

**Commissioner and Stakeholder
Off-Road Vehicle (ORV) Question and Answer Document
(including proposed additions or changes)**

Commissioner Questions 5/7/2021

1. Q: What are the age specifications and the requirements for ORV operation?

A: If a person is under 18 and does not have a license they need to complete the ORV safety education course before operating an ORV. A person under 18 without a license would also need to be under the direct supervision of a parent or guardian and have their ORV safety certificate in their immediate possession while operating an ORV. MCL 324.81131(13)

Anyone under 16 has to complete an ORV safety education course approved by the DNR before operating an ORV. The course may include a written exam and a driving test. Upon successful completion of this safety education course a person shall receive an ORV safety certificate. MCL 324.81130(1)

If a child is under 16 then they cannot operate an ORV unless they are under the direct visual supervision of an adult and they have an ORV safety certificate in their possession. It is the ORV owner's responsibility to know the age of the operator. MCL 324.81129

A parent or legal guardian of a child under 16 cannot permit the child to operate an ORV unless they are under the direct visual supervision of an adult and they have their ORV safety certificate in their possession. MCL 324.81129

A child age 12 or older, but under 16 (12-15 years of age) may cross a street, county road, or highway to operate an ORV pursuant to MCL 324.81131(9) if they have their ORV safety certificate in their possession. MCL 324.81131(9) states that under a local ordinance a person may operate an ORV with the flow of traffic on the far right of the maintained portion of the street or county road covered by the ordinance.

2. Q: Are there concerns about a minimum ORV operating age of 12 years old?

A: According to the Michigan DNR OVR Handbook, “[m]inimum ages for ORV operation are the result of an extensive review by the Michigan Legislature. The hearing process caused everyone to focus on the alarming statistics regarding young riders. According to U.S. Consumer Product Safety Commission, of the 3,353 reported ATV-related fatalities of children younger than 16 years of age (from 1982 through 2018), 1,465 (44%) were younger than 12 years of age. . . Most of the accidents involving young riders could be traced to a number of factors such as lack of supervision, machine design characteristics, and lack of training. Some parents appeared to be unaware of many of these hazards.”

3. Q: Are there concerns about anyone without a license driving any vehicle or ORV on a county road?

A: According to the Michigan DNR OVR Handbook, “[r]ecognizing that there are potential safety hazards in ORV riding, the Michigan Legislature has enacted regulations that directly affect:

- Operation of ORVs by children under 16 years of age
- Safety equipment that is required of all ORV operators and passengers
- Strict controls on the use and possession of alcohol while operating ORVs
- Unlawful operation on roads open to regular vehicle traffic.”

4. Q: Is there any Allegan County liability for allowing children without a license to operate ORVs on county roads?

A: Subject to section 5 of 1964 PA 170, MCL 691.1405, this state, a board of county road commissioners, a county board of commissioners, and a local unit of government are immune from tort liability for injuries or damages sustained by any person arising in any way out of the operation or use, on the maintained portion or unmaintained portion of a highway, road, or street, of an ORV that is not registered under the code (Michigan vehicle code) or that is registered under the code (Michigan vehicle code) but is operated as authorized pursuant to subsection (2), (3), (5), or (6), (Section 2 is the provision that authorizes a county ordinance.) The immunity provided by this subsection does not apply to actions of an employee of this state, an employee of a board of county road commissioners, an employee of a county board of commissioners, or an employee of a local unit of government that constitute gross negligence. As used in this subsection, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results. MCL 324.81131(15)

MCL 691.1405 states, “[g]overnmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner, as defined in Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Compiled Laws of 1948.”

Each person who participates in the sport of ORV riding accepts the risks associated with that sport insofar as the dangers are inherent. Those risks include, but are not limited to, injuries to persons or property that can result from variations in terrain; defects in traffic lanes; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; and collisions with fill material, decks, bridges, signs, fences, trail maintenance equipment, or other ORVs. Those risks do not include injuries to persons or property that result from the use of an ORV by another person in a careless or negligent manner likely to endanger person or property. When an ORV is operated in the vicinity of a railroad right-of-way, each person who participates in the sport of ORV

riding additionally assumes risks including, but not limited to, entanglement with railroad tracks, switches, and ties and collisions with trains and train-related equipment and facilities. MCL 324.81133(3)

5. Q: Should Allegan County only allow children 12-15 years old operate ORVs on private land? If Allegan County adopts a County-wide ORV ordinance, should the ordinance prohibit operators under 16 years old or operators without a license?

A: According to the Michigan DNR OVR Handbook, “[m]inimum ages for ORV operation are the result of an extensive review by the Michigan Legislature. The hearing process caused everyone to focus on the alarming statistics regarding young riders. According to U.S. Consumer Product Safety Commission, of the 3,353 reported ATV-related fatalities of children younger than 16 years of age (from 1982 through 2018), 1,465 (44%) were younger than 12 years of age. . . Most of the accidents involving young riders could be traced to a number of factors such as lack of supervision, machine design characteristics, and lack of training. Some parents appeared to be unaware of many of these hazards.”

If a person is under 18 and does not have a license they need to complete the ORV safety education course before operating an ORV. A person under 18 without a license would also need to be under the direct supervision of a parent or guardian and have their ORV safety certificate in their immediate possession while operating an ORV. MCL 324.81131(13)

Anyone under 16 has to complete an ORV safety education course approved by the DNR before operating an ORV. The course may include a written exam and a driving test. Upon successful completion of this safety education course a person shall receive an ORV safety certificate. MCL 324.81130(1)

If a child is under 16 then they cannot operate an ORV unless they are under the direct visual supervision of an adult and they have an ORV safety certificate in their possession. It is the ORV owner’s responsibility to know the age of the operator. MCL 324.81129

A parent or legal guardian of a child under 16 cannot permit the child to operate an ORV unless they are under the direct visual supervision of an adult and they have their ORV safety certificate in their possession. MCL 324.81129

A child age 12 or older, but under 16 (12-15 years of age) may cross a street, county road, or highway to operate an ORV pursuant to MCL 324.81131(9) if they have their ORV safety certificate in their possession. MCL 324.81131(9) states that under a local ordinance a person may operate an ORV with the flow of traffic on the far right of the maintained portion of the street or county road covered by the ordinance.

A parent or legal guardian of a child under 16 cannot permit the child to operate a 3-wheeled ATV. MCL 324.81129(3)

The owner or person in charge of a 3-wheeled ATV cannot permit a child under 16 to operate the 3-wheeled ATV. A child under 16 cannot operate a 3-wheeled ATV. MCL 324.81129

6. Q: Is there a DNR sticker required or some other custom registration for an ORV?

A: The owner of an ORV shall file an application for a license with the DNR or a dealer on forms provided by the DNR. If an ORV is sold by a dealer, the application for a license shall be submitted to the DNR by the dealer in the name of the owner. The application shall include a certification. The owner of the vehicle shall sign the application or, if the application is filed electronically, provide information requested by the DNR to verify the owner's identity. The application shall be accompanied by a fee as provided. A person shall not file an application for a license that contains false information. Upon receipt of the application in approved form and upon payment of the appropriate fee, the DNR or dealer shall issue to the applicant a license.

A license shall be issued and is valid for the 12-month period beginning April 1 and ending March 31 each year.

The fee for a license is as follows:

Except as provided in subdivision (c), if the license does not authorize operation of the ORV on state ORV trails, \$26.25.

Except as provided in subdivision (c), if the license authorizes operation of the ORV on state ORV trails, \$36.25.

For a license valid for a 12-month period beginning April 1, 2024 or a subsequent April 1, no fee. MCL 324.81116

Before a vehicle requiring an ORV license is operated, the owner shall ensure that a license is permanently attached to the vehicle in the manner prescribed and in the location designated by the department. MCL 324.81116(4)

A person shall not operate an ORV on a street, county road, or highway, except if the vehicle is registered under the code (Michigan vehicle code). MCL 324.81115(1)(c)

7. Q: Does Allegan County have to create a separate registration process at the county level?

A: No

8. Q: Would Allegan County need to conduct, operate, or offer a training program of any kind for ORV operators?

A: The DNR shall implement a comprehensive program for the training of ORV operators and the preparation and dissemination of ORV information and safety advice to the public. The program will provide training to youthful operators and issue the ORV safety certificates. MCL 324.81129(8)

Anyone under 16 has to complete an ORV safety education course approved by the DNR before operating an ORV. The course may include a written exam and a driving test. Upon successful completion of this safety education course a person shall receive an ORV safety certificate. MCL 324.81130(1)

If a person is under 18 and does not have a license they need to complete the ORV safety education course before operating an ORV. A person under 18 without a license would also need to be under the direct supervision of a parent or guardian and have their ORV safety certificate in their immediate possession while operating an ORV. MCL 324.81131(13)

A safety education course can be conducted by a college or university, an intermediate school district, a local school district, a law enforcement agency, or another governmental agency located in this state or by a department approved nonprofit service organization. MCL 324.81130(2)

Except for a course conducted by a private business enterprise, an applicant for a safety education course shall pay not more than a \$25.00 course fee or in the case of a university or community college a fee not more than the cost of 1 credit hour of instruction. The course fees shall only be used for funding the administration and implementation of the course. MCL 324.81130(3)

An ORV safety education course approved by the DNR may be conducted by a private business enterprise. A private business enterprise may charge a course fee not to exceed the cost of conducting the course. MCL 324.81130(4)

The DNR website directs that “riders 16 years old and younger riding on public or private land in Michigan must:

1. take an approved ORV education course,
2. carry an ORV safety certificate and,

3. have direct visual supervision by an adult at all times.”

On the DNR website the online ORV safety education course is \$34.95.

The safety course is also offered in a few counties including: Charlevoix, Cheboygan, Clare, Eaton, and Kalkaska.

9. Q: How would Allegan County meet the requirements of a required training program for ORV operators?

A: The DNR shall implement a comprehensive program for the training of ORV operators and the preparation and dissemination of ORV information and safety advice to the public. The program will provide training to youthful operators and issue the ORV safety certificates. MCL 324.81129(8)

Anyone under 16 has to complete an ORV safety education course approved by the DNR before operating an ORV. The course may include a written exam and a driving test. Upon successful completion of this safety education course a person shall receive an ORV safety certificate. MCL 324.81130(1)

If a person is under 18 and does not have a license they need to complete the ORV safety education course before operating an ORV. A person under 18 without a license would also need to be under the direct supervision of a parent or guardian and have their ORV safety certificate in their immediate possession while operating an ORV. MCL 324.81131(13)

A safety education course can be conducted by a college or university, an intermediate school district, a local school district, a law enforcement agency, or another governmental agency located in this state or by a department approved nonprofit service organization. MCL 324.81130(2)

Except for a course conducted by a private business enterprise, an applicant for a safety education course shall pay not more than a \$25.00 course fee or in the case of a university or community college a fee not more than the cost of 1 credit hour of instruction. The course fees shall only be used for funding the administration and implementation of the course. MCL 324.81130(3)

An ORV safety education course approved by the DNR may be conducted by a private business enterprise. A private business enterprise may charge a course fee not to exceed the cost of conducting the course. MCL 324.81130(4)

The DNR website directs that “riders 16 years old and younger riding on public or private land in Michigan must:

1. take an approved ORV education course,

2. carry an ORV safety certificate and,
3. have direct visual supervision by an adult at all times.”

On the DNR website the online ORV safety education course is \$34.95.

The safety course is also offered in a few counties including: Charlevoix, Cheboygan, Clare, Eaton, and Kalkaska.

10. Q: Who handles distribution of ORV safety certificates?

A: The DNR shall implement a comprehensive program for the training of ORV operators and the preparation and dissemination of ORV information and safety advice to the public. The program will provide training to youthful operators and issue the ORV safety certificates. MCL 324.81129(8)

Anyone under 16 has to complete an ORV safety education course approved by the DNR before operating an ORV. The course may include a written exam and a driving test. Upon successful completion of this safety education course a person shall receive an ORV safety certificate. MCL 324.81130(1)

11. Q: Are there any legal requirements for Allegan County or are they met by another agency for ORV safety certificates?

A: The DNR shall implement a comprehensive program for the training of ORV operators and the preparation and dissemination of ORV information and safety advice to the public. The program will provide training to youthful operators and issue the ORV safety certificates. MCL 324.81129(8)

Anyone under 16 has to complete an ORV safety education course approved by the DNR before operating an ORV. The course may include a written exam and a driving test. Upon successful completion of this safety education course a person shall receive an ORV safety certificate. MCL 324.81130(1)

If a person is under 18 and does not have a license they need to complete the ORV safety education course before operating an ORV. A person under 18 without a license would also need to be under the direct supervision of a parent or guardian and have their ORV safety certificate in their immediate possession while operating an ORV. MCL 324.81131(13)

A safety education course can be conducted by a college or university, an intermediate school district, a local school district, a law enforcement agency, or another governmental agency located in this state or by a department approved nonprofit service organization. MCL 324.81130(2)

Except for a course conducted by a private business enterprise, an applicant for a safety education course shall pay not more than a \$25.00 course fee or in the case of a university or community college a fee not more than the cost of 1 credit hour of instruction. The course fees shall only be used for funding the administration and implementation of the course. MCL 324.81130(3)

An ORV safety education course approved by the DNR may be conducted by a private business enterprise. A private business enterprise may charge a course fee not to exceed the cost of conducting the course. MCL 324.81130(4)

The DNR website directs that “riders 16 years old and younger riding on public or private land in Michigan must:

1. take an approved ORV education course,
2. carry an ORV safety certificate and,
3. have direct visual supervision by an adult at all times.”

On the DNR website the online ORV safety education course is \$34.95. The safety course is also offered in a few counties including: Charlevoix, Cheboygan, Clare, Eaton, and Kalkaska.

12. Q: Would the board of commissioners need to make any kind of up-front appropriation to handle training or enforcement for an ORV ordinance?

A: Not for an ORV safety education course. See questions 9 and 11 above.

13. Q: Are helmets required or optional for ORV operation?

A: An individual who is operating or is a passenger on an ORV shall wear a crash helmet and protective eyewear that are approved by the United States Department of Transportation. This does not apply if an individual is wearing a properly adjusted and fastened safety belt if the ORV is equipped with a roof that meets or exceeds United States Department of Transportation standards for a crash helmet. MCL 324.81133(2)

14. Q: Can a township “opt-out” of a County-wide ORV ordinance? Can a city “opt-out” of a County-wide ORV ordinance?

A: The legislative body of a township or municipality (city or village) may adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the township or municipality, respectively. MCL 324.81131(3)

The legislative body of a township or municipality (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 subsection (2) (section 2 provides authority for a county ordinance). MCL 324.81131(4)

*To highlight the distinction, these provisions speak specifically to county roads located within the township, city, or village. Municipal streets are not affected by either of these provisions.

15. Q: Can a city create their own ORV ordinance?

A: A municipality (city or village) can adopt their own ORV ordinance under MCL 324.81131(3)

The legislative body of a township or municipality (city or village) may adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the township or municipality, respectively. MCL 324.81131(3)

The legislative body of a municipality (city or village) may adopt an ordinance authorizing the operation of ORVs on 1 or more streets within the municipality. MCL 324.81131(5)

* A city may authorize operation of ORVs on county roads within the city under section 81131(3) and may authorize operation of ORVs on municipal streets under section 81131(5).

16. Q: What is the appropriate timeline for notice and for approving a County-wide ordinance and the timeline for implementing, both from a legal perspective and from a practical measure? (i.e. even if the County could implement an ordinance by June 1, 2021, is that practical?)

A: Not less than 45 days before a public hearing on the ordinance, the county clerk shall send notice of the public hearing, by certified mail, to:

- a. The county road commission.
 - b. The legislative body of each township and municipality (city or village) located within the county.
 - c. The state transportation department if the road intersects a highway.
 - d. If state forestland is located within the county, to the DNR.
- MCL 324.81131(2)

17. Q: If Allegan County implements a County-wide ORV ordinance is there any way to keep it uniform?

A: MCL 324.81131 provides authority for a county board of commissioners, and the legislative body of a township or municipality (city or village) to adopt an ordinance

authorizing the operation of ORVs on 1 or more county roads located within the jurisdiction.

Additionally, MCL 324.81131 provides authority for the board of county road commissioners to close county roads to the operation of ORVs otherwise authorized pursuant to a county, township, or municipality ordinance.

18. Q: If a city chooses to do nothing and Allegan County implements a County-wide ORV ordinance, what does that mean? Can a city “opt-out” and if so, how? What if the city does nothing and what if the city does not want to allow ORV operation?

A: A county board of commissioners may adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the county. MCL 324.81131(2)

If the county adopts an ordinance that authorizes operation of ORVs on a county road that is within a city, then the city would need to take action as it relates to a county road within the city.

*To highlight the distinction, this relates specifically to county roads located within the city. Municipal streets are not included.

The legislative body of a township or municipality (city or village) may adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the township or municipality, respectively. MCL 324.81131(3)

The legislative body of a township or municipality (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 subsection (2) (section 2 provides authority for a County ordinance). MCL 324.81131(4)

The legislative body of a municipality (city or village) may adopt an ordinance authorizing the operation of ORVs on 1 or more streets within the municipality. MCL 324.81131(5)

19. Q: Is there any benefit to a County-wide ordinance versus a township or city ordinance? Is there any legal purpose of why Allegan County should focus on a County-wide ordinance rather than let the townships or cities handle it?

A: A violation of an ordinance described in this section is a municipal civil infraction. The ordinance may provide for a fine of not more than \$500.00 for a violation of the ordinance. MCL 324.81131(17)

The treasurer of the local unit of government (with a County-wide ordinance, the County treasurer) shall deposit fines collected by that local unit of government, and damages collected into a fund to be designated as the "ORV fund". The legislative body (the county board of commissioners) of the local unit of government shall appropriate revenue in the ORV fund as follows:

a. Fifty percent to the county sheriff or police department responsible for law enforcement in the local unit of government for ORV enforcement and training.

b. Fifty percent to the board of county road commissioners or, in the case of a city or village, to the department responsible for street maintenance in the city or village. Revenue appropriated under this subdivision shall be used for repairing damage to streets, county roads, or highways and the environment that may have been caused by ORVs and for posting signs indicating ORV speed limits or indicating whether streets, county roads, or highways are open or closed to the operation of ORVs under this section.

MCL 324.81131(18)

20. Q: Can a township authorize on which roads it can allow ORV operation?

A: The legislative body of a township or municipality (city or village) may adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the township or municipality, respectively. MCL 324.81131(3)

The legislative body of a township or municipality (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 subsection (2) (section 2 provides authority for a County ordinance). MCL 324.81131(4)

21. Q: Can the townships review a County-wide ORV ordinance before the board of commissioners' vote?

A: The draft ordinance should be available for review on or about May 13, 2021.

22. Q: If an ORV operator does damage to a park by operating an ORV are the fines large enough to act as a deterrent and is there restitution payable?

A: A violation of an adopted ordinance is a municipal civil infraction. The ordinance may provide for a fine of not more than \$500.00 for a violation of the ordinance. 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. MCL 324.81131(17)

23. Q: Will the ORV ordinance keep ORVs off of bike paths or bike lanes that are on the road right-of-way meant only for bikes?

A: The authority and regulation for operation of bicycles upon highways or streets can be found in the Michigan vehicle code.

Under MCL 257.660a “[a] person operating a bicycle upon a highway or street at less than the existing speed of traffic shall ride as close as practicable to the right-hand curb or edge of the roadway except as follows: . . . (c) When conditions make the right-hand edge of the roadway unsafe or reasonably unusable by bicycles, including, but not limited to, surface hazards, an uneven roadway surface, drain openings, debris, parked or moving vehicles or bicycles, pedestrians, animals, or other obstacles, or if the lane is too narrow to permit a vehicle to safely overtake and pass a bicycle. . .”

Additionally, under MCL 257.660(3) “[w]here a usable and designated path for bicycles is provided adjacent to a highway or street, a person operating an electric personal assistive mobility device or electric skateboard may, by local ordinance, be required to use that path.”

Subject to any closure of county roads under proper authority, if a local unit of government adopts an ordinance, a person may operate an ORV with the flow of traffic on the far right of the maintained portion of the street or county road covered by the ordinance. MCL 324.81131(9)

"Maintained portion" means the roadway and any shoulder of a street, county road, or highway. MCL 324.81101 amended Definitions effective March 24, 2021.

*This answer could depend on if the bike path is included as part of a county road. The proposed draft ORV ordinance would not authorize ORV operation on any municipal streets.

24. Q: Should the master map be maintained by the county and if so, shouldn't it be more clearly labeled and viewable?

A: The current proposed Allegan County ORV draft ordinance provides for ORV operation on all county roads in Allegan County and that the road commission, a township or municipality has the authority to close roads. County roads are defined in the proposed Allegan County ORV draft ordinance as “a county primary road or a county local road... under the jurisdiction of the Allegan County Road Commission”. Additionally, the road commission and the sheriff’s department could receive revenue from fines and damages for violations of an adopted ordinance. By allowing ORV operation on all county roads in the county, any restrictions would come from the road commission or a township or

municipality and the road commission could be the clearing house for a master map or list of roads and publish them accordingly.

Subject to any closure of county roads under proper authority, a county board of commissioners may adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the county. MCL 324.81131(2)

The legislative body of a township or municipality (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 subsection (2) (section 2 provides authority for a County ordinance). MCL 324.81131(4)

The board of county road commissioners may close a county road to the operation of ORVs otherwise authorized. A county road commission shall not close more than 30% of the linear miles of county roads located within the county to the operation of ORVs otherwise authorized. A county road may be closed to the operation of ORVs under this subsection only to protect the environment or if the operation of ORVs poses a particular and demonstrable threat to public safety. MCL 324.81131(4)

*Answers to questions 25 through 31 were prepared including information provided by Sheriff Frank Baker on April 26, 2021, and Prosecutor Myrene Koch on April 23, 2021 and May 3, 2021.

25. Q: Do we have enough Sheriff's Deputies to handle enforcement of a County-wide ORV ordinance?

A: The Allegan County sheriff's department currently feels that they do not have enough patrol deputies to adequately provide the existing services; however, much like that, they will respond and enforce to the extent possible.

26. Q: Will a County-wide ORV ordinance actually be enforced?

A: The Allegan County sheriff's department currently enforces ORV issues now to the extent possible. They will continue to provide enforcement.

27. Q: Who handles enforcement of ORV laws now?

A: Any law enforcement agency in the county.

28. Q: Who will handle enforcement of "closed roads"?

A: The Allegan County sheriff's department cannot speak for other agencies as to their enforcement; however, the sheriff's department will likely be the primary enforcement agency of a County-wide ORV ordinance.

29. Q: Does the Sheriff's department have the ability to enforce a County-wide ORV ordinance with existing staff?

A: The Allegan County sheriff's department will provide enforcement to the extent possible.

30. Q: Would Allegan County need to conduct, operate, or offer a training program of any kind for Sheriff's deputies for enforcement of an ORV ordinance?

A: The Allegan County sheriff's department will provide in-house legal updates on whatever is included in the final adopted ordinance that Allegan County may choose to pass.

31. Q: How will enforcement and prosecution of a County-wide ordinance be handled?

A: The Allegan County sheriff's department deferred to the Allegan County Prosecutor's office for information related to enforcement and prosecution.

The Allegan County Prosecutor states "To alleviate confusion between townships and allow for a consistent County-wide ordinance, I agree to handle the prosecution."

The legislative body of a township or municipality (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 subsection (2) (section 2 provides authority for a County ordinance). MCL 324.81131(4)

*If the township adopts an ordinance closing a county road or roads this would be prosecuted at the local level.

Commissioner Questions 5/25/2021

32. Q: Is an unregistered snowmobile and/or a mud runner (a 4x4 pickup, Jeep, or something similarly larger than a "typical" ORV), a dune buggy, or Sherman tank a legitimate ORV lawfully operating on Allegan County roads under this ordinance?

A: Generally, no, the listed vehicles would not be considered ORVs lawfully operating under this ordinance. Here are some specifics broken down.

"Snowmobile" means any motor-driven vehicle designed for travel primarily on snow or ice of a type that utilizes sled-type runners or skis, an endless belt tread, or any combination of these or other similar means of contact with the surface upon which it is operated, but is not a vehicle that must be registered under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

A snowmobile shall not be operated unless the owner first obtains a certificate of registration, registration decal and a trail permit sticker. The certificate of registration must accompany the snowmobile and be made available for inspection upon demand by a peace officer.

A snowmobile is required to be registered, so an unregistered snowmobile cannot operate legally/lawfully whether it could be considered an ORV or not.

The mud runner, 4 x 4 pickup, Jeep, dune buggy, and Sherman tank would need to meet all of the qualifications set out under the definition of ORV, or including ATV, and would need to comply with the lighting, braking, throttle, noise, and licensing requirements set forth in the ORV statute sections.

Also, if the vehicle is registered under the Michigan vehicle code and is more than 65 inches wide or has 3 wheels it cannot be operated pursuant to MCL 324.81131(11), which states, “[u]nless the person possesses a license as defined in section 25 of the Michigan vehicle code, 1949 PA 300, MCL 257.25, a person shall not operate an ORV as authorized pursuant to subsection (2), (3), (5), or (6) if the ORV is registered as a motor vehicle under chapter II of the Michigan vehicle code, 1949 PA 300, MCL 257.201 to 257.259, and either is more than 65 inches wide or has 3 wheels.”

From the Michigan Secretary of State website:

Titling ORVs or ATVs

In Michigan, when you buy an ORV or ATV, you are issued an "off-road title." A title verifies you own the vehicle. An off-road title means the vehicle can't be operated on public streets because it was built exclusively for off-road use and lacks the necessary safety equipment for on-road use. (Michigan law does make an exception for ORVs or ATVs that are legally modified and retitled for on-road use as an assembled vehicle.)

Titling ORVs or ATVs for on-road use

Under Michigan law, certain side-by-side off-road utility vehicles may be retitled as an assembled vehicle for on-road use. Vehicles fitting this description include the John Deere "Gator" and Polaris "Ranger." You must follow the [secretary of state's standard assembled vehicle title procedure](#). The vehicle must be retro-fitted with high- and low-beam headlights, brake lights, taillights, turn signals, horn, windshield, windshield wipers and washers, independent parking brake, street-legal tires and all other on-road equipment required by the Michigan Vehicle Code. It will be retitled as an "assembled vehicle" and issued a new vehicle identification number.

Two-wheeled ORVs (motorcycles known as "dirt bikes" or "trail bikes") also can be retitled for on-road use. A vehicle inspection is required to verify that the motorcycle has the required safety equipment.

33. Q: Is the information about an ORV roof needing to comply with DOT standards for a crash helmet valid information? (“I sincerely and adamantly question the validity of the roof safety standards vis-à-vis the standards for a crash helmet. It is like transferring the front end crash standards of a Corvette to a horse.”)

A: The statute MCL 324.81133(2) states that a helmet is the standard and then lists exceptions. A seat belt and roof are an exception. See below for statutory language.

MCL 324.81133(2): An individual who is operating or is a passenger on an ORV shall wear a crash helmet and protective eyewear that are approved by the United States Department of Transportation. This subsection does not apply to any of the following:

(a) An individual who owns the property on which the ORV is operating, is a family member of the owner and resides at that property, or is an invited guest of an individual who owns the property. An exception under this subdivision does not apply to any of the following:

(i) An individual less than 16 years of age.

(ii) An individual 16 or 17 years of age, unless the individual has consent from his or her parent or guardian to ride without a crash helmet.

(iii) An individual participating in an organized ORV riding or racing event if an individual who owns the property receives consideration for use of the property for operating ORVs.

(b) An individual wearing a properly adjusted and fastened safety belt if the ORV is equipped with a roof that meets or exceeds United States Department of Transportation standards for a crash helmet.

(c) An ORV operated on a state-licensed game bird hunting preserve at a speed of not greater than 10 miles per hour.

(d) An ORV operated for the purpose of towing a fishing shanty or supply shed over the frozen surface of public waters at the minimum speed required to maintain controlled forward movement of the vehicle or while traveling to and from a fishing shanty at a speed of not greater than 10 miles per hour. An owner of private property is not liable for personal injuries, including death, to an individual who operates an ORV as described in this subdivision without wearing a helmet while traveling on the owner's property.

The Department of Transportation (DOT) standard for a motorcycle helmet states that to be certified it has to conform to a few minimum requirements and be able to pass a series of impact tests. The helmet will have a DOT symbol on the outside back, this means it meets the Federal Motor Vehicle Safety Standard No. 218. 49 CFR § 571.218 Standard No. 218; Motorcycle helmets.

34. Q: If operating outside the noted hours in Section 301(j) are the braking system, and brake light not required?

Section 301: j. The ORV is equipped with a braking system that may be operated by hand or foot, capable of producing deceleration at 14 feet per second on level ground at a speed of 20 miles per hour; a brake light, brighter than the taillight, visible from behind

the vehicle when the brake is activated, if the vehicle is operated during the hours of 1/2 hour after sunset and 1/2 hour before sunrise”

A: MCL 324.81133(1) An individual shall not operate an ORV:

(c) Unless the vehicle is equipped with a braking system that may be operated by hand or foot, capable of producing deceleration at 14 feet per second on level ground at a speed of 20 miles per hour; a brake light, brighter than the taillight, visible from behind the vehicle when the brake is activated, if the vehicle is operated during the hours of 1/2 hour after sunset and 1/2 hour before sunrise; and 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.

The semicolon between the different sentence parts in the statute adds the phrase “Unless the vehicle is equipped with” to the beginning of each sentence part, so the braking system is a separate requirement with no operating time constraints. The brake light is required during the specified operating times. A headlight and taillight are a separate requirement set forth in MCL 324.81131(12), “A person shall not operate an ORV as authorized pursuant to this section without displaying a lighted headlight and lighted taillight.”

35. Q: Are the noise emission standards enforceable?

A: A proposed change to Section 301(k) was to add the noise emission standards defined, instead of stating as “defined by law”.

MCL 324.81131(1)(f) sets forth the following: Exhaust noise emission shall not exceed 86 Db(A) or 82 Db(A) on a vehicle manufactured after January 1, 1986, when the vehicle is under full throttle, traveling in second gear, and measured 50 feet at right angles from the vehicle path with a sound level meter that meets the requirement of ANSI S1.4 1983, using procedure and ancillary equipment therein described; or 99 Db(A) or 94 Db(A) on a vehicle manufactured after January 1, 1986, or that level comparable to the current sound level as provided for by the United States Environmental Protection Agency when tested according to the provisions of the current SAE J1287, June 86 test procedure for exhaust levels of stationary motorcycles, using sound level meters and ancillary equipment therein described. A vehicle subject to this part, manufactured or assembled after December 31, 1972 and used, sold, or offered for sale in this state, shall conform to the noise emission levels established by the United States Environmental Protection Agency under the noise control act of 1972, 42 USC 4901 to 4918.

There are decibel reading or decibel level apps available to add to your cell phone which will tell you a decibel reading or decibel level at any given point in time.

36. Q: In Section 501 does “registered” mean registered under the Michigan motor vehicle code? Does this make the ORV subject to the standards of the ORV ordinance?

A: In Section 501, which was suggested to be deleted in its entirety, the language was taken directly from MCL 324.81131(16) which states: In a court action in this state, if competent evidence demonstrates that a vehicle that is permitted to operate on a road, street, or highway pursuant to the code was in a collision on a roadway with an ORV that is not registered under the code, the operator of the ORV shall be considered prima facie negligent. In MCL 324.81101 code was a provided definition as follows: “Code” means the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

Yes. “Registered” means registered under the Michigan vehicle code.

Any ORV that is registered under the Michigan vehicle code is lawfully permitted to operate on a road, street, or highway without the authorization provided by any ordinance.

37. Q: In Section 501 is “on the roadway” determinative of where an ORV should be operating?

A: In Section 501, which was suggested to be deleted in its entirety, an ORV should be operating on the maintained portion of the roadway which includes the shoulder of the road. The roadway only, does not include the shoulder.

The relevant provisions and definitions are as follows:

Section 301. ORV Operation. Subject to Section 402, a person may operate an ORV with the flow of traffic on the far right of the maintained portion of all county roads within Allegan County. . .

f. “Maintained portion” means the roadway and any shoulder of a street, county road, or highway.

l. “Roadway” means the portion of a street, county road, or highway improved, designed, or ordinarily used for travel by vehicles registered under the Michigan vehicle code. Roadway does not include the shoulder.

38. Q: Why would an operator of an ORV in the circumstance presented in Section 501 not be considered prima facie negligent?

A: Even if Section 501 is deleted in its entirety, MCL 324.81131(16) is still a relevant provision of law.

39. Q: Under Section 502, should there be a fine schedule?

A: There is nothing in the statute that prohibits a fine schedule. The statute only explicitly states under MCL 324.81131(17) that a violation is a municipal civil infraction and the civil fine shall not be more than \$500.00.

40. Q: Can the County levy a municipal civil infraction fine of more than \$500?

A: Possibly under other authority; however Part 811 of the Natural Resources and Environmental Protection Act, specifically MCL 324.81131(17) states that: A violation of an ordinance described in this section is a municipal civil infraction. The ordinance may provide for a fine of not more than \$500.00 for a violation of the ordinance. 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.

The term “may” provide for a fine of not more than \$500.00 determines it does not have to be \$500.00, but cannot be more than \$500.00.

In *Huron Township v City Disposal Systems, Inc. Huron Township v Inland Waters Pollution Control, Inc.*, 448 Mich 362 (1995), “[t]he amount or limitation of a penalty imposed by or under an ordinance must comply with a specific governing provision of law. Where the penalty is fixed by statute, the penalty imposed by the ordinance cannot exceed the limit prescribed.”

41. Q: Who is going to be authorized to issue tickets?

A: Under MCL 600.8701(a) “Authorized local official” means a police officer or other personnel of a county, city, village, township, or regional parks and recreation commission created under section 2 of 1965 PA 261, MCL 46.352, legally authorized to issue municipal civil infraction citations.

MCL 600.8703(1) A municipal civil infraction action is commenced upon the issuance of a citation as provided in section 8707. The plaintiff in a municipal civil infraction action is the political subdivision whose ordinance has been violated.

MCL 600.8707(1) An authorized local official who witnesses a person violate an ordinance a violation of which is a municipal civil infraction shall prepare and subscribe, as soon as possible and as completely as possible, an original and 3 copies of a citation, except as provided in subsection (6). Subsection 6 speaks about an established municipal ordinance violations bureau.

42. Q: Does the county have an exhaustive description, meeting multiple standards of the municipal civil infraction design and operation? If not, should this be developed at the same time as this ordinance?

A: The law regarding Municipal Civil Infractions is set forth in the Revised Judicature Act of 1961, PA 236 of 1961 and specifically Chapter 87, MCL 600.8701 – MCL 600.8735. Otherwise, this may require additional legal research.

43. Q: Can a person, 18 years or older, without a license, but with a safety certificate, operate an ORV under this proposed ordinance?

A: Section 301. ORV Operation states: “Subject to Section 402, a person may operate an ORV with the flow of traffic on the far right of the maintained portion of all county roads within Allegan County; provided that:

b. A person possesses a license as defined in Section 25 of the Michigan Vehicle Code, MCL 257.25.”

Under the draft ordinance this requires a person to possess a license with two limited exceptions stated in in items “e.” and “f.” for persons under 18 and persons under 12.

MCL 324.81131(13) states: A person under 18 years of age shall not operate an ORV as authorized pursuant to this section unless the person is in possession of a valid driver license or under the direct supervision of a parent or guardian and the person has in his or her immediate possession an ORV safety certificate issued pursuant to this part or a comparable ORV safety certificate issued under the authority of another state or a province of Canada. A person under 12 years of age shall not operate an ORV as authorized pursuant to this section. The requirements of this subsection are in addition to any applicable requirements of section 81129. Section 81129 sets out requirements for child ORV operators.

44. Q: Are there concerns about anyone without a license driving an ORV on a county road?

A: Generally, yes, which is why the legislature does not allow ORV’s which are not registered under the Michigan vehicle code to operate on streets, county roads, or highways, except as provided for and authorized by an adopted ordinance. MCL 324.81122(1).

45. Q: Are both an ORV license and an ORV permit required to operate under this ordinance?

A: The Michigan DNR website sets forth specific information about licensing and permit requirements. Additionally, the DNR website has a chart of requirements based on type of vehicle and designated trails or routes and what is necessary.

- An **ORV license** is required to ride eligible county roads, frozen surface of public waters, state forest roads (that are open to ORV use) and eligible national forest roads. A license is not required to operate on private lands. The cost is \$26.25. *Both the ORV license and trail permit are valid for one year, which begins April 1 and ends March 31 of the following year.*
- An **ORV trail permit** is required when operating on designated **ORV Trail / Routes and special ORV-use areas**. A trail permit is not required to operate on private lands. The cost is \$10 (plus \$26.25 for the ORV license) for a total of \$36.25. *Both the ORV license and trail permit are valid for one year, which begins April 1 and ends March 31 of the following year.* ORV trail permits are not valid as a stand-alone license; an ORV license must also be purchased.

Under the ordinance a county road is defined term. Under MCL 324.81123 the DNR was required by October 1, 1991, to develop a comprehensive plan for the management of ORV use of areas, routes, and trails maintained by or under the jurisdiction of the department (DNR) or local unit of government pursuant to section 81131.

Additionally, under MCL 324.81115(1)(c) Subject to subsection (2), a person shall not operate an ORV under any of the following conditions unless the ORV is licensed with the department or a dealer as provided under this part:

(c) On a street, county road, or highway, except if the vehicle is registered under the code.

An ORV needs an ORV license to operate on a county road.

46. Q: Is the County under any obligation to provide an ORV safety course? Does the County intend to provide an ORV safety course?

A: MCL 324.81130 sets forth the requirements for an ORV safety education course. The course needs to be approved by the department (DNR). They can be conducted by a college or university, an intermediate school district, a local school district, a law enforcement agency, or another governmental agency located in Michigan.

There is no obligation for the County to provide an ORV safety course.

Additionally, the Sheriff has indicated that they would not be offering an ORV safety course, at least initially.

47. Q: Original question 19 was not answered. Original Q19 was: Is there any benefit to a County-wide ordinance versus a township or city ordinance? Is there any legal purpose of why Allegan County should focus on a County-wide ordinance rather than let the townships or cities handle it?

A: There are no legal benefits or legal purposes why Allegan County should focus on a County-wide ordinance.

48. Q: Under original Q31, what is the local level?

A: Local level is either a township, city or village.

49. Q: Under the outline provided, what are subsections (2) and (3) of the statute?

A: MCL 324.81131: (2) Subject to subsection (4), a county board of commissioners may adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the county. Not less than 45 days before a public hearing on the ordinance, the county clerk shall send notice of the public hearing, by certified mail, to the county road commission, to the legislative body of each township and municipality located within the county, to the state transportation department if the road intersects a highway, and, if state forestland is located within the county, to the department. If the county is a southern county, before adopting an ordinance under this subsection, the county board of commissioners shall consult with the board of county road commissioners.

(3) Subject to subsection (4), the legislative body of a township or municipality may adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the township or municipality, respectively. Not less than 28 days before a public hearing on the ordinance, the clerk of the township or municipality shall send notice of the public hearing, by certified mail, to the county road commission, to the county board of commissioners, to the legislative body of every other township and municipality located within the county, to the state transportation department if the road intersects a highway, and, if state forestland is located within the township or municipality, to the department. If the township or municipality is located in a southern county, before adopting an ordinance under this subsection, the legislative body of the township or municipality shall consult with the board of county road commissioners. This subsection does not apply to a township or municipality until 1 year after the effective date of the amendatory act that first authorized the county in which that township or municipality is located to adopt an ordinance under subsection (2).

50. Q: In the outline under I. C. 4. is the “reason for closure” a strict and specific limitation upon townships and municipalities to be able to “opt out” in whole or in part from a county-wide ORV ordinance? Also, is that same “reason for closure” a strict and specific limitation upon the Board of County Road Commissioners in its designations of “county roads closed to ORV use”?

A: The “reason for closure” section comes from MCL 324.81131(4), which states:
The board of county road commissioners may close a county road to the operation of ORVs otherwise authorized pursuant to subsection (2) or (3). A county road commission shall not under this subsection close more than 30% of the linear miles of county roads located within the county to the operation of ORVs otherwise authorized pursuant to subsection (2) or (3). The legislative body of a township or municipality may adopt an

ordinance to close a county road located in the township or municipality to the operation of ORVs otherwise authorized pursuant to subsection (2). The legislative body of a village may adopt an ordinance to close a county road located in the village to the operation of ORVs otherwise authorized by the township pursuant to subsection (3). A county road may be closed to the operation of ORVs under this subsection only to protect the environment or if the operation of ORVs poses a particular and demonstrable threat to public.

Generally, yes, the restriction of closing a county road to “protect the environment or if the operation of ORVs poses a particular and demonstrable threat to public” does apply to the closure of county roads set forth in the statute subsection.

51. Q: What is an ARGO and similar amphibious vehicle? Is it use that defines?

A: Wikipedia definition of amphibious machine is a vehicle that is a means of transport, viable on land as well as on (or under) water. They can include bicycles, ATVs cars, buses, trucks, combat vehicles, boats, and hovercraft.

ARGO was named after the Argonaut of Greek mythology for its stamina on land and water. It started in 1962 as a subsidiary of Ontario Drive & Gear Limited. In 1967 ODG decided to introduce its own 6-wheel amphibious vehicle.

Under Article II’s definitions, an ORV includes an amphibious machine.

j. “ORV” or, unless the context implies a different meaning, “vehicle” means a motor-driven off-road recreation vehicle capable of cross-county travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. A multitrack or multiwheel drive vehicle, a motorcycle or related 2-wheel vehicle, a vehicle with 3 or more wheels, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation may be an ORV. An ATV is an ORV. ORV or vehicle does not include a registered snowmobile, a farm vehicle being used for farming, a vehicle used for 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.

52. Q: Does the County, in fact, have the authority to construct an ordinance more restrictive than state law?

A: From the Michigan Municipal League Handbook, Section 2: Roles and Responsibilities, Chapter 7: Local ordinances,

Consistency with State and Federal Laws and Local Charters

The provisions of an ordinance must be consistent with state law; the ordinance may not conflict with or be preempted by a state law. The same holds true for federal law. A

direct conflict exists if an ordinance permits what a state statute prohibits or prohibits what a state statute permits. Some areas of potential local regulation may be preempted by a state (or federal) statute, either expressly or because the statutory scheme occupies the field of regulation. In that case, the local regulation cannot be upheld, even though there is no direct conflict. An ordinance may not conflict with the provisions of a local charter.

From the MSU Extension Article – County Government Powers are Very Limited
County ordinance making authority is from four categories:

Must be related to "county affairs" (e.g., internal operations of the county such as ordinances about county-owned land, buildings, facilities).

Cannot contravene (conflict with) state law.

Cannot interfere in local affairs (e.g., what city, village or township ordinances may require).

Lack of general police power. This limitation is not found above, but, rather, is the absence of state statute that delegated such authority to county government.

No statute specifically gives county commissions a general grant of authority to regulate or pass ordinances to protect the "health, safety, and welfare" of its population. Such statutes do exist for cities, villages, and townships.

The Powers of the county board of commissioners law Public Act 156 of 1851, MCL 46.11(j) states: By majority vote of the members of the county board of commissioners elected and serving, pass ordinances that relate to county affairs and do not contravene the general laws of this state or interfere with the local affairs of a township, city, or village within the limits of the county, and pursuant to section 10b provide suitable sanctions for the violation of those ordinances. The board may change the limits of a city, village, or school district within the county as provided by law. If there is not a general law governing the subject, or if a change cannot be made pursuant to a general law, the board may change the limits of the village upon petition of at least 10% of the resident taxpayers. An ordinance or act of incorporation provided in this subdivision takes effect when notice of the adoption is published in a newspaper of general circulation in the county. The clerk of the county board of commissioners shall engross each ordinance or act, and it shall be signed by the chairperson of the county board of commissioners and certified by the clerk of the county board of commissioners. If, within 50 days after the county board of commissioners adopts an ordinance or act, a petition signed by not less than 20% of the electors residing in the district to be affected by the ordinance or act is filed with the county clerk asking that the ordinance or act be submitted to electors of the district to be affected by the ordinance or act for approval or rejection, then the ordinance or act does not take effect until it is approved by a majority of the electors of the district affected voting on that issue at a regular or special election called for that purpose. The county board of commissioners shall provide the manner of submitting the ordinance or act to the electors for their approval and of determining the result of the election.

Commissioner Proposed Additions or Changes 5/25/2021

Draft Ordinance ARTICLE II – Definitions

Proposed ADD: “ATV” (all-terrain vehicle) means a vehicle with 3 or more wheels that is designed for off-road use, has low-pressure tires, has a seat designed to be straddled by the rider, and is powered by a 50cc to 1,000cc gasoline engine or an engine of comparable size using other fuels. MCL 324.81101(b)

Original: No definition of “ATV” included.

***No objections to including this definition.*

Proposed CHANGE: “Maintained portion” means the roadway and shoulders of a county road.

Original: “Maintained portion” means the roadway and any shoulder of a street, county road, or highway. MCL 324.81101(o)

Proposed CHANGE: “Operate” means to ride in or on and be in actual physical control of an ORV.

Original: “Operate” means to ride in or on, and be in actual physical control of, the operation of an ORV. MCL 324.81101(s)

Proposed CHANGE: “Operator” means an individual who is in actual physical control of the ORV.

Original: “Operator” means an individual who operates or is in actual physical control of the operation of an ORV. MCL 324.81101(t)

Proposed CHANGE: “ORV” (Off-road vehicle) means a motor-driven off-road recreation vehicle capable of cross-county travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. A multitrack or multiwheel drive vehicle, a motorcycle or related 2-wheel vehicle, a vehicle with 3 or more wheels, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation. An ATV is an ORV. A registered snowmobile, a farm vehicle being used for farming, a vehicle used for 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 is not an ORV.

Original: “ORV” or, unless the context implies a different meaning, “vehicle” means a motor-driven off-road recreation vehicle capable of cross-county travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. A multitrack or multiwheel drive vehicle, a motorcycle or related 2-wheel vehicle, a vehicle with 3 or more wheels, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation may be an ORV. An ATV is an ORV. ORV or vehicle does not include a registered snowmobile, a farm vehicle being used for farming, a vehicle used for 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. MCL 324.81101(u)

Proposed CHANGE: “ORV safety certificate” means a written document issued under the Act or a comparable authority of another state or Canadian province proving that an individual has successfully/satisfactorily completed all components of an approved ORV safety course.

Original: “ORV safety certificate” means an ORV safety certificate issued under the Act or a comparable safety certificate issued under the authority of another state or province of Canada.

Statute: “ORV safety certificate” means an ORV safety certificate issued under section 81130 or, except as used in section 81130, a comparable safety certificate issued under the authority of another state or province of Canada. MCL 324.81101(v)

***Recommendation to keep the original definition as written.*

Proposed ADD: the term “Vehicle” to the list of definitions, but no requested definition provided.

Statute: “Vehicle” means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices exclusively moved by human power or used exclusively upon stationary rails or tracks and except, only for the purpose of titling and registration under this act, a mobile home as defined in section 2 of the mobile home commission act, Act No. 96 of the Public Acts of 1987, being section 125.2302 of the Michigan Compiled Laws. MCL 257.79

*** No recommendation to include this definition.*

Proposed CHANGE: “Visual supervision” means the direct observation of the operator with the unaided or normally corrected eye by an observer who is able to come to the immediate, physical aid of the operator by being co-located/contiguous/in/on/next to the operator.

Original: “Visual supervision” means the direct observation of the operator with the unaided or normally corrected eye by an observer who is able to come to the immediate aid of the operator. MCL 324.81101(k)

*** If the proposed change to visual supervision is added, it is recommended to include the following provision for clarity (under Article III ORV Operation). MCL 324.81133(1) “An individual shall not operate an ORV: . . . (s) While transporting any passenger in or upon an ORV unless the manufacturing standards for the vehicle make provisions for transporting passengers.” MCL 324.81133(1)(s)*

Draft Ordinance ARTICLE III – ORV Operation, Section 301

Proposed CHANGE: b. A person possesses a license as defined in Section 25 of the Michigan Vehicle Code, MCL 257.25, with the exception presented by “e” below.

Original: b. A person possesses a license as defined in Section 25 of the Michigan Vehicle Code, MCL 257.25.

Proposed CHANGE: d. A person shall not operate an ORV without displaying a lighted headlight, lighted taillight, and a flag on whip standard not less than six (6) feet long attached to the ORV.

Original: d. A person shall not operate an ORV without displaying a lighted headlight and lighted taillight. MCL 324.81131(12)

*** Some criteria for a "flag" included in a relevant section of the statute. MCL 324.81122(1)(c) "An operator of an ORV under this subdivision shall have attached to the ORV a flag made of reflective material. The flag shall extend not less than 8 feet from the surface of the street, county road, or highway and not less than 4 feet above the top of the ORV. The flag shall be not less than 12 inches high by 18 inches long and not measure less than 100 square inches."*

Proposed CHANGE: e. No person 12 - 18 (at least twelve and less than 18) years of age may operate an ORV unless the person is in possession of a valid license or under the direct supervision of a parent or guardian and the person has in his or her immediate possession an ORV safety certificate.

Original: e. No person under 18 years of age may operate an ORV unless the person is in possession of a valid license or under the direct supervision of a parent or guardian and the person has in his or her immediate possession an ORV safety certificate. MCL 324.81131(13)

*** Recommendation to include the written words, rather than the hyphen, if the proposed change is adopted, for clarity.*

Proposed CHANGE: j. The ORV, if operated during the hours of 1/2 hour after sunset and 1/2 hour before sunrise, is equipped with a braking system that may be operated by hand or foot, capable of producing deceleration at 14 feet per second on level ground at a speed of 20 miles per hour and a brake light, brighter than the taillight, visible from behind the vehicle when the brake is activated.

Original: j. The ORV is equipped with a braking system that may be operated by hand or foot, capable of producing deceleration at 14 feet per second on level ground at a speed of 20 miles per hour; a brake light, brighter than the taillight, visible from behind the vehicle when the brake is activated, if the vehicle is operated during the hours of 1/2 hour after sunset and 1/2 hour before sunrise. MCL 324.81133(1)(c)

Proposed CHANGE: k. Add the noise emission standards defined.

Original: k. The ORV is operated pursuant to noise emission standards defined by law. MCL 324.81133(1)(f)

Statute: MCL 324.81131(1)(f) sets forth the following: Exhaust noise emission shall not exceed 86 Db(A) or 82 Db(A) on a vehicle manufactured after January 1, 1986, when the vehicle is under full throttle, traveling in second gear, and measured 50 feet at right angles from the vehicle path with a sound level meter that meets the requirement of ANSI S1.4 1983, using procedure and ancillary equipment therein described; or 99 Db(A) or 94 Db(A) on a vehicle manufactured after January 1, 1986, or that level comparable to the current sound level as provided for by the United States Environmental Protection Agency when tested according to the provisions of the current SAE J1287, June 86 test procedure for exhaust levels of stationary motorcycles, using sound level meters and ancillary equipment therein described. A vehicle subject to this part,

manufactured or assembled after December 31, 1972 and used, sold, or offered for sale in this state, shall conform to the noise emission levels established by the United States Environmental Protection Agency under the noise control act of 1972, 42 USC 4901 to 4918.

Proposed CHANGE: 1. The ORV may not be operated on the road surface, roadway, shoulder or right-of-way of any State or Federal highway unless crossing the highway at right angles.

Original: 1. The ORV may not be operated on the road surface, roadway, shoulder or right-of-way of any State or Federal highway. MCL 324.81122(1)

Statute: MCL 324.81122(1)(a) The operator of a vehicle may cross a street, county road, or highway, other than a limited access highway, at right angles, for the purpose of getting from 1 area to another, if the operation can be done in safety. The operator shall bring the vehicle to a complete stop before proceeding across a street, county road, or highway, and shall yield the right-of-way to oncoming traffic.

***Whether included or not, MCL 324.81122(1)(a) is still a relevant provision of law.*

Stakeholder Questions 5/25/2021

16. Q: First line of Section 301 says “on the far right of the maintained portion of the county road”, does that “maintained portion” include the shoulder (either paved or not paved) to the right of the white line (where present)? In the definition section the roadway is defined as NOT including the shoulder. Has the road commission determined which, if any county roads they would exempt from this ordinance? Submitted via email on May 20, 2021 by Jim Connell

A: Thank you for your correspondence. You are correct that the "roadway" does not include the shoulder of the road. The "maintained portion" is also a defined term in the draft ordinance and that does include the shoulder. See Article II - Definitions; f. “Maintained portion” means the roadway and any shoulder of a street, county road, or highway.

As of now, the County has not received any information from the board of the road commission about which roads it would close to operation of ORVs if a County-wide ordinance is implemented. *Response provided via email on May 24, 2021*



**CITY OF ALLEGAN
RESOLUTION NO. 21.12**

A RESOLUTION TO SUPPORT ALLEGAN COUNTY-WIDE ORV ORDINANCE.

The following preamble and resolution were offered by Member Perrigo and supported by Member McKenzie.

WHEREAS, On July 23, 2020, at the request of the interested citizens, the Allegan County Board of Commissioners (County Board) discussed the concept of a county-wide, Off-Road Vehicle (ORV) Ordinance

WHEREAS, A county-wide ORV Ordinance was considered in 2014 resulting in the decision of the County Board to take no action regarding the development of an ordinance to allow ORV's to travel on the county roads.

WHEREAS, The County Board believes an ORV Ordinance remains best considered at the local level considering the geographical, roadways and philosophical difference that may exist across the County.

WHEREAS, Creating a patchwork of interconnection local ORV ordinance presents challenges with consistency and uniformity of enforcement

WHEREAS, the County has indicated that Allegan County Road Commission, Sheriff and Prosecutor's office are offering assistance to any local unit or group of local units that may consider developing an ORV ordinance.

WHEREAS, historically local units bear the burden of enforcing, ticketing and prosecuting the local units ordinance

WHEREAS, questions remain as to who the County Board, the Sheriff and Prosecutor's office intends to write tickets, prosecute ordinance violators, and divide ticket revenue.

WHEREAS, According to the County Board's own approved communique of August 13, 2020, During the July 23 Meeting, the County Board reaffirmed the 2014 decision **largely due to the absence of a united position being represented by all, or even the majority of local units in the County**

THEREFORE, BE IT RESOLVED, that the Board of the Allegan City Council, expresses its support of an Allegan County-wide ORV Ordinance.

BE IT FURTHER RESOLVED THAT, that the creation of a County-wide ORV ordinance in the best way to ensure that there is consistency from local unit to local unit and uniform enforcement.

PRESENT: Redding, Hanse, Bird, Mayor Andrus, Mayor Pro Tem Galloway, Perrigo and McKenzie:

NAYS: N/A:

ABSENT:N/A:

RESOLUTION DECLARED ADOPTED.

Christopher Tapper
Christopher Tapper, City Clerk

CERTIFICATION

I, Christopher Tapper, duly appointed City Clerk of the City of Allegan, do hereby certify that the above is a true and correct copy of a resolution adopted by the City Council of the City of Allegan, Michigan, on this 24th day of May, 2021.

Christopher Tapper
Christopher Tapper, City Clerk

Becky Blaine

From: Jim Connell <drjim1@icloud.com>
Sent: Thursday, May 20, 2021 9:50 AM
To: ADMINISTRATION; Steve Schultz
Subject: ORV Input

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

First line of 301 says “ on the far right of the maintained portion of the county road”

Does that “maintained portion” include the shoulder (either paved or unpaved) to the right of the white line (where present)?

In the definition section the roadway is defined as NOT including the shoulder.

Has the road commission determined which , if any county roads they would exempt from this ordinance?

Jim Connell DVM

Allegan Township Trustee

drjim1@icloud.com

Sent from my iPhone

Becky Blaine

From: Robert Sarro
Sent: Tuesday, May 25, 2021 5:34 PM
To: Becky Blaine
Subject: FW: draft ORV ordinance

From: Albert Meshkin [mailto:Al@laketowntwp.org]
Sent: Thursday, May 13, 2021 8:53 AM
To: Jim Storey <JStorey@ALLEGANCOUNTY.ORG>; Dean Kapenga <dkapenga@gmail.com>; Robert Sarro <RSarro@ALLEGANCOUNTY.ORG>
Cc: Gary Dewey (deweygary@gmail.com) <deweygary@gmail.com>; Gary Dewey <Gary@laketowntwp.org>; James Delaney <JamesD@laketowntwp.org>; Jim Johnson <Jim@laketowntwp.org>; Jim Johnson (jim.johnson@grangerconstruction.com) <jim.johnson@grangerconstruction.com>; Linda Howell <Linda@laketowntwp.org>; Michelle Sall <michelle@laketowntwp.org>
Subject: draft ORV ordinance

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Chairman Storey and Commissioners,

The Laketown Township Board discussed the draft ORV ordinance at their regular May meeting last night. The Board is concerned about the ordinance and does not feel it is a good fit for a more urban township like Laketown. They are also concerned that the way the ordinance is currently worded Laketown would be forced into it and would need to go through the expense of drafting our own ordinance to "opt out". Further, MCL 324.81131(4) would require the township to demonstrate our reasoning for opting out. This opens the door for being challenged if/when someone is prosecuted under our ordinance.

The Laketown Board voted unanimously to request the County Board of Commissioners amend Section 301 of the draft ORV ordinance to include the following words after Allegan County: ", except within the following local units of government: Laketown Township, ..." (and then poll other local units of government to see who else would like to be opted out).

The Laketown Board also feels the penalties for violating the county ordinance are not sufficient and should have an increased financial penalty and possibly include confiscation of a vehicle.

Thank you in advance for considering the concerns of Laketown Township.

Al Meshkin
Manager

Good Evening,

As you can see by tonight's turnout, your constituents and our community are showing a great deal of support for the county board of commissioners to schedule a public hearing and subsequently pass this ordinance into law.

This only tells part of the story however, I want to share some numbers and information that paint a picture of an entirely different magnitude.

As you all know, social media plays a very big part in communication in our world today. As such, this event was shared on Facebook to encourage attendance tonight.

On one page it was shared 28 times.
On another page it was shared 86 times.

As you are also aware each time a "post" is shared is an opportunity for positive or depending on your view of social media, more likely, negative interaction.

As of 8:30, last night, April 21, the analytical tool embedded into Facebook indicated that over 13,000 people had seen that post, 2000 people had actually clicked on it.


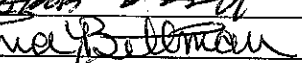
There were zero, I repeat ZERO negative, what Facebook calls, reactions in all of the shared posts that I had permissions to view.

I conclude today by simply imploring you to respect the will of the people who have appeared here today and invested their time to demonstrate a sample of the desire of the constituency of Allegan county to enact a countywide ordinance allowing ORV usage.

Sincerely,
Joshua Driscoll
3081 53rd St.
Hamilton, MI 49419

Allegan county residents for a county wide ORV ordinance

The undersigned residents are in support of a county wide ordinance and request the Allegan County Board of Commissioners to move forward with said ordinance and expedite it's implementation. We have also nominated 4 spokesmen for the group, they are Scott Beltman, Dan Caywood, Jon Myers, and Josh Discroll. Thank you

Name	Signature	Township
Jay Davis		Salem
Kyle Pattock		Door
Sam & Sumette Sachse		Salem
Mark Waanders		Allegan
Bridget Waanders		Allegan
Joanna Westhouse		Door
David Westhouse		Door
Zachary Vanderkamp		Heath
Dustin Vanderkultst		Allegan
Trey Bolman		Allegan
Randy Bitterbeck		HAMILTON
Steve Berens		Door
Lisa Loderstein		Watson
Tom Salmon		Watson
MARK MYERS		Watson
Jamie List		Allegan
Steve Nelson		LEE
MATT WARWICK		MONTEREY
Dan Caywood		Salem
Josh Discroll		Marlins
Drena Beltman		monterey
MATT S. CAMPBELL		ALLEGAN
Donald L. Gunderson		Allegan
Scott BELTMAN		MONTEREY
Caleb Kamm		monterey
Sosaph Hokman		Hokins
Taylor Arispe		Salem

Allegan county residents for a county wide ORV ordinance

The undersigned residents are in support of a county wide ordinance and request the Allegan County Board of Commissioners to move forward with said ordinance and expedite it's implementation. We have also nominated 4 spokesmen for the group, they are Scott Beltman, Dan Caywood, Jon Myers, and Josh Discroll. Thank you

Name	Signature	Township
John Scholten		Manlius
Regina Coffey		Monterey
Olivia Coffey		Monterey
Darren Coffey		Monterey
CHERIE DYKSTER		Dorr
Cherie Dykster		Dorr
Adam Coffey		Monterey
Alex Coffey		Monterey
Jerome Gustaf		LEE
Brian Kerber		Hopkins
Joe Jablonski		Hopkins
Thomas Teich		Allegan-Watson
Madalyn Kioski		Clyde
Scott Kioski		Clyde
David Gray		Monterey
Wendy Gray		Monterey
Brandon Thompson		Manlius
Christina Weber		Monterey
Brian Weber		Monterey
Bruce Weber		Salem
Kendi Kamps		Troubridge
Justin Kamps		Troubridge
Van Vander Bosch		Heath
BRETT WESTMAN		Dorr
Jerry VanWagner		Salem
Jeanne VanWagner		Salem
Dan VanWagner		Salem
Steve Allin		Dorr
Mac Ellen Dandrew		Hopkins
JOY HORIZONCA		DORR
Eric VanWagner		Dorr

Allegan county residents for a county wide ORV ordinance

The undersigned residents are in support of a county wide ordinance and request the Allegan County Board of Commissioners to move forward with said ordinance and expedite it's implementation. We have also nominated 4 spokesmen for the group, they are Scott Beltman, Dan Caywood, Jon Myers, and Josh Discroll. Thank you

Name	Signature	Township
Grace Y. Engel	<i>Grace Y. Engel</i>	Watson
Timothy Engel	<i>Timothy Engel</i>	Watson
Taul VanWazer	<i>Taul VanWazer</i>	Dorr
DON PATRICK	<i>Don Patrick</i>	Dorr
RICK MAYS	<i>Rick Mays</i>	Monterey
Tom Batehels	<i>Tom Batehels</i>	Kalley
Sarah Bennett	<i>Sarah Bennett</i>	Monterey
Matt Bennett	<i>Matt Bennett</i>	Monterey
Levi Morse	<i>Levi Morse</i>	Clyde
Kiley Kirkensbers	<i>Kiley Kirkensbers</i>	Salem
William Dickse	<i>William Dickse</i>	Monterey
Libe Dickse	<i>Libe Dickse</i>	Monterey
Owen Eckwitten	<i>Owen Eckwitten</i>	Salem
Danielle Berens	<i>Danielle Berens</i>	Dorr
ROD LOEFSTEIN	<i>Rod Loefstein</i>	WATSON
Norma Salmon	<i>Norma Salmon</i>	Watson
Jessica List	<i>Jessica List</i>	Allegan
Kristin Driscoll	<i>Kristin Driscoll</i>	Mantius
Pat Driscoll	<i>Pat Driscoll</i>	Mantius
Destin Driscoll	<i>Destin Driscoll</i>	Laketown
Kelly Caywood	<i>Kelly Caywood</i>	Salem
Mike Mulder	<i>Mike Mulder</i>	Heath


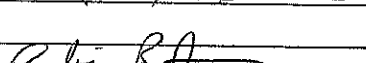
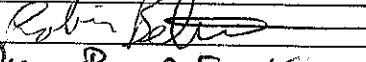
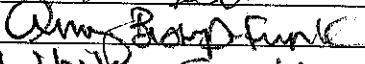

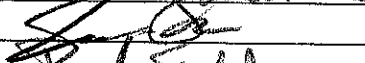


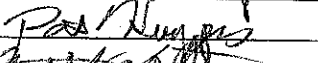
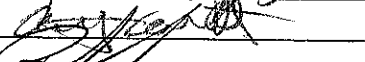


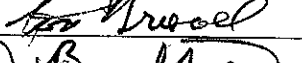
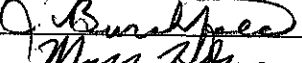
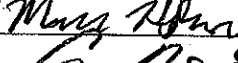

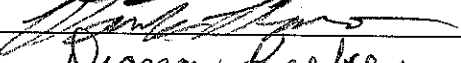
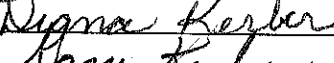

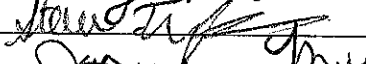
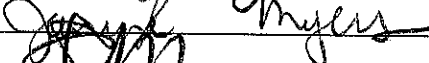
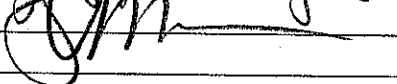
Allegan county residents for a county wide ORV ordinance

The undersigned residents are in support of a county wide ordinance and request the Allegan County Board of Commissioners to move forward with said ordinance and expedite it's implementation. We have also nominated 4 spokesmen for the group, they are Scott Beltman, Dan Caywood, Jon Myers, and Josh Discroll. Thank you

Name	Signature	Township
Karen Middendorp	<i>[Signature]</i>	Dorr
Joel Kodanhistor	<i>[Signature]</i>	Salem
Sheri Kodanhistor	<i>[Signature]</i>	Salem
ALCAN RONE	<i>[Signature]</i>	Dorr
Heath Middendorp	<i>[Signature]</i>	Dorr
Carly Kraima	<i>[Signature]</i>	Dorr
Robert Middendorp	<i>[Signature]</i>	Dorr
Cody Lampen	<i>[Signature]</i>	Hamilton
Rick Lampen	<i>[Signature]</i>	Overseas
Toby Filkins	<i>[Signature]</i>	LEE
Steven Filkins	<i>[Signature]</i>	Bloomingsdal
Donald Compagner	<i>[Signature]</i>	Monterey
Gina Compagner	<i>[Signature]</i>	Monterey
HARRY Compagner	<i>[Signature]</i>	Monterey
MIKE TAYLOR	<i>[Signature]</i>	Dorr
Cody Taylor	<i>[Signature]</i>	Dorr
Greg VanValkinburg	<i>[Signature]</i>	Watson
Coral VanValkinburg	<i>[Signature]</i>	Watson
Casey Kamps	<i>[Signature]</i>	Trowbridge
Diane Kamps	<i>[Signature]</i>	Heath
Ken Kamps	<i>[Signature]</i>	Heath
MATTHEW C GILBERT	<i>[Signature]</i>	Wayland
JAN L GILBERT	<i>[Signature]</i>	Wayland
Scott VanDan	<i>[Signature]</i>	Salem
Jon Wadwa	<i>[Signature]</i>	Heath
Jackie Goodeman	<i>[Signature]</i>	Maules
James Goodeman	<i>[Signature]</i>	Maules
Carlene Cooke	<i>[Signature]</i>	Dorr
Tom Cooke	<i>[Signature]</i>	Dorr
Amy Brink	<i>[Signature]</i>	Byron
Curt Brink	<i>[Signature]</i>	Byron

Allegran county residents for a county wide ORV ordinance

The undersigned residents are in support of a county wide ordinance and request the Allegran County Board of Commissioners to move forward with said ordinance and expedite it's implementation. We have also nominated 4 spokesmen for the group, they are Scott Beltman, Dan Caywood, Jon Myers, and Josh Discroll. Thank you

Name	Signature	Township
Kevin D. Briener		Montgomery
Marisa Belmont		Montgomery
Robin Beltman		Montgomery
Amy Biorp Funk		Salem
Whitney Smith		Salem
Jerry Furt		Salem
Red Smith		Salem
Calen Huggens		Lee
PAT Huggens		Lee
Tony Annot		Montgomery
Rick Locatis		Allegran
Christy Locatis		Allegran
Tom Discroll		Manlius
JAMISON BURKHFIELD		MANLIUS
Marous Helder		Fillmore
Angelica Pena-Smith		Manlius
Paulo Pena		Clyde
Diana Kerber		Hopkins
Gary Kerber		Hopkins
Steve Tyler		Allegran
Janine Myers		Salem
Shawn Montenbelt		Wayland

Becky Blaine

Subject: FW: ORV's need restrictions.

From: Gami Rae [<mailto:gamirae@gmail.com>]

Sent: Tuesday, April 20, 2021 9:47 AM

To: PARKS <PARKS@ALLEGANCOUNTY.ORG>

Subject: ORV's need restrictions.

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

I hope I am connecting to the proper department fir this issue. As a citizen of Allegan County I am concerned about the recent movement by local ORT enthusiasts and their action to legalize ORV on our streets and trails. This bothers me as I feel that is allowed it will bring noise, trash and rowdy crowds with them. I fear it will make out streets less safe because of vehicle accidents and that minors will be wheeling around our quiet streets and trails.

If you allow this at all please make sure it is limited to a small area where this action can be participated in. I would hate to see out quiet county streets become a speed way for these vehicles.

I also feel it would have a deleterious effect on out county's wildlife, floura and fauna.

Thank you,
Paula Madura