

**TOWNSHIP OF SHELBY
COUNTY OF OCEANA
STATE OF MICHIGAN**

Ordinance No. 08-21-19-1

ORV ORDINANCE

AN ORDINANCE AUTHORIZING AND REGULATING THE OPERATION OF OFF-ROAD VEHICLES (ORVs) ON COUNTY PRIMARY AND COUNTY LOCAL ROADS IN SHELBY TOWNSHIP, OCEANA COUNTY, MICHIGAN, PROVIDING PENALTIES FOR THE VIOLATION THEREOF, AND FOR THE DISTRIBUTION OF FINES AND COSTS RESULTING FROM THOSE PENALTIES PURSUANT TO 2009 PA 175, MCL 324.81131.

THE TOWNSHIP OF SHELBY ORDAINS:

Section 1. Definitions. For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- a. County means Oceana County, Michigan.
- b. Direct Supervision, means the direct visual observation of the operator with the unaided or normally correct eye, where the observer is able to come to the immediate aid of the operator.
- c. Driver's License means any driving privileges, license, temporary instruction permit or temporary license issued under the laws of any state, territory or possession of the United States, Indian country as defined in 18 USC 1151, the District of Columbia, and the Dominion of Canada pertaining to the licensing of persons to operate motor vehicles.
- d. Maintained Portion means that portion of road, improved, designated, and/or ordinarily used for vehicular traffic, including the gravel shoulder or paved shoulder of the road.
- e. Operate, means to ride in or on and be in actual physical control of the operation of an ORV/ATV.
- f. Operator means a person who operates or is in actual physical control of the operation of an ORV/ATV.
- g. ORV or, unless the context implies a different meaning, A vehicle 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. A multitrack or multiwheel drive vehicle, a motorcycle or related 2-wheel vehicle, a vehicle with 4 or more wheels, a golf

cart, 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. An "ORV" does not include a three-wheeler, dune buggy, or a sandrail.

- h. Road means a County primary road or County local road as described in section 5 of 1951 PA 51, MCL 247.655.
- i. Road Commission means the Board of County Road Commissioners for the County of Oceana.
- j. Safety Certificate means a certificate issued pursuant to 1994 PA 451, as amended, MCL 324.1129, or a comparable ORV safety certificate issued under the authority of another state or a province of Canada.
- k. Street means a city or village major street or city or village local street as described in section 9 of 1951 PA 51, MCL 247.659, or a segment thereof.
- l. Township means the Township of Shelby.

Section 2. Operation of ORVs on County Roads. An individual may operate an ORV on all roads located within the Township provided that the ORV is operated only with the flow of traffic, on the far right of the maintained portion, of the road, subject to the following regulations:

- a. A person shall not operate an ORV at a speed greater than 25 miles per hour, or a lower posted ORV speed limit or in a manner that interferes with traffic on the road.
- b. ORVs shall travel single-file, except when passing or being passed by another ORV.
- c. All ORVs operating shall display a lighted headlight and taillight when equipped.
- d. Unless a person possess a driver's license, a person shall not operate an ORV on a road if the ORV is registered as a motor vehicle under the Michigan Vehicle Code and the ORV is either more than 65 inches wide or has three wheels.
- e. A person under the age of 12 shall not operate an ORV on a road.
- f. A person under the age of 18 shall not operate an ORV on a road unless the person is in possession of a valid driver's license or is under the direct supervision of a parent or guardian and the person has in his or her possession an ORV safety certificate issued by Michigan or another state or province of Canada.

- g. All operators must, upon demand by a law enforcement officer, present either an ORV safety certificate or driver's license.
- h. An owner or person in control or charge of an ORV shall not allow an ORV to be operated by an individual who is incompetent to operate a vehicle because of a mental or physical disability.
- i. A child less than 16 years of age shall not operate a 3-wheeled ORV or ATV.
- j. A person shall not operate an ORV at a rate of speed greater than is reasonable and proper, or in a careless manner having undue regard for conditions.
- k. A person shall not operate or ride on an ORV unless they are wearing on their head a helmet and protective eyewear approved by the United States Department of Transportation. This section does not apply if the ORV 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 safety belt.
- l. A person shall not operate an ORV during the hours of 1/2 hour before sunset and 1/2 hour after sunrise without a working brake light that is brighter than the taillight.
- m. All ORVs 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.
- n. No person who is an operator or passenger on an ORV shall transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken.
- o. An ORV shall be equipped with a spark arrester type United States Forest Service approved muffler in good working order and in constant operation.
- p. An ORV shall otherwise be operated in full compliance with all applicable provisions of state law, including, but not limited to, Part 811 of the Natural Resources and Environmental Protection Act, MCL 324.81101, et seq.
- q. An ORV shall not be operated upon any portion of a state highway, including M20 and Old US-31 also known as Oceana Drive, unless specifically authorized by the Michigan Department of Transportation pursuant to MCL 324.81131(6) and (7).
- r. An ORV shall not be operated upon any portion of a freeway.
- s. The operation of three-wheels, dune buggies, and/or sandrails on roads within the Township is prohibited under this Ordinance.

Section 3. No Township Duty to Maintain County Roads. Despite the provisions contained in this Ordinance allowing ORVs to use portions of County roads, the Township shall have no duty, and undertakes no duty, to maintain a road within its boundaries in a condition that is reasonably safe and convenient for the operation of ORVs. Pursuant to MCL 324.81131 and MCL 691.1405, the Township shall be 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 or unmaintained portion of a highway, road, or street, of an ORV.

Section 4. Careless or Reckless Operation. In a court action in this state where competent evidence demonstrates that a vehicle permitted to be operated on a road, street, or highway pursuant to the Michigan Vehicle Code, 1949 PA 300, MCL 257.1 to 257.923, is involved in a collision with an ORV, the operator of the ORV involved in the collision shall be considered prima facie negligent.

Section 5. Operation of ORV by Child. A parent or guardian of a child less than 16 years of age shall not permit or allow the child to violate any provision of this Ordinance.

Section 6. Enforcement.

- a. A violation of this Ordinance is a municipal civil infraction, and a person responsible for a civil infraction under this Ordinance shall pay a fine of not less than \$175.00 nor more than \$500.00 plus costs and actual reasonable attorney fees incurred by the Township in enforcing this Ordinance. In addition, the Court may order the defendant to pay the cost of repairing any damage to the environment, a road, or public property damaged as a result of the violation.
- b. Officers, deputies, members, and/or agents of the Oceana County Sheriff's Department are authorized to enforce this Ordinance and to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in Court.
- c. The Township Treasurer shall deposit fines and costs collected under this Ordinance under the applicable provisions of the Revised Judicature Act, MCL 600.8379, into a fund designated as the ORV Fund.
- d. The Township Treasurer shall appropriate revenue in the ORV Fund as follows:
 - i. Fifty percent to the Oceana County Road Commission 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.
 - ii. Fifty percent to the Oceana County Sheriff's Department for ORV enforcement and training.

Section 7. Master Map. The Township shall maintain a master map that conspicuously indicates those road and highways and parts or sections thereof where the operation of ORVs is permitted and prohibited pursuant to this Ordinance. The Township shall make such master map available to the public. Nothing in this section requires the Township to bear the costs or

expenses associated with distributing copies of the map to the public.

Section 8. Severability. If any section, clause, or provision of this Ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the remainder of the Ordinance, which shall be given effect without the invalid portion or application.

Section 9. Effective Date. This Ordinance shall take effect and be in force upon the expiration of 30 days of the date when the notice of adoption of this Ordinance is published in a newspaper of general circulation with the Township. This Ordinance and any attached documents shall be codified, edited for typos and grammatical errors, and enumerated in accordance with the codification procedure of the Township.

AYES: Members: Cindy Lopez, Roger Dawell, John Hendrixon, Ken Auer, Marilyn Glover
NAYS: Members: 0
ABSENT: Members: 0

ORDINANCE DECLARED ADOPTED.

We, Marilyn Glover, Township of Shelby Clerk, and John Hendrixon, Township of Shelby Supervisor, do hereby certify that the above and foregoing Ordinance, known as Ordinance No. 082119-1 of the Township of Shelby, Michigan, was introduced and passed at a regular meeting of the Township Board, held on August 21, 2019, by an affirmative vote of the majority of the Township Board members.

Date: 08-21-, 2019

John Hendrixon
John Hendrixon, Supervisor

Date: 08-21-, 2019

Marilyn Glover
Marilyn Glover, Clerk

