

Others make registration voluntary and promote it for the same reason.²⁴ Registration may be even more important for e-bikes given that they can cost significantly more than a normal bicycle.

Require helmets. The legislature has not regulated bicycle helmet use, which leaves room for a local helmet requirement as gap-filling legislation.

Address reckless riding and consider impoundment. Reckless operation of e-bikes is a top concern among municipalities and their residents. State statute already prohibits endangering safety by negligent operation of a “vehicle.”²⁵ Although it isn’t clear whether an e-bike would fit the definition of a “vehicle” as used in that statute, the question may not matter in the end.

In the reckless driving statute, “vehicle” means any self-propelled device for moving persons or property or pulling implements from one place to another.²⁶ E-bikes may be partially or even fully self-propelled depending on the bike and how it is being used, but almost all e-bikes can also be operated solely on pedal power. Does that matter? No court has ruled on the question, but I would argue that all e-bikes are self-propelled because they all have a motor that can be used to propel them. The fact that you can also pedal doesn’t change that. But that’s not the only reason to think that the reckless driving statute should apply to e-bikes.

With two exceptions, Wis. Stat. § 346.02(4)(a) states that all provisions of Chapter 346 that are applicable to vehicles also apply to e-bike riders when they are on a roadway or the shoulder of a highway. The exceptions to this are when the provisions of the statute “by their express terms apply only to motor vehicles or that by their very nature would have no application to bicycles.” The reckless driving statute is contained in chapter 346 and there is no reason that it could not be applied against an e-bike, so the statute would apply to e-bike riders unless the express terms of the statute say that it only applies to motor vehicles. By its express terms, the reckless driving statute applies to vehicles, not motor vehicles. So, e-bikes should be subject to the statute just like any other “vehicle” regardless of how that term is defined.

The application of this reckless driving statute is particularly important because the legislature recently allowed municipalities to adopt ordinances allowing officers to impound any vehicle used in violating the reckless driving statute (or a conforming ordinance) at the time of citation or arrest.²⁷ The impounded vehicle may be held until towing and storage costs and any outstanding fines or forfeitures owed

by the owner are paid. This adds a powerful enforcement mechanism to municipalities’ tool belts.

What to Avoid

A few tempting tools are off the table without action by the legislature.

Age restrictions. Many complaints related to e-bikes involve minors. As a result, municipalities may be tempted to prohibit minors under a certain age from riding e-bikes. But this would pose significant risks under the limits to local powers discussed above.

State statute currently prohibits persons under 16 years old from operating a class 3 e-bike. However, the statutes contain no such limit on class 1 or 2 e-bikes. Because of this, an ordinance extending age restrictions to class 1 or class 2 e-bikes would be regulating the same conduct the legislature already addressed and prohibiting something the statutes otherwise allowed. As a result, such an ordinance would likely be invalid under *Walker*.

Licensing riders. The attorney general has concluded that cities and villages cannot license bicyclists, create bicycle courts, or impound bicycles in the absence of express legislative authorization.²⁸ The registration statute authorizes registering bicycles, not licensing the people who ride them. Some municipalities may be tempted to condition the issuance of a bike license on the completion of some kind of educational course or a test. But this would likely be seen as an attempt to license a rider rather than a bike and could be challenged on those grounds.

Conclusion

E-bikes are not going away, and the complaints probably aren’t either. Municipalities have a variety of tools to address these issues, but it will require a detailed understanding of current state regulations and a careful approach to local regulation. Done right, municipalities are well equipped to address this change in their communities.

Traffic Regulation 434



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24. See, e.g. the City of Stevens Point: <https://stevenspoint.com/208/Bicycle-Licenses>

25. Wis. Stat. § 346.62.

26. Wis. Stat. §§ 346.62(1)(d), 939.22(44).

27. Wis. Stat. § 349.115.

28. 66 Op. Att’y Gen. 99 (1977).

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