Classy Cycles, Inc. v. Panama City Beach, No. 1D18-3095 2019 WL 5945495 *1 (Fla. 1st DCA Nov. 13, 2019).

First DCA Holds That Local Governments are Empowered to *Totally* Ban Rental Scooters Within Their Jurisdiction Under Certain Conditions

In 2017 Panama City Beach ("City") enacted two ordinances concerning rental scooters in response to a decision by the First District Court of Appeals ("DCA"), which held that the City's ordinances requiring rental scooters drivers to wear helmets and rental scooter providers to carry insurance were preempted by state law. The first ordinance prohibited the overnight rental of motorized scooters. The second completely prohibited the renting of motorized scooters effective September 2020. Both ordinances included lengthy "whereas clauses" that articulated the reasons the City adopted the ordinance. The "whereas clauses" showed the City was mainly concerned with the threat inexperienced scooter drivers posed to the safety of residents and tourists. Classy Cycles brought suit challenging the ordinances' validity.

Classy Cycles attacked the City's ordinances on two grounds: (1) the ordinances lacked a rational basis because rental scooters are not a per se nuisance and a municipality cannot totally prohibit a business activity that is not a per se nuisance; and (2) the ordinances are specifically preempted by the Florida Uniform Traffic Code ("FUTC").

A majority of the court upheld the City's ban stating that the Municipal Home Rule Powers Act ("MHRPA") grants cities the power to prohibit any activity so long as the reasons for implementing the ban are not arbitrary and unreasonable. The court first stated that Classy Cycles' "per se nuisance" argument was no longer valid because the MHRPA effectively repealed the case law that established the "per se nuisance" theory. The court then turned to whether the City had a rational basis for enacting a ban on rental scooters. The court stated that, generally speaking, an ordinance completely prohibiting a legal business from operating anywhere in the city would be arbitrary and unreasonable. However, the court held the City's rental scooter ban had a rational basis because the "whereas clauses" stated that the rental scooters presented a dangerous condition throughout the *entire* city. The court stated that "[u]nder these limited circumstances, we do not find the [City's] ordinances to be arbitrary or unreasonable."

Further, the court held that the City was not preempted by state law from passing ordinances banning rental scooters. Analyzing the text of the FUTC, the court found that the statute specifically allowed local governments to "prohibit[] or regulat[e] the use of heavily traveled streets by *any class or kind of traffic* found to be incompatible with the normal and safe movement of traffic." The court distinguished the City's ordinances from those ordinances the court previously struck down, which attempted to regulate the conduct of the driver.

The opinion inspired a dissent from Judge Makar who determined that the City was preempted from completely banning scooter rentals. Judge Makar analyzed the language of the FUTC and concluded that it allowed cities to regulate the operation of motorized scooters, but the statute limits the power of local governments because the language only gives them the power to regulate motorized scooters' "use" or "operation," and not the manner that scooters are made available to the public.