

REVISED POLICY
OTHER POWER-DRIVEN MOBILITY DEVICES
City of Boise Department of Parks & Recreation

INTRODUCTION AND PURPOSE

The City of Boise (“City”) owns approximately 4,200 acres of open space reserve land in the Boise foothills. These land holdings are surrounded by over 84,000 acres of land owned by private individuals and other public agencies. The agencies and some private landowners have paths and trails, open to the public, that cross their respective properties. In the early 1990’s individuals and agencies (the City, Ada County, the Bureau of Land Management, the US Forest Service and the Idaho Department of Fish and Game) came together to cooperatively and cohesively manage a seamless trail system, commonly known as the Ridge to Rivers Trail Network (“R to R Network”). Although the trail system threads across a patchwork of ownership, the Ridge to Rivers partners and other supportive entities seek to provide exceptional access to public lands and natural environments in the Boise foothills.

Of the 192 miles that make up the R to R Network, approximately 160-miles lie on property not owned or managed by the City. Trail management is guided by the Ridge to Rivers MOU and individual easements with private landowners. The Ridge to Rivers MOU and individual easements maintain each partner’s ability to promulgate individual rules and regulations in accordance with applicable laws and regulations. Given this patchwork of ownership, it is not possible for the City to adopt or enforce one set of uniform rules applicable to the entire 192 miles of trails. As such, this revised policy establishes policies and rules for the use of other power driven mobility devices (“OPDMDs”) on Ridge to Rivers trails that are located entirely and solely on property owned by the City.

This Revised Policy is in response to the Department of Justice (“DOJ”), Civil Rights Division, 28 Code of Federal Regulations (“CFR”) Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services Final Rule, which requires state and local public entities to make reasonable modifications in their policies, practices, and procedures to permit the use of OPDMDs by individuals with disabilities, unless the public entity can demonstrate that the use of the device is not reasonable or that its use will result in a fundamental alteration in the public entity’s services, programs, or activities.

The DOJ’s final rule established a two-tiered definitional approach to mobility devices by separating wheelchairs from OPDMDs. This two-tiered approach provides balance between ensuring access for individuals with mobility disabilities and addressing the fundamental concerns of the City with altering amenities, negatively impacting resources, and providing a safe environment. It also allows the City to preserve and protect traditional use of wheelchairs and other manually powered mobility aides, while recognizing the use of other devices that may be more beneficial for individuals with certain mobility disabilities.

In accordance with the criteria set forth in Section 35 of the ADA, City staff completed an individual assessment of each City owned path and trail located on Ridge to Rivers trails to determine which types of OPDMDs are authorized for use by persons with a mobility disability. The focus of the analysis was on the appropriateness of the use of OPDMDs at and upon City owned paths and trails, rather than on whether it is necessary for an individual with mobility disabilities to use a particular OPDMD. As such, the City continues to be committed to providing amenities, while promoting the safe use and enjoyment of the City's recreational paths and trails by a broad spectrum of the public.

The City owned paths and trails located in the Boise foothills were designed and constructed for passive recreational users such as hikers, dog walkers, runners, bicyclists, and horseback riders. Indeed, trail user surveys and trail counts indicated that approximately 66% of all users of the R to R Network are on foot. Each trail varies greatly in surface material, terrain, width, elevation, user type, and user volume. Trail users have come to expect a safe, relaxed, quiet experience, free of motorized vehicles, except for those being driven by City staff and emergency personnel. While the use of OPDMDs on certain trails may at first be disturbing to traditional trail users, we believe that trail use by persons with mobility disabilities will provide an opportunity for a segment of the population that previously was unable to experience the trails to now enjoy these exceptional amenities.

As technology advances and new devices are developed, public use patterns change, additional property and property interests are acquired, and impacts to natural and cultural resources are reevaluated, the City may modify the types of OPDMDs that are permissible on any given City owned path or trail in the R to R Network. It is the operator's responsibility to ensure that they are in conformance with this Revised Policy.

Finally, the adoption of this Revised Policy does not represent an endorsement that the City's paths and trails in the R to R Network are safe for the use of an OPDMD or wheelchair. Users must exercise reasonable caution and care in deciding to use any particular trail or path while operating such devices.

LEGAL AUTHORITY

Boise City Code 13-01-04
28 CFR Part 35 - Americans with Disabilities Act

DEFINITIONS

Electric Power-Assisted Bicycle (“E-bike”). A vehicle having two tandem wheels or two parallel wheels and one forward wheel, any two of which, are not less than twelve (12) inches in diameter that is designed to be operated by human power with the assistance of an electric motor that has a power output of not more than seven hundred fifty (750) watts that: (i) is

incapable of propelling the vehicle at a speed of more than twenty (20) miles per hour; and (ii) disengages or ceases to function when the vehicle's brakes are applied.

Manually Powered Mobility Aides. Walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities.

OPDMD. Any mobility device powered by batteries, fuel, or other engines--whether or not designed primarily for use by individuals with mobility disabilities -- that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (“EPAMDs”), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair.

Wheelchair. A manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or both indoor and outdoor locomotion.

ASSESSMENT FACTORS

There are a number of factors to consider in determining the type of OPDMD that individuals with mobility disabilities may use on City owned paths and trails located in the R to R Network. These factors include safety of the user, safety of other guests, protection of natural resources, and ensuring the peace and quiet of the outdoor experience. In making that determination the City considered the following factors:

1. The type, size, weight, dimensions and speed of the device;
2. The volume of traffic and type of traffic;
3. The facility's design and operational characteristics (ie: width and surface);
4. Whether legitimate safety requirements can be established to permit the safe operation of OPDMDs;
5. Whether the use of OPDMDs creates a substantial risk of serious harm to the immediate environment or natural or cultural resources.

INQUIRY ABOUT A DISABILITY

The last element of the new regulations clarifies the acceptable way to address an OPDMD when asking for credible assurance the user requires the device.

In accordance with the DOJ regulations, representatives of City, including staff and volunteers, will not ask an individual using a wheelchair or OPDMD questions about the

nature and extent of the individual's mobility disability. The City may, however, ask a person who wishes to use an OPDMD on City owned paths and trails located in the R to R Network to provide credible assurance that the OPDMD is required because of the person's mobility disability. The City will accept the presentation of a valid, state-issued, disability parking placard or card, or other state-issued proof of disability as a credible assurance that the use of the OPDMD is for the individual's mobility disability. A valid disability placard or card is one that is presented by the individual to whom it was issued and is otherwise in compliance with the state of issuance's requirements for disability placards or cards.

In lieu of a valid, state-issued disability placard or card, or state-issued proof of disability, the City will accept as a credible assurance a verbal representation, not contradicted by observable fact, that the OPDMD is being used for a mobility disability.

POLICY ON THE USE OF WHEELCHAIRS AND OPDMDs

Using the framework set forth above, the City has evaluated paths and the trails in the R to R Network that are located entirely and solely on property owned by the City. In striking a balance and with the highest concern for the safety of all users, the City has adopted the following policy:

- 1. Use of Wheelchairs and Manually-Powered Mobility Aides.** The use of wheelchairs and manually-powered mobility aides by individuals with mobility disabilities is permitted on paths and trails in the R to R Network that are located entirely and solely on property owned by the City and are open to pedestrian use.
- 2. Use of OPDMDs.** The use of OPDMDs by individuals with mobility disabilities is permitted on paths and trails in the R to R Network that that are located entirely and solely on property owned by the City and are open to pedestrian use, unless the class of OPDMD cannot be operated in accordance with legitimate safety requirements based upon the assessment factors set forth above.
- 3. Some Trails are Closed, Off-limits, or Restricted - Check Before You Go.** Some paths and trails are designated as "Closed" for mobility device use. A trail with a "Closed" designation indicates that OPDMD use is prohibited. A trail with an "Open" designation indicates any type of OPDMD is permitted for use by individuals with a mobility disability. A trail with a "Restricted" designation indicates that an E-bike is the only class of OPDMD allowed.
- 4. Qualified Individuals.** The use of OPDMDs is limited to individuals with a mobility disability. Qualified individuals may apply for and be issued a permit by the Department of Parks & Recreation for use of an OPDMD on designated City owned paths and trails in the R to R Network.
- 5. Gas-Powered OPDMS are Prohibited.** OPDMDs with internal combustion engines are not allowed on trails and paths that are designated as "Closed" or "Restricted."

6. Stay on the Trail and within the Established Footprint. Cross-country mobility device travel is not permitted. OPDMD use is limited to existing trails and paths and the wheel bed of the OPDMD must be confined within the footprint of the trail or path established and maintained by the City.

7. Be Safe and Courteous. Mobility devices must be operated in a responsible and prudent fashion, giving due consideration to other trail user density and speeds and must be operated at a safe speed for existing conditions and circumstances. When other trail users are present, a safe speed for an OPDMD is deemed to be the average speed at which the other users are travelling on the trail.

PATH AND TRAIL CLASSIFICATION

A detailed and current list of trails available for authorized uses can be provided upon request by the Boise Parks and Recreation administration office (208-608-7600, 1104 Royal Blvd) or found by visiting the accessible trails page on the Ridge to Rivers website.