

Brookline Advisory Committee
Public Safety Subcommittee Hearing
WARRANT ARTICLE 16
September 25, 2019

Introduction

The Public Safety Subcommittee held a public hearing on Warrant Article 16 in the Fifth Floor School Committee Room of Town Hall from 6:00 pm to 8:00 pm on Wednesday, September 25, 2019.

There were over 30 attendees: co-petitioners Paul Warren (TMM 1) and Heather Hamilton (Select Board Member); Sgt. John Canney (Traffic Division, Brookline PD); Zoe Lynn (Sustainability Program Administrator); 23 members of the public: C. Scott Ananian (TMM 10), Pat Ahlin, Rodin Batcheller (Emerson College), Margaret Beal, Susan Helms Daley, Janet Gelbart (AC), Ellen Golde, Lea Grossman, John Harris (TMM 8, CAB), Barr Jozwicki (TMM 9), Joyce Jozwicki (TMM 9), Eileen Hulnick, Cindy Lee (Transportation Board), Sean Lynn-Jones (TMM 1), Peggy Morrison, Scott Mullen (Lime), Natasha Perez, Adele Pike, Alison Plante, Marcia Shanbaum, Ruthann Sneider (TMM 6), Denise Springborg, Martin Yaseen; and the four Subcommittee members Janice Kahn (chair, TMM 15), David-Marc Goldstein (TMM 8), Susan Granoff (TMM 7), and Alisa Jonas (TMM 16).

Summary

WA 16 is a resolution that urges the Select Board to postpone all decisions on adopting, extending, or implementing any programs, including pilot programs, related to shared e-scooters or other micro-mobility devices in Brookline until after (1) the State Legislature has updated and clarified Massachusetts's current laws governing the use and operation of these devices and (2) the Transportation Board has held public hearings and has adopted rules and regulations regarding the operation and parking of e-scooters and other micro-mobility devices on Brookline's public sidewalks and public paths and in its parks. WA 16 also urges that Brookline's delegates to the State Legislature work to ensure that, in any new state legislation passed involving e-scooters and micro-mobility devices, Brookline retains local control to regulate its sidewalks with respect to the use and operation of such devices. WA 16 does not take a position either for or against e-scooter usage in Brookline. It is simply seeking a moratorium on any Select Board actions with respect to future e-scooter programs in Brookline until after the State Legislature and Brookline's Transportation Board have enacted up-to-date regulations for the use and operation of e-scooters and other micro-mobility devices.

The Subcommittee recommends FAVORABLE ACTION on WA 16 by a vote of 4-0-0.

Background

In the fall of 2018 the Select Board voted to approve a 7 1/2 month shared rental e-scooter pilot program in Brookline running from April 1, 2019 to November 15, 2019. Brookline's e-scooter pilot program, which is the first in the state, was initiated at the urging of Select Board Member Heather Hamilton and after consultation with Transportation Administrator Todd Kirrane and Transportation Board Chair Christopher Dempsey. Originally, the e-scooter rental companies participating in the pilot program were Lime and Bird, which provided approximately 300 scooters; several months after the start of the program, Spin became the third participating e-scooter rental company.

E-scooters are part of a broad category of lightweight electric vehicles known as “micro-mobility devices.” These devices include electric-powered scooters, skateboards, unicycles, bicycles, and hoverboards. While these devices (and in particular e-scooters) are frequently made available to users via shared rental services, they are also being privately purchased.¹ E-scooter rental services are becoming increasingly popular in many communities throughout the country.

Riders use a mobile phone application to rent e-scooters and pay for trips. When signing up to rent an e-scooter, riders must sign and agree to the rental company's user agreement, which can be more than 50 printed pages long, typically requires that all disputes be settled by confidential arbitration, and limits the company's liability to the rider. (In the case of Lime, for example, liability is currently capped at \$100.) Typically, there is no general liability insurance coverage provided should the rider hit a pedestrian, crash into a car, or damage someone's property.

Because users of these devices can and do cross municipal borders, the development of appropriate safety regulations with respect to these devices is a local, regional, and statewide transportation issue.

At present, e-scooters appear to be covered under Mass. General Law Chapter 90, Section 1, which defines a “motorized scooter” as “any 2 wheeled tandem or 3 wheeled device, that has handlebars, designed to be stood or sat upon by the operator, powered by an electric or gas powered motor that is capable of propelling the device with or without human propulsion.” Under decades-old current state law (Ch. 90, sect. 1E), which was developed to regulate faster, gas-powered mopeds and scooters like Vespas, motorized scooters must be equipped with brake lights and turn signals, cannot be operated at a speed in excess of 20 miles per hour, can only be operated during daylight hours, and its operators must have a valid driver's license or learner's permit and wear protective headgear. Nine different bills seeking to regulate different aspects of e-scooter usage have been filed in the current session of the State Legislature, including one by Governor Baker.

In Brookline, e-scooters are currently regulated locally by Article VII, Section 15 of the Transportation Department Rules and Regulations, which bars driving vehicles on sidewalks with limited exceptions. The Brookline Police Department has been using this regulation to justify stopping people driving e-scooters on sidewalks. Section 7.5.11 of Brookline's By-laws, which prohibits sidewalk obstructions of “free passage for travelers” except with special permits for building purposes, might also be applicable, but, according to co-petitioner Warren, has not been enforced with respect to e-scooters on sidewalks that are blocking pedestrian ways. Town counsel has informed co-petitioner Warren that Town Meeting does not have the authority to change laws governing Brookline's sidewalks. Rather, the Transportation Board has exclusive jurisdiction and authority to regulate Brookline's sidewalks, pursuant to Chapter 317 of the Acts of 1974, which created Brookline's Transportation Board.

On a regional basis, Brookline has been working with the Massachusetts Area Planning Council in a regional planning effort with Boston, Cambridge, Watertown, and Newton to develop a coordinated regulatory framework for the operation of micro-mobility devices.

¹As a sidenote, a motorized scooter known as the Autoped, powered first by a fuel tank and later by an electric battery and able to reach 15-25 mph, was introduced in 1914, and it and other manufactured versions became increasingly popular in the US and western European nations in the 1920s and 1930s. They were reportedly used by postal delivery workers, celebrities like Amelia Earhart and Humphrey Bogart (1938), and even by New York gangs trying to make quick getaways from the police. <https://mashable.com/2015/06/15/1916-suffragette-scooter/>

Summary of Public Comments Discussion

With but one exception, all of the speakers at the public hearing supported WA 16.

Co-petitioner Paul Warren emphasized that WA 16 does not take a position on whether shared e-scooters services should be permitted to operate in Brookline. It simply asks that the Select Board postpone any decisions on this matter until new and updated state and local laws and regulations that specifically deal with current micro-mobility and e-scooter technology have been enacted.

Mr. Warren explained that current laws and regulations at both the state and local levels, which were enacted decades ago, are, in many ways, not adequate for regulating e-scooters and other micro-mobility devices and are unclear and sometimes contradictory as to whether and in what ways they apply to modern devices.

The petitioners believe that, as the popularity of micro-mobility devices grows, there will be an increasing number of these devices, both shared and privately owned, on Brookline's streets, even if Brookline chooses to not contract with a vendor to offer rental locations in Brookline. To promote the safe use of these devices in Brookline, WA 16 seeks to encourage the development of appropriate up-to-date regulations at both the state and local level for the use and operation of these devices.

Mr. Warren noted that the purpose of Brookline's e-scooter pilot program was to help the town collect information and data on its usage and to better evaluate the benefits and costs of a permanent program. Based on ongoing usage data and user survey results, there have been over 150,000 e-scooter trips to date. According to information provided by Bird, one of the e-scooter rental companies, 20% of the trips of their users replaced auto trips and 21% was used for transport to T stops.

The pilot program also highlighted a number of problems and concerns, particularly with respect to pedestrians and especially the elderly, the very young, and people with disabilities. These problems and concerns include the risk of injury from tripping, falling, and collision hazards due to improperly parked e-scooters left on sidewalks and scooters being ridden on sidewalks, as well as underage operators, lack of helmet compliance, and absence of liability insurance. Mr. Warren noted that setting regulations will just be the start of addressing these problems and that there will be a need for followup investments in enforcement, education, and infrastructure to better ensure public safety.

In addition to Mr. Warren, there were 20 individuals who made public comments. Only one speaker, Scott Ananian (TMM 10), expressed opposition to WA 16 because he believes that Brookline should not have to wait for the state to pass new laws before deciding to continue the use of shared e-scooters in Brookline. Another speaker stated that, in his opinion, WA 16 was necessary but not sufficient; it's merely a first step.

A large number of speakers focused their comments on their negative experiences as pedestrians with the pilot e-scooter program.

Some speakers were concerned about the lack of enforcement of current regulations with respect to e-

scooters being ridden on sidewalks and in parks. They spoke of being afraid to walk on sidewalks for fear of being knocked down by e-scooters and of the special concerns of the elderly and people with disabilities. Sean Lynn-Jones (TMM 1) noted that standard accident/injury data does not capture the "near miss rate" or the "fear factor" experienced by pedestrians with respect to e-scooters being ridden on sidewalks.

A number of speakers emphasized that sidewalks are important for both pedestrian recreation and transportation, and that they and many pedestrians no longer felt safe when forced to share Brookline's sidewalks and parks with e-scooters. This is particularly a problem for seniors, some of whom rely almost entirely on walking for their recreational and transportation needs.

Sgt. Canney spoke of some of the difficulties that the police have had with regard to stopping e-scooters from being ridden on the sidewalk. He said that it is difficult for the police to stop an e-scooter being driven on the sidewalk because it is dangerous for police riding in cruisers to chase it down and almost impossible for a foot patrol officer to catch up with a scooter going 10-15 miles per hour; the PD has created a small group of police on bicycles, and expanding the number of police on bikes (or on e-scooters) might help with future enforcement of e-scooter sidewalk regulations.

A few speakers spoke about difficulties in enforcement because there are no means of identifying e-scooters and riders who break the law and urged that unique and readily visible license numbers be put on each e-scooter.

Many other speakers focused on problems related to e-scooters being left strewn across sidewalks and posing accessibility and tripping hazards to pedestrians. Speakers spoke of parked e-scooters being left in handicapped parking spaces, in curb cuts, in front of hydrants and bus stops, and blocking access to crosswalk buttons.

Speakers suggested that the rental e-scooter companies who are profiting from being given access to Brookline's streets should be paying the town more than \$1 a day per e-scooter. They should be contributing towards the costs of police enforcement of e-scooter regulations and infrastructure improvements necessitated by e-scooters, as well as providing liability insurance to riders that cover the costs of any injuries to people and property that they may cause as a result of their e-scooter use. It was also suggested that the rental companies should help fund a townwide survey seeking feedback about the pilot program to be mailed to every Brookline resident.

One of the speakers, John Harris (TMM 8), spoke at length about the climate change benefits of e-scooters and noted that seated e-scooters can address broader demographic requirements. E-scooters are not expensive to purchase (\$300-400) and can supplement car use, especially for trips that are three miles or less. He also noted that Lime has held training sessions for e-scooter riders and has given away helmets to participants.

Another speaker, whose husband owns an e-scooter and who rides one herself, said that riding e-scooters is challenging and first-time users require training. She pointed out that the e-scooters in the pilot program use plastic tires rather than air-filled tires and are not designed for Brookline's pot-hole filled roads.

Heather Hamilton, one of WA 16's co-petitioners, said that she and Transportation Administrator Todd Kirrane are in the process of developing a set of criteria for assessing the success of the town's e-scooter pilot program. A speaker questioned whether developing such criteria for determining the program's success after the pilot program is nearly over rather than at the start of the pilot program will provide a sufficiently impartial assessment.

The Subcommittee also received several comments by email, which are also reflected in the above summary.

Subcommittee Discussion and Vote

Ms. Granoff noted that Brookline's narrow streets and sidewalks (with only a few very limited exceptions) make it quite different from the municipalities in other parts of the country where e-scooter programs have become popular, which typically have broad sidewalks and multi-lane streets and many fewer public transportation options than does Brookline. She emphasized the importance of the town doing a townwide print survey of all of Brookline's residents to assess the impact of e-scooter rentals on the town rather than a more limited online survey that might not receive a representative sample of senior responses. Ms. Granoff also emphasized the importance of e-scooter rental companies being required to provide liability insurance to their riders and raised concerns that parked e-scooters left on sidewalks that limit accessibility for residents in wheelchairs may raise questions about Brookline's compliance with the ADA.

In response to a question by Ms. Jonas, Sgt. Canney said that the police currently enforce regulations prohibiting e-scooters riding on sidewalks, riders without helmets, and underage riders. He noted that the police have been keeping track of reported accidents and that the number has been fairly low. Since the inception of the pilot program, the police have had over 500 interactions with people on e-scooters. The police can give verbal and written warnings for operating e-scooters on sidewalks, but can't collect fines.

Ms. Kahn stated that she likes WA 16 because it doesn't take a position on e-scooter usage in Brookline and allows the town to step back and assess before making any future decisions.

The Subcommittee, by a vote of 4 in favor, with none opposed and no abstentions, voted FAVORABLE ACTION on WA 16.

Documents Reviewed

Packet provided by co-petitioner Paul Warren, consisting of his public hearing remarks; Mass. General Law Chapter 90, sections 1 and 1E; a list of filed state legislation; existing pertinent Brookline Transportation Department rules and regulations and Brookline By-laws; and two Boston.com news articles: "Charlie Baker want to fix Massachusetts's electric scooter problem," Jan. 22, 2019, and "Dockless electric scooters could return to the Boston area, but probably not in 2018," Sept. 18, 2018.

Mass. General Law Chapter 317 ("An Act Establishing a Department of Transportation in the Town of Brookline")

<https://www.nbcboston.com/investigations/E-Scooter-Riders-Risks-Insurance-Rules-561172811.html>

<https://www.nbcboston.com/investigations/Boston-Learning-E-Scooter-Experiments-561170621.html>

<https://mashable.com/2015/06/15/1916-suffragette-scooter/>

<https://www.forbes.com/sites/zarastone/2018/08/01/a-hundred-years-before-scootergate-toy-scooters-saved-jobs/#7c84700a4775>