



To: Edward Hudak, Chief of Police

From: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MSR*

RE: Legal Opinion Regarding Operating a Bicycle on a Florida Road

Date: March 19, 2019

The City of Coral Gables Police Department has requested guidance as to the applicable laws regarding the authority of a police officer to issue citations on persons operating a bicycle on a Florida road in violation of Florida Statutes Section 316.2065(5)(a) (2019).

I. QUESTION PRESENTED

Under Section 316.2065, when operating a bicycle on a Florida road, is a bicyclist required to use a bicycle lane or remain on the right-hand side of the road?

II. SHORT ANSWER

No. Under Florida Statutes Section 316.2065(1), a person operating a bicycle has all the rights and duties of a driver under Florida Statutes Chapter 316, State Uniform Traffic Control. However, Florida Statutes Section 316.2065 provides special regulations which supersede a bicyclist's other rights and duties found under Chapter 316. Generally, a person operating a bicycle may occupy any portion of a Florida road. However, if the person operating a bicycle is travelling at "less than the normal speed of traffic at the time and place and under the conditions then existing" then the person must operate the bicycle in a lane marked for bicycle use ("bicycle lane") or, if there is no bicycle lane, then "as close as practicable to the right-hand curb or edge of the roadway" § 316.2065(5)(a), Fla. Stat. (2019). This conditional requirement to

bicycle on a bicycle lane or the right-hand curb does not apply under the following three exceptions:

(1) “when overtaking and passing another bicycle or vehicle proceeding in the same direction,”

(2) “preparing for a left turn at an intersection or into a private road or driveway,” and

(3) “When reasonably necessary to avoid any condition or potential conflict . . . which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane.” This exception provides several examples of conditions or potential conflicts: “a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane”

Additionally, to aide in determining when an officer may in his or her discretion issue a citation under Section 316.2065(5)(a), the flowcharts attached to this opinion as Exhibit 1 and Exhibit 2 may be helpful as a supplement to this opinion.

III. LEGAL ANALYSIS AND ANSWER TO THE QUESTION PRESENTED

a. Definition of Bicycle

A bicycle is “vehicle” for purposes of Chapter 316, and the definition of “bicycle” can be found under “bicycle” in Florida Statutes Section 316.003(4) (2019):

Every vehicle propelled solely by human power, and every motorized bicycle^[1] propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position or

¹ A “motorized bicycle” is a bicycle, and the only legal distinction between a motorized bicycle and a bicycle is that a “person under the age of 16 may not operate or ride upon a motorized bicycle.” § 316.003(4), Fla. Stat. (2019); *Inman v. State*, 916 So. 2d 59, 60 (Fla. 2d DCA 2005) (Motorized bicycles are defined within the definition of bicycle in Section 316.003(4)); *State v. Manchado*, 968 So. 2d 115, 116 (Fla. 4th DCA 2007) (A motorized bicycle by definition is not capable of exceeding a speed of twenty miles per hour). Therefore, other than the age restriction, this opinion regarding bicycles also applies to motorized bicycles.

a scooter or similar device. A person under the age of 16 may not operate or ride upon a motorized bicycle.

b. Operation of a Bicycle on Any Part of a Florida Road Is Generally Allowed, but There Are Conditions and Exceptions.

Florida Statutes Section 316.2065(1) states that

Every person propelling a vehicle by human power has all of the rights and all of the duties applicable to the driver of any other vehicle under this chapter, except as to special regulations in this chapter, and except as to provisions of this chapter which by their nature can have no application.

As provided above, a bicycle is propelled by human power; therefore, unless an exception applies, a bicycle is treated as any other vehicle under Chapter 316. These exceptions, which supersede the general rights and duties under Chapter 316 that are provided to a person operating a bicycle, are contained in Section 316.2065.

Under Section 316.2065(1) a person may operate a bicycle on any part of a Florida road because a bicycle is a vehicle and a person operating a vehicle on a Florida road has all the rights and duties provided to him or her under Chapter 316 unless an exception applies. One exception can be found in Section 316.2065(5)(a).² Under Section 316.2065(5)(a), if a person is “operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing”³ then this person must use a bicycle lane if available, or if no bicycle lane is available, then must operate the bicycle “as close as practicable to the right-hand curb or edge of the roadway“

² There is an additional provision under Florida Statutes Section 316.2065(5)(b) (2019) regarding one-way roads: “Any person operating a bicycle upon a one-way highway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.” This provision does not affect the analysis of Section 316.2065(5)(a) as they are two entirely separate provisions.

³ For brevity and clarity throughout the remainder of the opinion, whenever “less than the normal speed of traffic” is used, then “at the time and place and under the conditions then existing” is assumed to follow as if the entire phrase is being used, i.e., “less than the normal speed of traffic at the time and place and under the conditions then existing.”

In other words, if a person is operating a bicycle at or exceeding the normal speed of traffic, then this person may use any part of the Florida road, even if a bicycle lane is available. But, if a person is operating a vehicle at less than the normal speed of traffic and is not operating the bicycle on a bicycle lane or, if no bicycle lane is available, as close as practicable to the right-hand curb or edge—i.e., in the center of the lane or the left-side of the lane—then this person is in violation of Section 316.2065(5)(a). Furthermore, if a person is operating a vehicle at less than the normal speed of traffic and is operating the vehicle as close as practicable to the right-hand curb or edge *while a bicycle lane is also available*, then this person is also violating Section 316.2065(5)(a).

However, there are three exceptions under Section 316.2065(5)(a) to the conditional requirement of operating a bicycle on a bicycle lane or right-hand curb:

1. When overtaking and passing another bicycle or vehicle proceeding in the same direction.
2. When preparing for a left turn at an intersection or into a private road or driveway.
3. When reasonably necessary to avoid any condition or potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane. For the purposes of this subsection, a “substandard-width lane” is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

Therefore, a person operating a bicycle at less than the normal speed of traffic is not required to use a bicycle lane or travel as close as practicable to the right-hand curb if any one of the three exceptions apply and would not be in violation of Section 316.2065(5)(a).

Of special note under Section 316.2065(5)(a)3. is the enumerated “condition or potential conflict” described as a “substandard-width lane.” As defined therein, a “substandard-width lane is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the

lane.”⁴ *Id.* Note, that “vehicle” and specific types of vehicles are enumerated and defined under Florida Statutes Section 316.003 (2019). If a person is operating a bicycle at less than the normal speed of traffic and, under the standard of “reasonably necessary,” there is a substandard-width lane in which the bicycle and any other vehicle as defined in section 316.003 cannot travel side-by-side, then the operator of the bicycle may use any part of the Florida road and is exempted from a violation of Section 316.2065(5)(a).

c. Operation of a Bicycle on Sidewalks and Sidewalk Areas Is Generally Allowed Except for Certain Areas with the City of Coral Gables.

Florida Statutes Section 316.1995 allows a person to drive a vehicle propelled by human power upon a bicycle path, sidewalk, or sidewalk area. However, this general allowance does not preempt a municipality from regulating the operation of a bicycle:

(1) The provisions of this chapter shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from: [. . .] (h) Regulating the operation of bicycles.

[and]

(7)(a) A county or municipality may enact an ordinance to permit, control, or regulate the operation of vehicles⁵, golf carts, mopeds, motorized scooters, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law. The ordinance must restrict such vehicles or devices to a maximum

⁴ Unfortunately, a thorough review of applicable Florida case law regarding substandard-width lanes has provided no guidance from Florida courts. Neither the Florida Supreme Court nor the Florida District Courts of Appeal have issued an opinion regarding or related to substandard-width lanes. At this time, the only guidance is the plain meaning and definition provided with the statute.

When a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. . . . Instead, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent.

State v. Burris, 875 So. 2d 408, 410 (Fla. 2004).

⁵ A motorized bicycle is a vehicle under Florida Statutes Section 316.003(99): “Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks.”

speed of 15 miles per hour in such areas.

§ 316.008, Fla. Stat. Therefore, although a bicycle is generally allowed to be operated on a sidewalk or sidewalk area, a municipality may regulate their use on a sidewalk or sidewalk area. *See generally* Fla. Att'y Gen. Op. 94-5 (1994).

In the City of Coral Gables, “[t]he riding of bicycles upon the pedestrian sidewalks on Miracle Mile and where posted shall be prohibited and unlawful with the exception of law enforcement officers in performance of their duties.” City of Coral Gables Municipal Code Section 74-3(a). Furthermore,

(a) Except as set forth in section 74-239, the riding of all motorized vehicles, including, but not limited to, motorized bicycles, motorized scooters, moped, motorcycles, and electric personal assistive mobility devices, upon areas of pedestrian traffic along Miracle Mile, Giralda Plaza, and all other commercially zoned districts within the city shall be prohibited and unlawful with the exception of law enforcement officers using electric personal assistive mobility devices in performance of their duties and electric or motorized wheelchairs or other such motorized vehicles used by the disabled.

(b) This section shall not apply to law enforcement officers in performance of their duties or other uses authorized by the city.

City of Coral Gables Municipal Code Section 74-4. Therefore, in the City of Coral Gables, a person may operate a bicycle on a sidewalk with the exceptions as noted above.

IV. CONCLUSION

Under Chapter 316, a bicycle may generally be operated on any part of a Florida road because the operator of a bicycle has the same rights and duties applicable to other vehicles under Chapter 316, unless excepted. However, under Section 316.2065(5)(a), if a person is “operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing” then this person must use a bicycle lane if available, or if no bicycle lane is available, then must operate the bicycle “as close as practicable to the right-hand curb or edge of the roadway” But, this conditional requirement to use a bicycle lane or the right-hand curb, has three exceptions: (1) “when overtaking and passing another bicycle or vehicle proceeding in

the same direction,” (2) “preparing for a left turn at an intersection or into a private road or driveway,” and (3) “When reasonably necessary to avoid any condition or potential conflict . . . which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane.” If any one of these exceptions apply, a person operating a bicycle at less than the normal speed of traffic may use any part of the road.



EXHIBIT 1

ANALYSIS OF F.S. 316.2065(5)(a) WHEN A BICYCLIST IS ON A FLORIDA ROAD AND THERE IS NO BICYCLE LANE AVAILABLE

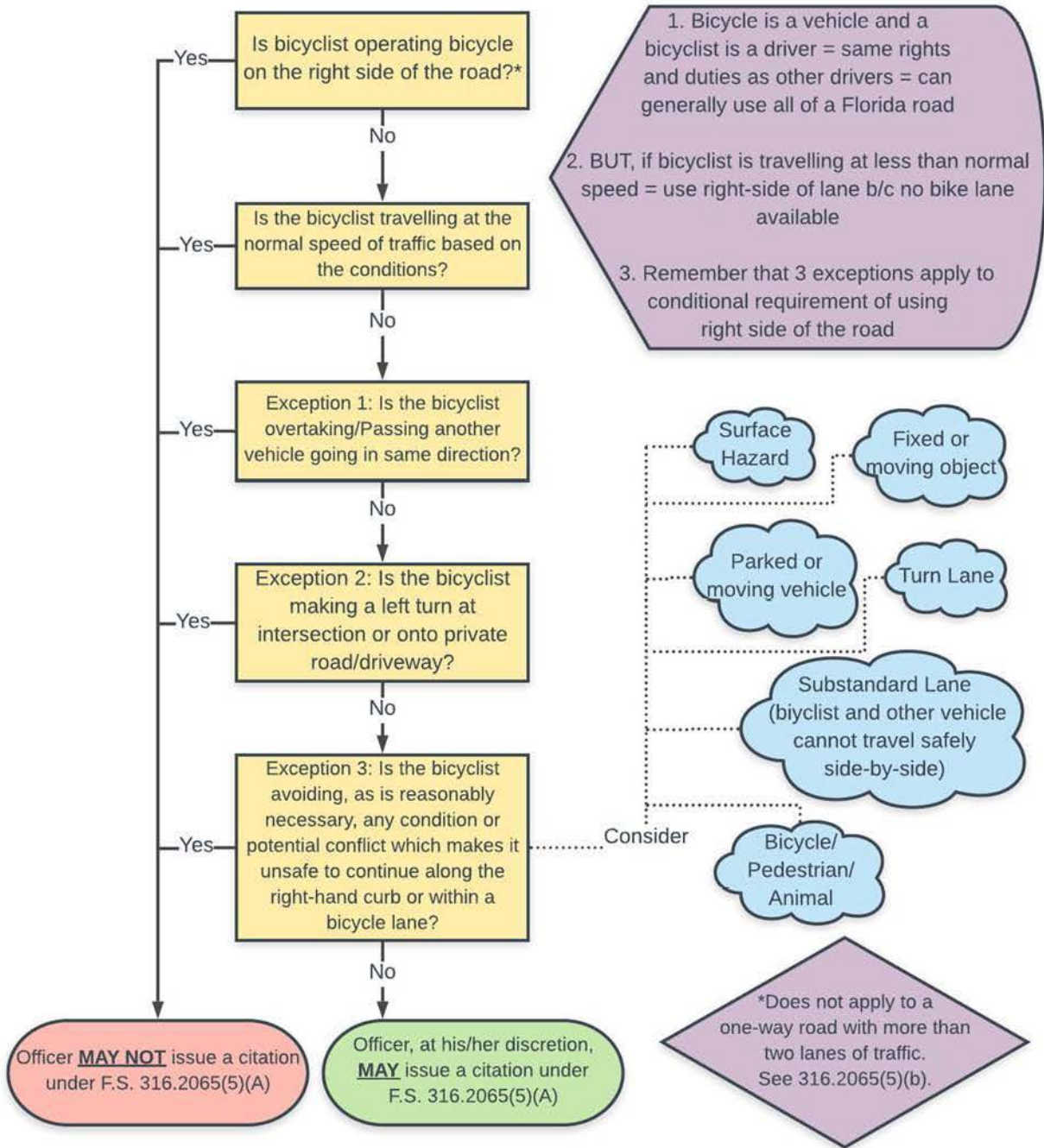
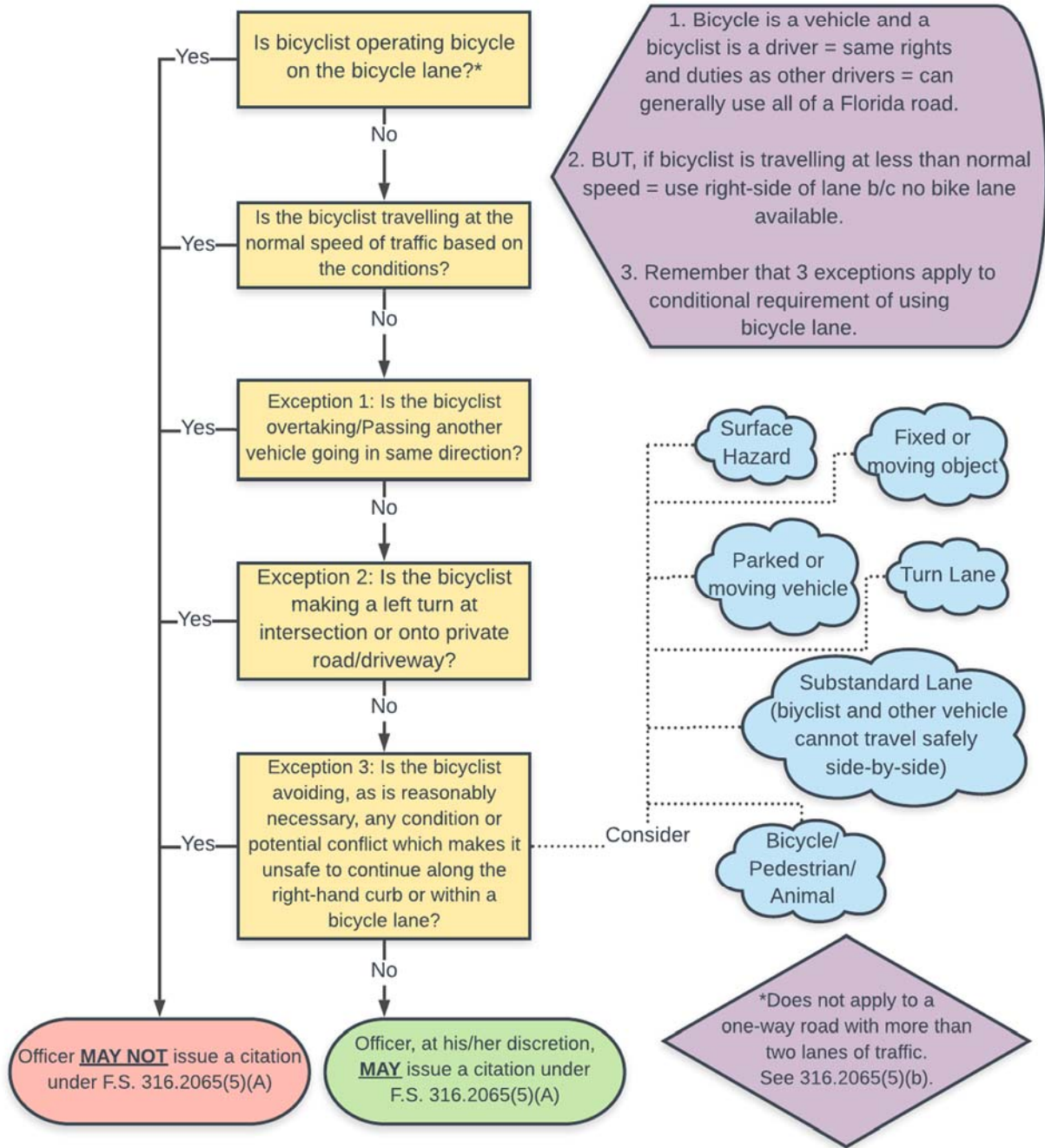




EXHIBIT 2

ANALYSIS OF F.S. 316.2065(5)(a) WHEN A BICYCLIST IS ON A FLORIDA ROAD AND THERE IS A BICYCLE LANE AVAILABLE



LEGAL OPINION

To: Edward Hudak
Chief of Police

Via: Miriam Ramos
City Attorney
City of Coral Gables

From: Israel U. Reyes, Managing Partner
Christopher Reyes, Partner
The Reyes Law Firm, P.A.
Police Legal Advisors

Date: February 28, 2019

Re: Section 316.2065(5)(a) Citations of a Person Operating a Bicyclist on a Florida Road

The City of Coral Gables Police Department has requested guidance as to the applicable laws regarding the authority of a police officer to issue citations on persons operating a bicycle on a Florida road in violation of Florida Statutes Section 316.2065(5)(a) (2019).

I. QUESTION PRESENTED

Under Section 316.2065, when operating a bicycle on a Florida road, is a bicyclist required to use a bicycle lane or remain on the right-hand side of the road?

II. SHORT ANSWER

No. Under Florida Statutes Section 316.2065(1), a person operating a bicycle has all the rights and duties of a driver under Florida Statutes Chapter 316, State Uniform Traffic Control.

However, Florida Statutes Section 316.2065 provides special regulations which supersede a bicyclist's other rights and duties found under Chapter 316. Generally, a person operating a bicycle may occupy any portion of a Florida road. However, if the person operating a bicycle is travelling at "less than the normal speed of traffic at the time and place and under the conditions then existing" then the person must operate the bicycle in a lane marked for bicycle use ("bicycle lane") or, if there is no bicycle lane, then "as close as practicable to the right-hand curb or edge of the roadway" § 316.2065(5)(a), Fla. Stat. (2019). This conditional requirement to operate a bicycle on a bicycle lane or the right-hand curb does not apply under the following three exceptions:

- (1) "when overtaking and passing another bicycle or vehicle proceeding in the same direction,"
- (2) "preparing for a left turn at an intersection or into a private road or driveway," and
- (3) "When reasonably necessary to avoid any condition or potential conflict . . . which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane." This exception provides several examples of conditions or potential conflicts: "a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane"

Additionally, to aid in determining when an officer may in his or her discretion issue a citation under Section 316.2065(5)(a), the flowcharts attached to this opinion as Exhibit 1 and Exhibit 2 may be helpful as a supplement to this opinion.

III. LEGAL ANALYSIS AND ANSWER TO THE QUESTION PRESENTED

a. Definition of Bicycle

A bicycle is “vehicle” for purposes of Chapter 316, and the definition of “bicycle” can be found under “bicycle” in Florida Statutes Section 316.003(4) (2019):

Every vehicle propelled solely by human power, and every motorized bicycle^[1] propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position or a scooter or similar device. A person under the age of 16 may not operate or ride upon a motorized bicycle.

b. Operation of a Bicycle on Any Part of a Florida Road Is Generally Allowed, but There Are Conditions and Exceptions.

Florida Statutes Section 316.2065(1) states that

Every person propelling a vehicle by human power has all of the rights and all of the duties applicable to the driver of any other vehicle under this chapter, except as to special regulations in this chapter, and except as to provisions of this chapter which by their nature can have no application.

As provided above, a bicycle is propelled by human power; therefore, unless an exception applies, a bicycle is treated as any other vehicle under Chapter 316. These exceptions, which supersede the general rights and duties under Chapter 316 that are provided to a person operating a bicycle, are contained in Section 316.2065.

Under Section 316.2065(1) a person may operate a bicycle on any part of a Florida road because a bicycle is a vehicle and a person operating a vehicle on a Florida road has all the rights

¹ A “motorized bicycle” is a bicycle, and the only legal distinction between a motorized bicycle and a bicycle is that a “person under the age of 16 may not operate or ride upon a motorized bicycle.” § 316.003(4), Fla. Stat. (2019); *Inman v. State*, 916 So. 2d 59, 60 (Fla. 2d DCA 2005) (Motorized bicycles are defined within the definition of bicycle in Section 316.003(4)); *State v. Manchado*, 968 So. 2d 115, 116 (Fla. 4th DCA 2007) (A motorized bicycle by definition is not capable of exceeding a speed of twenty miles per hour). Therefore, other than the age restriction, this opinion regarding bicycles also applies to motorized bicycles.

and duties provided to him or her under Chapter 316 unless an exception applies. One exception can be found in Section 316.2065(5)(a).² Under Section 316.2065(5)(a), if a person is “operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing”³ then this person must use a bicycle lane if available, or if no bicycle lane is available, then must operate the bicycle “as close as practicable to the right-hand curb or edge of the roadway”

In other words, if a person is operating a bicycle at or exceeding the normal speed or traffic, then this person may use any part of the Florida road, even if a bicycle lane is available. But, if a person is operating a vehicle at less than the normal speed of traffic and is not operating the bicycle on a bicycle lane or, if no bicycle lane is available, as close as practicable to the right-hand curb or edge—i.e., in the center of the lane or the left-side of the lane—then this person is in violation of Section 316.2065(5)(a). Furthermore, if a person is operating a vehicle at less than the normal speed of traffic and is operating the vehicle as close as practicable to the right-hand curb or edge *while a bicycle lane is also available*, then this person is also violating Section 316.2065(5)(a).

However, there are three exceptions under Section 316.2065(5)(a) to the conditional requirement of operating a bicycle on a bicycle lane or right-hand curb:

1. When overtaking and passing another bicycle or vehicle proceeding in the same direction.

² There is an additional provision under Florida Statutes Section 316.2065(5)(b) (2019) regarding one-way roads: “Any person operating a bicycle upon a one-way highway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.” This provision does not affect the analysis of Section 316.2065(5)(a) as they are two entirely separate provisions.

³ For brevity and clarity throughout the remainder of the opinion, whenever “less than the normal speed of traffic” is used, then “at the time and place and under the conditions then existing” is assumed to follow as if the entire phrase is being used, i.e., “less than the normal speed of traffic at the time and place and under the conditions then existing.”

2. When preparing for a left turn at an intersection or into a private road or driveway.

3. When reasonably necessary to avoid any condition or potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane. For the purposes of this subsection, a “substandard-width lane” is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

Therefore, a person operating a bicycle at less than the normal speed of traffic is not required to use a bicycle lane or travel as close as practicable to the right-hand curb if any one of the three exceptions apply and would not be in violation of Section 316.2065(5)(a).

Of special note under Section 316.2065(5)(a)3. is the enumerated “condition or potential conflict” described as a “substandard-width lane.” As defined therein, a “substandard-width lane is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.”⁴ *Id.* Note, that “vehicle” and specific types of vehicles are enumerated and defined under Florida Statutes Section 316.003 (2019). If a person is operating a bicycle at less than the normal speed of traffic and, under the standard of “reasonably necessary,” there is a substandard-width

⁴ Unfortunately, a thorough review of applicable Florida case law regarding substandard-width lanes has provided no guidance from Florida courts. Neither the Florida Supreme Court nor the Florida District Courts of Appeal have issued an opinion regarding or related to substandard-width lanes. At this time, the only guidance is the plain meaning and definition provided with the statute.

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State v. Burris, 875 So. 2d 408, 410 (Fla. 2004).

lane in which the bicycle and any other vehicle as defined in section 316.003 cannot travel side-by-side, then the operator of the bicycle may use any part of the Florida road and is exempted from a violation of Section 316.2065(5)(a).

c. Operation of a Bicycle on Sidewalks and Sidewalk Areas Is Generally Allowed Except for Certain Areas with the City of Coral Gables.

Florida Statutes Section 316.1995 allows a person to drive a vehicle propelled by human power upon a bicycle path, sidewalk, or sidewalk area. However, this general allowance does not preempt a municipality from regulating the operation of a bicycle:

(1) The provisions of this chapter shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from: [. . .] (h) Regulating the operation of bicycles.

[and]

(7)(a) A county or municipality may enact an ordinance to permit, control, or regulate the operation of vehicles⁵, golf carts, mopeds, motorized scooters, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law. The ordinance must restrict such vehicles or devices to a maximum speed of 15 miles per hour in such areas.

§ 316.008, Fla. Stat. Therefore, although a bicycle is generally allowed to be operated on a sidewalk or sidewalk area, a municipality may regulate their use on a sidewalk or sidewalk area.

See generally Fla. Att'y Gen. Op. 94-5 (1994).

In the City of Coral Gables, “[t]he riding of bicycles upon the pedestrian sidewalks on Miracle Mile and where posted shall be prohibited and unlawful with the exception of law

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enforcement officers in performance of their duties.” City of Coral Gables Municipal Code
Section 74-3(a). Furthermore,

(a) Except as set forth in section 74-239, the riding of all motorized vehicles, including, but not limited to, motorized bicycles, motorized scooters, moped, motorcycles, and electric personal assistive mobility devices, upon areas of pedestrian traffic along Miracle Mile, Giralda Plaza, and all other commercially zoned districts within the city shall be prohibited and unlawful with the exception of law enforcement officers using electric personal assistive mobility devices in performance of their duties and electric or motorized wheelchairs or other such motorized vehicles used by the disabled.

(b) This section shall not apply to law enforcement officers in performance of their duties or other uses authorized by the city.

City of Coral Gables Municipal Code Section 74-4. Therefore, in the City of Coral Gables, a person may operate a bicycle on a sidewalk with the exceptions as noted above.

IV. CONCLUSION

Under Chapter 316, a bicycle may generally be operated on any part of a Florida road because the operator of a bicycle has the same rights and duties applicable to other vehicles under Chapter 316, unless excepted. However, under Section 316.2065(5)(a), if a person is “operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing” then this person must use a bicycle lane if available, or if no bicycle lane is available, then must operate the bicycle “as close as practicable to the right-hand curb or edge of the roadway” But, this conditional requirement to use a bicycle lane or the right-hand curb, has three exceptions: (1) “when overtaking and passing another bicycle or vehicle proceeding in the same direction,” (2) “preparing for a left turn at an intersection or into a private road or driveway,” and (3) “When reasonably necessary to avoid any condition or potential conflict . . . which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane.” If

any one of these exceptions apply, a person operating a bicycle at less than the normal speed of traffic may use any part of the road.



EXHIBIT 1
ANALYSIS OF F.S. 316.2065(5)(a)
WHEN A BICYCLIST IS ON A FLORIDA ROAD
AND THERE IS NO BICYCLE LANE AVAILABLE

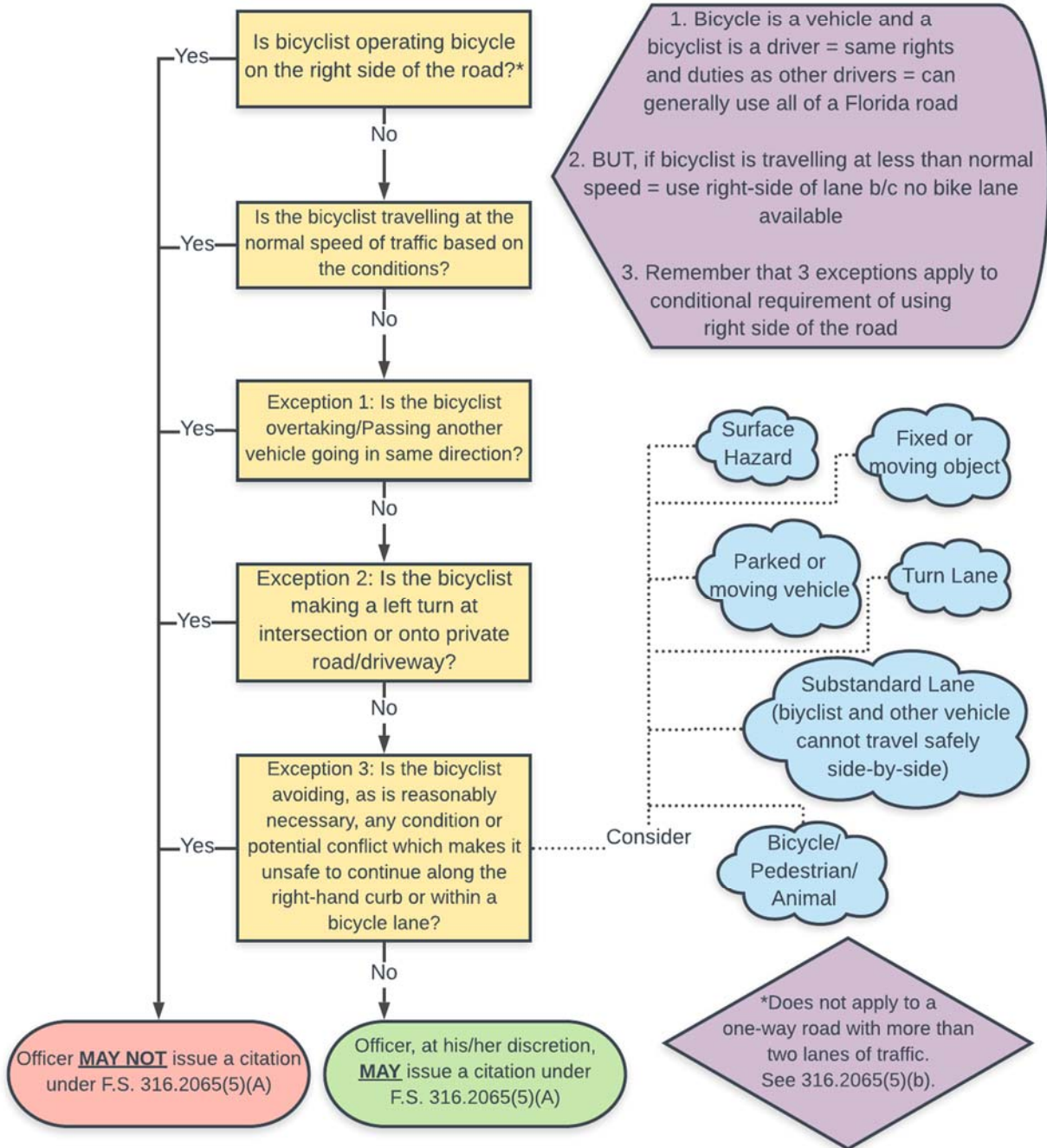
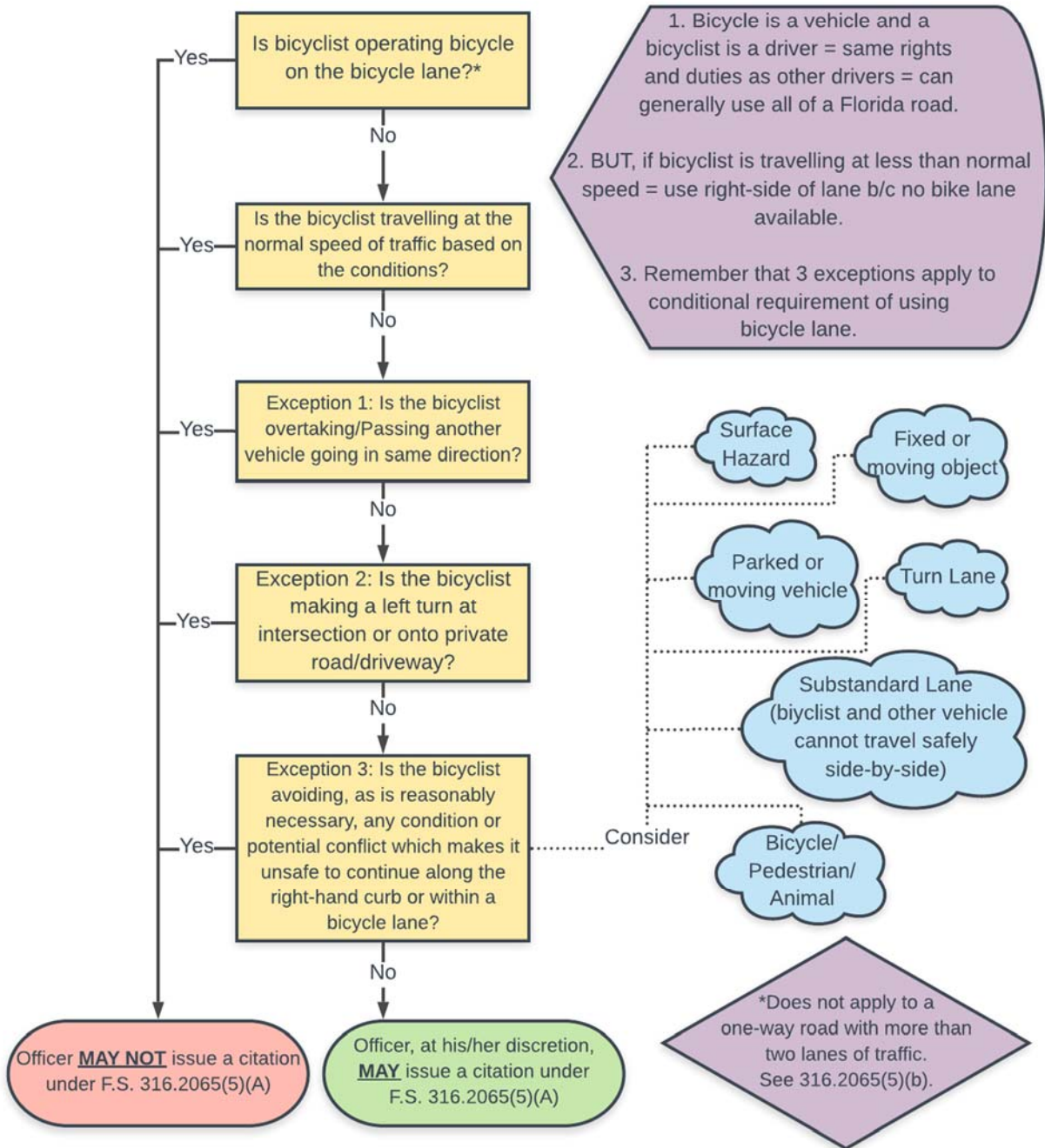




EXHIBIT 2
ANALYSIS OF F.S. 316.2065(5)(a)
WHEN A BICYCLIST IS ON A FLORIDA ROAD
AND THERE IS A BICYCLE LANE AVAILABLE



Paulk, Enga

From: Ramos, Miriam
Sent: Tuesday, March 19, 2019 9:20 AM
To: Paulk, Enga
Cc: Suarez, Cristina
Subject: Opinion re. bicycles
Attachments: Legal Opinion on F.S. 316.2065(5)(a) - bicycles.docx

Enga, please format and publish.

Thanks,

Miriam Soler Ramos, Esq., B.C.S.

City Attorney

*Board Certified by the Florida Bar in
City, County, and Local Government Law*

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