That portion of a sidewalk adjacent to the curb that contains elements such as street trees, signal poles, street lights, bicycle racks or other street furniture. This area does not include the curb itself or the pedestrian through zone.

Geofencing

The use of Global Positioning System ("GPS"), Radio Frequency Identification ("RFID"), or other technology to create a virtual geographic boundary, enabling

software to trigger a response in a shared device when it enters or leaves a particular area.

Multiuse path

A public way designed and designated for use by pedestrians, persons riding bicycles, and, to the extent also permitted, those employing other non-motorized conveyances (such as in-line skates, roller skates, skateboards, and kick scooters).

Operable

A shared device that can be rented successfully, and all its physical and electronic systems used safely.

Operator

A company or person that engages in or operates a shared system business or enterprise.

Pedestrian through zone

That portion of a sidewalk used primarily by pedestrians for travel and for accessing transit or buildings. It does not include the furnishings zone.

Permit holder

The sole proprietorship, partnership, association, corporation, or governmental or nonprofit agency that is the named holder of a permit issued pursuant to this chapter.

Public infrastructure and property maintenance fee

An annual fee per allotted shared device paid by operators to repair, maintain, and build public infrastructure associated with bicycles and electric mobility devices.

Public highway

A public way meeting the definition in N.Y. Vehicle & Traffic Law § 134.

Public right-of-way use fee

A daily fee per available shared device, invoiced monthly and paid by operators.

Shared bicycle system

A network of bicycles available for public use meeting the definition in N.Y. Vehicle & Traffic Law § 1243.

Shared bicycle with electric assist system

A network of bicycles with electric assist available for public use meeting the definition in N.Y. Vehicle & Traffic Law § 1243.

Shared device

A bicycle, bicycle with electric assist, or electric scooter that is part of a shared system.

Shared electric scooter system

A network of electric scooters available for public use meeting the definition in N.Y. Vehicle & Traffic Law § 1282(10).

Shared system

A shared bicycle system, shared bicycle with electric assist system, shared electric scooter system, or any network offering more than one of these types of mobility devices.

Shared system permit

A permit issued by this [city/town/village] as provided in this chapter.

Sidewalk

A public pedestrian way meeting the definition in N.Y. Vehicle & Traffic Law § 144.

#### *§ DDD-2 Scope*

The provisions of this chapter apply to the operation of shared systems, including any shared devices, within this [city/town/village] on any public highway, crosswalk, sidewalk, multiuse path, pedestrian mall or path, park or public space, municipal or private parking lot open to and used by the general public.

#### *§ DDD-3 Permit Required; Permit Term and Fees.*

(a) Any operator wishing to operate a shared system within this [city/town/village] shall submit an application and secure a shared system permit, as issued by [name of office administering the program]. The decision to issue a

permit, its duration, and its allotted number of shared bicycles, bicycles with electric assist, and electric scooters is at the [city/town/village]'s sole discretion.

(b) Each permit shall be valid for no more than [1 year] from the date of issuance.

(c) The application fee, permit fee, and subsequent permit renewal fees, and other fees as applicable, shall be as provided in section DDD-16.

(d) All permit holders shall pay the [city/town/village] an annual public infrastructure, administration, and property maintenance fee specified in section DDD-16 per bicycle or electric mobility device, calculated upon the allotted fleet size requested and approved in the initial permit. Should an increase in allotted fleet size be approved in accordance with section DDD-6, this fee amount shall also be increased to reflect the increased allotted fleet size. The public infrastructure, administration, and property maintenance fee shall be devoted to covering the cost of installation, maintenance and repair of the [city/town/village]'s infrastructure and administration related to or necessitated by shared systems.

(e) All permit holders requesting an increase in their allotted fleet size above the amount identified in their initial permit shall, at the time that increase is approved, pay the additional public infrastructure, administration, and property maintenance fee for every additional bicycle or electric mobility device in accordance section DDD-16.

(f) Shared systems that are managed by free operators shall be required to secure a permit, but are exempt from the fees required in this section for each fiscal year in which the shared system continues to meet the criteria for free operators.

#### *§ DDD-4 Shared System Procedure*

(a) A shared device offered for use by a shared system operator may be placed on public property in any parking spot authorized under Chapter CCC, governing the operation of bicycles with electric assist and electric scooters.

(b) A user, having activated and used the device in accordance with the operator's rules, may leave the device in any parking spot authorized under Chapter CCC. The device is then available for use by another.

*§ DDD-5 Operations and Maintenance*

- (a) All operators shall have staffed operations located within this [city/town/village] for the purpose of maintaining and rebalancing the bicycles, bicycles with electric assist, and electric scooters within their fleets.
- (b) All operators shall have a twenty-four (24) hour customer service and complaint phone number for customers and others to report safety concerns, maintenance issues, complaints, or to ask questions.
- (c) Every shared device in the operator's fleet shall have the operator's name, phone number, and a unique identifier for the device that is clearly displayed and visible to the user and to others.
- (d) Any inoperable or unsafe shared device shall be removed from public availability within [24] hours of notice to the operator by any means by any individual or entity and shall be returned to full working order before being placed back into public availability.
- (e) In the event of extreme weather, the [city/town/village] may require that all shared devices be removed from the streets if safe operation is not deemed feasible.
- (f) The [city/town/village] may, in its sole discretion and without prior notice, remove any shared device in an operator's fleet from its current location if it is a matter of public safety or for some other public purpose. In such a case, the [city/town/village] will attempt to notify the operator as soon as reasonably practicable thereafter. The operator shall pay the cost of any such removal. The [city/town/village] will not be liable for any damages that occur as its result.
- (g) All operators shall halt their shared system operations daily at [9 p.m.]. Shared devices shall remain inactive until [6 a.m.] of the following day.

*§ DDD-6 Fleet Size Requirements*

- (a) Permitted bicycle share system operators shall have a minimum fleet size of [50] bicycles and a maximum fleet size of [100] bicycles.

(b) Permitted bicycle with electric assist share system operators shall have a minimum fleet size of [50] bicycles with electric assist and a maximum fleet size of [100] bicycles with electric assist.

(c) Permitted electric scooter share system operators shall have a minimum fleet size of [50] electric scooters and a maximum fleet size of [100] electric scooters.

(d) Permitted operators with a combination of bicycles, bicycles with electric assist, and electric scooters shall have a minimum fleet size of [60] devices and a maximum of [150] devices, provided that their fleet includes a minimum of [20] of each type.

(e) The number of bicycles, bicycles with electric assist, and electric scooters permitted under this program shall be limited to a cumulative total of [500].

(f) Each application for a shared system permit shall specify the operator's proposed fleet size and composition.

(g) The [city/town/village] may increase the number of bicycles, bicycles with electric assist, or electric scooters in a permit holder's allotted fleet size above the numbers requested in the initial application and limits specified in subsections (a) – (e) at its sole discretion and will consider doing so on a permit-by-permit basis. In order to obtain an increase in its allotted fleet size, a permit holder must demonstrate that, on average, each device in its fleet is being used more than [3] times per day. Permit holders may request an increase in their allotted fleet size up to one time per month, provided that at least [2] months have elapsed since their initial permit issuance. Each request will be subject to an application renewal fee, as provided in Section DDD-16(d).

#### *§ DDD-7 Safety*

(a) All bicycles used in systems issued a permit under this chapter shall meet the standards outlined in the Code of Federal Regulations (CFR) under Title 16, Chapter II, Subchapter C, Part 1512-Requirements for Bicycles. Additionally, permitted systems shall meet the safety standards outlined in the International Organization for Standardization (ISO) section 43.150-Cycles, subsection 4210.

(b) All bicycles with electric assist used in systems issued a permit under this chapter shall meet the definition of low-speed electric bicycles in 15 U.S. Code

§ 2085; and shall be subject to the same requirements as bicycles described in subsection (a).

(c) All electric scooters used in systems issued a permit under this ordinance shall meet any applicable standards established by the Consumer Product Safety Commission.

(d) All shared devices used in systems issued a permit under this chapter shall meet the equipment requirements of chapter CCC.

(e) The maximum motor assisted speed of all shared electric scooters used in systems issued a permit under this chapter shall be limited to [15] miles per hour.

(f) All permit holders shall provide a mechanism for both users and non-using members of the public to notify the permit holder of safety and customer service issues. At a minimum that shall consist of a 24-hour customer service number and an online form for reporting improper parking, unsafe operation, and other issues.

The online form must include, at minimum, the following fields:

- (1) First Name;
- (2) Last Name;
- (3) Email or Phone Contact;
- (4) Address, intersection, or coordinates of the issue;
- (5) Shared device ID; and
- (6) Nature of issue.

(g) All shared devices used in systems issued a permit under this chapter shall have visible language that provides the following information:

- (1) A notice that the use of a helmet is strongly recommended;
- (2) A notice that users are prohibited from riding on the sidewalk;
- (3) A unique identification number;
- (4) The name of the permit holder;

(5) The permit holder's customer service information in a font size that meets or exceeds ADA standards; and

(6) Any additional safety requirements specified in the permit.

*§ DDD-8 Deployment*

(a) An operator's employees and contractors shall only deploy shared devices at locations that comply with the parking regulations in Chapter CCC applicable to shared systems.

(b) An operator's employees and contractors shall only deploy shared devices in groupings with a combined length of no greater than [10] feet, immediately abutting one another; and at least [20] feet must be left clear between groupings of shared devices along the same block face.

(c) An operator's employees and contractors shall cease placing shared devices in front of any address or at coordinates provided by the [city/town/village], within [48] hours of receiving notice to do so.

(d) An operator's employees and contractors shall pull support and redeploying vehicles all the way up to, and parallel with, the curb for shared device loading and unloading, and shall not load or unload in a vehicle or bicycle lane, or in a manner that impedes travel in those lanes.

(e) An operator's employees and contractors shall comply with all applicable New York State and local laws. If, in its sole discretion, the [city/town/village] determines that a permit holder's redeployment or collection activities are being performed in an unsafe manner or in violation of applicable parking and traffic laws, that determination shall be grounds for permit revocation.

(f) If an operator has an allotted fleet size of over 100 devices, at least twenty percent (15%) shall be redeployed once per day to locations in underserved areas of the [city/town/village], as determined by the [city/town/village].

(g) All operators shall provide the [city/town/village] with a plan for equitable shared device deployment and service, including: education of, marketing to, and engagement with low-income, minority, non-English speaking, and zero-car populations. The plan should address such topics as how to use shared devices



safely, and the laws and regulations governing the use of bicycles and electric mobility devices.

(h) All operators shall provide information on how users can use their shared system without (1) a smartphone, and/or (2) a credit or debit card.

*§ DDD-9 Geofencing*

(a) The [city/town/village] shall maintain a list of areas within its boundaries that are to be:

- (1) geofenced to prevent all operation of shared devices;
- (2) geofenced to reduce the speed of bicycles with electric assist and electric scooters to a specific motor assisted speed limit; and
- (3) geofenced to prevent the parking of a shared device and ending of a ride.

(b) During temporary street or other right-of-way closures due to scheduled construction, special events, or other planned activities, the [city/town/village] may establish temporary geofenced areas upon providing operators with a [21]-day notice of the change.

*§ DDD-10 User education*

Permit holders must educate users on the safe and lawful operation of the shared device they are renting. At a minimum, at the time of user registration, and activation of rental, a permit holder must direct a user to:

- (a) comply with all traffic rules and signals;
- (b) avoid riding on sidewalks and other pedestrian areas;
- (c) ride and park only where permitted;
- (d) take no additional passengers;
- (e) avoid riding while impaired by alcohol or drugs; and
- (f) focus on balance and traffic, while maintaining full control at all times without the distraction of a mobile device or headphones.

*§ DDD-11 Inducing user compliance*

(a) Permit holders shall use their best efforts to ensure that users comply with all applicable New York State and local laws. At a minimum, permit holders shall distribute notifications, warnings, and fines, and shall suspend users' accounts for documented occurrences of repeated non-compliant behavior in accordance with subsection

(b). Permit holders shall submit a report to the [city/town/village] regarding notifications, warnings, fines and suspensions delivered to users on a monthly basis. Further details may be enumerated in the permit. Repeated failure by a permit holder's users to comply with applicable laws may be grounds for permit suspension or revocation.

(c) Permit holders shall suspend users who incur three documented violations of this chapter or of chapter CCC within a [3] month period.

(d) For each violation that has come to the [city/town/village]'s attention, it shall furnish the permit holder the scooter permit number, date, time and geolocation of the violation.

(e) Permit holders shall provide the [city/town/village], the first initial, last name and a unique identifier for each user whose conduct has violated either this chapter or chapter CCC.

(f) Any suspension of a user shall begin immediately upon notification from the [city/town/village] to the permit holder and continue for [30] days, or as determined by the [city/town/village].

*§ DDD-12 Data, Statistics, Reporting*

(a) Each shared device shall bear a unique alphanumeric identification number:

(1) Visible from a distance of [10] feet and not be covered by a branding or other marking; and

(2) Used in the operator's tracking and record-keeping systems to identify the shared device.

(b) All operators must include active GPS location tracking capabilities on each shared device to ensure the prompt location of damaged devices or devices in

disrepair, the site of reported unsafe and unlawful riding or parking, as well as to facilitate data collection and data sharing as outlined in this section.

(c) All operators shall provide users with a privacy policy that safeguards users' trip data, personal information, images, videos, and other recorded images collected by them in accordance with N.Y. Vehicle & Traffic Law §§ 1243(2), 1282(10)(b).

(d) All operators shall maintain a record of maintenance activities, including but not limited to the maintenance record for each device by identification number. These records shall be made available to the [city/town/village] upon request.

(e) All operators shall provide the [city/town/village], or a third-party researcher designated by the City, the following data on a monthly basis in a format approved by the [city/town/village]:

- (1) Aggregated breakdown of users by gender and age;
- (2) The number of bicycles, bicycles with electric assist, and electric scooters in circulation;
- (3) Daily, weekly and monthly number of active users;
- (4) Device usage, including:
  - i. total user miles, broken out daily, monthly, quarterly, and annually;
  - ii. the number and duration of rides per user per day, as well as the number of rides per device by type per day;
- (5) Anonymized aggregated data of trips taken by the operator's devices in the form of heat maps showing routes, trends, origins, and destinations;
- (6) Anonymized trip data that includes the origin and destination, trip duration, and date and time of trips taken by the operator's shared devices;
- (7) Customer comments/complaints and their resolution, incidents of theft or vandalism, and average repair times; and

(8) Reported collisions and injuries.

(f) All operators shall provide the [city/town/village] with anonymous real-time data (information that is delivered immediately after collection) on the availability and location of their entire fleet upon request.

(g) All Operators shall conduct qualitative surveys, developed collaboratively between the [city/town/village] and operator, of users after the first six months of operation, and then annually after the first six-month survey.

*§ DDD-13 Insurance and Indemnification*

(a) All Operators shall maintain continuously throughout the entire term of their permit general commercial liability insurance with a minimum liability limit of [1] million dollars, listing the [city/town/village] as additionally insured, and issued by an insurance company licensed to do business in New York State.

(b) Prior to a permit being issued, all applicants shall sign an agreement indemnifying the [city/town/village] and holding it harmless as outlined in the shared system permit.

(c) All operators shall agree that the [city/town/village] is not responsible for educating users regarding safety requirements and other laws, and that they and not the [city/town/village] are responsible for educating users on how to ride or operate the devices they provide. Operators agree to educate users regarding laws applicable to riding and operating the devices they provide within the [city/town/village] and to instruct users to comply with all applicable New York and local laws.

*§ DDD-14 Termination*

The [city/town/village] reserves the right to terminate a shared system permit at any time and require that the entire fleet of the devices to which it applies be removed from its territory. Such notice of termination shall be delivered to the operator as outlined in the permit. Removal shall be completed within [30] days unless a different time period is established by the [city/town/village].

*§ DDD-15 Appeal*

Any applicant who is denied a permit or any operator whose permit is terminated pursuant to Section DDD-14 may appeal that decision. The appeal may be made

to the [city council/town board/village board] by submitting the decision letter, as well as a request for the appeal, in writing, within [10] calendar days of the original decision. The request must identify:

- (a) the permit or permit application that is the subject of the appeal;
- (b) the operator's or applicant's specific objections to the original decision; and
- (c) any specific actions being proposed by operator or applicant that could change the permit decision.

*§ DDD-16 Fees and fines*

(a) Applicants shall pay an application fee of [500] dollars.

(b) All permit holders applying for a renewal of their permit or an increase in their allotted fleet size shall pay a permit renewal fee of [300] dollars.

(c) All permit holders shall pay an annual public infrastructure, administration, and property maintenance fee of [80] dollars per shared device. If a permit holder's allotted fleet size is increased during the permit period, the permit holder shall pay a public infrastructure, administration, and property maintenance fee of [10] dollars for each month remaining in the permit's term per additional device.

(d) All permit holders shall pay a public right-of-way use fee per available shared device. Its amount is calculated on a daily basis and varies according to where the shared device is available during that day. If a device is at any point in a day available in the core business area as defined in the permit, the public right of way use fee for that day will be [20] cents. If a device is not available in the core business area, but is available in the well-served neighborhoods defined in the permit, the public right of way use fee for that day will be [10] cents. If a device is only available in the underserved areas of the [city/town/village] as identified in the permit, the public right of way use fee for that day will be [5] cents.

(e) The [city/town/village] shall provide right-of-way use fee invoices to permit holders on a monthly basis. Those invoices will be based on trip data provided by the permit holder and verified by the [city/town/village] or a third party

designated by it. Payments will be due within [30] days of the invoice date and will be considered delinquent if not received within [30] days of the invoice date. The [city/town/village] may suspend or revoke a permit if fee payment is delinquent.

*§ DDD-17 Signage*

All signage on a shared device shall relate to the operator, the device, and any information required by the permit. Advertising of any other product or service shall not be allowed.

## **An Ordinance Authorizing the Operation of Bicycles with Electric Assist on Roadways from Which Bicycles Are Not Excluded**

Exercising the authority granted in section 1242(8) of the Vehicle and Traffic Law of the State of the New York, the [governing body] of [name of city, village, or town] authorizes the operation of class one and class two bicycles with electric assist (as defined in section 102-c of that law) on any roadway within its jurisdiction from which bicycles are not excluded, including those with a posted speed limit in excess of thirty miles per hour.

New York Laws, Vehicle & Traffic  
(as amended by 2020 N.Y. Laws ch. 58, Part XX)

*Note:*

New sections and provisions added by ch. 58, Part XX to existing sections are underlined.

Article 1 - Words and Phrases Defined

Section 102-c

Bicycle with electric assist

A bicycle which is no more than thirty-six inches wide and has an electric motor of less than seven hundred fifty watts, equipped with operable pedals, meeting the equipment and manufacturing requirements for bicycles adopted by the Consumer Product Safety Commission under 16 C.F.R. Part 1512.1 et seq. and meeting the requirements of one of the following three classes:

(a) "Class one bicycle with electric assist." A bicycle with electric assist having an electric motor that provides assistance only when the person operating such bicycle is pedaling, and that ceases to provide assistance when such bicycle reaches a speed of twenty miles per hour.

(b) "Class two bicycle with electric assist." A bicycle with electric assist having an electric motor that may be used exclusively to propel such bicycle, and that is not capable of providing assistance when such bicycle reaches a speed of twenty miles per hour.

(c) "Class three bicycle with electric assist." Solely within a city having a population of one million or more, a bicycle with electric assist having an electric motor that may be used exclusively to propel such bicycle, and that is not capable of providing assistance when such bicycle reaches a speed of twenty-five miles per hour.

Section 114-e

Electric scooter



Every device weighing less than one hundred pounds that (a) has handlebars, a floorboard or a seat that can be stood or sat upon by the operator, and an electric motor, (b) can be powered by the electric motor and/or human power, and (c) has a maximum speed of no more than twenty miles per hour on a paved level surface when powered solely by the electric motor.

### *Section 125*

#### Motor vehicles

Every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power, except (a) electrically-driven mobility assistance devices operated or driven by a person with a disability, (a-1) electric personal assistive mobility devices operated outside a city with a population of one million or more, (b) vehicles which run only upon rails or tracks, (c) snowmobiles as defined in article forty-seven of this chapter, (d) all terrain vehicles as defined in article forty-eight-B of this chapter, (e) bicycles with electric assist as defined in section one hundred two-c of this article, and (f) electric scooters as defined in section one hundred fourteen-e of this article. For the purposes of title four of this chapter, the term motor vehicle shall exclude fire and police vehicles other than ambulances. For the purposes of titles four and five of this chapter the term motor vehicles shall exclude farm type tractors and all terrain type vehicles used exclusively for agricultural purposes, or for snow plowing, other than for hire, farm equipment, including self-propelled machines used exclusively in growing, harvesting or handling farm produce, and self-propelled caterpillar or crawler-type equipment while being operated on the contract site.

## Article 34 - Operation of Bicycles and Play Devices

### *Section 1238*

Passengers on bicycles under one year of age prohibited; passengers and operators under fourteen years of age to wear protective headgear; operators of class three bicycles with electric assist to wear protective headgear.

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5-c. No person shall ride upon, propel or otherwise operate a class three bicycle with electric assist unless such person is wearing a helmet meeting standards established by the commissioner. For the purposes of this subdivision, wearing a helmet means having a properly fitting helmet fixed securely on the head of such wearer with the helmet straps securely fastened.

6. (a) Any person who violates the provisions of subdivision five, five-a, five-b or five-c of this section shall pay a civil fine not to exceed fifty dollars.

(b) The court shall waive any fine for which a person who violates the provisions of subdivision five or subdivision five-c of this section would be liable if such person supplies the court with proof that between the date of violation and the appearance date for such violation such person purchased or rented a helmet.

(c) The court may waive any fine for which a person who violates the provisions of subdivision five, five-a, five-b, or five-c of this section would be liable if the court finds that due to reasons of economic hardship such person was unable to purchase a helmet or due to such economic hardship such person was unable to obtain a helmet from the statewide in-line skate and bicycle helmet distribution program, as established in section two hundred six of the public health law, or a local distribution program. Such waiver of a fine shall not apply to a second or subsequent violation of subdivision five-c of this section.

7. The failure of any person to comply with the provisions of this section shall not constitute contributory negligence or assumption of risk, and shall not in any way bar, preclude or foreclose an action for personal injury or wrongful death by or on behalf of such person, nor in any way diminish or reduce the damages recoverable in any such action.

8. (a) A police officer shall only issue a summons for a violation of subdivision two, five, or five-a of this section by a person less than fourteen years of age to the parent or guardian of such person if the violation by such person occurs in the presence of such person's parent or guardian and where such parent or guardian is eighteen years of age or more. Such summons shall only be issued to such parent or guardian, and shall not be issued to the person less than fourteen years of age.

(b) A police officer shall only issue a summons for a violation of subdivision five-c of this section by a person less than sixteen years of age to the parent or guardian of such person if the violation by such person occurs in the presence of such person's parent or guardian and where such parent or guardian is eighteen years of age or more. Such summons shall only be issued to such parent or guardian, and shall not be issued to the person less than sixteen years of age.

### Section 1242

#### Additional provisions applicable to bicycles with electric assist

Additional provisions applicable to bicycles with electric assist. 1. In addition to complying with all of the rules, regulations, and provisions applicable to bicycles contained in this article, bicycles with electric assist shall operate in a manner so that the electric motor is disengaged or ceases to function when the brakes are applied or the rider stops pedaling, or operate in a manner such that the electric motor is engaged through a switch or mechanism that, when released, will cause the electric motor to disengage or cease to function.

2. No person less than sixteen years of age shall operate a bicycle with electric assist. The failure of any person to comply with the provisions of this subdivision shall not constitute contributory negligence or assumption of risk, and shall not in any way bar, preclude or foreclose an action for personal injury or wrongful death by or on behalf of such person, nor in any way diminish or reduce the damages recoverable in any such action.

3. (a) Except as provided in paragraphs (b) and (c) of this subdivision, the governing body of any city, town or village may, by local law or ordinance, further regulate the time, place and manner of the operation of bicycles with electric assist including, but not limited to, maximum speed, requiring the use of protective headgear, and the wearing of readily visible reflective clothing or material by operators of bicycles with electric assist, and may limit, prohibit the use thereof in specified areas, or prohibit entirely the use of bicycles with electric assist within such city, town or village, provided that adequate signage is visibly posted outside the boundaries of such prohibited areas.

(b) The governing body of any city, town or village in the counties of Nassau or Suffolk may, by local law or ordinance, further regulate the time, place and

manner of the operation of bicycles with electric assist, including, but not limited to, maximum speed, requiring the use of protective headgear, and the wearing of readily visible reflective clothing or material by operators of bicycles with electric assist only after adoption of a local law or ordinance by the governing body of the county in which the city, town or village is located. Provided, however, that the provisions of this paragraph shall not apply to the adoption of a local law or ordinance by a city, town or village in the counties of Nassau or Suffolk pursuant to the provisions of paragraph (a) of this subdivision to prohibit the use of bicycles with electric assist in specified areas, or prohibit entirely the use of bicycles with electric assist within such city, town or village, provided that adequate signage is visibly posted outside the boundaries of such prohibited areas.

(c) The governing body of any town or village in the county of Westchester may, by local law or ordinance, further regulate the time, place and manner of the operation of bicycles with electric assist, including, but not limited to, maximum speed, requiring the use of protective headgear, and the wearing of readily visible reflective clothing or material by operators of bicycles with electric assist only after adoption of a local law or ordinance by the governing body of Westchester county. Provided, however, that the provisions of this paragraph shall not apply to the adoption of a local law or ordinance by a town or village in the county of Westchester pursuant to the provisions of paragraph (a) of this subdivision to prohibit the use of bicycles with electric assist in specified areas, or prohibit entirely the use of bicycles with electric assist within such town or village, provided that adequate signage is visibly posted outside the boundaries of such prohibited areas.

4. (a) No person shall operate a bicycle with electric assist on any public lands or property, other than a highway exclusive of any greenway running adjacent to or connected with a highway, except that a bicycle with electric assist may be operated on any such lands that have been designated and posted for travel by bicycles with electric assist in accordance with the provisions of paragraph (b) of this subdivision. For the purposes of this subdivision, the term "greenway" shall have the same meaning as such term is defined by subdivision seven of section 44-0103 of the environmental conservation law and subdivision one of section 39.03 of the parks, recreation and historic preservation law.

(b) A state agency, by regulation or order, and a city, town or village, by local law or ordinance, may designate any appropriate public lands and properties under its jurisdiction, other than highways exclusive of any greenway running adjacent to or connected with a highway, as a place open for travel by bicycles with electric assist upon written request for such designation by any person, and may impose restrictions and conditions for the regulation and safe operation of bicycles with electric assist on such public lands or property, such as travel on designated trails and hours of operation.

5. (a) No bicycle with electric assist shall be operated on a sidewalk, except as may be authorized by a local law or ordinance adopted by a city, town or village having jurisdiction over such sidewalk including parking on certain sidewalks within such city, town or village in compliance with the federal Americans with Disabilities Act of 1990, as amended (Public Law 101-336).

(b) (i) Notwithstanding the provisions of paragraph (a) of this subdivision, a bicycle with electric assist owned by a natural person where the owner is engaged in personal use may park on a sidewalk whether attended or unattended. A city, town or village having jurisdiction over such sidewalk shall provide a method by which a bicycle with electric assist owned by a natural person may be identified as such.

(ii) Notwithstanding the provisions of paragraph (a) of this subdivision, a bicycle with electric assist used to transport property in commerce may temporarily park on a sidewalk, whether attended or unattended, for the purpose of and while actually engaged commercially in the loading or unloading of property. A city, town or village having jurisdiction over such sidewalk shall provide a method by which a bicycle with electric assist used to transport property in commerce may be identified as such.

(iii) No person shall park a bicycle with electric assist pursuant to this paragraph in a manner that interferes with the free passage of pedestrians on a sidewalk.

6. Every person operating a bicycle with electric assist shall yield the right of way to pedestrians.

7. Notwithstanding the provisions of subdivision (b) of section twelve hundred thirty-four of this article to the contrary, persons operating bicycles with electric assist upon a roadway shall ride single file.

8. Except as may be otherwise provided by local law, ordinance, order, rule or regulation enacted or promulgated pursuant to this article, a bicycle with electric assist may only be operated on highways with a posted speed limit of thirty miles per hour or less, including non-interstate public highways, private roads open to motor vehicle traffic, and designated bicycle or in-line skate lanes.

9. No person shall operate a class one or class two bicycle with electric assist in excess of twenty miles per hour. No person shall operate a class three bicycle with electric assist in excess of twenty-five miles per hour.

10. The operation of a class three bicycle with electric assist outside of a city having a population of one million or more is prohibited.

11. (a) No person, firm, association or corporation engaged in the business of selling or leasing bicycles with electric assist shall sell or lease any bicycle with electric assist on or after June first, two thousand twenty-two unless such bicycle with electric assist has permanently affixed thereto, in a prominent location, a manufacturer's label which shall include the following information: the class, maximum motor-assisted speed, and motor wattage of such bicycle with electric assist. Manufacturers and distributors of bicycles with electric assist shall, by April first, two thousand twenty-two, establish a process by which an owner of a bicycle with electric assist may request and obtain a manufacturer's label providing the class, maximum motor-assisted speed, and motor wattage applicable to his or her bicycle with electric assist purchased prior to June first, two thousand twenty-two and installation instructions from such manufacturers and distributors.

(b) No person shall operate a bicycle with electric assist on any public highway or street in this state after June first, two thousand twenty-two unless such bicycle with electric assist has permanently affixed thereto, in a prominent location, a manufacturer's label providing the class, maximum motor-assisted speed, and motor wattage of such bicycle with electric assist. Any person who violates the provisions of this paragraph shall be punished by a civil fine of up to fifty dollars.

The court shall waive any fine for which a person who violates the provisions of this paragraph would be liable if such person supplies the court with proof that, between the date on which he or she is charged with having violated this paragraph and the appearance date for such violation, a manufacturer's label was affixed to his or her bicycle with electric assist as required by this paragraph. Provided, however, that such waiver of fine shall not apply to a second or subsequent conviction under this paragraph.

12. A violation of the provisions of subdivision two, five, six, nine, or ten of this section shall result in a civil fine not to exceed fifty dollars.

13. A police officer shall only issue a summons for a violation of this section by a person less than sixteen years of age to the parent or guardian of such person if the violation by such person occurs in the presence of such person's parent or guardian and where such parent or guardian is eighteen years of age or older. Such summons shall only be issued to such parent or guardian, and shall not be issued to the person less than sixteen years of age.

#### Section 1242-a

Operation of a bicycle with electric assist while under the influence of alcohol or drugs

Operation of a bicycle with electric assist while under the influence of alcohol or drugs. 1. Offenses; criminal penalties. (a) Operating a bicycle with electric assist while ability impaired. No person shall operate a bicycle with electric assist while the person's ability to operate such bicycle with electric assist is impaired by the consumption of alcohol.

(i) A violation of this paragraph shall be a traffic infraction and shall be punishable by a fine of not more than three hundred dollars, or by imprisonment in a penitentiary or county jail for not more than fifteen days, or by both such fine and imprisonment.

(ii) A person who operates a bicycle with electric assist in violation of this paragraph after having been convicted of a violation of any paragraph of this subdivision within the preceding five years shall be punished by a fine of not more



than seven hundred fifty dollars, or by imprisonment of not more than thirty days in a penitentiary or county jail or by both such fine and imprisonment.

(iii) A person who operates a bicycle with electric assist in violation of this paragraph after being convicted two or more times of a violation of any paragraph of this subdivision within the preceding ten years shall be guilty of a misdemeanor, and shall be punished by a fine of not more than one thousand dollars, or by imprisonment of not more than one hundred eighty days in a penitentiary or county jail or by both such fine and imprisonment.

(b) Operating a bicycle with electric assist while intoxicated; per se. No person shall operate a bicycle with electric assist while such person has .08 of one per centum or more by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of subdivision five of this section.

(c) Operating a bicycle with electric assist while intoxicated. No person shall operate a bicycle with electric assist while in an intoxicated condition.

(d) Operating a bicycle with electric assist while ability impaired by drugs. No person shall operate a bicycle with electric assist while the person's ability to operate such bicycle with electric assist is impaired by the use of a drug as defined in this chapter.

(e) Operating a bicycle with electric assist while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs. No person shall operate a bicycle with electric assist while the person's ability to operate such bicycle with electric assist is impaired by the combined influence of drugs or of alcohol and any drug or drugs.

(f) Penalty. (i) A violation of paragraph (b), (c), (d) or (e) of this subdivision shall be a misdemeanor and shall be punishable by a fine of not more than five hundred dollars, or by imprisonment in a penitentiary or county jail for not more than one year, or by both such fine and imprisonment.

(ii) A person who operates a bicycle with electric assist in violation of paragraph (b), (c), (d) or (e) of this subdivision after having been convicted of a violation of paragraph (b), (c), (d) or (e) of this subdivision within the preceding ten years shall



be guilty of a class E felony, and shall be punished by a fine of not more than one thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(iii) A person who operates a bicycle with electric assist in violation of paragraph (b), (c), (d) or (e) of this subdivision after having been convicted of a violation of paragraph (b), (c), (d) or (e) of this subdivision two or more times within the preceding ten years shall be guilty of a class E felony, and shall be punished by a fine of not more than four thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

2. Certain sentences prohibited. Notwithstanding any provisions of the penal law, no judge or magistrate shall impose a sentence of unconditional discharge for a violation of paragraph (b), (c), (d) or (e) of subdivision one of this section.

3. Sentencing; previous convictions. When sentencing a person for a violation of paragraph (b), (c), (d) or (e) of subdivision one of this section pursuant to subparagraph (ii) of paragraph (f) of subdivision one of this section, the court shall consider any prior convictions the person may have for a violation of subdivision two, two-a, three, four, or four-a of section eleven hundred ninety-two of this title within the preceding ten years. When sentencing a person for a violation of paragraph (b), (c), (d) or (e) of subdivision one of this section pursuant to subparagraph (iii) of paragraph (f) of subdivision one of this section, the court shall consider any prior convictions the person may have for a violation of subdivision two, two-a, three, four, or four-a of section eleven hundred ninety-two of this title within the preceding ten years. When sentencing a person for a violation of subparagraph (ii) of paragraph (a) of subdivision one of this section, the court shall consider any prior convictions the person may have for a violation of any subdivision of section eleven hundred ninety-two of this title within the preceding five years. When sentencing a person for a violation of subparagraph (iii) of paragraph (a) of subdivision one of this section, the court shall consider any prior convictions the person may have for a violation of any subdivision of section eleven hundred ninety-two of this title within the preceding ten years.

4. Arrest and field testing. (a) Arrest. Notwithstanding the provisions of section 140.10 of the criminal procedure law, a police officer may, without a warrant,

arrest a person, in case of a violation of any paragraph of subdivision one of this section, if such violation is coupled with an accident or collision in which such person is involved, which in fact had been committed, though not in the police officer's presence, when the officer has reasonable cause to believe that the violation was committed by such person. For the purposes of this subdivision, police officer shall also include a peace officer authorized to enforce this chapter when the alleged violation constitutes a crime.

(b) Field testing. Every person operating a bicycle with electric assist which has been involved in an accident shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that such operator has consumed alcohol, the police officer may request such operator to submit to a chemical test in the manner set forth in subdivision five of this section.

5. Chemical tests; when authorized. A police officer may request any person who operates a bicycle with electric assist in this state to consent to a chemical test of one or more of the following: breath, blood, urine, or saliva, for the purpose of determining the alcoholic and/or drug content of such person's blood, provided that such test is administered at the direction of a police officer with respect to a chemical test of breath, urine or saliva or, with respect to a chemical test of blood, at the direction of a police officer: (a) having reasonable grounds to believe such person to have been operating in violation of paragraph (a), (b), (c), (d) or (e) of subdivision one of this section and within two hours after such person has been placed under arrest for any such violation; or (b) within two hours after a breath test, as provided in paragraph (b) of subdivision four of this section, indicates that alcohol has been consumed by such person and in accordance with the rules and regulations established by the police force of which the officer is a member.

6. Testing procedures. (a) Persons authorized to withdraw blood; immunity; testimony. (i) At the request of a police officer, the following persons may withdraw blood for the purpose of determining the alcoholic or drug content therein: (A) a physician, a registered professional nurse, a registered physician assistant, a certified nurse practitioner, or an advanced emergency medical technician as certified by the department of health; or (B) under the supervision and at the direction of a physician, registered physician assistant or certified

nurse practitioner acting within his or her lawful scope of practice, or upon the express consent of the person eighteen years of age or older from whom such blood is to be withdrawn: a clinical laboratory technician or clinical laboratory technologist licensed pursuant to article one hundred sixty-five of the education law; a phlebotomist; or a medical laboratory technician or medical technologist employed by a clinical laboratory approved under title five of article five of the public health law. This limitation shall not apply to the taking of a urine, saliva or breath specimen.

(ii) No person entitled to withdraw blood pursuant to subparagraph (i) of this paragraph or hospital employing such person, and no other employer of such person shall be sued or held liable for any act done or omitted in the course of withdrawing blood at the request of a police officer pursuant to this section.

(iii) Any person who may have a cause of action arising from the withdrawal of blood as aforesaid, for which no personal liability exists under subparagraph (ii) of this paragraph, may maintain such action against the state if any person entitled to withdraw blood pursuant to this paragraph acted at the request of a police officer employed by the state, or against the appropriate political subdivision of the state if such person acted at the request of a police officer employed by a political subdivision of the state. No action shall be maintained pursuant to this subparagraph unless notice of claim is duly filed or served in compliance with law.

(iv) Notwithstanding subparagraphs (i), (ii) and (iii) of this paragraph, an action may be maintained by the state or a political subdivision thereof against a person entitled to withdraw blood pursuant to subparagraph (i) of this paragraph or hospital employing such person for whose act or omission the state or the political subdivision has been held liable under this paragraph to recover damages, not exceeding the amount awarded to the claimant, that may have been sustained by the state or the political subdivision by reason of gross negligence or bad faith on the part of such person.

(v) The testimony of any person other than a physician, entitled to withdraw blood pursuant to subparagraph (i) of this paragraph, in respect to any such withdrawal of blood made by such person may be received in evidence with the

same weight, force and effect as if such withdrawal of blood were made by a physician.

(vi) The provisions of subparagraphs (ii), (iii) and (iv) of this paragraph shall also apply with regard to any person employed by a hospital as security personnel for any act done or omitted in the course of withdrawing blood at the request of a police officer pursuant to this section.

(b) Right to additional test. The person tested shall be permitted to choose a physician to administer a chemical test in addition to the one administered at the direction of the police officer.

(c) Rules and regulations. The department of health shall issue and file rules and regulations approving satisfactory techniques or methods of conducting chemical analyses of a person's blood, urine, breath or saliva and to ascertain the qualifications and competence of individuals to conduct and supervise chemical analyses of a person's blood, urine, breath or saliva. If the analyses were made by an individual possessing a permit issued by the department of health, this shall be presumptive evidence that the examination was properly given. The provisions of this paragraph do not prohibit the introduction as evidence of an analysis made by an individual other than a person possessing a permit issued by the department of health.

7. Chemical test evidence. (a) Admissibility. Upon the trial of any such action or proceeding arising out of actions alleged to have been committed by any person arrested for a violation of any paragraph of subdivision one of this section, the court shall admit evidence of the amount of alcohol or drugs in the defendant's blood as shown by a test administered pursuant to the provisions of subdivision five of this section.

(b) Probative value. The following effect shall be given to evidence of blood-alcohol content, as determined by such tests, of a person arrested for a violation of subdivision one of this section:

(i) evidence that there was .05 of one per centum or less by weight of alcohol in such person's blood shall be prima facie evidence that the ability of such person

to operate a bicycle with electric assist was not impaired by the consumption of alcohol, and that such person was not in an intoxicated condition;

(ii) evidence that there was more than .05 of one per centum but less than .07 of one per centum by weight of alcohol in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be relevant evidence, but shall not be given prima facie effect, in determining whether the ability of such person to operate a bicycle with electric assist was impaired by the consumption of alcohol; and

(iii) evidence that there was .07 of one per centum or more but less than .08 of one per centum by weight of alcohol in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be given prima facie effect in determining whether the ability of such person to operate a bicycle with electric assist was impaired by the consumption of alcohol.

8. Where applicable. The provisions of this section shall apply upon public highways, private roads open to motor vehicle traffic, any other parking lot, and sidewalks. For the purposes of this section "parking lot" shall mean any area or areas of private property, including a driveway, near or contiguous to and provided in connection with premises and used as a means of access to and egress from a public highway to such premises and having a capacity for the parking of four or more motor vehicles. The provisions of this section shall not apply to any area or areas of private property comprising all or part of property on which is situated a one or two-family residence.

9. Enforcement upon crash. Notwithstanding any provision of this section, no part of this section may be enforced unless in conjunction with a crash involving an operator of a bicycle with electric assist. For the purposes of this subdivision, "crash" shall mean colliding with a vehicle, person, building or other object.

### Section 1243

Shared bicycle and shared bicycle with electric assist systems; data protection

Shared bicycle and shared bicycle with electric assist systems; data protection. 1. The governing body of any city, town or village may, by local law, ordinance,

order, rule or regulation, authorize and regulate shared bicycle systems or shared bicycle with electric assist systems within such city, town or village. No such shared systems shall operate within a city, town or village except as authorized by such local law, ordinance, order, rule or regulation. For the purposes of this subdivision, the term shared bicycle system or shared bicycle with electric assist system shall mean a network of self-service and publicly available bicycles or bicycles with electric assist in which a bicycle or bicycle with electric assist trip begins and/or ends on any public highway.

2. Notwithstanding any other provision of law to the contrary, all trip data, personal information, images, videos, and other recorded images collected by any shared bicycle system or shared bicycle with electric assist system which is authorized to operate within a city, town or village pursuant to this section: (a) shall be for the exclusive use of such shared bicycle or shared bicycle with electric assist system and shall not be sold, distributed, or otherwise made available for any commercial purpose and (b) shall not be disclosed or otherwise made accessible except (i) to the person who is the subject of such data, information or record; or (ii) if necessary to comply with a lawful court order, judicial warrant signed by a judge appointed pursuant to article III of the United States constitution, or subpoena for individual data, information or records properly issued pursuant to the criminal procedure law or the civil practice law and rules. Provided, however, that nothing contained in this paragraph shall be deemed to preclude the exchange of such data, information or recorded images solely for the purpose of administering such authorized shared system. For the purposes of this subdivision, "personal information" shall mean information that identifies an individual, including but not limited to name, address, telephone number, and the type and form of payment including credit card number, debit card number, or other payment method.

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## Article 34-D - Operation of Electric Scooters

### Section 1280

#### Effect of regulations

1. The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this article.

2. These regulations applicable to electric scooters shall apply whenever an electric scooter is operated upon any highway, upon private roads open to public motor vehicle traffic and upon any path set aside for the exclusive use of bicycles, in-line skates, electric scooters, or all.

### Section 1281

Traffic laws apply to persons operating electric scooters; local laws

Traffic laws apply to persons operating electric scooters; local laws. 1. Every person riding an electric scooter upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle and the rider of a bicycle by this title, except as to special regulations in this article and except as to those provisions of this title which by their nature can have no application.

2. (a) Except as provided in paragraphs (b) and (c) of this subdivision, the governing body of any city, town or village may, by local law or ordinance, further regulate the time, place and manner of the operation of electric scooters, including, but not limited to, maximum speed, requiring the use of protective headgear, and the wearing of readily visible reflective clothing or material by operators of electric scooters, and may limit, prohibit the use thereof in specified areas, or prohibit entirely the use of electric scooters within such city, town, or village, provided that adequate signage is visibly posted outside the boundaries of such prohibited areas.

(b) The governing body of any city, town or village in the counties of Nassau or Suffolk may, by local law or ordinance, further regulate the time, place and manner of the operation of electric scooters, including, but not limited to, maximum speed, requiring the use of protective headgear, and the wearing of readily visible reflective clothing or material by operators of electric scooters only after adoption of a local law or ordinance by the governing body of the county in which the city, town or village is located. Provided, however, that the provisions of this paragraph shall not apply to the adoption of a local law or ordinance by a

city, town or village in the counties of Nassau or Suffolk pursuant to the provisions of paragraph (a) of this subdivision to prohibit the use of electric scooters in specified areas, or prohibit entirely the use of electric scooters within such city, town or village, provided that adequate signage is visibly posted outside the boundaries of such prohibited areas.

(c) The governing body of any town or village in the county of Westchester may, by local law or ordinance, further regulate the time, place and manner of the operation of electric scooters, including, but not limited to, maximum speed, requiring the use of protective headgear, and the wearing of readily visible reflective clothing or material by operators of electric scooters only after adoption of a local law or ordinance by the governing body of Westchester county. Provided, however, that the provisions of this paragraph shall not apply to the adoption of a local law or ordinance by a town or village in the county of Westchester pursuant to the provisions of paragraph (a) of this subdivision to prohibit the use of electric scooters in specified areas, or prohibit entirely the use of electric scooters within such town or village, provided that adequate signage is visibly posted outside the boundaries of such prohibited areas.

3. No person shall operate an electric scooter unless such operation is in compliance with the provisions of this chapter, and any regulation or order or local law or ordinance adopted pursuant to this article.

### Section 1282

#### Operating electric scooters

1. No electric scooter shall be used to carry more than one person at one time. No person operating an electric scooter shall carry any person as a passenger in a pack fastened to the operator or fastened to the electric scooter. The failure of any person to comply with the provisions of this subdivision shall not constitute contributory negligence or assumption of risk, and shall not in any way bar, preclude or foreclose an action for personal injury or wrongful death by or on behalf of such person, nor in any way diminish or reduce the damages recoverable in any such action.



2. No person operating an electric scooter shall carry any package, bundle or article which prevents the operator from keeping at least one hand upon the handle bars or which obstructs his or her vision in any direction.

3. Every person operating an electric scooter shall yield the right of way to pedestrians.

4. No person less than sixteen years of age shall operate or ride as a passenger upon an electric scooter, and no person sixteen years of age or older shall allow any person less than sixteen years of age to operate or ride as a passenger upon such scooter.

5. Except as may be otherwise provided by local law, ordinance, order, rule or regulation enacted or promulgated pursuant to this article, an electric scooter may only be operated on highways with a posted speed limit of thirty miles per hour or less, including non-interstate public highways, private roads open to motor vehicle traffic, and designated bicycle or in-line skate lanes.

6. No person shall operate an electric scooter in excess of fifteen miles per hour.

7. (a) No person shall operate an electric scooter on a sidewalk, except as may be authorized by a local law or ordinance adopted by a city, town or village having jurisdiction over such sidewalk including parking on certain sidewalks within such city, town or village in compliance with the federal Americans with Disabilities Act of 1990, as amended (Public Law 101-336).

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, an electric scooter owned by a natural person where the owner is engaged in personal use may park on a sidewalk whether attended or unattended, provided however that no person shall park an electric scooter pursuant to this paragraph in a manner that interferes with the free passage of pedestrians on a sidewalk. A city, town or village having jurisdiction over such sidewalk shall provide a method by which an electric scooter owned by a natural person may be identified as such.

8. (a) No person shall operate an electric scooter on any public lands or property, other than a highway exclusive of any greenway running adjacent to or connected with a highway, except that an electric scooter may be operated on any such lands that have been designated and posted for travel by electric scooters in

accordance with the provisions of paragraph (b) of this subdivision. For the purposes of this subdivision, the term "greenway" shall have the same meaning as such term is defined by subdivision seven of section 44-0103 of the environmental conservation law and subdivision one of section 39.03 of the parks, recreation and historic preservation law.

(b) A state agency, by regulation or order, and a city, town or village, by local law or ordinance, may designate any appropriate public lands and properties under its jurisdiction, other than highways exclusive of any greenway running adjacent to or connected with a highway, as a place open for travel by electric scooters upon written request for such designation by any person, and may impose restrictions and conditions for the regulation and safe operation of electric scooters on such public lands or property, such as travel on designated trails and hours of operation.

9. (a) No person, firm, association or corporation engaged in the business of selling or leasing electric scooters shall sell or lease any electric scooter on or after June first, two thousand twenty-two unless such electric scooter has permanently affixed thereto, in a prominent location, a manufacturer's label which shall include the following information: the maximum motor-assisted speed, the number of persons for which such electric scooter is designed and equipped, and motor wattage of such electric scooter. Manufacturers and distributors of electric scooters shall, by April first, two thousand twenty-two, establish a process by which an owner of an electric scooter may request and obtain a manufacturer's label providing the maximum motor-assisted speed, the number of persons for which such electric scooter is designed and equipped, and motor wattage applicable to his or her electric scooter purchased prior to June first, two thousand twenty-two and installation instructions from such manufacturers and distributors.

(b) No person shall operate an electric scooter on any public highway or street in this state after June first, two thousand twenty-two unless such electric scooter has permanently affixed thereto, in a prominent location, a manufacturer's label providing the maximum motor-assisted speed, the number of persons for which such electric scooter is designed and equipped, and motor wattage of such electric scooter. Any person who violates the provisions of this paragraph shall be

punished by a civil fine of up to fifty dollars. The court shall waive any fine for which a person who violates the provisions of this paragraph would be liable if such person supplies the court with proof that, between the date on which he or she is charged with having violated this paragraph and the appearance date for such violation, a manufacturer's label was affixed to his or her electric scooter as required by this paragraph. Provided, however, that such waiver of fine shall not apply to a second or subsequent conviction under this paragraph.

10. (a) The governing body of any city, town or village may, by local law, ordinance, order, rule or regulation, authorize and regulate shared electric scooter systems within such city, town or village. No such shared systems shall operate within a city, town or village except as authorized by such local law, ordinance, order, rule or regulation. No such shared electric scooter system shall operate on public highways in a county with a population of no less than one million five hundred eighty-five thousand and no more than one million five hundred eighty-seven thousand as of the two thousand ten decennial census. For the purposes of this subdivision, the term shared electric scooter system shall mean a network of self-service and publicly available electric scooters, and related infrastructure, in which an electric scooter trip begins and/or ends on any public highway.

(b) Notwithstanding any other provision of law to the contrary, all trip data, personal information, images, videos, and other recorded images collected by any shared electric scooter system which is authorized to operate within a city, town or village pursuant to this section: (i) shall be for the exclusive use of such shared electric scooter system and shall not be sold, distributed or otherwise made available for any commercial purpose and (ii) shall not be disclosed or otherwise made accessible except: (1) to the person who is the subject of such data, information or record; or (2) if necessary to comply with a lawful court order, judicial warrant signed by a judge appointed pursuant to article III of the United States constitution, or subpoena for individual data, information or records properly issued pursuant to the criminal procedure law or the civil practice law and rules. Provided, however, that nothing contained in this paragraph shall be deemed to preclude the exchange of such data, information or recorded images solely for the purpose of administering such authorized shared system.

For the purposes of this subdivision, "personal information" shall mean information that identifies an individual, including but not limited to name, address, telephone number, and the type and form of payment including credit card number, debit card number, or other payment method.

11. A violation of the provisions of subdivision one, two, three, four, six, or seven of this section shall result in a civil fine not to exceed fifty dollars.

12. A police officer shall only issue a summons for a violation of this section by a person less than sixteen years of age to the parent or guardian of such person if the violation by such person occurs in the presence of such person's parent or guardian and where such parent or guardian is eighteen years of age or more. Such summons shall only be issued to such parent or guardian, and shall not be issued to the person less than sixteen years of age.

### Section 1283

#### Clinging to vehicles

1. No person operating an electric scooter shall attach such scooter, or himself or herself, to any vehicle being operated upon a roadway.

2. No vehicle operator shall knowingly permit any person to attach any electric scooter, or himself or herself, to such operator's vehicle in violation of subdivision one of this section.

### Section 1284

#### Riding on roadways, shoulders, and lanes reserved for non-motorized vehicles and devices.

1. Upon all roadways, any electric scooter shall be operated either on a usable bicycle or in-line skate lane or, if a usable bicycle or in-line skate lane has not been provided, near the right-hand curb or edge of the roadway or upon a usable right-hand shoulder in such a manner as to prevent undue interference with the flow of traffic except when preparing for a left turn or when reasonably necessary to avoid conditions that would make it unsafe to continue along near the right-hand curb or edge. Conditions to be taken into consideration include, but are not limited to, fixed or moving objects, vehicles, bicycles, in-line skates, pedestrians,

animals, surface hazards or traffic lanes too narrow for a person operating an electric scooter and a vehicle to travel safely side-by-side within the lane.

2. Persons operating electric scooters upon a roadway shall ride single file. Persons operating electric scooters upon a shoulder, bicycle or in-line skate lane, or bicycle or in-line skate path intended for the use of bicycles, in-line skates or electric scooters may ride two or more abreast if sufficient space is available, except that when passing a vehicle, bicycle, electric personal assistive mobility device, person on in-line skates or pedestrian standing or proceeding along such shoulder, lane or path, persons operating electric scooters shall operate such scooters single file.

3. Any person operating an electric scooter who is entering a roadway from a private road, driveway, alley or over a curb shall come to a full stop before entering the roadway.

### Section 1285

#### Lamps and other equipment

1. Every electric scooter when in use during the period from one-half hour after sunset to one-half hour before sunrise shall be equipped with a lamp on the front which shall emit a white light visible during hours of darkness from a distance of at least five hundred feet to the front and with a red light visible to the rear for three hundred feet. At least one such light shall be visible for two hundred feet from each side.

2. No person shall operate an electric scooter unless such scooter is equipped with a bell or other device capable of giving a signal audible for a distance of at least one hundred feet, except that an electric scooter shall not be equipped with nor shall any person use upon an electric scooter any siren or whistle.

3. Every electric scooter shall be equipped with a brake that enables the operator to bring the electric scooter to a controlled stop.

### Section 1286

#### Operators to wear protective headgear

1. No person sixteen or seventeen years of age shall ride upon, propel or otherwise operate an electric scooter unless such person is wearing a helmet meeting standards established by the commissioner pursuant to the provisions of subdivision two-a of section twelve hundred thirty-eight of this title. As used in this subdivision, wearing a helmet means having a properly fitting helmet fixed securely on the head of such wearer with the helmet straps securely fastened.

2. Any person who violates the provisions of subdivision one of this section shall pay a civil fine not to exceed fifty dollars.

3. The court shall waive any fine for which a person who violates the provisions of subdivision one of this section would be liable if such person supplies the court with proof that between the date of violation and the appearance date for such violation such person purchased or rented a helmet, which meets the requirements of subdivision one of this section, or if the court finds that due to reasons of economic hardship such person was unable to purchase a helmet or due to such economic hardship such person was unable to obtain a helmet from the statewide in-line skate and bicycle helmet distribution program, as established in section two hundred six of the public health law or a local distribution program. Such waiver of fine shall not apply to a second or subsequent violation of subdivision one of this section.

4. The failure of any person to comply with the provisions of this section shall not constitute contributory negligence or assumption of risk, and shall not in any way bar, preclude or foreclose an action for personal injury or wrongful death by or on behalf of such person, nor in any way diminish or reduce the damages recoverable in any such action.

### Section 1287

Leaving the scene of an incident involving an electric scooter without reporting in the second degree

Leaving the scene of an incident involving an electric scooter without reporting in the second degree. 1. Any person age eighteen years or older operating an electric scooter who, knowing or having cause to know, that physical injury, as defined in subdivision nine of section 10.00 of the penal law, has been caused to another person, due to the operation of such electric scooter by such person,

shall, before leaving the place where such physical injury occurred, stop, and provide his or her name and residence, including street and street number, to the injured party, if practical, and also to a police officer, or in the event that no police officer is in the vicinity of the place of said injury, then such person shall report such incident as soon as physically able to the nearest police station or judicial officer.

2. Leaving the scene of an incident involving an electric scooter without reporting in the second degree is a violation.

### Section 1288

Leaving the scene of an incident involving an electric scooter without reporting in the first degree

Leaving the scene of an incident involving an electric scooter without reporting in the first degree. 1. Any person age eighteen years or older operating an electric scooter who, knowing or having cause to know, that serious physical injury, as defined in subdivision ten of section 10.00 of the penal law, has been caused to another person, due to the operation of such electric scooter by such person, shall, before leaving the place where such serious physical injury occurred, stop, and provide his or her name and residence, including street and street number, to the injured party, if practical, and also to a police officer, or in the event that no police officer is in the vicinity of the place of said injury, then such person shall report said incident as soon as physically able to the nearest police station or judicial officer.

2. Leaving the scene of an incident involving an electric scooter without reporting in the first degree is a class B misdemeanor.

### Section 1289

Operation of an electric scooter while under the influence of alcohol or drugs

Operation of an electric scooter while under the influence of alcohol or drugs. 1. Offenses; criminal penalties. (a) Operating an electric scooter while ability impaired. No person shall operate an electric scooter while the person's ability to operate such electric scooter is impaired by the consumption of alcohol.

(i) A violation of this paragraph shall be a traffic infraction and shall be punishable by a fine of not more than three hundred dollars, or by imprisonment in a penitentiary or county jail for not more than fifteen days, or by both such fine and imprisonment.

(ii) A person who operates an electric scooter in violation of this paragraph after having been convicted of a violation of any paragraph of this subdivision within the preceding five years shall be punished by a fine of not more than seven hundred fifty dollars, or by imprisonment of not more than thirty days in a penitentiary or county jail or by both such fine and imprisonment.

(iii) A person who operates an electric scooter in violation of this paragraph after being convicted two or more times of a violation of any paragraph of this subdivision within the preceding ten years shall be guilty of a misdemeanor, and shall be punished by a fine of not more than one thousand dollars, or by imprisonment of not more than one hundred eighty days in a penitentiary or county jail or by both such fine and imprisonment.

(b) Operating an electric scooter while intoxicated; per se. No person shall operate an electric scooter while such person has .08 of one per centum or more by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of subdivision five of this section.

(c) Operating an electric scooter while intoxicated. No person shall operate an electric scooter while in an intoxicated condition.

(d) Operating an electric scooter while ability impaired by drugs. No person shall operate an electric scooter while the person's ability to operate such electric scooter is impaired by the use of a drug as defined in this chapter.

(e) Operating an electric scooter while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs. No person shall operate an electric scooter while the person's ability to operate such electric scooter is impaired by the combined influence of drugs or of alcohol and any drug or drugs.

(f) Penalty. (i) A violation of paragraph (b), (c), (d) or (e) of this subdivision shall be a misdemeanor and shall be punishable by a fine of not more than five



hundred dollars, or by imprisonment in a penitentiary or county jail for not more than one year, or by both such fine and imprisonment.

(ii) A person who operates an electric scooter in violation of paragraph (b), (c), (d) or (e) of this subdivision after having been convicted of a violation of paragraph (b), (c), (d) or (e) of this subdivision within the preceding ten years shall be guilty of a class E felony, and shall be punished by a fine of not more than one thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(iii) A person who operates an electric scooter in violation of paragraph (b), (c), (d) or (e) of this subdivision after having been convicted of a violation of paragraph (b), (c), (d) or (e) of this subdivision two or more times within the preceding ten years shall be guilty of a class E felony, and shall be punished by a fine of not more than four thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

2. Certain sentences prohibited. Notwithstanding any provisions of the penal law, no judge or magistrate shall impose a sentence of unconditional discharge for a violation of paragraph (b), (c), (d) or (e) of subdivision one of this section.

3. Sentencing: previous convictions. When sentencing a person for a violation of paragraph (b), (c), (d) or (e) of subdivision one of this section pursuant to subparagraph (ii) of paragraph (f) of subdivision one of this section, the court shall consider any prior convictions the person may have for a violation of subdivision two, two-a, three, four, or four-a of section eleven hundred ninety-two of this title within the preceding ten years. When sentencing a person for a violation of paragraph (b), (c), (d) or (e) of subdivision one of this section pursuant to subparagraph (iii) of paragraph (f) of subdivision one of this section, the court shall consider any prior convictions the person may have for a violation of subdivision two, two-a, three, four, or four-a of section eleven hundred ninety-two of this title within the preceding ten years. When sentencing a person for a violation of subparagraph (ii) of paragraph (a) of subdivision one of this section, the court shall consider any prior convictions the person may have for a violation of any subdivision of section eleven hundred ninety-two of this title within the preceding five years. When sentencing a person for a violation of subparagraph

(iii) of paragraph (a) of subdivision one of this section, the court shall consider any prior convictions the person may have for a violation of any subdivision of section eleven hundred ninety-two of this title within the preceding ten years.

4. Arrest and field testing. (a) Arrest. Notwithstanding the provisions of section 140.10 of the criminal procedure law, a police officer may, without a warrant, arrest a person, in case of a violation of any paragraph of subdivision one of this section, if such violation is coupled with an accident or collision in which such person is involved, which in fact had been committed, though not in the police officer's presence, when the officer has reasonable cause to believe that the violation was committed by such person. For the purposes of this subdivision, police officer shall also include a peace officer authorized to enforce this chapter when the alleged violation constitutes a crime.

(b) Field testing. Every person operating an electric scooter which has been involved in an accident shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that such operator has consumed alcohol, the police officer may request such operator to submit to a chemical test in the manner set forth in subdivision five of this section.

5. Chemical tests; when authorized. A police officer may request any person who operates an electric scooter in this state to consent to a chemical test of one or more of the following: breath, blood, urine, or saliva, for the purpose of determining the alcoholic and/or drug content of such person's blood, provided that such test is administered at the direction of a police officer with respect to a chemical test of breath, urine or saliva or, with respect to a chemical test of blood, at the direction of a police officer: (a) having reasonable grounds to believe such person to have been operating in violation of paragraph (a), (b), (c), (d) or (e) of subdivision one of this section and within two hours after such person has been placed under arrest for any such violation; or (b) within two hours after a breath test, as provided in paragraph (b) of subdivision four of this section, indicates that alcohol has been consumed by such person and in accordance with the rules and regulations established by the police force of which the officer is a member.

6. Testing procedures. (a) Persons authorized to withdraw blood; immunity; testimony. (i) At the request of a police officer, the following persons may withdraw blood for the purpose of determining the alcoholic or drug content therein: (A) a physician, a registered professional nurse, a registered physician assistant, a certified nurse practitioner, or an advanced emergency medical technician as certified by the department of health; or (B) under the supervision and at the direction of a physician, registered physician assistant or certified nurse practitioner acting within his or her lawful scope of practice, or upon the express consent of the person eighteen years of age or older from whom such blood is to be withdrawn: a clinical laboratory technician or clinical laboratory technologist licensed pursuant to article one hundred sixty-five of the education law; a phlebotomist; or a medical laboratory technician or medical technologist employed by a clinical laboratory approved under title five of article five of the public health law. This limitation shall not apply to the taking of a urine, saliva or breath specimen.

(ii) No person entitled to withdraw blood pursuant to subparagraph one of this paragraph or hospital employing such person, and no other employer of such person shall be sued or held liable for any act done or omitted in the course of withdrawing blood at the request of a police officer pursuant to this section.

(iii) Any person who may have a cause of action arising from the withdrawal of blood as aforesaid, for which no personal liability exists under subparagraph (ii) of this paragraph, may maintain such action against the state if any person entitled to withdraw blood pursuant to this paragraph acted at the request of a police officer employed by the state, or against the appropriate political subdivision of the state if such person acted at the request of a police officer employed by a political subdivision of the state. No action shall be maintained pursuant to this subparagraph unless notice of claim is duly filed or served in compliance with law.

(iv) Notwithstanding subparagraphs (i), (ii) and (iii) of this paragraph an action may be maintained by the state or a political subdivision thereof against a person entitled to withdraw blood pursuant to subparagraph (i) of this paragraph or hospital employing such person for whose act or omission the state or the political subdivision has been held liable under this paragraph to recover damages, not exceeding the amount awarded to the claimant, that may have

been sustained by the state or the political subdivision by reason of gross negligence or bad faith on the part of such person.

(v) The testimony of any person other than a physician, entitled to withdraw blood pursuant to subparagraph (i) of this paragraph, in respect to any such withdrawal of blood made by such person may be received in evidence with the same weight, force and effect as if such withdrawal of blood were made by a physician.

(vi) The provisions of subparagraphs (ii), (iii) and (iv) of this paragraph shall also apply with regard to any person employed by a hospital as security personnel for any act done or omitted in the course of withdrawing blood at the request of a police officer pursuant to this section.

(b) Right to additional test. The person tested shall be permitted to choose a physician to administer a chemical test in addition to the one administered at the direction of the police officer.

(c) Rules and regulations. The department of health shall issue and file rules and regulations approving satisfactory techniques or methods of conducting chemical analyses of a person's blood, urine, breath or saliva and to ascertain the qualifications and competence of individuals to conduct and supervise chemical analyses of a person's blood, urine, breath or saliva. If the analyses were made by an individual possessing a permit issued by the department of health, this shall be presumptive evidence that the examination was properly given. The provisions of this paragraph do not prohibit the introduction as evidence of an analysis made by an individual other than a person possessing a permit issued by the department of health.

7. Chemical test evidence. (a) Admissibility. Upon the trial of any such action or proceeding arising out of actions alleged to have been committed by any person arrested for a violation of any paragraph of subdivision one of this section, the court shall admit evidence of the amount of alcohol or drugs in the defendant's blood as shown by a test administered pursuant to the provisions of subdivision five of this section.

(b) Probative value. The following effect shall be given to evidence of blood-alcohol content, as determined by such tests, of a person arrested for a violation of subdivision one of this section:

(i) evidence that there was .05 of one per centum or less by weight of alcohol in such person's blood shall be prima facie evidence that the ability of such person to operate an electric scooter was not impaired by the consumption of alcohol, and that such person was not in an intoxicated condition;

(ii) evidence that there was more than .05 of one per centum but less than .07 of one per centum by weight of alcohol in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be relevant evidence, but shall not be given prima facie effect, in determining whether the ability of such person to operate an electric scooter was impaired by the consumption of alcohol; and

(iii) evidence that there was .07 of one per centum or more but less than .08 of one per centum by weight of alcohol in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be given prima facie effect in determining whether the ability of such person to operate an electric scooter was impaired by the consumption of alcohol.

8. Where applicable. The provisions of this section shall apply upon public highways, private roads open to motor vehicle traffic, any other parking lot, and sidewalks. For the purposes of this section "parking lot" shall mean any area or areas of private property, including a driveway, near or contiguous to and provided in connection with premises and used as a means of access to and egress from a public highway to such premises and having a capacity for the parking of four or more motor vehicles. The provisions of this section shall not apply to any area or areas of private property comprising all or part of property on which is situated a one or two family residence.

9. Enforcement upon crash. Notwithstanding any provision of this section, no part of this section may be enforced unless in conjunction with a crash involving an operator of an electric scooter. For the purposes of this subdivision, "crash" shall mean colliding with a vehicle, person, building or other object.

