

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

To: Tom Lynch, Director of Transportation
From: Amber McReynolds, Assistant City Attorney
RE: Legal Status and Regulation of Automated Vehicles¹
Date: March 26, 2019

QUESTIONS PRESENTED

1. What is the current legal status of automated vehicles?
2. Does the City currently have the authority to regulate automated vehicles?

SHORT ANSWERS

1. Automated vehicles are not prohibited by state law and may be permitted depending on whether the vehicle meets state and federal requirements.
2. Generally, no, with some potential exceptions.

ANALYSIS

I. Federal, State, and Local Vehicle Regulation

Vehicle requirements and specifications are typically a function of federal regulation. The National Highway Traffic Safety Administration (NHTSA), an agency of the United States Department of Transportation (USDOT), issues Federal Motor Vehicle Safety Standards (FMVSS). The Wisconsin Department of Transportation may refuse to register vehicles that do not meet federal regulations. Wis. Stat. § 341.10. Vehicles that are not registered or exempt from registration may not legally operate on public streets. Wis. Stat. § 341.04(1).

As a general matter, Wisconsin State Statute restricts local regulation of public highways. Under Wis. Stat. § 349.03(1):

No local authority may enact or enforce any traffic regulation unless such regulation:

- (a) Is not contrary to or inconsistent with chs. 341 to 348 and 350; or
- (b) Is expressly authorized by ss. 349.06 to 349.25 or some other provision of the statutes.

¹ Although automated vehicles may also be referred to in other terms such as autonomous vehicles, driverless vehicles, or self-driving vehicles, for consistency, this memo uses the term “automated vehicle” or “AV”.

Current Wisconsin law does not explicitly prohibit or permit the operation of automated vehicles. Therefore, AVs are permitted or prohibited in Wisconsin dependent on the same laws that apply to other types of vehicles.

Definitions in state vehicle code explain why AVs may be allowed to operate under current Wisconsin law without statutes explicitly addressing AVs. A “vehicle” is a “device in, upon, or by which any person or property is or may be transported or drawn upon a highway...”. Wis. Stat. § 340.01(74). A “motor vehicle” is defined as a “self-propelled” vehicle. Wis. Stat. § 340.01(35). While most Wisconsin traffic laws are written in a way that assumes an “operator” is involved, no statute explicitly requires that a moving vehicle must have an “operator”. Even if the necessity of an “operator” is assumed, “operator” is defined as “a person who drives or is in actual physical control of a vehicle”. Wis Stat. § 340.01(41)(emphasis added). There are no specific definitions in Wis. Ch. 340 for the terms “driver” or “drive”. The above definitions allow the following interpretation: If a person is present in an AV to “drive” the vehicle or take over actual physical control of the vehicle, they are the “operator” of the vehicle. Under that interpretation, the operator of the AV would need a valid license and need to follow traffic laws in the same way as any other operator of any other vehicle. A secondary interpretation could be that even without a person present in the vehicle, the AV may still operate under technology that allows a person to “drive” the vehicle remotely.

If an AV is permitted to operate under state law, the City is only able to regulate what is expressly authorized by Wis. Ch. 349. Currently Wis. Ch. 349 does not expressly authorize municipalities to regulate automated vehicles. However, other existing authority in Wis. Ch. 349 could apply to AVs depending on how the vehicles are classified or operated. For example, Wis. Stat. § 349.26, authorizes the City to regulate low-speed vehicles². If an automated vehicle is registered with the state as a low-speed vehicle, then any City regulations applicable to low-speed vehicles would apply to the automated low-speed vehicle in the same way they apply to other low-speed vehicles.³ Likewise, if AVs begin charging fares or operating for hire, the City may be able to regulate them through state and local regulations applicable to taxis or public passenger vehicles.

In sum, if a vehicle meets federal standards and is a legally registered vehicle with the Wisconsin DOT, it may operate on public streets per state statutes applicable to that type of vehicle. Since the state does not authorize broad local regulation of AVs, the City would not have authority to prohibit operation of AVs that are otherwise permitted to operate under state law. Exceptions based on current local authority may apply to AVs depending on several factors.

² “Low-speed vehicle” means a motor vehicle that conforms to the definition and requirements for low-speed vehicles as adopted in the federal motor vehicle safety standards for low-speed vehicles under 49 CFR 571.3 (b) and 49 CFR 571.500. Wis. Stat. § 340.01(27h).

³ MGO 12.792 allows low-speed vehicles on any roadways with speed limits of 35 miles per hour or less.

II. Automated Vehicle Developments in Wisconsin and Potential for Legislation

In January 2017, the USDOT selected UW-Madison as one of ten national “Proving Grounds” to encourage testing and information sharing around automated vehicle technologies. In May 2017, former Governor Walker issued an Executive Order creating a Steering Committee “for the purpose of advising the Governor in a coordinated effort on how best to advance the testing and operation of autonomous and connected vehicles in the State of Wisconsin.”⁴ On June 29, 2018, the Steering Committee on Autonomous and Connected Vehicle Testing and Deployment issued its report.⁵ The report includes descriptions and status of current technologies, potential impacts, and recommendations. The recommendations include suggestions related to licensing, registration, and law enforcement considerations, formally authorizing an AV testing framework in Wisconsin, and updating and clarifying state statutes and administrative rules related to AV operation and liability. The report also recommends recognizing reports on AV by the USDOT⁶ and the American Association of Motor Vehicle Administrators (AAMVA)⁷ and suggests deferring to FMVSS for future AV equipment standards.

At least 29 states have enacted legislation related to AVs. Legislation related to federal primacy regarding AV testing and deployment was before Congress in 2018, although it failed to pass in the US Senate. This area of law is developing, and guidance on AVs and the City’s ability to regulate aspects of AV operation will be largely dependent on future federal and state legislation.

CONCLUSION

If an automated vehicle may legally operate under Wisconsin law, the City does not have the authority to prohibit the automated vehicle from operating on City streets. Some exceptions may apply based on factors such as fare collection or vehicle type, but these exceptions require further analysis on a case-by-case basis. This information and conclusion should be reevaluated as federal and state laws applicable to automated vehicles develop and change.

4 2017 Executive Order 245

https://docs.legis.wisconsin.gov/code/executive_orders/2011_scott_walker/2017-245.pdf

5 *Report of the Governor’s Steering Committee on Autonomous and Connected Vehicle Testing and Deployment*, June 29, 2018

<https://wisconsin.gov/Documents/about-wisdot/who-we-are/comm-couns/av-final-report-062918.pdf>

6 USDOT, *Preparing for the Future of Transportation, Automated Vehicles 3.0*

<https://www.transportation.gov/av/3/preparing-future-transportation-automated-vehicles-3>

The Steering Committee Report references USDOT’s Automated Vehicles 2.0 version, but the 3.0 version from October, 2018 has since been released.

7 AAMVA, *Jurisdictional Guidelines for the Safe Testing and Deployment of Highly Automated Vehicles*, May 2018