Moab City Council Agenda Item  
Meeting Date: June 8, 2021

**Item:** Ordinance No. 2021-09 - Text Amendments to Moab Municipal Code §12.20.005 (Modifying the Definition of Motorized Vehicle and Adding a Definition for E-Bikes) and to Moab Municipal Code §12.20.060 (Allowing Class 1 E-Bikes on City Path Systems and Setting a 15 MPH Speed Limit on Mill Creek Parkway).

**Staff Presenter:** Laurie Simonson, City Attorney

**Attachments:**

- Attachment 1: Grand County Resolution Permitting Class 1 Electric Assisted Bicycles on All Paved Pathways Included Within the North Moab Recreation Areas Alternative Transportation System Within the Unincorporated Area of Grand County or On Land Owned By Grand County (signed copy not available at the time of this report)

- Attachment 2: Moab Municipal Code §12.20.060

- Attachment 3: Moab Municipal Code §12.20.005


- Attachment 5: TEA-21 Transportation Equity Act for the 21st Century Fact Sheet – Bicycle Transportation and Pedestrian Walkways

- Attachment 6: Ordinance No. 2021-09 - Text Amendments to Moab Municipal Code §12.20.005 (Modifying the Definition of Motorized Vehicle and Adding a Definition for E-Bikes) and to Moab Municipal Code §12.20.060 (Allowing Class 1 E-Bikes on City Path Systems and Setting a 15 MPH Speed Limit on Mill Creek Parkway)

**Proposed Motion:** “I move to approve Ordinance No. 2021-09 - Text Amendments to Moab Municipal Code §12.20.005 (Modifying the Definition of Motorized Vehicle and Adding a Definition for E-Bikes) and to Moab Municipal
Code §12.20.060 (Allowing Class 1 E-Bikes on City Path Systems and Setting a 15 MPH Speed Limit on Mill Creek Parkway).

Updated Timeline of Events:

This item was on the agenda for consideration at the April 27, 2021 meeting of the City Council. At that meeting, the Council voted to table the item based upon an email received from Mr. Paul Spencer of the Trail Mix advisory committee. In his email, Mr. Spencer noted that the Grand County Trail Mix Committee was currently working on several proposals to improve opportunities for e-bikes within the greater Moab area. Mr. Spencer requested, in part, that: “Rather than proceed independently, we would encourage the City to join us and other land managers with our paved path proposal.” Mr. Spencer stated: “Land usage within Grand County is complicated; whether the land you are on is within the City or County or BLM or NPS or USFS or private is often unclear to residents, and is not understood at all by visitors. A unified County-wide approach to regulation will make life easier for everyone.” Since that time, Mr. Spencer clarified that he sent this email in his personal capacity not as the president of the Trail Mix Committee and that the email represented his personal opinion not the opinion of the Trail Mix Committee. Also, on May 5, 2021, County Administrator Chris Baird clarified to the Council that Trail Mix is an advisory committee to the County Commission and is not a City advisory committee.

Thereafter, on May 11, 2021, the Trail Mix Committee held a regular meeting and invited staff to present the City’s proposed Ordinance concerning e-bikes within City limits. Staff made a presentation to Trail Mix similar to this agenda summary report. The Trail Mix advisory committee voted at this meeting to recommend that the County adopt a one-year trial period to allow Class 1 e-bikes on the paved paths north of the City of Moab.

On June 1, 2021, the Grand County Commission considered the Trail Mix proposal and voted in favor of a resolution allowing “Class 1 E-Bikes on the Paved NMRA [North Moab Recreation Areas Alternative Transportation System] Pathways within the unincorporated area of Grand County or on land owned by Grand County within the boundaries of the City of Moab.” (See Attachment 1.) This Resolution did not include a one-year trial period and made clear that it applied to the paved NMRA pathways only and did not permit, attempt to permit, or encourage the permission of any class of E-Bike
on any recreational, single-track, or dirt-surfaced non-motorized trails within the unincorporated area of Grand County.

This item is now back before the Council with the additional timeline of events above. As additional information, the Council received 13 emails in support of allowing e-bikes on the City’s pathways and five opposed. Of the five in opposition, the overall concern was the speed of e-bikes. Given that the County has permitted Class 1 e-bikes and not Class 2 or 3 e-bikes on the pathways north of the City, and given that some of the public has expressed a concern over speed, staff has revised the proposed Ordinance for Council’s consideration. The revised Ordinance places a 15 mile per hour (MPH) speed limit on all users of the Mill Creek Parkway path and permits Class 1 e-bikes on City path systems. The Council could also choose to allow Class 2 and 3 e-bikes on City path systems at its discretion.

The background information below was included in the prior staff report for the April 27, 2021 Council meeting and is included again here for ease of reference.

**What is an E-bike?**

An electric bicycle (“e-bike”) is a bicycle with a small electric motor that provides power to help move the bicycle. E-bikes are divided into three classes. A “Class 1 electric bicycle” is an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour. A “Class 2 electric bicycle” is an electric bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour. A “Class 3 electric bicycle” is an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 28 miles per hour. (36 Code of Federal Regulations (“CFR”), Chapter I, Part 1, §1.4.)

E-bikes have recently gained popularity in many communities. While e-bikes have an electric motor, they are operable in a similar manner to traditional bicycles and, in many cases, appear indistinguishable from them. (Secretary of the Interior Bernhardt’s Secretary’s Order 3376, “Increasing Recreational Opportunities through the use of Electric Bikes,” August 29, 2019.)
What Is The Current City, State and Federal Law Regarding E-Bikes?

Currently, multiple definitions in the “Streets, Sidewalks and Public Places” section of the Moab Municipal Code combine to create a prohibition on the use of e-bikes on pathways within City limits. Specifically, Moab Municipal Code §12.20.060 prohibits motorized vehicles in public parks. (See Attachment 2.) Moab Municipal Code §12.20.005 defines “Motorized vehicle” as “any motorized vehicle capable of, or designed for, travel on or immediately over land, water, paved pathways or other natural terrain. This includes motor assisted bicycles (electric, gas or diesel).” (See Attachment 3.) Moab Municipal Code §12.20.005 defines “Public park” as “city-owned parks, public squares, ball diamonds, soccer fields, path systems and other recreation areas, but not designated smoking areas specified by the City.” (See Attachment 3.) Therefore, under these current definitions, e-bikes are not allowed on the City’s pathways.

The City of Moab’s inclusion of e-bikes in the definition of “motorized vehicle” is inconsistent with state law. Utah Code Annotated (UCA) §41-6a-102 excludes e-bikes from the definition of “motor vehicle.” Therefore, e-bikes are allowed on pathways under state law. Further, pursuant to state law, “an individual may operate an electric assisted bicycle on a path or trail designated for the use of a bicycle” and the City of Moab may “adopt an ordinance or rule to regulate or restrict the use of an electric assisted bicycle, or a specific classification of an electric assisted bicycle, on a sidewalk, path, or trail within the jurisdiction of the local authority or state agency.” (UCA 41-6a-1115.5 (2) and (3).)

Additionally, some federal agencies, including the National Park Service, have recently made changes to explicitly exclude e-bikes from the definition of “motor vehicle.” (Department of the Interior, National Park Service, RIN 1024–AE61, General Provisions; Electric Bicycles, Final Rule effective December 2, 2020. “The rule explicitly excludes e-bikes from the definition of ‘motor vehicle’ found at 36 CFR 1.4. This clarifies that, except as stated in section 4.30(g), e-bikes are not subject to the regulations in 36 CFR part 4 that apply to the use of motor vehicles.” Secretary of the Interior Bernhardt’s Secretary’s Order 3376, “Increasing Recreational Opportunities through the use of Electric Bikes,” August 29, 2019 memorandum directs the superintendents of any NPS unit with e-bikes present to implement the
actions required by the policy using their regulatory authority in 36 CFR 1.5(a)(2). This authority allows superintendents to designate areas for a specific use or activity, or impose conditions or restrictions on a use or activity. As of the date of this rule, more than 380 units of the National Park System have implemented the e-bike policy under the authority in 36 CFR 1.5(a)(2) and have published notice of this action in the park-specific compilation of management actions required by 36 CFR 1.7(b), referred to as the superintendent’s compendium.)

On November 15, 1993, August 1, 1994, and December 15, 2000, the City of Moab received grant money from the Utah Division of Parks and Recreation’s Non-Motorized Trail Matching Fund by way of Financial Assistance Agreements for construction of pathways for “non-motorized” trails and facilities. (See for example Attachment 4.) These grant funds were from state funds provided by the Utah State Legislature. The Financial Assistance Agreements do not define “non-motorized” and these agreements pre-date the popularity of e-bikes. Over the years, the City has received other grant money from the Utah Division of Parks and Recreation for construction of pathways which made no mention of “non-motorized” use (i.e. were for “public outdoor recreation use” or allowed “motorized” use or were specifically for “motorized” use). The 1993, 1994, and 2000 grants were the only grants that specified “non-motorized” use. Because these were state grant funds and the state definition of motorized vehicle excludes e-bikes, the proposed change in definitions in Ordinance 2021-09 would not impact this past funding.

On April 30, 2015, the City received a joint Utah Division of Parks and Recreation and Federal Highway Administration grant for “non-motorized” recreational trails. The United States Department of Transportation’s Bicycle Transportation and Pedestrian Walkways provisions of Section 217 of Title 23, as amended by TEA-21, describes how Federal-aid funds may be used for bicycle and pedestrian projects and has clarified the permissibility of motorized wheelchair use on trails and pedestrian walkways that otherwise prohibit motorized use and also clarified the permissibility of electric bicycles on these facilities where State or local regulations permit. (See Attachment 5.) Finally, the Federal Highway Administration has stated, regarding use of “motorized vehicles,” that motorized wheelchairs are permitted and that state and local laws may permit e-bikes on trails and pedestrian walkways. (See 23 U.S. Code § 217 – Bicycle transportation and pedestrian walkways, section (h) “Use of Motorized Vehicles.”)
Additionally, the Americans with Disabilities Act ("ADA") requires that municipalities allow "power-driven mobility devices" on municipal facilities unless the municipality can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the public entity has adopted. Therefore, this section has been interpreted to require cities to allow persons with disabilities to use e-bikes on public pathways. With many studies finding that the baby boom generation will increase the number of people with age related disabilities, there will likely be an increase in the number of users of e-bikes for mobility related reasons.

Moreover, e-bikes can expand the option of bicycling to more people by providing a new option for those who want to ride a bicycle but might not otherwise do so because of physical fitness, age, or convenience, especially at high altitude or in hilly or strenuous terrain. Also, when used as an alternative to gasoline or diesel-powered modes of transportation, e-bikes can reduce greenhouse gas emissions and fossil fuel consumption, improve air quality, and support active modes of transportation. Similar to traditional bicycles, e-bikes can decrease traffic congestion, reduce the demand for vehicle parking spaces, and increase the number and visibility of cyclists on the road. (Department of the Interior, National Park Service, RIN 1024–AE61 General Provisions; Electric Bicycles, Final Rule effective December 2, 2020.)

**Conclusion:**

Ordinance 2021-09 removing the prohibition on e-bikes on City pathways will:

1. make the City’s regulations consistent with state and County law;
2. make the City’s regulations consistent with federal regulations;
3. make clear the City’s compliance with the ADA;
4. allow additional mobility and recreational uses;
5. encourage active transportation with an anticipated correlation in reduction of greenhouse gases, traffic congestion and demand for parking.

Ordinance 2021-09 will not conflict with any grant funds previously received by the City for construction of pathways as state law and federal regulation
make clear that e-bikes are excluded from the definition of motor vehicle and that e-bikes can be permitted on pathways by local regulation.