



Town of Hilton Head Island
Public Planning Committee Special Meeting
Wednesday, June 16, 2021 – 9:00 a.m.
AGENDA

In accordance with the Town of Hilton Head Island Municipal Code Section 2-5-15, this meeting is being conducted virtually and can be viewed live on the Town's Public Meeting Facebook Page at <https://www.facebook.com/townofhiltonheadislandmeetings/>. Following the meeting, the video record will be made available on the Town's website at <https://www.hiltonheadislandsc.gov/>.

1. Call to Order

2. FOIA Compliance – Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.

3. Roll Call

4. Approval of Agenda

5. Approval of Minutes

a. Special Meeting of June 2, 2021

6. Appearance by Citizens

7. Unfinished Business

8. New Business

a. Regulation of E-Scooters

b. Regulation of E-Bikes

c. Trolley Service Update

9. Staff Reports

10. Committee Business

11. Adjournment

Public comments concerning agenda items can be submitted electronically via the Open Town Hall HHI portal at <https://hiltonheadislandsc.gov/opentownhall/>. The portal will close at 4:30 p.m. on June 15, 2021. All comments submitted through the portal will be provided to the Committee for review and made part of the official record. Citizens who wish to comment on agenda items during the meeting by phone must contact the Committee Secretary at 843-341-4770 not later than 12:00 p.m. on June 15, 2021.

Please note that a quorum of Town Council may result if four (4) or more of their members attend this meeting.



Town of Hilton Head Island
Public Planning Committee Special Meeting
June 2, 2021 at 3:00 p.m. Virtual Meeting
MEETING MINUTES

Present from the Committee: Chairman David Ames, Tamara Becker, Alex Brown, Glenn Stanford

Absent from the Committee: None

Others Present from Town Council: Bill Harkins, Tom Lennox

Present from Town Staff: Jennifer Ray, Interim Community Development Director; Teri Lewis, Deputy Community Development Director; Diane Busch, Staff Attorney; Nicole Dixon, Development Review Administrator; Jayme Lopko, Senior Planner; Sheryse DuBose, Historic Neighborhoods Preservation Administrator; Teresa Haley, Senior Administrative Assistant; Karen D. Knox, Senior Administrative Assistant

1. Call to Order

Chairman Ames called the meeting to order at 3:00 p.m.

2. Freedom of Information Act Compliance – Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the Town of Hilton Head Island requirements.

3. Roll Call – See as noted above.

4. Approval of Agenda

Chairman Ames asked for a motion to approve the agenda. Mr. Stanford moved to approve. Ms. Becker seconded. By way of roll call, the motion passed by a vote of 4-0-0.

5. Approval of Minutes

a. Regular Meeting of April 22, 2021

Chairman Ames asked for a motion to approve the minutes of the Regular Meeting of April 22, 2021. Mr. Stanford moved to approve as amended. Ms. Becker seconded. By way of roll call, the minutes were approved by a vote of 4-0-0.

6. Citizen Comments

Public comments concerning agenda items were to be submitted electronically via the Town's Open Town Hall portal. Those comments were provided to the Committee and made part of the official record. Citizens were also provided the option to comment on agenda items during the meeting by phone. There were no callers for this meeting.

7. Unfinished Business

a. **Review and Recommendation on Family Compound/Family Subdivision LMO Amendments**

Dr. Sheryse DuBose gave a brief overview of the amendments and mentioned the Planning Commission held their meeting this morning and voted 8-0-0 to move the Family Compound/Family Subdivision LMO Amendments to PPC for approval. The purpose of the Family Compound and Family Subdivision is to encourage property retention among native land owners and also to honor the native island communal living traditions. These property owners can benefit from the compound and subdivision and there are some people who are waiting to use that now. Staff recommends the Public Planning Committee forward a recommendation to Town Council for Family Compound and Family Subdivision.

Chairman Ames thanked Dr. DuBose for today's presentation, but also for the work she, staff and Curtis Coltrane have been doing over the last couple of years.

The Committee made comments and inquiries regarding: the applicants waiting in queue to take advantage of the changes that would come with the adoption of this; concerns that were raised in the last PPC meeting were resolved; confirmation that a property owner is required to produce a certificate that shows he/she has the legal title to the property and therefore has the ability to make any decisions regarding that property; confirmation that these amendments do not include any changes pertaining to home occupation.

Chairman Ames commented that this has been a process that required the community, Town Council and staff to dig deeper into our relationships on the Island. The Committee was hopeful and optimistic that this step would prove to be proof of our ability in this Community to come together.

Chairman Ames asked for a motion to approve and recommend to Town Council the Family Compound/Family Subdivision LMO Amendments. Mr. Brown moved to approve. Mr. Stanford seconded. By way of roll call, the motion passed by a vote of 3-1-0. Ms. Becker opposed.

8. New Business

a. Review and Recommendation on 2020 Lowcountry Natural Hazard Mitigation Plan

Teri Lewis stated the Lowcountry Council of Governments on behalf of Beaufort, Colleton, Hampton and Jasper Counties and the Municipalities within each of those counties prepared the 2020 Lowcountry Natural Hazard Mitigation Plan. This plan does assess the communities' vulnerabilities to natural hazards; and includes long term strategies to address these hazards and to prevent future damage and loss of life. Ms. Lewis mentioned it is important because the adoption of the Plan will fulfill the continuing requirements that qualify the Town for FEMA, pre-disaster mitigation grants, post-disaster reconstruction assistance, and the Town's continued participation in the CRS Program. This Plan is consistent with Our Plan, specifically excellence, environment, regional goals and strategies. The Planning Commission met on May 19th to consider it and they voted unanimously to approve a Resolution recommending adoption of the 2020 Lowcountry Natural Hazard Mitigation Plan as an appendix to Our Plan. The next step will be a Public Hearing before Town Council scheduled for July 20th if it moves forward with a positive recommendation from the Public Planning Committee.

Chairman Ames asked for a motion to recommend approval of the 2020 Lowcountry Natural Hazard Mitigation Plan to Town Council. Mr. Stanford moved to approve. Ms. Becker seconded. By way of roll call, the motion passed by a vote of 4-0-0.

b. Review and Discussion on Research Related to a Short Term Rental Ordinance

Teri Lewis advised the development of a short term rental ordinance has been identified as a priority for the Town. Staff and Town Council members have documented multiple concerns from the public relating to the number of short term rentals on the Island. Some of the concerns include impacts to residential neighborhoods, the environment, the infrastructure, workforce housing; imbalance between residential and resort commercial districts; the Town ordinance does not include: a definition for short term, an occupancy limit on the number of bedrooms for single family homes, nor a requirement for additional parking.

Staff researched 24 communities, including several in South Carolina and Florida that have existing short term rental ordinances. Staff found several commonalities between most of the communities and these include: short term being defined as less than 30 days; that they regulate the number of occupants both by unit and per bedroom; that a license number is required on advertising of the unit; a permit is required and often a fee is required with the permit; a business license and an associated fee are also required; ATAX for an occupancy tax is collected; posting of rules and regulations for the short term rental or the provision of what we found is a good neighbor brochure. Some communities also grandfathered existing rental units, have a primary residence restriction and use a computer tracking program. A representative from one of the computer tracking companies did a quick scan of Hilton Head Island using their software and found that there were over 12,000 listings with over 9,500 unique short term rental units.

Ms. Lewis said staff would like to get some input from the Public Planning Committee on all of these different things that communities do, but especially the grandfathering.

Staff's additional findings included: several communities either included language that short term rentals cannot be used for or counted towards workforce housing; others require a fee that goes into a fund that is used to build workforce housing units; most require a contact for the unit; regulations related to noise hours, parking spaces based on bedrooms, yearly inspections of the units and specific trash agreements; some communities limit short term rentals to certain zoning districts; some limit the use to a certain percentage within zoning districts; some require separation distance between short term rental units so an entire neighborhood does not become all short term rental units; require vacation rental registration fees, tourist development taxes, and a per night occupancy privilege charge; some communities require a certain amount of insurance coverage on short term rentals.

Ms. Lewis said that moving forward the plan is to continue to engage stakeholders. Staff has reached out to all 10 PUD's and found out that 6 do not allow short term rentals. Hilton Head Plantation no longer allows short term rentals, but has 4 that were allowed to remain for an unknown period of time. Palmetto Dunes, Shipyard and Sea Pines all allow short term rentals. For Palmetto Dunes, it represents about 50% of their community. Shipyard fluctuates around 300 short term rental units and in Sea Pines there are approximately 2,000 currently. Staff plans to also speak with the 3 Public Service Districts and find out their concerns related to short term rentals. Staff is specifically looking to find out the impact on water and sewer capacity. Staff plans to engage residents in a variety of neighborhoods to learn about their concerns and experiences related to short term rentals. The Town's current Business License Ordinance allows for a one unit exemption for people who own and rent property. MASC's Business License Model Ordinance does not have that exemption and requires all property owners that own and rent property to obtain a Business License. Staff is recommending adopting that model business license and removing the one

unit exemption with the adoption of that new ordinance which is scheduled to be reviewed by F&A at their June 15th meeting. The Town also has an RFQ out right now which will close on June 10th. The Town is looking to hire an expert to draft a Short Term Rental Ordinance. Staff will share their research with them once they are hired as well as the input we receive from the stakeholders and the Public Planning Committee. Staff will work closely through this process and would be responsible for taking the drafted Ordinance through the adoption process once it was drafted. Certainly, staff would work very closely with the Public Planning Committee and the consultant during that time period.

Staff's plan is to report back at the July PPC meeting with an update on the stakeholder input and the status of the consultants.

The Committee made comments and inquiries regarding: support to implement ordinances to protect the residential neighborhoods both inside and outside of the gated communities; grandfathering, noise hours, parking, trash, clarification on what the RFQ was for and also clarification on the 12,000 listings mentioned above; the need to obtain legal advice on the legal enforceability of these regulations; the Town needs a business license of everyone who has a business of renting real estate on a perpetual basis and was in favor of getting rid of the exemption pertaining to only renting one unit; concerns received from several residents in the Folly Field community regarding large groups renting short term; obtain a definitive number of short term rental units and how that ratio competes with affordable housing; the value of the experience for guests and the quality of life for residents is protection of brand; consider whether a commercial component exists among short term rentals and how to address it; review the rental stock of very large homes to see what they are advertising and compare it to the impact of infrastructure and amenities; consider designating more residential areas and possibly have an overlay capping the number of short term rentals within those areas; return residential neighborhoods back to the residents of Hilton Head Island and protect their quality of life and safety.

The Committee expressed support in moving this ordinance forward so that restrictions can be enforced and to give plenty of notice that this ordinance will become effective by a certain date. The Committee mentioned there are a lot of fine companies that do short term rentals very well and those companies need to be engaged equally so that codes are well written.

Ms. Lewis noted one of the requests in the RFQ is to have a lawyer as part of the team that works on this ordinance. Curtis Coltrane would also review anything that was drafted. Ms. Lewis acknowledged Jayme Lopko and Nicole Dixon from staff who were key in all the research put together.

c. Review and Discussion on 2021 LMO Amendments – First Set

Teri Lewis advised the Committee that the LMO is generally amended on a bi-annual basis with some standalone amendments that proceed separately due to Town Council priorities. Town Council adopted several sets of amendments in 2020, but general amendments were put on hold during this time. Staff has brought forward amendments for consideration by the Committee at this time. No language has been drafted.

Standalone Proposed Amendment

Short Term Rental Ordinance

Wetland Mitigation Requirements for Projects with a Community Benefit (Airport, Gateway Corridor, Parks)

Changes to Massing Height, Setbacks, Buffers (DRB Concerns)

Airport Approach Path and incompatible uses.

First Set

- 1. Make changes identified being needed as a result of the new flood maps.** The Committee agreed for staff to proceed.

- 2. Add a definition for Nano Brewery and add to use classifications.**

The Committee questioned if there was a downside in moving in this direction that has been identified. Staff responded it makes sense for the scale of the use. The Committee also asked for a definition of a Nano Brewery. Staff advised it would be something that is small in scale and limited to the amount of sales and on sight consumption.

- 3. Allow outdoor screened bike storage in the LC and CC zoning districts and provide more specifically related to screening.**

The Committee was concerned how the sight would be impacted by having outdoor storage.

- 4. Allow Outdoor Display and Sale of Merchandise in the RD, MV, MF zoning districts.**

The Committee asked where the idea came from. Staff responded there have been applicants who have requested to have outdoor displays and in trying to explain what districts it was allowed in, they were inquiring if they can have a bike business out there with outdoor storage, but not have any kind of outdoor display. Staff found that it was appropriate to allow it in those districts. The Committee expressed concerns about this and made comments regarding: the list of what is allowed should be refined; aesthetic concerns; whether this is a permanent or temporary use; consideration of business owners wanting the economic opportunity without the storefront ability; concerns with conflicting with the Gullah Geechee Cultural & Land Preservation Task Force's recommendations related to opening up economic opportunities and open air sales; careful consideration of how the RD, MV and MF zoning districts address outdoor display and sale of merchandise.

- 5. Revise what is permitted to encroach into setbacks.**

The Committee mentioned some residents in a newly developed community want an in ground pool that would require encroachments into setbacks and buffers. The Committee expressed willingness to look at the pros and cons of this, however, the purpose of setbacks and buffers are of great importance. The Committee asked Staff to clarify what is permitted in the setback, consider what is the purpose of a setback, does it serve an environmental purpose, and if so, what is included in the LMO that reinforces that notion.

- 6. Setbacks and Buffers**

- Add the PD-1 District and Agriculture use to the adjacent use setback and buffer tables.**

The Committee agreed staff to proceed.

- **Mirror the reduction allowed in the setback table for small residential development plan reviews and minor subdivisions in the buffer table.**

The Committee expressed this is not the direction they desire and asked staff to look at criteria that address important factors regarding setbacks and buffers such as privacy, aesthetics, noise, etc.; and to come back with real world examples and photographs.

- **Remove note in setback table and under it allowing small residential developments to reduce setback to 5 feet.**

The Committee said setbacks and buffers need to be reviewed in its total form and see what is liked and what is not.

- **Make it clear when/where setback angles are required.**

The Committee decided to wait until the bigger picture is discussed.

7. Access Easements

- **Reduce the setback and buffer requirement from access easements.**
- **Remove the requirement for a buffer from an access easement for commercial properties.**
- **Add requirement for access easements on shared property lines.**

The Committee said these also need to be added to the setback and buffer discussions mentioned above.

8. Review when and how plantings are required on a single family lots in buffers as part of a subdivision Certificate of Compliance.

The Committee mentioned tree protection surpasses the arguments. The Island supports tree protection in this community and building should be done in accordance to the tree protection regulations. The Committee asked if the buffer has no trees in it at the beginning of construction of the house or building, then support of that the planting could take place after the construction. If there is natural vegetation in that buffer then it should be protected.

9. Make changes to allow temporary or seasonal signage as recommendation by the Gullah Geechee Preservation Report.

Some members of the Committee expressed concerns with cluttering the aesthetics of island character and that temporary signage is not always removed. One member of the Committee emphasized Gullah Geechee culture is part of island character and a component of the Town's newly adopted Comprehensive Plan. The Committee asked that Jenn McEwen be included in the discussion of opportunities to display and educate cultural signs that would resonate with both residents and visitors.

10. Replace using June traffic counts with July traffic counts for Traffic Impact Analysis Plan Standards.

The Committee agreed for staff to proceed.

11. Add single family residential lots to the list of exemptions from having to obtain tree removal permits (other than required buffers.)

The Committee said there is evidence of development practices now that do not respect the environment. This brings up the question whether or not the Town should be lenient as to relegate the significant tree decision to the developer in all cases.

12. Strengthen the language as it relates to trunk offsets and tree protection zones of specimen trees and significant trees during construction.

The Committee agreed for staff to proceed.

13. Remove requirement that staff provide a recommendation as part of staff reports.

The Committee expressed Town staff members are knowledgeable and may know more individually than the collected wisdom of an appointed Board/Commission. Staff has worked on a particular issue or application and has a lot more detailed information that can be beneficial to the Board/Commission. The Staff report, recommendation, and presentation are valuable aspects. The Committee mentioned it's important that Board members in a volunteer capacity are better equipped along the way. The Committee expects the Town Manager to hire people who are experts and have experience in areas that probably as elected officials and volunteers do not have. The Committee looks to staff to provide the evaluation and assessment of opportunity or risk in any proposal; not necessarily support a position, but to give Council the information and the pros and cons of a direction. The Committee is in favor of staff putting together a comprehensive presentation and then allow Council to make a decision.

14. Remove staff granted waivers.

The Committee expressed it may be necessary to have thicker guidelines with less flexibility. The Committee asked staff to provide the different types of waivers for their review at the next meeting.

Chairman Ames suggested staff put a calendar together on how these items will move forward.

9. Staff Reports - None

10. Committee Business - None

11. Adjournment

With no other business before the Committee, Chairman Ames asked for a motion to adjourn. Mr. Stanford moved to adjourn. Ms. Becker seconded. The meeting was adjourned at 5:13 p.m.

Submitted by: Karen D. Knox, Secretary

Approved: [DATE]



TOWN OF HILTON HEAD ISLAND

TO: Public Planning Committee
FROM: Diane Busch, *Staff Attorney/Prosecutor*
CC: Marc Orlando, ICMA-CM, *Town Manager*
CC: Josh Gruber, *Deputy Town Manager*
DATE: June 7, 2021
SUBJECT: Motorized Scooter Rental Prohibition

Recommendation:

The safety of the Island's visitors and residents is tantamount. Motorized scooters pose an additional risk and disruption to the safe, lawful use of public pathways and roads. Staff recommends that motorized scooters be expressly prohibited for use on public roads, pathways and rights-of-way within the Town of Hilton Head Island.

Background:

Staff has recently learned of an attempt by local businesses to offer motorized scooter rentals on the Island. Motorized scooters (propelled by a motor) are lightweight, two-wheeled tandem, open motor vehicles on which the rider stands on a floorboard, self-balancing, with the help of a long-steering handle.

Classified by State law as motor vehicles, motorized scooters are not permitted on public sidewalks or pathways. A motor vehicle is defined as "every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails." SC Code of Laws does not distinguish, or further define motorized scooters; however, both motorcycles and mopeds are defined. Of the two, the definition which most closely describes a motorized scooter is a moped, which is defined as "a cycle, defined as a motor vehicle, with or without pedals, to permit propulsion by human power, that travels on not more than three wheels in contact with the ground whether powered by gasoline, electricity, alternative fuel, or a hybrid combination thereof."

If we apply the definition of a moped to identify motorized scooters, SC law requires, "A moped operated on a public highway must be registered and licensed with the SCDMV (South Carolina Department of Motor Vehicles) in the same fashion as passenger vehicles."

South Carolina law includes additional requirements for those selling, leasing or renting mopeds. The devices must be equipped with operable pedals (if equipped with pedals); at least one rear view mirror; operable headlights and running lights; and brake lights which are operable when either brake is deployed. Please note that motorized scooters are not equipped with any of the above.

Other than on private property, there are no lawful public roadways or pathways on which a motorized scooter may be operated within the Town of Hilton Head Island.

Importantly, there are also significant safety concerns regarding the operation of motorized scooters on public pathways and roads. A study released by the JAMA Network Open Study found “Standing motorized scooters are increasingly used for personal transportation, yet such devices confer considerable risk for trauma, particularly to the head and extremities. As potential dangers are not widely known and training is often minimal, riders may often use these devices in an unsafe manner, e.g., without protective gear and/or while intoxicated. This single-center study assessed the incidence and severity of traumatic injuries associated with motorized scooters and the associated use of protective devices and/or intoxicants.”¹ Further, in a 2020 study of e-scooter injuries, Kathleen Yaremchuk, M.D., chair of the Department of Otolaryngology at the Henry Ford Health System –says a review of emergency visits in the last three years shows e-scooter injuries have increased significantly with many of them related to head and neck injuries.²

Incidents within the Town are antidotal at this time as no official data compiling mechanism has been established to keep track of incidents involving motor scooters. Still, it is not hard to imagine the increased risk for collisions with bicyclists, pedestrians, individuals with physical limitations, motorists, and other scooter riders if Town pathways or roads included one-person motorized scooters.

Bauer F, Riley JD, Lewandowski K, Najafi K, Markowski H, Kepros J. Traumatic Injuries Associated with Standing Motorized Scooters. *JAMA Netw Open*. 2020;3(3):e201925. doi:10.1001/jamanetworkopen.2020.1925

<https://www.henryford.com/news/2020/10/ent-e-scooters-study>

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO.

PROPOSED ORDINANCE NO. 2021-

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, TO ADD A NEW ARTICLE 611 TO PROHIBIT THE USE AND RENTAL OF MOTORIZED SCOOTERS ON ANY PUBLIC RIGHT-OF-WAY AND TO PROVIDE AUTHORITY TO THE TOWN OF HILTON HEAD ISLAND AND THEIR DESIGNEES TO REMOVE AND DISPOSE OF ANY MOTORIZED SCOOTERS PHYSICALLY LEFT UNATTENDED ON PUBLIC PROPERTY.

WHEREAS, the Town Council now desires to add Article 611, to Title 12, Chapter 1, for the purpose of defining “motorized scooter” and to establish prohibited uses thereof; and

WHEREAS, the Town Council finds that motorized scooters are a safety hazard to visitors and residents, particularly those enjoying the public sidewalks and pathways of Hilton Head Island; and

WHEREAS, as defined by South Carolina Code, motorized scooters are motorized vehicles, which are prohibited by the Municipal Code of the Town from use on Town sidewalks, pathways and beaches; and

WHEREAS, South Carolina law requires motor vehicles to be registered and titled with the SCDMV if they are driven upon public roadways; and

WHEREAS, the Town Council finds that it is in the best interests for the safety of the citizens and visitors of the Town to prohibit the use of motorized scooters on or about public roads, public right-of-ways, and public pathways.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDERED AND ORDAINED BY AND UNDER THE AUTHORITY OF THE SAID TOWN COUNCIL, AS FOLLOWS:

NOTE: Underlined and bold-face typed portions indicate additions to the Municipal Code. ~~Stricken~~ portions indicate deletions to the Municipal Code.

Section 1. That Chapter 1 (Motorized Vehicles Prohibited on Pathways) of Title 12 of the Municipal Code of the Town of Hilton Head Island, South Carolina, is hereby amended to include Article 611:

Section 12-1-611 Motorized Scooters: Defined.

For the Purposes of this chapter, the term “motorized scooter” shall mean every device which has one, two, or three wheels, is self-balancing, with or without handlebars, a floorboard that is designed to be stood upon while riding, powered by an electric motor, or any other artificial power source. Devices commonly known as electric scooters, hoverboards and one-wheels are illustrative of, but not limited to, other devices intended to be included in this section. Motorized scooters or powered wheelchairs designed for use by persons with limited mobility are not "Motorized Scooters" as that term is defined in this Ordinance and are excluded from the application of this Ordinance.

- (1) Section 12-1-612 Motorized Scooters: It shall be unlawful for any person to operate a motorized scooter:**
 - a. Upon any public roadway designed for vehicular traffic;**
 - b. Upon any public sidewalk or pathway;**
 - c. On any public right-of-way;**
 - d. Upon any Town owned or leased property, including parks, recreation centers, beaches, athletic fields or parking lots.**
- (2) It shall be unlawful to rent, offer, or make available a motorized scooter for the use on a public roadway, public sidewalk or pathway, or public right-of-way.**
- (3) Any motorized scooter left physically unattended on public property may be removed and disposed of by discarding, donation, auction, or any other manner deemed appropriate by the Town. The Town shall bear no responsibility to a motorized scooter owner for loss or damage to a confiscated motorized scooter, including any chain or locking mechanism, in its enforcement of this Section.**

Section 2 Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. Effective Date. This Ordinance shall be effective upon adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS ____ DAY OF _____, 2021.

(SIGNATURES ON FOLLOWING PAGE)

John D. McCann, Mayor

ATTEST:

By: _____
Krista Wiedmeyer, Town Clerk

First Reading: _____

Second Reading: _____

APPROVED AS TO FORM:

Curtis Coltrane, Town Attorney

Introduced by Council Member: _____



MEMORANDUM

TO: Joshua A. Gruber, Esq., Deputy Town Manager
Diane Busch, Staff Attorney
FROM: LaQuin Andrus, Legal Intern
RE: Regulation of Electronic Bicycles
DATE: June 7, 2021

Issue:

This memorandum provides an overview of the current federal, state, and local laws related to electric bicycles.

Federal Law, Agencies, and Action:

In 2002, the U.S. Congress enacted [Public Law 107-319](#), which established that electric bicycles are regulated as consumer products under the Consumer Product Safety Act and, more specifically, are subject to the same regulations that govern traditional, human-powered bicycles. This amendment to the Consumer Product Safety Act is codified in [15 U.S.C. Chapter 47 Section 2085](#).

Under Public Law 107-319, an electric bicycle is referred to as a “low-speed electric bicycle,” which is defined as:

a two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.

The Consumer Product Safety Administration (CPSC) considers e-bikes that meet this definition to be standard bicycles for the purposes of manufacture and first sale at the federal level, and they must comply with the bicycle safety standards set forth in [16 C.F.R. § 1512](#). The federal law permits e-bikes to be powered by the motor alone (a “throttle-assist” e-bike), or by a combination of motor and human power (a “pedal-assist” e-bike).

The designation of the 20 mph speed limit for electric bikes distinguishes them from mopeds and motorcycles. In addition, pursuant to Section 2 of Public Law 107-319, electric bicycles are explicitly not “motor vehicles” for the purposes of federal law and are not subject to National Highway Transportation Safety Administration vehicle standards.

Significantly, this federal definition only specifies the maximum assisted speed that an electric bicycle can travel when being powered only by the motor. It does not provide a maximum assisted speed for when an electric bicycle is being propelled by a combination of human and motor power. The Consumer Product Safety Commission has clarified that the federal law does allow e-bikes to travel faster than 20 mph when using a combination of human and motor power.

This federal law does not preempt any state traffic laws and vehicle codes. While Subsection 1(d) of Public Law 107-319 is a preemption provision, this provision is limited in purview to product safety regulation. Therefore, Public Law 107-319 has no impact on South Carolina traffic laws or vehicle codes. Accordingly, the manufacturing and first sale of an e-bike is regulated by the federal government, whereas its operation on streets and pathways lies within the state's authority.

Regulation by Federal Agencies

Certain federal agencies are delegated the authority to ensure the standardization and proper safety of products in the United States. The CPSC handles consumer products, and its authority is limited only to the manufacture and first sale of consumer products. Products that do not fall under the jurisdiction of CPSC include those specifically named by law to be under the jurisdiction of other federal agencies, such as firearms, motor vehicles, and food and drugs. When CPSC defines a device as a consumer product, it means the device must comply with all manufacture and product sales regulations set by CPSC that pertain to the device. This does not affect how states may decide to govern the licensing and use of consumer products, such as bicycles or all-terrain vehicles.

Similarly, the National Highway Transportation Safety Administration (NHTSA) handles motor vehicles, and its authority is limited primarily to safety requirements of motor vehicles. Through administering the Federal Motor Vehicle Safety Standards (FMVSS), NHTSA is able to impose requirements on the design, construction, performance, and durability of motor vehicles.

When NHTSA defines a device as a motor vehicle, it means the device must comply with all regulations set by NHTSA that pertain to the device. This does not affect how states may decide to govern the licensing and use of motor vehicles, such as mopeds or passenger vehicles. The key points to understand are that CPSC handles only the manufacture and first sale of consumer products, such as bicycles; NHTSA handles vehicle and safety standards of motor vehicles. When CPSC or NHTSA define a product or vehicle, the extent of the definition is limited only to the scope of their regulations. Thus, states are free to govern the licensing and use of consumer products and motor vehicles as they wish, insofar as states do not enact laws that reduce the manufacture/safety standards set by the federal agencies.

The Federal Highway Administration (FHWA) is a division of the U.S. Department of Transportation, and its primary role in the federal-aid highway program is to oversee federal funds used for design, constructing and maintaining the National Highway System (primarily interstate highways, U.S. routes, and most state routes). In addition, FHWA provides oversight and guidance for non-motorized trails and pedestrian walkways using federal transportation funds (23 U.S. Code § 217).

Finally, federal land management agencies (the National Park Service, Bureau of Land Management, U.S. Fish and Wildlife Service and Bureau of Reclamation – within the U.S.

Department of the Interior - the U.S. Forest Service – within the U.S. Department of Agriculture) can regulate the use of electric bicycles on motorized and non-motorized trails.

Regulation by the Department of the Interior

On October 2, 2020, the [Department of the Interior \(DOI\) finalized its rule governing the use of electric bicycles on public lands](#). This rule implements [Secretary of the Interior Order 3376, “Increasing Recreational Opportunities through the use of Electric Bikes,”](#) on Federal lands managed by the Department.

[Secretary’s Order 3376, Increasing Recreational Opportunities through the use of Electric Bikes](#) called on Interior bureaus to develop policies and regulations to enhance access to public lands, especially for older individuals and those with physical limitations, by allowing for electric bike use where traditional bicycles are allowed and to bring federal land e-bike regulations more in line with state rules.

The final rules in large part adopt the existing federal definition of e-bikes as a two- or three-wheeled cycle with fully operable pedals and an electric motor of not more than 750 watts (1 horsepower). The rules look to the classification system developed by a majority of states to differentiate between different types of e-bikes. These new regulations clarify the authority of [the National Park Service, the Bureau of Land Management, the Fish and Wildlife Service](#) and [the Bureau of Reclamation](#) to increase recreational opportunities for those who enjoy the pedaling assistance e-bikes can provide. The regulations make clear the agencies can allow e-bikes on roads and trails that are open to traditional bicycles through the issuance of site-specific decisions. In addition, the rule no longer considers electric bicycles a motorized use “unless the rider is using the throttle along to power the bicycle for an extended period of time.”

Local land managers are tasked with carrying out the new regulations in their jurisdictions after taking into consideration public health and safety, natural and cultural resource protection and other management activities and objectives.

Public lands designated by Congress as “wilderness areas” will remain off-limits to both traditional bicycles and e-bikes.

Regulation by the Department of Agriculture

On September 24, 2020, [the United States Department of Agriculture \(USDA\), Forest Service proposed revising its directives to update and clarify guidance on management of electric bicycle use on National Forest System \(NFS\) lands](#).

According to the Forest Service, the “proposed directive revisions align with the 27 States and DOI’s proposed e-bike rules in adopting a standard definition for an e-bike and a three-tiered classification for e-bikes and align with DOI’s proposed e-bike rules in requiring site-specific decision-making and environmental analysis at the local level to allow e-bike use.”

The [proposed directive](#) is an amendment to the Forest Service Manual (FSM) 7700 for the Travel Management Rule (TMR) and [Chapter 10 Travel Planning](#) for motor vehicle use

management. Of note, the Forest Service’s proposed definition¹ of electric bicycles deviates from other federal, state, or local laws in the United States.² The proposed definition would limit electric bicycles to two-wheeled devices and manage electric bicycles as “motor vehicles.”

To allow electric bicycles on bike trails currently classified as non-motorized trails, under current regulations and this proposed directive, requires reclassifying electric bicycles as motorized. This proposed directive is not about allowing electric bikes on motorized trails. Although, since electric bicycles are currently motorized vehicles, and the proposed directives codify that, any motorized route or motorized trail is automatically open to electric bicycles if not specifically closed to such use. Accordingly, the directive proposes defining or creating a process and framework for allowing electric bikes, as motorized vehicles, on bike trails currently classified as non-motorized trails and consequently recategorizing them as motorized trails, albeit limited possibly to certain classes of electric bicycles.

The public commenting period ended on October 26, 2020. The Forest Service is currently considering submitted documents and as of June 6, 2021 has not published the final rule. A notice of the final revisions, including a response to timely comments, will be posted on [the Forest Service's web page](#).

State Legislation Overview

At the state level, electric bicycles law are variable. According to PeopleForBikes, 45 states and Washington D.C. have incorporated electric bicycles into their traffic codes and regulated them similar to traditional bicycles. In the 5 remaining states, electric bicycles lack a specific definition and may be included within another vehicle class such as “moped” or “motorized bicycle.”³

Electric Bicycle Definition and Classification System

Thirty-three states have enacted [PeopleForBikes’ “model” law](#), which is a three-tiered electric bike classification system (table below) intended to differentiate between models with varying speed capabilities, in some manner. Any device outside of these respective state definitions is not considered a low-speed electric bicycle that would be regulated as a bicycle. Other states, similar to South Carolina, have “acceptable” legislation (as designated by the Bicycle Product Suppliers Association and PeopleForBikes), which regulates electric bicycles as a traditional bicycle.

New Jersey and West Virginia both established a two-tiered classification system. In New Jersey, [the definition](#) only includes the first two tiers of classification. Additionally, the legislature modified its [“motorized bicycles” definition](#) by stating that such device is one that operates in excess of 20 MPH with a maximum motor-powered speed of 28 MPH. This would generally meet the definition of a “class three” e-bike. In [West Virginia, the law](#)

¹ “Electric Bicycle (E-Bike). Also referred to as an electric mountain bike (eMTB), a type of motor vehicle with two wheels attached to a frame, one behind the other, equipped with fully operable pedals and an electric motor of less than 750 watts that meets the requirements of one of the” three defined classes.

² As stated above, pursuant to 15 U.S.C. § 2085, electric bicycles are “consumer products,” subject to the same consumer product safety standards as bicycles. See also, [49 U.S.C. § 30102](#) (electric bikes are explicitly not “motor vehicles” subject to federal motor vehicle safety standards); [23 U.S.C. § 217\(h\)\(4\)](#) (electric bicycles are explicitly excluded from being considered a motorized vehicle and, therefore, are permitted to access non-motorized facilities in accordance with state and local law).

³ Last checked June 3, 2021.

provides for “class one” and “class three” e-bikes, but not the “class two” classification e-bike that can be propelled solely by a motor up to 20 MPH.

Class 1 electric bicycle	A 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.
Class 2 electric bicycle	A 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.
Class 3 electric bicycle	A 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 and is equipped with a speedometer.

South Carolina Regulation of Electric Bicycles

In South Carolina, electric bicycles are considered bicycles so long as they have two or three wheels, fully operable pedals, an electric motor that does not exceed 750 watts, and whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.⁴ Electric bicycles are explicitly not considered mopeds. Electric bicycles are exempt from motor vehicle requirements, which means that bicyclists do not need a license to operate or register their bicycle with the Department of Motor Vehicles. More specifically, the South Carolina traffic code gives electric bicycles similar rights and duties to that of traditional bicycles.⁵ Stated plainly: in South Carolina, local jurisdictions are to treat and regulate electric bicycles the same as traditional bicycles.⁶ Similar to the federal definition, the South Carolina traffic code permits electric bikes to be powered by the motor alone (a “throttle-assist” e-bike), or by a combination of motor and human power (a “pedal-assist” e-bike); only specifies the maximum assisted speed that an electric bicycle can travel when being powered only by the

⁴ [S.C. Code Ann. § 56-1-10](#): “‘Electric-assist bicycles’ and ‘bicycles with helper motors’ means low-speed electrically assisted bicycles with two or three wheels, each having fully operable pedals and an electric motor of no more than 750 watts, or one horsepower, and a top motor-powered speed of less than twenty miles an hour when operated by a rider weighing one hundred seventy pounds on a paved level surface, that meet the requirements of the Federal Consumer Product Code provided in 16 C.F.R., Part 1512, and that operate in a manner such that the electric motor disengages or ceases to function when their brakes are applied or the rider stops pedaling. Manufacturers and distributors of electric-assist bicycles shall apply a label that is affixed permanently, in a prominent location, to each electric-assist bicycle, indicating its wattage and maximum electrically assisted speed. The owner or user of an electric-assist bicycle shall not remove or tamper with the label. If a user tampers with or modifies an electric-assist bicycle, changing the speed capability, he must replace the label indicating the vehicle’s wattage or horsepower. Electric-assist bicycles and bicycles with helper motors are not mopeds.”

⁵ [S.C. Code Ann. § 56-5-3520](#): “Bicyclists operating bicycles with helper motors, as defined in Section 56-1-10, are subject to all statutory provisions applicable to bicyclists, as provided in Section 56-5-3420.”

⁶ Town Attorney, Curtis L. Coltrane, reached the same legal conclusion as stated in a July 31, 2020, correspondence addressed to former Staff Attorney, Stephen Ryan, with Stephen G. Riley and Joshua A. Gruber receiving courtesy copies.

motor; and does not provide a maximum assisted speed for when an electric bicycle is being propelled by a combination of human and motor power. The state definition does not define electric bicycles based on the three-tiered electric bike classification system. Accordingly, local jurisdictions are permitted to adopt the three-tiered electric bike classification system in order to differentiate between models with varying speed capabilities.

Electric bicycles are allowed to operate on the same paths as traditional bicycles. The South Carolina traffic code enables local authorities to exercise police power to regulate “the operation of bicycles” on “streets and highways under their jurisdiction.”⁷ In addition, local authorities may regulate the use of bicycles on sidewalks under their jurisdiction as long as those regulations do not conflict with the traffic code.⁸ Therefore, local jurisdictions have the authority prohibit the use of bicycles on public pathways and roads.

South Carolina Local Regulations of Electric Bicycles

Following the state law change in 2020, local jurisdictions across South Carolina have varied in their response and approach to the change. No communities that we have reached out to have reported having held an electric bike pilot study or community engagement meetings, allowing for public comment and opinions. Some communities have reported that they define or regulate electric bicycles as something in conflict with state law whereas as other communities have yet to take action.

- Charleston: Electric bicycle regulation was not brought up until our inquiry;
- Daniel’s Island: Still defining an electric bicycle as a moped, which are not permitted to travel in excess of 20 mph;
- Kiawah Island/Folly Beach/Ravenel: Not yet defining electric bikes as traditional bicycles.
- Mt. Pleasant: Refers to electric bicycles as “low-speed vehicle” and have a variety of means to restrict them as a “non-regulated vehicle.” There is no specific speed set out for “low-speed vehicles”
- Myrtle Beach: Defines electric bicycles in accordance with [S.C. Code Ann. § 56-1-10](#) and restricts them to “no more than 20 miles per hour”;
- Communities similar to Hilton Head Island located outside of South Carolina:
 - Sanibel, Florida: [adopted the definition of bicycle](#) contained in [the Florida Code](#). Electric bicycles are regulated like bicycles. Thus, the same rules of the road apply to both electric bicycles and human-powered bicycles.
 - Sarasota, Florida: [adopted the definition of bicycle](#) contained in the Florida Code. Electric bicycles are regulated like bicycles. Thus, the same rules of the road apply to both electric bicycles and human-powered bicycles.

Conclusion

⁷ [S.C. Code Ann. § 56-5-710\(8\)](#): “Subject to the limitations prescribed in Section 56-5-930, the provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from . . . regulating the operation of bicycles and requiring the registration and licensing of them, including the requirement of a registration fee . . .”

⁸ [S.C. Code Ann. § 56-5-430](#) defines the terms “street” and “highway” as “[t]he entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel....” [S.C. Code Ann. § 56-5-480](#) defines the term “sidewalk” as “that portion of a street between the curb lines, or the lateral lines, of a roadway and the adjacent property lines, intended for the use of pedestrians.” Thus, a sidewalk is part of a street or highway. See also, [Burke v. Davidson, 380 S.E.2d 839 \(S.C. App. 1989\)](#).

Since electric bicycles have entered the outdoor recreation scene, there have been both early adopters of the technology and those who are adamantly opposed to widespread use. For each side, there are multiple reasons behind their attitudes concerning e- electric bicycles, including perceptions of speed and safety, their influence on accessibility/crowding, and their impact on the trails themselves.

As of this writing, the roll-out of these electric bicycles policies across the country has not been empirically documented, and the existing evidence of how these communities are receiving electric bicycles is anecdotal. Although, pedal-assist electric bicycles are generally considered the most similar to a traditional bicycle, and therefore, the most generally accepted. It is also evident that the agencies or municipalities that have allowed electric bicycles on paths or trails have done so with accessibility and congestion-reduction in mind.

Under South Carolina law, the Town should treat electric bicycles as we currently treat traditional bicycles by adding a definition for or, alternatively, adopting the state's definition of "electric-assist bicycles" and "bicycles with helper motors". Therefore, the Town would not be allowed to limit or prohibit the use of electric bicycles unless such restrictions apply to all bicycles. Pursuant to state law, the Town is allowed to regulate the speed of bicycles, which includes the ability to limit the speed of electric bicycles and require the bicycle's governing system to reduce the bicycles speed at specified locations.



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Public Planning Committee
VIA: Jennifer Ray, ASLA, *Interim Community Development Director*
FROM: Anne Cyran, AICP, *Senior Planner*
CC: Teri Lewis, AICP, *Deputy Community Development Director*
DATE: June 8, 2021
SUBJECT: Trolley Service Update

The 2021 Breeze Trolley service started on April 10; it will run through Labor Day. The trolley operates seven days a week. The trolley operates from 1:00 PM to 10:00 PM most days, which is similar to the 2019 and 2020 schedules. The fare is free again this year.

In April 2021, total ridership increased by 101% over April 2019. The 2020 service season was abbreviated due to COVID-19. The service began in mid-June. In May 2021, total ridership increased by 345% over May 2019. As of June 7, 2021, the average daily ridership increased by 276% over June 2019 and by 400% over June 2020.

Staff requested Palmetto Breeze record the number of riders picked up at each stop for the remainder of the season.

Attachment:

- A. 2021 Trolley Ridership Counts

APRIL
TROLLEY RIDERSHIP COUNT 2021

DAY	APRIL		STARTED SERVICE ON April 10, 2021				DAILY TOTAL
			FREE FARE	Bikes	SENIOR	CHILDREN	
Sat	10	505-SE					
		505-Mid	39				
			136	0	26	5	167
Sun	11	505-SE					
		505-Mid	43				
			157	0	0	24	181
Mon	12	505-SE					
		505-Mid					
			73	0	7	17	97
Tue	13	505-SE					
		505-Mid					
			90	3	6	3	99
Wed	14	505-SE					
		505-Mid					
			73	7	11	6	90
Thurs	15	505-SE					
		505-Mid					
			133	0	18	16	167
Fri	16	505-SE					
		505-Mid					
			238	4	1	33	272
Sat	17	505-SE					
		505-Mid					
			200	3	6	13	219
Sun	18	505-SE					
		505-Mid					
			194	1	0	16	210
Mon	19	505-SE					
		505-Mid					
			111	5	0	12	123
Tue	20	505-SE					
		505-Mid					
			190	3	0	15	205
Wed	21	505-SE					
		505-Mid					
			173	1	0	20	193
Thurs	22	505-SE					
		505-Mid					
			271	5	0	28	299
Fri	23	505-SE					
		505-Mid					
			203	5	0	15	218
Sat	24	505-SE					
		505-Mid					
			133	1	0	1	134
Sun	25	505-SE					
		505-Mid					
			268	4	2	23	293
Mon	26	505-SE					
		505-Mid					
			200	3	0	25	225
Tue	27	505-SE					
		505-Mid					
			267	2	0	5	272
Wed	28	505-SE					
		505-Mid					
			227	0	7	15	249
Thurs	29	505-SE					
		505-Mid					
			282	5	12	9	303
Fri	30	505-SE					
		505-Mid					
			255	1	0	25	280
		TOTAL	3,956	53	96	326	4,296

4,296

Total YTD

4,296

MAY
TROLLEY RIDERSHIP COUNT 2021

DAY	MAY	FREE FARE	Bikes	SENIOR	CHILDREN	DAILY TOTAL
Sat	1	389	2	0	8	397
Sun	2	220	0	6	10	236
Mon	3	286	0	0	20	306
Tue	4	213	2	0	10	223
Wed	5	336	1	0	27	363
Thurs	6	198	1	0	5	203
Fri	7	338	1	8	27	373
Sat	8	312	2	0	14	326
Sun	9	223	0	0	17	240
Mon	10	228	4	0	29	257
Tue	11	268	0	0	10	278
Wed	12	304	0	0	6	310
Thurs	13	381	0	2	15	398
Fri	14	453	5	1	16	470
Sat	15	468	8	0	2	470
Sun	16	222	5	0	0	222
Mon	17	231	6	0	12	243
Tue	18	217	3	0	6	223
Wed	19	391	0	0	10	401
Thurs	20	224	2	0	6	230
Fri	21	385	14	0	6	391
Sat	22	470	3	0	32	502
Sun	23	342	3	2	33	377
Mon	24	351	6	0	32	383
Tue	25	368	3	0	6	374
Wed	26	267	0	0	25	292
Thurs	27	247	0	1	14	262
Fri	28	376	2	0	31	407
Sat	29	422	2	0	40	462
Sun	30	792	5	0	123	915
Mon	31	401	3	0	22	423
	TOTAL	10,323	83	20	614	10,957

10,957

Total YTD

15,253

**JUNE
TROLLEY RIDERSHIP COUNT 2021**

DAY	JUNE	FREE FARE	Bikes	SENIOR	CHILDREN	DAILY TOTAL
Tue	1	273	2	0	7	280
Wed	2	307	4	0	37	344
Thurs	3	406	0	0	22	428
Fri	4	302	2	0	9	311
Sat	5	417	2	3	28	448
Sun	6	341	0	0	15	356
Mon	7	374	4	0	13	387
Tue	8					0
Wed	9					0
Thurs	10					0
Fri	11					0
Sat	12					0
Sun	13					0
Mon	14					0
Tue	15					0
Wed	16					0
Thurs	17					0
Fri	18					0
Sat	19					0
Sun	20					0
Mon	21					0
Tue	22					0
Wed	23					0
Thurs	24					0
Fri	25					0
Sat	26					0
Sun	27					0
Mon	28					0
Tue	29					0
Wed	30					0
TOTAL		2,420	14	3	131	2,554

2,554

Total YTD	17,807
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