



March 6, 2019

Ken McGair  
Senior Deputy City Attorney  
Ken.McGair@portlandoregon.gov

**Re: Scooters and Sidewalk Accessibility**

Dear Ken,

As promised, I write to follow up on our conversation yesterday, March 5, 2019. During our conversation, we discussed the concerns Disability Rights Oregon (DRO) and the United States Department of Justice (DOJ) has with ensuring sidewalk accessibility for people with disabilities due to the barriers electronic scooters caused during the 2018 pilot. Below you'll find a brief legal analysis followed by DRO's requests for regulatory guidance and enforcement.

Brief Legal Analysis

Federal law is well established regarding the right of people with disabilities to have equal access to city sidewalks. On July 26, 1990, Congress enacted the Americans with Disabilities Act (ADA), 42 U.S.C.A. §§ 12101 et seq., establishing the most important civil rights for persons with disabilities in our country's history, including the right to have full and equal enjoyment of services, programs, or activities of a public entity. In the House Report accompanying the ADA, Congress expressly noted that the "employment, transportation, and public accommodation sections of [the ADA] would be meaningless if people who use wheelchairs were not afforded the opportunity to travel on and between the streets." See H.R. Rep. No. 101-485(II), at 84, reprinted in 1990 U.S.C.C.A.N. 303, 367. The ADA's regulations require the City of Portland to operate each program, service, or activity "so that, when, viewed in its entirety, it is readily accessible to and useable by individuals with disabilities." 28 C.F.R. § 35.150; *see also* 28 C.F.R. §§ 35.149 & 35.151. The system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways themselves constitute an essential public service, program, or activity under Title II of the ADA. 28 C.F.R. § 35.104; *see Barden v. City of Sacramento*, 292 F.3d 1073 (2002). The regulations implementing Title II of the ADA provide that a public entity must maintain the features of all facilities required to be accessible by the ADA. 28 C.F.R. § 35.133. Facilities required to be accessible include roads, walks and passageways. 28 C.F.R. § 1035.104.

Portland City Code also provides useful guidance regarding sidewalks accessibility. First, 17.28.010 defines "sidewalk" as "means the portion of the street intended for the use of pedestrians" rather than by motorized vehicles. Second, city code 17.28.070 states that even

property owners must keep sidewalks in good repair so that they are free of tripping and other safety hazards for pedestrians and people in wheelchairs. Finally, city code 17.28.065 requires the parking of bicycles to maintain sidewalk accessibility.

### Request for Ensuring Compliance

As noted in the Portland Bureau of Transportation's (PBOT) [2018 E-Scooter Pilot Findings Report](#), "improperly parked scooters negatively impacted accessibility and created a hazard for people with visual impairments." Similarly, during this 2018 pilot, DRO received several concerning calls and complaints regarding the lack of sidewalk accessibility and safety from both our staff and clients with mobility disabilities and vision impairments. On or about January 15, 2019, DRO then learned that the [PBOT had agreed to a longer, one-year pilot](#) "to test new measures to improve the use of e-scooters." However, it was unclear what additional steps the city would take to address the critical concerns with sidewalk accessibility and improve e-scooter safety. On January 22, 2019, I reached out to the City Attorney's Office to learn more about what measures were to be taken to address these accessibility and safety concerns.

Based on our conversation, I understand that the City of Portland is working with PBOT on both the permitting process and considering regulations to address ADA compliance. I also understand that the City is hesitant to implement too many regulations as it may dissuade smaller, more diverse e-scooter businesses from entering the marketplace. DRO maintains its request that any improvements to the e-scooter marketplace cannot come at the price of ensuring the promise of the ADA mandating that people with disabilities have equal access to our city's sidewalks. For this reason, DRO requests that the City of Portland consider adopting the following to ensure compliance with the ADA and existing city code:

1. Require e-scooters to provide aggregate data similar to the 2018 pilot but also including a) the number of parking violations or times an e-scooter rider left an e-scooter in the public right of way, b) the number of incidents involving pedestrians, and c) the number of hazards or maintenance issues.
2. Issue regulations similar to city code 17.28.065 requiring that e-scooters be parked outside the public right of way to avoid tripping or other sidewalk safety hazards. As DOJ pointed out in our meeting, one such solution may be designed parking locations for e-scooters similar to the bike ride sharing program.
3. Implement permitting requirements that give priority to e-scooter companies who employ geofencing or other technology and enforcement to limit the use or parking of e-scooters in the pedestrian right of way.

4. Enforce e-scooter parking and riding violations consistent with federal and local law.
5. Create a public forum where members of the public can share their experiences and concerns with e-scooters and sidewalk accessibility.

Last, I would like to express concern that the renewal of the e-scooter program for a full year was decided without any public meetings or open discussion, especially with the disability community. While the city did offer the chance for some comment through the feedback form, the survey was only retroactive, allowing people to describe their experiences over the summer. It is unclear what efforts the city took to invite the public to comment on the possibility of any future or long-term renewal of the program or offered citizens a chance to say what might be changed in a future initiative. The processes of government and the votes of administrative bodies should be open to the public. ORS 192.630. While we sincerely appreciated your willingness to meet with us yesterday, we had no opportunity to discuss this matter prior to the announced renewal in January. The input we offer and any response from PBOT to our concerns will be challenged by time constraints created by the belated inclusion of important voices in this discussion.

Thank you again for meeting with us and sharing what steps the city has taken so far. We look forward to working with you and your team in ensuring safety and sidewalk access to every person living, working, or visiting Portland.

Sincerely,

  
Emily Cooper