

# OFFICE OF THE CITY ATTORNEY

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435 Ryman • Missoula MT 59802  
(406) 552-6020 • Fax: (406) 327-2105  
[attorney@ci.missoula.mt.us](mailto:attorney@ci.missoula.mt.us)

## Legal Opinion 2019-016

**TO:** Mayor Engen, City Council, Dale Bickell, Mike Brady, Scott Hoffman, Mike Colyer, Chris Odlin, Richard Stepper, Laurie Clark, Ben Weiss, Mike Haynes, Kevin Slovarp, Troy Monroe, Jeremy Keene, Brian Hensel, Chad Pancake, Marty Rehbein, Kirsten Hands, Ginny Merriam, Donna Gaukler, Morgan Valliant

**FROM:** Jim Nugent, City Attorney

**CC:** Department Attorney

**DATE** June 20, 2019

**RE:** It is unlawful to operate a motorized nonstandard vehicle on ways of the state open to the public unless the operation is specifically authorized by ordinance or regulation passed by the local governing body for a public way under the local government's jurisdiction.

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### FACTS:

Pursuant to section 61-8-375 MCA the Montana State Legislature has made the operation of motorized nonstandard vehicles unlawful on ways of the state open to the public unless the local government specifically authorizes motorized nonstandard vehicles operation on public ways by local ordinance or regulation.

### ISSUE(S):

1. Does Montana state law provide a statutory definition of the term “motorized nonstandard vehicle”?
2. Does Montana state law identify what constitutes “ways of the state open to the public”?

### CONCLUSION(S):

1. Yes, the term “motorized nonstandard vehicle” is defined in subsection 61-1-101(45) MCA.
2. The phrase “ways of the state open to the public” is defined in subsection 61-8-101(1) MCA.

## **LEGAL DISCUSSION:**

Montana's traffic regulations are primarily set forth in title 61, chapter 8 MCA entitled "TRAFFIC REGULATIONS". Included in these Montana traffic regulations is section 61-8-375 MCA generally making it unlawful to operate a motorized nonstandard vehicle on the ways of the state open to the public, except that Montana local governments are specifically authorized to allow the operation of motorized nonstandard motor vehicles on public ways under their jurisdiction.

Section 61-8-375 MCA states:

61-8-375. UNLAWFUL OPERATION OF MOTORIZED NONSTANDARD VEHICLE-EXCEPTION. A PERSON MAY NOT OPERATE A MOTORIZED NONSTANDARD VEHICLE ON WAYS OF THIS STATE OPEN TO THE PUBLIC UNLESS THE OPERATION IS SPECIFICALLY AUTHORIZED BY ORDINANCE OR REGULATION PASSED BY THE LOCAL GOVERNING BODY of the county, city, or town for a public way under its jurisdiction. (emphasis added)

The term "motorized nonstandard vehicle" is defined in subsection 61-1-101 (45) MCA to mean:

- "(45)(a) "Motorized nonstandard vehicle" means a vehicle, on or by which a person may be transported, that:
- (i) is propelled by its own power, using an internal combustion engine or an electric motor;
  - (ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and
  - (iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.
- (b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".
- (c) The term does not include a moped as defined in **61-8-102**, an electric personal assistive mobility device, or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person."

The Montana state Legislature has also defined the term "bicycle" in Montana traffic regulations to include "electrically assisted bicycles". The terms "bicycle" and "electrically assisted bicycle" are defined in subsection 61-8-102(2)(b) and 61-8-102(2)(g) MCA to mean:

"(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

- ....
- (b) 'Bicycle' means a vehicle propelled solely by human power on which any person may ride, irrespective of the number of wheels, except scooters, wheelchairs and similar devices. THE TERM INCLUDES AN ELECTRICALLY ASSISTED BICYCLE."(emphasis added)

....

(g) 'Electrically assisted bicycle' means a vehicle on which a person may ride that has two tandem wheels and an electric motor capable of propelling the vehicle and a rider who weighs 170 pounds no faster than 20 miles an hour on a paved level surface."

While an "electrically assisted bicycle" has an electric motor, it does not meet the statutory definition of a "motorized nonstandard vehicle" pursuant to section 61-8-375 MCA.

As noted above, generally Montana state traffic regulations pursuant to section 61-8-375 MCA prohibit the operation of motorized nonstandard vehicles on the ways of the state open to the public. The term or phrase "ways of the state open to the public" is defined in subsection 61-8-101(1) & (2) MCA pertaining to the general application of Montana's traffic regulations as meaning:

**"61-8-101. APPLICATION-EXCEPTIONS.** (1) As used in this chapter, "ways of the state open to the public" means ANY HIGHWAY, ROAD, ALLEY, LANE, PARKING AREA OR OTHER PUBLIC OR PRIVATE PLACE ADAPTED AND FITTED FOR PUBLIC TRAVEL THAT IS IN COMMON USE BY THE PUBLIC.(emphasis added)  
(2) The provisions of this chapter RELATING TO THE OPERATION OF VEHICLES REFER EXCLUSIVELY TO THE OPERATION OF VEHICLES UPON HIGHWAYS except:

- (a) where a different place is specifically referred to in a given section:
- (b) the provisions of 61-8-301 and 61-8-401(1)(b), 1(c ), and (2), with regard to operating a vehicle under the influence of drugs, apply anywhere within this state,
- (c ) the provisions of 61-8-301 (reckless driving) and 61-8-401 except subsections (1)(b), (1)(c ), and (2) thereof, 61-8-402 through 61-8-405, and 61-8-465, with regard to operating a vehicle while under the influence of alcohol, apply upon all ways of the state open to the public." (emphasis added)

Pursuant to subsections 61-8-101(1) & (2) MCA the general definition of "ways of the state open to the public" is intended to be broad enough to include parking lots, business drive-up windows, etc. However, subsection 61-8-101(2) MCA also specifically limits the provisions of title 61, chapter 8, "TRAFFIC REGULATIONS" exclusively to operation of vehicles upon highways.

Therefore, the provisions of section 61-8-375 MCA pertaining to operation of motorized nonstandard vehicles is exclusively limited to highways and is not applicable to the broader ways of the state property that is not part of a highway. Section 61-8-375 MCA pertaining to operation of motorized nonstandard vehicles does not apply to bicycle pathways and trails that are not part of a highway as defined by Montana state law. Section 61-8-375 MCA does not apply to bicycle/pedestrian trails and pathways that are not part of a highway.

The term "highway" is defined in title 61, chapter 8, "TRAFFIC REGULATIONS" pursuant to subsection 61-8-102(2)(i) MCA as meaning:

“(i) ‘Highway’ has the meaning provided in 61-1-101, but includes that have been or are later dedicated to public use”

The definition of the term “highway” in section 61-1-101 MCA is set forth in subsection 61-1-101(27) MCA as meaning:

“(27) ‘Highway’ or ‘public highway’ means the entire width between the boundary lines of every public maintained way when any part of the publically maintained way is open to the use of the public for purposes of vehicular travel.”

**CONCLUSION(S):**

1. Yes, the term “motorized nonstandard vehicle” is defined in subsection 61-1-101(45) MCA.
2. The phrase “ways of the state open to the public” is defined in subsection 61-8-101(1) MCA.

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/s/

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Jim Nugent, City Attorney

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