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**Sent:** Wednesday, July 10, 2024 10:50 AM

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**Subject:**

Here is our analysis of the Grand Jury's recommendations and a suggested response for Marin cities and towns. This is on your July 15 agenda I believe. I hope this is in time to be considered by staff before they submit their proposal. Feel free to pass on to staff.

To add two points to the memo, I have come to realize in working with other Marin jurisdictions that some people have a negative knee-jerk reaction to grand jury recommendations, at least people who haven't served on a grand jury. So, as much as we recommend agreeing to implement the main recommendation of an minimum age requirement of 16 for throttle e-bikes, two other possibilities would be to say:

a) has not yet been implemented but will be when AB 1778 is enacted and provides authority for such ordinance; or

b) further analysis is needed, including whether and when AB 1778 will be enacted and give Marin municipalities the authority to enact such ordinances; we understand that the Senate will act on the Assembly-approved bill by August 31, with a September 30 deadline for the Governor to sign.

On the other main recommendation -- forming a county-wide task force with participation by representatives of schools, police, public health and bicycle advocates to consider county-wide regulations of ebikes -- that should be an easy, clear "will be implemented." One town suggested that an existing committee of the Marin County Police Chiefs' Association already satisfies this recommendation. But it is limited to police chiefs and does not include schools, public health or bicycle advocates. And from what I can tell, it does not hold public meetings. So I question whether it works for that purpose. I would think a broader-based task force would be more effective.

Happy to discuss or answer any questions. Thanks.

<https://www.ebikeaccess.org>



July 5, 2024

## **E-Bike Access' Recommendation on Responding to the Civil Grand Jury Report on Throttle E-Bikes**

The Grand Jury report recommends that the Board of Supervisors and each Marin municipality adopt ordinances requiring operators of class 2 e-bikes (*i.e.*, the ones with motorcycle-like throttles that do not require pedaling) to be at least 16 years of age and that the operators and passengers must wear helmets. E-Bike Access<sup>1</sup> whole-heartedly agrees. We also agree with the Grand Jury that a county-wide task force should be formed to coordinate these efforts.

### **Key Findings**

- The increasing number of e-bike accidents with youths under 16 is a public health and safety danger in Marin;
- Class 2 e-bikes pose a "significant risk to safety" of riders and others;
- Marin municipalities have not uniformly addressed the "safety issues related to class 2 e-bike use by operators under the age of 16"; and
- The State has left it up to Marin municipalities to create their own regulations.

Each finding by the Grand Jury is supported by the evidence cited in the Report, and is beyond debate.

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<sup>1</sup> E-Bike Access is a Marin-based non-profit that has been educating the public on the legal and safety issues raised by throttle devices and proposing solutions for law enforcement and schools. Our April 30 Statement, attached, summarized the Grand Report Report along with our commentary.

Note that when the Grand Jury refers to class 2 e-bikes, it includes all throttle devices with a class 2 label. This includes throttle devices that exceed the motor size (750 watts) and speed capabilities (20 mph) for legal class 2 e-bikes. The census of 16 local schools conducted for Safe Routes to Schools shows that 2/3s of the electric devices at local middle schools exceeded the legal limits. About 2/3s of those illegal devices were the Super73 brand.

Although the Grand Jury quotes the Marin County Bicycle Coalition's correct conclusion that Super73 devices do not qualify as legal class 2 e-bikes and thus are not allowed at its e-bike safety classes, the Grand Jury mistakenly refers to "modifying" throttle devices to exceed the legal limits.

In fact, Super73 provides an app that allows a rider to shift into "unlimited" mode and attain speeds of 30-35 mph, as easily as changing the volume on an iPhone. Doing that, or shifting a car from park to drive or from first to second gear, is not "modifying" anything; it is simply using the device as designed and intended by the manufacturer. And it makes Super73s and similar brands illegal from the outset, regardless how fast the rider happens to go at any given time.

### **Grand Jury Recommendations**

**R1.** We agree that the County and all Marin municipalities should adopt a minimum age of 16 requirement for class 2 e-bikes. If AB 1778 passes, they will have the authority to do so.

New laws, however, aren't enough. They need to be enforced, which will be as large a challenge as enforcing the current laws that make Super73s and other over-powered throttle devices illegal. School/law enforcement partnerships are essential.

**R2-3.** We agree that the County and municipalities should establish a joint task force to coordinate county-wide regulations for e-bike use and that the task force should include schools, law enforcement, public health officials and bike advocates.

In addition, the task force should coordinate not just new regulations but also enforcement of the existing laws regarding the illegal electric throttle devices.

The task force should include other stakeholders like retailers, parents, and students who are riding these vehicles. The students, once they learn the legalities and injury statistics, can be our greatest allies!

**R4.** We endorse the recommendation that the County explore sources of funding for educational efforts on this topic. Potential sources include “administrative citations or fines for stores and parents” (as Chief Norton suggested); litigation by the County against retailers and manufacturers; and, if the District Attorney fails to act, private litigation by parents misled into buying an illegal throttle device which could lead to a settlement or judgment with refunds to the parents and a fund to assist the County’s education efforts.

### **Final Thoughts**

1. Super73s and other illegal devices mislabeled as class 2 e-bikes are a significant problem in Marin and that existing laws make them illegal. But that is no reason to reject the Grand Jury’s recommendation. Indeed it is a further reason to adopt them.

As a practical matter, local minimum age ordinances will apply to all devices labeled as class 2 e-bikes even the mis-labeled ones. To escape the ordinance, companies like Super73 would need to admit that they are mislabeling their devices and that they are really motorcycles instead of e-bikes. That admission would trigger all the requirements that apply to motorcycles, including driver’s licensing, DMV registration, insurance and safety equipment like turn signals that their devices typically don’t have.

In this crucial respect, the local ordinances will aid the police and schools in banning Super73 and the other mislabeled e-bikes. They will also discourage parents from buying them.

2. Throttle e-bikes are inherently more dangerous than pedal-assist e-bikes. There is a world of difference between pedaling (even

with an assist) and putting a thumb on a throttle. As the Grand Jury report explains: "Unlike class 1 and class 3 e-bikes, which . . . only get a power boost while the rider is pedaling, class 2 e-bikes can accelerate quickly with no pedaling at all." Class 2 e-bikes can also sustain their top speed without any effort other than thumb pressure on the throttle. A Super73 will accelerate from zero to 20 in under 10 seconds (and up to 35 in 15 seconds). A typical cyclist cannot do that with a pedal assist bicycle. And the throttle rider can stay at that top speed until the battery runs out. Most cyclists can't do that.

Unlike pedal-assist, throttle e-bikes are more prone to accidents from riders mistakenly pressing on the throttle when they mount the bicycle or when they are trying to brake in an emergency. <https://www.sixthreezero.com/blogs/bike-advice/electric-bike-accidents-how-do-they-happen-how-to-avoid-accidents>

3. The Marin Health accident data supports the conclusion that throttle devices are more dangerous. The accident rate for youth ages 10-15 on electric devices is five times higher than the rate for other age groups on electric devices. True, the data don't distinguish among the three classes of e-bikes. But we know from the Safe Routes to School census data and observations on the street that 10-15 year olds do not typically ride pedal-assist e-bikes; they favor the throttle ones.

By contrast, the accident rates for conventional bikes vary much less over age groups. This suggests that the cause of the higher accident rate for youth ages 10-15 on e-bikes is the result of the throttle devices they are riding -- typically Super73s and other illegal throttle devices mislabeled as class 2 e-bikes.

4. The Legislature already imposed a minimum age requirement of 16 for class 3 e-bikes (pedal-assist up to 28 mph). In doing so, it did not require any "evidence" of a higher accident rate. It used common sense. That same common sense, this time augmented by the evidence just outlined, fully justifies the same minimum age requirement for the more dangerous class 2 e-bikes.