

**STATE OF MICHIGAN
COUNTY OF BENZIE
ORDINANCE NO. 2014-001**

An ordinance to repeal Ordinance No. 2012-02 and all other ordinances regulating the operation of an Off Road Vehicle (ORV) on certain public roads, and to permit the operation of an ORV in compliance with this ordinance on roads which are designated for such use on a master map duly adopted by the Benzie County Board of Commissioners;; and to set forth the regulations regarding the operation of ORVs on public roads in Benzie County, for the purpose of providing penalties for the violation thereof, and for the distribution of public funds resulting from those penalties for the violation thereof, and for the distribution of public funds resulting from those penalties pursuant to 2008 PA 240, MCL 324.81131.

THE COUNTY OF BENZIE ORDAINS:

Section 1. Definitions.

As used in this ordinance, the following definitions shall apply:

- a) "County" means the County of Benzie.
- b) "Driver License" means an operator's or chauffeur's license or permit issued to an individual by the Secretary of State under Chapter III of the Michigan Vehicle Code, 1949 PA 300, MCL 257.301 to 257.325, for that individual to operate a vehicle, whether or not conditions are attached to the license or permit.
- c) "Operate" means to ride in or on, and be in actual physical control of the operation of an ORV.
- d) "Operator" means a person who operates or is in actual physical control of the operation of an ORV.
- e) "ORV" means a motor driven off road recreation vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. ORV or vehicle includes, but is not limited to, a multi-track or multi-wheel drive vehicle, or ORV, a motorcycle or related 2-wheel, 3-wheel, or 4-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation deriving motor power from a source other than muscle or wind. ORV or vehicle does not include a registered snowmobile, a farm vehicle being used for farming, a vehicle used or military, fire, emergency, or law enforcement purposes, a vehicle owned and operated by a utility company or an oil or gas company when performing maintenance on its facilities or on property over which it has an easement, a construction or logging vehicle used in performance of its common function, or a registered aircraft.

- f) "Road" means a county primary road or county local road as described in section 5 of 1951 PA 51, MCL 247.655.
- g) "Road Commission" means the Board of County Road Commissioners for the County of Benzie.
- h) "Safety Certificate" means a certificate issued pursuant to 1994 PA 451 as amended, MCL 324.81129, or a comparable ORV safety certificate issued under the authority of another state or a province of Canada.
- i) "Township" means an individual township within the County of Benzie.
- j) "Township Board" means a board of trustees of any township within the County of Benzie.
- k) "Direct Supervision" means the direct visual observation of the operator with the unaided or normally corrected eye, where the observer is able to come to the immediate aid of the operator.

Section 2. ORV Operation

An ORV may be operated on the far right of the maintained portion of a road within the county and the gravel portion of paved roads within the County when available except for the following:

- a) Not on any road designated as closed to ORV use on the official ORV Map duly adopted by resolution of the Benzie County Board of Commissioners (BOC), which official map shall be posted at the Benzie County Sheriff's department. Copies of said map shall also be made available to the Benzie County Road Commission and shall be made available to the public at the Benzie County Government Center.
- b) Not on any roadway, shoulder or right-of-way of any State or Federal highway including but not limited to M-168, M-22, US-31 and M-115.
- c) Not on the Betsie Valley trail at any time.

Section 3. Limited Operation on Closed Roads

Residents, as established by the address on their current driver's license, or their parents' driver's license if they do not have a driver's license, may operate an ORV in compliance with this ordinance on roads which are closed according to the master map referenced in Section 11, below, for the purpose of accessing an open road, only from the residence to and from the closest open road which cannot be more than ½ mile from said residence. This subsection does not apply to roads exempt from opening by state statute, roads in townships which have elected to opt out of this ordinance, road closed by action of the Benzie County Road

Commission and roads bordering counties which have not been opened by that county.

Section 4. Local Government Authority

a) The BOC will amend this ordinance to allow townships and other local governmental units to opt in or out as requested by the majority vote of the unit's legislative body. If a local governmental unit recommends closing any of its roads due to safety or environmental issues the BOC will cause the official ORV Map to be amended, if necessary, to designate said roads as closed to ORV use. A local governmental unit may adopt its own ordinance to close any roads within the boundaries of said unit to the operation of ORVs permitted by the county. The Township board of any township in the county may adopt an ordinance authorizing the operation of ORVs on the maintained portion of 1 or more roads located within their township, pursuant to MCL 324.81131(3).

b) As of the date of the adoption of this ordinance, the following local governmental units have closed the roads within their boundaries to use by ORVs: Crystal Lake Township, Lake Township, City of Frankfort and the Village of Elberta.

Section 5. Closure by County Road Commission or Local Governmental Unit.

a) The board of county road commissioners may close a county road to the operation of ORVs otherwise authorized pursuant this ordinance. A county road commission shall not, however, close more than 30% of the linear miles of county roads located within the county to the operation of ORVs otherwise authorized pursuant to this ordinance.

b) The legislative body of a township, city or village may adopt an ordinance to close a county road located in the township or municipality to the operation of ORVs otherwise authorized pursuant to this ordinance.

c) A county road may be closed to the operation of ORVs under this section only to protect the environment or if the operation of ORVs poses a particular and demonstrable threat to public safety.

d) If a road is closed by the county road commission or by a local unit of government under subsections a) or b) of this section, the BOC shall, as necessary, adopt a resolution amending the official ORV Map designate such road(s) as close.

Section 6. Conditions for Operation

Except as set forth herein or otherwise provided by law, an ORV meeting all of the following conditions may be operated on a road or street in the county:

- a) At a speed of no more than 25 miles per hour or a lower posted ORV speed limit.
- b) By a person not less than 12 years of age.
- c) With the flow of traffic.
- d) In a manner which does not interfere with traffic on the road or street.
- e) Traveling single file except when overtaking and passing another ORV.
- f) When visibility is not substantially reduced due to weather conditions unless displaying a lighted headlight and lighted taillights.
- g) Operation hours: one-half hour before sunrise until 11:00 p.m.
- h) While displaying a lighted headlight and lighted taillight at all operational hours beginning January 1, 2010.
- i) While the operator and each passenger is wearing a crash helmet and protective eyewear approved by the United States Department of Transportation unless the vehicle is equipped with a roof that meets or exceeds standards for a crash helmet and the operator and each passenger is wearing a properly adjusted and fastened seat belt.
- j) With a throttle so designed that when the pressure used to advance the throttle is removed, the engine speed will immediately and automatically return to idle. While the ORV is equipped with a spark arrester type United States forest service approved muffler in good working order and in constant operation.
- k) Pursuant to noise emission standards defined by law.

Section 7. Persons Under 18

A person less than 18 years of age shall not operate an ORV on a road in the county unless the person is in possession of a valid driver's license or under the direct supervision of a parent or legal guardian and the person has in his or her possession an ORV safety certificate or a comparable ORV safety certificate issued under the authority of another state or a province of Canada. A person 18 years of age or older shall not operate an ORV on a road or street in Benzie County without a valid driver's license.

Section 8. *Prima Facie Negligence*

In a court action in this state, if competent evidence demonstrates that a vehicle that is

permitted to operate on a road or street pursuant to the Michigan Vehicle Code was in a collision on a roadway with an ORV that is not registered under the Michigan Vehicle Code, the operator of the ORV shall be considered *prima facie* negligent.

Section 9. Sanctions

Any person who violates this ordinance is guilty of a municipal infraction and may be ordered to pay a civil fine of not more than \$500.00. In addition, the court shall order the defendant to pay the cost of repairing any damage to the environment, a street, county road, or highway, or public property as a result of the violation.

Section 10. Disposition of Fines

The County Treasurer shall deposit all fines and damages collected under this ordinance into a fund to be designated as the ORV Fund. The BOC shall appropriate revenue in the ORV Fund as follows:

- a) Fifty percent (50%) to the Benzie County Road Commission or, in the case of a city or village, to the department responsible for street maintenance in the city or village, for repairing damage to roads and the environment that may have been caused by ORVs, and for posting signs indicating ORV speed limits, or indicating whether roads are open or closed to the operation of ORVs.
- b) Fifty percent (50%) to the Benzie County Sheriff for ORV enforcement and training.

Section 11. Official ORV Map

The County shall maintain a master map of all roads under jurisdiction of the Road Commission upon which shall be indicated those roads and parts of sections thereof upon which the operation of ORVs is permitted and prohibited pursuant to this ordinance. Such map shall be known as the official ORV Map and the master copy shall be kept at the office of the Benzie County Sheriff. A copy of said map shall be provided to the Benzie County Road Commission and a copy shall be available to the public at the Benzie County Government Center. The county shall make a copy of the ORV Map available to interested groups or organizations to make copies for distribution to the general public, but shall have no obligation to make, or to assume any expense associated with the making of such copies.

- a) The first official ORV Map under this ordinance is dated June 17, 2014 and is that ORV Map adopted by resolution of the BOC on June 17, 2014.
- b) The BOC may, by resolution, amend the official ORV Map as and when it deems it appropriate to do so, but may not do so more frequently than once each year.
- c) It shall be the responsibility of the respective Boards, Commissioners, or Councils within Benzie County to advise in writing to the BOC of any changes to be

incorporated into an amended master map.

Section 12. Agricultural: Agricultural use of an ORV falls under State regulation MCL 324.81122.

Section 13. Ordinance No. 2009-01, 2010-001, 2011-001, and 2012-002 are hereby repealed and replaced by this ordinance. Any complaint and/or prosecution commenced under Ordinance No. 2009-01, 2010-001, 2011-001, and 2012-002 shall continue in effect and such prosecution may be continued under this Ordinance.

This Ordinance becomes effective when notice of the adoption is published in a newspaper of general circulation in the county.

At a special meeting of the Benzie County Board of Commissioners held on August 27, 2014, and following a public hearing, adoption of this ordinance was moved by Commissioner Walterhouse and supported by Commissioner Rineer.

Ayes: Commissioners Bates, Kelley, Rineer, Tanner, Tucker and Walterhouse

Nays: None

Abs: Commissioner Griner

Dated: August 27, 2014


Donald R. Tanner, Chair

I, Dawn Olney, Benzie County Clerk and Clerk to the Board of Commissioners, do hereby certify the foregoing ORV Ordinance was duly adopted by the Benzie County Board of Commissioners at a special meeting of said board at which a quorum was present on the 27th day of August, 2014.


Dawn Olney, Benzie County Clerk
Clerk to the Board of Commissioners