

Fall 2004

Municipal Research News

Municipal Research and Services Center of Washington

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Motorized Scooters

Motorized scooters. You've likely all seen them and, if you haven't, you almost certainly will. Zipping down the street, driven by a 14-year old or younger, going 20 miles per hour or faster and noisily interrupting the tranquility of your neighborhood. Are they a problem, or are we just getting old?

What is a motor scooter?

A motorized scooter (or, as referred to by state law, a "motorized foot scooter") is essentially a skateboard with a small gasoline or electric motor on the back and a set of handlebars, a brake lever, and a hand-operated accelerator. Their cost will typically range from about \$200 to over \$1,000, and they may have a top speed of 20 mph or more. Some models have bicycle-type seats, although most riders seem to prefer the models with no seats. Gas-powered scooters, which are faster than electrically-driven ones, appear to be the scooters of choice, even though electric-driven models are cheaper and quieter. (The fact that gas-powered scooters are faster and noisier is, perhaps, why they are more popular.)

The problem

According to the U.S. Consumer Product Safety Commission (CPSC), 5,900 emergency room injuries from electric and/or gas-powered scooters were recorded in 2002 and, of those, almost 40 percent involved children 15 years of age and younger. Most of the more serious injuries have involved broken arms, hands, and legs, sustained from collisions with cars and other motor vehicles. There have also been some re-

corded fatalities and, with the almost exponential increase in the number of scooters on the road, more are likely to follow. Although newer statistical information is not yet available, anecdotal evidence suggests that the number of accidents involving motorized scooters has skyrocketed and will continue to do so.

Motorized scooters and state law

Through legislation adopted in 2003, the state defines "motorized foot scooters" and provides that such scooters do not require vehicle licenses; they are to be given the same access to streets and roads as are bicycles. Ch. 353, Laws of 2003. The statute also provides that no driver's license is required to operate a motorized foot scooter. The legislation prohibits a motorized scooter's operation at any time from a half hour after sunset to a half hour before sunrise, unless the scooter is equipped with reflectors of a type approved by the state patrol. The state law that prohibits the removal of muffling and pollution-control devices from mopeds does not apply to motorized scooters.

Motorized scooters may be used on multipurpose trails or bicycle lanes, although local jurisdictions may "restrict or otherwise limit the access of" motorized scooters. Bicycle paths, trails, and equestrian or hiking trails, among others, are off limits, if they have been either constructed or are maintained with federal highway transportation funds. Other new or existing trails or paths may be available for use by a motorized scooter, if they are appropriately signed.

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Municipal Research News is published quarterly by the Municipal Research and Services Center of Washington, 2601 4th Avenue, Suite 800, Seattle, WA 98121-1280. Your ideas and comments are appreciated. If you have news you would like to share or if you would like to write a short feature article, please contact us.

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Designer: Holly Stewart

(Four bills were introduced in 2004 to further regulate the use of motorized foot scooters. The bills, had they been enacted, would have prohibited the use of motorized scooters on public roads and streets, required operators to have a driver's license, established a minimum age for scooter operators, and set a maximum speed for use. While none of the bills was adopted, it is quite possible that legislative attempts to regulate motorized foot scooters will return during the 2005 legislative session.)

What local jurisdictions can do and are doing

Local jurisdictions can *limit or prohibit the use of motorized scooters* on sidewalks, on public trails, on public parking lots, around public buildings, and in parks. (The use of scooters on *private* facilities is not, in itself, unlawful; nothing limits the ability of a private landowner, such as the operator of a shopping center or mall, from prohibiting the use of a motorized scooter in a parking lot and/or the private or public areas of the private facility.) Several cities have prohibited the use of motorized scooters within their central business district.

As a public safety measure, a local government can probably *require that motor scooter operators wear safety helmets*; a number of Washington communities have adopted such requirements. State law limits motorized scooter use after sunset, unless the scooter is equipped with reflectors approved by the state patrol.

Local regulations may be able to go further, *requiring headlights*, and, for example, requiring them to be sufficiently bright to be visible from 500 feet away. Some communities have suggested or required that a tail light, bright enough to be visible from 600 feet away, be used *in addition to* a red-colored rear reflector, which is required for nighttime use. *Requiring the use of a muffling device* is possible, as such a requirement would not conflict with state law. Stanwood requires that the scooters be equipped with "a switch, lever, or other mechanism that, when released, will cause the drive motor to disengage or cease to function," a "dead man's switch."

At least four cities have included *parental responsibility* provisions in their motorized scooter ordinances, extending to parents the legal responsibility of assuring their minor children's adherence to motor scooter operational requirements.

Some communities have established *age requirements*. Mount Vernon, Sedro-Woolley, and Stanwood, for example, require that scooter operators be at least 16-years old; Puyallup sets its limit at 14 years. Some cities have established *maximum operational speed limits*, typically 25 miles per hour. Almost universally, in those cities that have already adopted motorized foot scooter regulations, rules that make it *unlawful to operate a motorized scooter in a careless, reckless, unsafe, or negligent manner* have been adopted, along with a notation that traffic laws and rules of the road apply. Stanwood's ordinance *prohibits the carrying of passengers*.

What can be done if a person violates a local regulation? Of the code provisions Municipal Research has reviewed, the cities that have adopted regulations have made a motorized scooter offense a *civil infraction*, punishable by a penalty of up to \$250. In addition, several of the cities have provided for the *seizure of a scooter, its temporary impoundment, and, for multiple offenses, forfeiture*. Seizure, impoundment, or forfeiture deprives the owner of his or her property. Under due process, if a jurisdiction intends to take a person's property, it must provide the property owner with notice of its intent and a hearing at which he or she may contest the taking. The hearing need not be elaborate, but it must provide the property owner with a chance to be heard by a person empowered to make adjustments, depending upon the evidence and argument made at the hearing.

What local jurisdictions (probably) cannot do

It is clear that counties, cities, and towns cannot prohibit the use of motorized scooters altogether; the state law that allows their use preempts the ability of local jurisdictions

to provide otherwise. Local jurisdictions arguably cannot require that the operators be licensed and, it would seem, under this limitation, it is likely that a jurisdiction cannot mandate that operators obtain training before using a scooter, which might be construed as a form of licensing. ("Arguably," since several cities have adopted ordinances requiring operators be licensed.)

What can be done by members of the public?

While many communities are wrestling with what they should do about motorized scooters, there are some safety suggestions that can be followed by anyone even contemplating travel by scooter. The CPSC recommends the following:

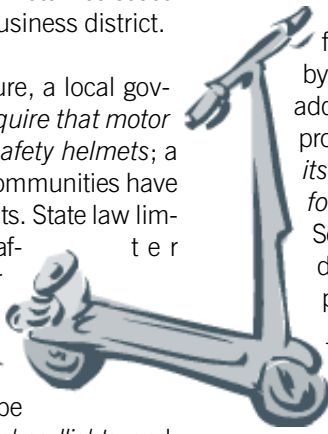
- Wear a helmet that meets CPSC's standards, along with knee and elbow pads.
- Ride the scooters on smooth, paved surfaces without any traffic.
- Wear sturdy shoes.
- Avoid streets, or surfaces with water, sand, gravel, or dirt.
- Do not ride the scooter at night - riders can't see where they're going or be seen by others.

Local governments may wish to share these suggestions with their citizens through their police or sheriff departments or by public safety notices posted on their websites or in their community bulletins.

Help is just a click or a phone call away

Municipal Research has been accumulating sample ordinances from jurisdictions across the state. Some are available online. If you want to review some samples, give us an e-mail or telephone call, or visit our Web page devoted to motorized scooters at <http://www.mrsc.org/Subjects/PubSafe/scooters.aspx>. Consultants will be happy to respond to any questions you may have. Of course, it is highly recommended that your city, town, or prosecuting attorney be consulted before taking any final action to adopt regulations or restrictions.

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ASK MRSC

Summaries of recent inquiries answered by MRSC consultants

Annexation – May a city annex the whole of a lot that is bisected by the urban growth boundary?

No, that lot may not, as a whole, be annexed. Because of RCW 35A.14.005, which prohibits annexation outside of an urban growth area, only the portion of this lot that is inside the UGA may be annexed. (While it may not be practical to annex only part of a lot, there is nothing that would strictly prohibit it.) The statute is very specific - territory beyond an urban growth area may not be annexed. We think a court would strictly apply this statute according to its terms, and there is no “wobble room” in its language. So, the only way the whole lot could be annexed is to have the county amend the UGA to include the whole lot.

Campaigning – May public officials use their titles to identify themselves when campaigning on their private time for or against a ballot initiative?

The answer is a cautious “yes”. This specific question was addressed in a Memorandum from the Office of the Attorney General, from Nancy Krier, Assistant Attorney General, “Statutory Limits on the Use of Public Funds/Facilities to Assist or Oppose Campaigns, Particularly Campaigns Involving Ballot Measures or Initiatives,” dated September 13, 2001:

While it may be prudent to avoid using a position or title, primarily to avoid any implication that the agency or its officers are “officially” supporting a particular candidate or proposition, the mere identification of a person by stating his/her title or position would not seem to be use of public facilities. However, it was wise for you to point out that you were attending in your private capacity in order to avoid any misunderstanding on that point.

A review of the local ethics rules that might limit this use of titles was also suggested in the memorandum, which is viewable at <http://www.mrsc.org/Subjects/Governance/aagmemo.aspx>.

Impact Fees – Have any jurisdictions returned impact fees because they were not used within six years of collection as per RCW 82.02.070(3)?

Not that we are aware of. RCW 82.02.080 sets forth the process for refunds of impact fees when they are not expended or encumbered within six years of the date paid or other period of time established in RCW 82.02.079(3).

MRSC did not find any jurisdictions that had actually refunded impact fees because the funds had not been expended within the six-year time frame. A few jurisdictions have refunded impact fees for other reasons. Apparently most jurisdictions do not have a problem expending the funds within six years, because the impact fees collected are relatively small in relationship to the costs of the transportation, park, school, and fire projects to which they are applied.

Interlocal Cooperation – May a city or county use a public utility district to provide city construction management services? Or, would the city or county need to include the public utility district on the architectural and engineering roster to comply with Chapter 39.80 RCW?

Assuming that the district’s construction management personnel are bona-fide employees, the city or county can simply agree to use them via an interlocal agreement. Chapter 39.80 RCW only comes into play if the district uses contract engineers or an engineering firm.

Note this excerpt from MRSC’s bidding publication:

RCW 39.34.080, a section of the Interlocal Cooperation Act, authorizes one public agency to contract with another public agency to perform any function which each agency is authorized by law to perform. Under this statute, one public entity (e.g., the state, a city, a county, a special district, etc.) could act as agent or

contractor for one or more public entities. RCW 39.34.030, another section of the Interlocal Cooperation Act, authorizes cooperative action, including joint purchases, by different governmental entities.

Open Meetings – May a city council, board of county commissioners, or other governing body adopt a policy of providing special meeting notice to its members by e-mail.

Technically speaking, this does not comply with the Open Public Meetings Act (OPMA), which requires at least a 24-hour advance, written notice “delivered personally or by mail” to each governing body member. This language dates back to when the OPMA was first adopted in 1971, prior to the existence of e-mail.

However, practically speaking, we do not see a problem with such a practice, at least with respect to those councilmembers who specifically agree to it. The only people who would have standing to challenge the notice policy would be the governing body members themselves. The practice would, in our opinion, clearly conform to the intent of the OPMA, if not its strict letter. Perhaps sometime soon state law will catch up with technology. Legislation introduced in 2004 (HB 2632) to allow for such means of meeting notice did not, for whatever reason, pass; it passed the House 94-0 and, maybe because of time constraints, did not come to the Senate for a vote.

Parking – May a city enter into a “revocable license and permit” authorizing a private company to have exclusive use of parking spaces located within the public right-of-way alongside the company’s building?

No, such a grant of privilege would violate RCW 46.61.570(4):

(4) It shall be unlawful for any person to reserve or attempt to reserve any

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HEADS UP

Emerging information for local government

Tourist \$ Notes

According to Washington State's annual statewide report on tourism, preliminary figures for 2003 travel spending in Washington State increased by 3.9 percent over 2002. In 2002, travel spending was estimated at \$11.2 billion, generating \$3.5 billion in earnings and 139,200 jobs. The report, dated January 2004, was prepared by Dean Runyon Associates for the Department of Community, Trade and Economic Development. (See <http://www.deanrunyan.com/pdf/wa03p.pdf>)

An American Farmland Trust Study estimated that wildlife viewing in Skagit County provides a direct and indirect economic impact of \$43.2 million annually. (American Farm Trust Study, 10-03). A U.S. Fish and Wildlife-sponsored study reported that direct expenditures on wildlife viewing in Washington for 2001 were over \$979 million. The total economic contribution from wildlife watching in Washington was \$1.78 billion. (See *WDFW Watchable Wildlife at* <http://www.wdfw.wa.gov/viewing/wildview.htm>)

The annual Northwest Washington Fair brings 200,000 visitors to Lynden each August and takes in about \$1.6 million, which is just the beginning of the fair's economic impact. (*Bellingham Herald*)

The annual Bellingham Festival of Music (July-August) attracted about 100 musicians from around the world and more than 10,000 visitors with their tourism dollars. In total, festival organizers say it injects about a half-million dollars of lodging, dining, and shopping into the local economy over its three-week duration. (*Bellingham Herald*)

Sponsors of the Sequim Lavender Festival estimated the economic impact of the festival to be \$1.4 million in new money. Overall, that amount increases to \$2.5 million for the 3 days (City Council Minutes, 2003). According to Scott Nagel, executive director of this year's festival, the number of attendees was about the same as last year (30,000), but most of the ven-

dors and local businesses reported an increase in profits over 2003. (*Sequim Gazette*)

The annual Skagit County Tulip festival brings between 300,000 and 500,000 visitors to the county every year. Direct spending by these visitors in 2000, when an estimated 350,000 visited the county, amounted to \$14 million, accompanied by \$2.8 million in wages, \$192,000 in local tax revenue, and \$848,000 in state tax revenue. (*American Farmland Trust Study, 10-03* <http://www.farmland.org/prw/Skagit%20Ag%20Impact%20Study.pdf>)

Recently Seen for Sale – Fund Raisers

Blaine Boardwalk planks \$100
Bellingham Farmer's Market - Engraved Brick Paver \$50, Stone Tablet \$1000, Shelter Section \$10,000, Park bench \$4000, Major donor acknowledgement \$5000+ (<http://www.depotmarket.org/>)

Recent Awards and Other Distinctions

The city of *Spokane* is a 2004 All-America City. The city received this honor from the National Civic League on Saturday, June 12, in Atlanta, Ga.

Representatives of the *Tacoma-Pierce County Sister Cities Council* and the city of *Kent Sister Cities Association* (KCSA) received awards in July from Sister Cities International (SCI). Tacoma-Pierce County received the innovation award for arts and culture. It was one of only 14 communities nationwide to be recognized by Sister Cities International for its 2003 achievements. Kent received the Sister Cities International Award for Best Overall Program (for Population of 50,000 to 100,000). This award recognized the many successful programs and projects of the KCSA, and the outstanding healthcare and humanitarian programs and projects of the Kent-Kherson and the Kent-El Grullo Committees. SCI also acknowledged the KCSA for its strong Young Artist Program, education and cultural programs, Youth Ambassador Exchange Program, and the

business and trade promotion initiated by the Yangzhou China Committee.

In July, the Washington State Department of Transportation and the Federal Highways Administration selected four local agency projects for the Award of Excellence awards. The awards program is a collaborative effort to formally recognize federally-funded local agency projects that have achieved excellence in safety enhancements, construction, innovative design, environmental compatibility, and public involvement and satisfaction. The awards presented were Best City Project - City of *Stevenson*, SR 14 Couplet Project; Best County Project - *Clark County* Padden Parkway Project; Best Special Project - *Douglas County* Chief Joseph Dam Bridge Rehabilitation Project; and the Director's Award - City of *Tonasket*, SR 20/SR 97 Sidewalk Improvements Project. (See <http://www.wsdot.wa.gov/TA/Awards/PE04/>)

Bremerton was ranked one of top 50 best places to live in the *Cities Ranked and Rated: More than 400 Metropolitan Areas Evaluated in the U.S. and Canada*, by Bert Sperling and Peter Sander, published by John Wiley & Sons, March 2004.

Bellingham was named as one of the best "adventure towns" in the September 2004 issue of *National Geographic Adventure Magazine*.

Seattle was one of 5 recipients of the prestigious Innovations in American Government Award for its Natural Drainage Systems Program. The award is from the Ash Institute for Democratic Governance and Innovation at Harvard University and the Council for Excellence in Government. Seattle's program uses plants, trees, and soil to replicate traditional pipes and vaults to purify and transport the city's storm water runoff to Seattle's creeks and marine water bodies. The award was announced at the end of July. (See <http://www.ashinstitute.harvard.edu/Ash/natdrain.htm>)

LIBRARY LISTINGS

New resource materials now available

New Acquisitions

This list contains new publications, ordinances, and other materials recently received by the MRSC library. We also prepare a more comprehensive list of new acquisitions each month which is posted on our Web site at www.mrsc.org/library/newacq.htm. If you would like to borrow one or more of these publications, please contact Electra Enslow in our library at (206) 625-1300 or library@mrsc.org.

▼Airports

Metropolitan Transportation System - Regional Airports, Puget Sound Milestones, 2004

▼Economic Development

25 Immutable Rules of Successful Tourism, by Roger A. Brooks and Maury Forman, 2003

▼Governance

The Price of Government - Getting the Results We Need in an Age of Permanent Fiscal Crisis, by David Osbourne and Peter Hutchinson, 2004

▼Information Services

E-Government, by Jennifer Cowley-Evans and Maria Manta Conroy, 2004

▼Miscellaneous

20/21 Vision - Twentieth-Century Lessons for the Twenty-First Century, by Bill Emmott, 2003

▼Planning and Land Use

City Comforts - How to Build an Urban Village, by David Sucher, 2003

Crossroads, Hamlet, Village, Town - Design Characteristics of Traditional Neighborhoods, Old and New, by Randall G. Arendt, 2004

The Latest Illustrated Book of Development Definitions, by Harvey S. Moskowitz, 2004

Open Ground - Effective Local Strategies for Protecting Natural Resources, by John R. Nolon, 2003

Urban Containment in the United States - History, Models, and Techniques for Regional and Metropolitan Growth Management, by Arthur C. Nelson and Casey J. Dawkins, 2004

▼Personnel

FSLA Special Report: DOL's New White-Collar Exemption Rules - What Employers Need to Know, Thompson 2004

▼Public Safety

Wireless E 9-1-1, by Colin Haller, 2004

▼Telecommunications

Broadband Access - Local Government Roles, by Thomas Asp, 2004

▼Transportation

Accessible Rights-of-Way: Sidewalks, Street Crossings, and Other Pedestrian Facilities - A Design Guide, written by U.S. Access Board and Federal Highway Administration staff

Resource Sharing

The *Information Partnership Program* seeks and collects current materials from Washington local governments. The materials received provide answers and support to the challenges faced by cities and counties every day. You may order the materials below by contacting the MRSC library at (206) 625-1300 or 1-800-933-6772 or e-mail us at mrsc@mrsc.org. Due to space limitations, the list below may not be complete. A comprehensive list of IP materials received may be requested from the library or viewed on our Web site at www.mrsc.org/library/rshare.htm.

▼Employee Satisfaction Surveys (Satisfaction with Working Conditions)

Sammamish Employee survey, 2004 (PE 8.3000)

▼Employee Performance Evaluation Forms

Camas Employee performance appraisal; *Coupeville* Performance appraisal - non-exempt employee; *Des Moines* Performance plan and evaluation for department director, Administrative support employees evaluation report, Camp Khaos 2004 staff evaluation, Court security and court transport officer evaluation report, Performance management process, performance evaluation, Marina employee evaluation report, Parks and recreation department employee job performance evaluation, Police department employee performance evaluation process, Police officer evaluation report, Detective evaluation report, Professional/technical employees evaluation report, Public works employee evaluation report, Rating scale, Performance goals for new rating period, Performance evaluation form, Performance improvement plan; *Gig Harbor* Employee appraisal form; *Olympia* Performance review; *Port Angeles* Employee self evaluation, Performance evaluation criteria definitions, Instructions for using performance evaluation system, Performance improvement plan, Performance evaluation form, Performance

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The scooters will probably not just go away

Unless and until the legislature again considers what further limits should be placed on the use of motorized foot scooters, it may be necessary for local jurisdictions to address the safety and noise issues being voiced by many of their citizens. Local regulation may not be the answer for every community, but consideration of the impact that motorized scooters have on local roadways may nevertheless be a good idea. Then we can begin worrying about other things, like pocket or mini-motorcycles.▶

By Paul Sullivan
Legal Consultant
Municipal Research and Services Center

portion of a highway for the purpose of stopping, standing, or parking to the exclusion of any other like person, nor shall any person be granted such right.

Extending exclusive parking privileges on a public right-of-way to private corporate employees or their guests violates the statute and the concept that the right-of-way is for the general use of the public.

Personnel - Does the civil service commission have jurisdiction to review a police department reduction in force decision by the city council?

No. The decision of the city council to reduce the size of the police force because of budget issues is not a decision that can

be reviewed by the civil service commission. This type of action does not constitute a demotion or termination of service as the term is used in the civil service statutes. It is a policy decision for the city council and such decisions do not have to be approved by the civil service commission. MRSC has located only one old case that is somewhat on point. In *Wettrick v. Seattle*, 115 Wash 548 (1921), the court noted the general rule:

It is well settled that it is within the powers of a city council to abolish a position in the classified civil service and thus separate an incumbent from the service and discontinue the salary thereof.▶

How to "Ask MRSC." Assistance from MRSC may be obtained by **Phone** (206) 625-1300 or 1-800-933-6772 for long-distance calls; **Letter** 2601 4th Avenue, Suite 800, Seattle, WA, 98121-1280; **Fax** (206) 625-1220; or **E-mail** mrsc@mrsc.org. Telephone inquiry service is available from 8:00 a.m. to 5:00 p.m. If a consultant is not immediately available, you can record a detailed request on voice mail 24-hours a day, and a staff member will call back as soon as possible.

goals for new rating period; *Sammamish* Performance review; *Spokane* Nonmanagerial performance appraisal review (PE 8.1000)

▼International Building Code Adoptions

East Wenatchee Ordinance No. 04-06, Adopts International Building, Mechanical, Fire, Residential Codes; Resolution No. 04-04, Sets fees for building permits (C 4.2000)

(see also MRSC Web page <http://www.mrsc.org/Subjects/Pubworks/ICCDocs.aspx>)

▼Motorized Foot Scooter Ordinances

Auburn Ordinance No 5844, passed 6/7/04; *Everett* Ordinance No. 2784-04, passed 8/11/04; *Kennewick* Ordinance No. 5054, passed 7/20/04; *Kirkland* Ordinance No. 3948, passed 7/6/04;

Renton Ordinance No. 5089, passed 6/28/04; *Spokane* Ordinance No. 1144, passed 3/18/04; *Yakima* Ordinance No. 2004-39, passed 7/6/04 (LR 89.3000) (see also MRSC Web page <http://www.mrsc.org/Subjects/PubSafe/scooters.aspx>)▶



Two New Publications Available

Public Records Disclosure for Washington Cities and Counties

Report No. 61 • June 2004

The Open Public Meetings Act

How it Applies to Washington Cities and Counties

Report No. 60 • June 2004

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