

# City of Durango Parks and Recreation Department Other Power-Driven Mobility Devices (OPDMD) Trail and Park Accessibility Policy

April 15, 2021

## **Introduction**

The City of Durango Parks and Recreation Department accommodates recreational opportunities for people with mobility disabilities by allowing the use of other power-driven mobility devices (OPDMD) in areas where the mobility devices can be operated safely, without posing risk of serious harm to natural and cultural resources, and in conformity with federal land management laws and regulations.

To ensure that OPDMD operation does not pose significant safety risks or fundamentally alter the nature of services, programs, and activities provided by the City, all OPDMDs operated on City lands must meet the standards below.

This policy applies only to OPDMD (non-wheelchair) usage. In accordance with federal law, wheelchairs including mobility scooters and manually powered mobility aids, such as walkers, crutches, canes, braces, and other similar devices are permitted anywhere in the City where pedestrian travel is allowed.

## **Purpose**

Effective March 15, 2011, the Department of Justice amended its regulation implementing Title II and Title III of the 1990 Americans with Disabilities Act (ADA). The amended regulations require organizations managing trails that are open to the public to conduct an assessment of each trail to determine if individuals with mobility disabilities can be accommodated on all or portions of the trail using OPDMDs.

The purpose of this policy is to provide guidelines for permitted use of OPDMDs on City lands, trails, and facilities pursuant to the U.S. Department of Justice regulations amending the Americans with Disabilities Act (“ADA”), Title II regulations, 28 C.F.R., Part 35. The policy is intended to improve ADA access to members of the community that are mobility impaired.

## **OPDMD Defined**

According to the U.S. Department of Justice rule, other power-driven mobility devices are defined as any mobility device powered by batteries, fuel, or other engines—whether or not designed 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 (defined pedestrian routes are those routes that are required to be wheelchair and disability accessible such as routes from parking to restrooms and public facilities), but that is not a wheelchair.

The City of Durango, as the municipal trail manager, is required to make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the trail organization can demonstrate that specific power-driven mobility devices cannot be operated in accordance with legitimate safety and other requirements based on actual risks documented in a formal trail assessment.

The ruling defined Trail Assessment Factors as the following:

- a. The type, size, weight, dimensions, and speed of the device;
- b. The volume of trail devices and pedestrian traffic;
- d. Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device on the specific trail or trail section; and
- e. Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources or poses a conflict with Federal land management laws and regulations.

## **Trail and Facility Assessment**

The City of Durango Parks and Recreation Department conducted assessments of City open space/natural areas, natural surface trails, hard surface trails, parks, and outdoor recreation facilities and associated infrastructure and recreational park facilities within the City open space and park system to determine the extent of reasonable modifications in City policies, practices, or procedures to allow use of OPDMDs in such places.

## **Open Space/Natural Lands Analysis**

### **Purpose of Open Space/Natural Lands Program**

The purpose of the Durango Open Space/Natural Lands Program as detailed in the 2020 Parks, Open Space, Trails and Recreation Master Plan, is to preserve the significant natural, scenic, and cultural characteristics that help to define Durango as a community and lend to the quality of life and lifestyle of current and future residents.

City of Durango Open Space is defined as: Natural lands and waters permanently preserved in a natural state or restored and enhanced using native species consistent with the surrounding landscape. Open Space may also include working agricultural ranch land and cultural and historic sites.

Management of open space lands seeks to protect and preserve viable communities of native plants, animals, birds, fish, and reptiles. Natural resource goals, objectives, and policies set forth in the City of Durango 2017 Comprehensive Plan include preserving and maintaining wildlife habitat and movement areas that work in conjunction with human use in those spaces, and coordinating with local, state, and federal agencies to monitor and continually evaluate threats to City natural resources.

## **Impacts of OPDMDs on Open Space/Natural Lands and Natural Surface Trails**

While the City of Durango desires to accommodate individuals with mobility disabilities, this must be done in a way that does not conflict with the City open space preservation mission to protect and steward natural resources, restrictions tied to the acquisition of a given property, and regulations of third party entities involved in the ownership and/or management of a property, nor jeopardize the safety of other persons using the open space, including those with a mobility disability. One of the factors the Americans with Disabilities Act (ADA) allows agencies to consider in making its assessment is whether the use of certain classes of OPDMDs creates a substantial risk of serious harm to the immediate environment or natural or cultural resources.

Devices that may meet the definition of “other power driven mobility devices,” including but not limited to all-terrain vehicles (ATVs) or other off-road vehicles (ORVs), are not appropriate types of recreation for City open space/natural lands and natural surface trails. The City has never allowed public recreational motorized use of its open space and natural areas, with the exception of motorized wheelchairs, greatly due to the non-motorized restrictions of the conservation easements encumbering much of the City open space lands. Thus, trails located in City open space were never designed for such use. Motorized recreational use poses considerable threat to the sustainability and durability of natural surface trails. Trail degradation can create hazardous terrain for other trail users, create substantial trail maintenance issues, and accelerate erosion leading to sedimentation of nearby waterways. Motorized recreation further threatens the natural ecosystem by disturbing wildlife in ways that cause undue physical stress from noise or fleeing, alteration of migration and movement patterns, and behavioral changes such as abandoning young. Lastly, motorized recreation can negatively impact passive recreation which is permitted in City open space.

## **Impacts of OPDMDs on City Parks, Hard Surface Trails, and Outdoor Recreation Facilities**

The City of Durango has evaluated City parks, hard surface trails, and outdoor recreation facilities for the use of OPDMDs as that term is defined in 28 Code of Federal Regulations section 35.104, as well as additional factors such as safety of and impacts to other users, impacts on the property and infrastructure, and characteristics of each amenity.

### **City of Durango Policy for Access to Persons with Mobility Disabilities**

The Parks and Recreation Department has assessed City amenities and determined that it will allow by permit only the use of OPDMDs on parks, hard surface trails, outdoor recreation facilities and associated infrastructure in accordance with the following regulations:

#### **1. Size**

OPDMDs shall not be wider than 36” or longer than 48”, except for electric bicycles which may exceed 48” in length. OPDMDs shall not exceed 550 lbs. including the operator.

## 2. Gas Powered OPDMDs Prohibited

OPDMDs shall not exceed zero emissions during use. Only manually or battery/electricity operated devices are permitted. The use of gas or other fuel powered mobility devices is prohibited due to the engine noise gas powered vehicles produce causing a significant zone of disturbance to the activities of native wildlife and that can negatively impact visitor experience. Furthermore, the noise from gas powered mobility devices poses a health risk to adjacent recreationalist when it exceeds 70 dB. The World Health Organization has set 70 dB as a maximum safe noise level in the work place. Most gas-powered vehicles, such as ATVs and gas-driven motor bikes, exceed this noise level. In addition, gas powered mobility devices create a risk of serious harm to the immediate environment from the danger created by the heat of the gas-fired engine.

## 3. Electric Powered Mobility Devices

OPDMDs for which a City permit may be obtained include any mobility device powered by batteries, including multiple passenger carts (three or four wheels); electronic personal assistance mobility devices (EPAMDs - such as the Segway PT); battery-powered Class I, II, or III bikes (two or three wheels); and single passenger scooters (three or four wheels). Examples include, but are not limited to, the following:



Stand and Ride 3-Wheel  
Mobility eScooter



Sit and Drive 4-Wheel  
Mobility eScooter



Class I, II, or III eBike



Segway PT

## 4. Speed

User is required to operate the OPDMD at the speed of pedestrian traffic.

## 5. Areas of Authorized Use

Permit not required for OPDMD use on City sidewalks, City-designated bike routes marked with signage (map available online at: [durangogov.org](http://durangogov.org)), streets, driveways, parking lots, ramps, and restrooms.

Permit required for OPDMD use on/in City trails and recreational park amenities. The attached list of accessible trails and recreational park amenities have been designated for OPDMD use by permit (Attachment A). Permit requests will be assessed on a case-by-case basis and may be issued with additional conditions.

## **6. Closed/Restricted Areas**

OPDMDs are not permitted in areas that are closed or restricted to the general public due to safety concerns or for resource protection.

## **7. Reservable Facilities and/or Public Buildings (“Facility”)**

Due to design characteristics, the City may restrict OPDMDs in certain reservable facilities and/or public buildings. Individuals are encouraged to contact the facility prior to their visit to determine if there are any restrictions or limitations. The City reserves the right to further restrict the use of OPDMDs during special events or during periods of high-volume pedestrian traffic.

## **8. Additional restrictions**

Use of City recreational amenities by permit are subject to the following additional restrictions:

- a. The operator of the OPDMD must be the person issued the City permit.
- b. The OPDMD is allowed only in areas of the park or facility in which the general public is permitted.
- c. The operator must not use the OPDMD if the use of the device causes damage to the park grounds, infrastructure, or facilities.
- d. No operator of an OPDMD shall be intoxicated.
- e. The OPDMD must not be operated between dusk and dawn.
- f. The operator is prohibited from carrying another person on the frame, or any object on the frame that may make the OPDMD unstable.
- g. The OPDMD must not be operated in a dangerous or reckless manner or at speeds that jeopardize the safety of the operator or other persons.

## **Application and Permit for Access to Use OPDMDs**

Only individuals with a mobility disability may be issued a permit to use OPDMDs on City lands. The City may stop individuals who are using an OPDMD because all powered devices except wheelchairs and Class I and Class II electric bicycles on specific hard surface trails are prohibited under City ordinance.

Due to the variety of electric powered OPDMDs available, visitors with mobility impairments should use their judgment in assessing the practicality of using their device on a particular trail or in a particular recreational park amenity prior to applying for a permit. Due to slope, surface condition, or many other factors OPDMD use may be physically impossible or unsafe even in areas where they are allowed.

The City shall not ask an individual using a wheelchair or OPDMD questions about the nature and extent of the individual’s disability. If a person using an OPDMD states they are using the device due to a mobility disability the City may ask them to provide credible assurance that the mobility device is required because of the person’s disability. The City shall 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. In lieu of a valid, state-issued disability parking placard or card, or state-issued proof of disability, the City shall accept as a credible assurance a verbal representation, not contradicted by observable fact, that the OPDMD is being used for a mobility disability. A “valid” disability placard or card is one that is presented by the person to

whom it was issued and is otherwise in compliance with the state of issuance's requirements for disability placards or cards.

Permits are valid for a duration of 3 years. Failure to comply with the terms and restrictions of the permit may result in revocation of the permit.

Completed application for permit form and any necessary attachments may be submitted as follows:

- Email to: [rec@durangogov.org](mailto:rec@durangogov.org)
- Mail to: Parks and Recreation Director, 2700 Main Ave., Durango, CO 81301

IMPORTANT: The application will be reviewed by the Parks and Recreation Director. Some locations may require application review by additional authorities, such as the U.S. Bureau of Reclamation for OPDMD use at Lake Nighthorse. If necessary, the applicant may be contacted to review the regulations. If the application is approved, the proper authorities will be notified by the Parks and Recreation Department (e.g., Code Enforcement, Police Department, and Park Rangers) before usage. Applicant must take this into consideration when applying, as turnaround time could take several days.

## **Revisions**

The City reserves the right to change, modify, or amend this policy at any time, as it would any other policy.

## **Governing Authority**

Americans with Disabilities Act, Title II regulation, 28 C.F.R. Part 35.

## Attachment A

### City of Durango Parks and Recreation Department Other Power-Driven Mobility Devices (OPDMD) Accessible Trails and Parks List

IMPORTANT: A permit is required to access these trails and parks with OPDMDs.

Permit not required for OPDMD use on City sidewalks, City-designated bike routes marked with signage (map available online at: [durangogov.org](http://durangogov.org)), streets, driveways, parking lots, ramps, and restrooms.

OPDMDs are not permitted in areas that are closed or restricted to the general public due to safety concerns or for resource protection.

Permit required for OPDMD use on/in City the trails and recreational park amenities listed below:

Trails to include and/or evaluate:

- Animas River Trail
- SMART160 Trail
- Oxbow Preserve trail
- Lake Nighthorse dam road
  - Lake Nighthorse ADA dock
  - Lake Nighthorse swim beach access
- Jenkins Ranch Road trail
- Florida Road trail
- Three Springs hard surface & Southern Open Space wetlands loop trail
- Twin Buttes hard surface trail
- Rim Trail or sections of for view