

# MONTMORENCY COUNTY

## Ordinance No. 09-01 of 2009

AN ORDINANCE PURSUANT TO ACT 240 OF THE PUBLIC ACTS OF 2008 AUTHORIZING AND REGULATING THE OPERATION OF OFF-ROAD VEHICLES ON ROADS WITHIN MONTMORENCY COUNTY, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND PROVIDING FOR THE DISTRIBUTION OF PUBLIC FUNDS RESULTING FROM THOSE PENALTIES

THE COUNTY OF MONTMORENCY ORDAINS:

**Section 1. Title:**

This Ordinance shall be known as the Montmorency County ORV Ordinance,

**Section 2. Definitions:** As used in this Ordinance,

"County" means the County of Montmorency.

"County Primary Road" and "County Local Road" mean those roads as described in section 5 of Act 51 of the Public Acts of 1951, as amended, being MCL 247.655.

"Ditch" means a water control depression beyond the maintained portion of a road. The inclines forming the sides of ditches are part of that control structure, as are culverts, rock structures to slow water and driveway inclines that cross ditches.

"Driver's License" means an operator's or chauffeur's license or permit issued to an individual by the Michigan Secretary of State under Chapter III of the Michigan Motor Vehicle Code, Act 300 of the Public Acts of 1949, as amended, being MCL 257.301, et seq., for that individual to operate a vehicle, whether or not conditions are attached to the license or permit.

"Far Right of the Maintained Portion of the Road" means the shoulder of the road when the roadway is improved by pavement, tar and chips, concrete, or other similar materials and means the extreme right of the open portion of the right-of-way when the roadway is not improved by pavement, tar and chips, concrete, or other similar materials.

"Operate" means to ride in or on and to be in actual physical control of the operation of an ORV.

"Operator" means a person who operates of an ORV.

"ORV" means a motor driven off-road recreation vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. ORV or vehicle includes, but is not limited to, a multi-track or multi-wheel drive vehicle, an ATV, a motorcycle or related 2-wheeled, 3-wheeled, or 4-wheeled vehicle, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation deriving motive power from a source other than muscle or wind.

"Preferred route" means a route from trail access points to commercial services, and are located to guide ORV traffic on the best route between those locations.

"Road" means the entire width between the boundary lines of a way publicly maintained when any part of the way is open to the use of the public for purposes of vehicular travel.

"Road Commission" means the Board of County Road Commissioners for the County of Montmorency.

"Roadway" means that portion of a road Improved, designed, or ordinarily used for vehicular travel. In the event a road includes two (2) or more separate roadways, the term "roadway," as used herein, shall refer to any such roadway separately, but not to all such roadways collectively.

"Safety Certificate" means a certificate issued pursuant to Section 81129 of Act 451 of the Public Acts of 1994, as amended, being MCL 324.81129, or a comparable ORV safety certificate Issued under the authority of another state or a province of Canada.

"Shoulder" means that portion of the road contiguous to the roadway generally extending the contour of the roadway, not designed for vehicular travel but Maintained for the temporary accommodation of disabled or stopped vehicles otherwise permitted on the roadway.

"Visual Supervision" means the direct observation of the operator of an ORV with the unaided or normally corrected eye, where the observer is able to come to the immediate aid of the operator.

### **Section 3. Prohibited Conduct:**

- (a). No person shall operate an ORV on the roadway, shoulder, or any other portion of a state or federal road in Montmorency County.
- (b). Except as permitted under Section 4 of this Ordinance, no person shall operate an ORV on the roadway, shoulder, or any other portion of a county primary road or a county local road in Montmorency County.
- (c). ORV operation is prohibited in ditches and on inclines within the right-of-way of county roads. Damage to vegetation in ditches, damage to driveway inclines and to culverts and other water control structures are prohibited under this Ordinance.
- (d). Within Montmorency County there are forest roads, logging roads, well-site access roads, wildlife grazing fields and other trails on public land. ORV operation is prohibited on these places unless posted open.

### **Section 4. Permitted ORV Operations:**

- (a). A person may operate an ORV on the far right of the maintained portion of all county primary and county local roads, except the following:
  - (1). Blue Lakes Road, from the Otsego County Line, approximately one mile east to Section 8.
- (a). When operating an ORV as authorized under this Ordinance, the operator shall comply with all of the following regulations;
  - (1). The operator shall be a person 12 years of age or older.

- (2). The operator and each passenger shall wear a crash helmet and protective eyewear approved by the United States Department of Transportation, unless the ORV is equipped with a roof that meets or exceeds the standards for a crash helmet and the operator and each passenger wears a properly adjusted and fasten seatbelt.
- (3). If the operator is a person 12 years of age or older, but less than 16 years of age, then the operator shall be under the direct-visual supervision of a parent or guardian and shall have in his or her immediate possession a safety certificate.
- (4). If the operator is a person 16 years of age or older, but less than 18 years of age, then the operator shall have In his or her immediate possession a valid drivers license and a safety certificate or shall be under the direct visual supervision of a parent or guardian and shall have In his or her immediate possession a safety certificate.
- (5). If the ORV is registered as a motor vehicle and is either more than 60 inches wide or has three wheels, then the operator shall have in his or her immediate possession a valid driver's license.
- (6). The ORV shall not be operated at a speed greater than 25 miles per hour or at a speed greater than any posted ORV speed limit.
- (7). The ORV shall be operated with the flow of traffic on the road.
- (8). The ORV shall be operated in a manner that does not interfere with traffic on the road.
- (9). All ORVs shall be operated in a single-file formation, except when overtaking and passing another ORV or when being overtaken and passed by another ORV.
- (10). The ORV shall be operated displaying a lighted headlight and lighted taillight when visibility is substantially reduced due to weather; conditions, during the time one-half (1/2) hour after sunset and one-half (1/2) hour before sunrise, and at all times beginning January 1, 2010.
- (11). The ORV shall be equipped with a throttle so designed that when the pressure used to advance the throttle is removed, the engine speed will immediately and automatically return to idle.
- (12). The ORV shall be equipped with an arrester type, United States forest service approved muffler in good working order and in constant operation.
- (13). The ORV shall be operated in full compliance with all noise emission standards defined by law.
- (14). On subdivision streets and roads within residential areas, ORVs may be operated for ingress and egress only. Sustained riding for recreation or practice by operators of any age is prohibited in these areas.
- (15). Preferred Routes between access points of the ORV trail system and commercial services are designated on maps available to ORV users. This is not a legally required route, but is a courtesy to limit traffic in residential areas and give ORV operators a route that stays away from state highways, where use is prohibited.

## **Section 5. Signs:**

With the consent of the road commission, the county shall procure and have posted on the applicable county primary and county local roads signs conforming to the requirements of the state manual and specifications for

a uniform system of traffic-control devices that provide notice to the public that the operation of ORVs on the roads on which the signs are posted is prohibited under this Ordinance.

All county roads, primary and local, are open to ORV operation, subject to the conditions set in this ordinance, and are not required to be posted open.

**Section 6. Penalties:**

(a). A person who violates any provision of this Ordinance shall be responsible for a municipal civil infraction as defined in Public Act 12 of 1994, amending Public Act 236 of 1961, being Sections 600.101-600.9939 of Michigan Compiled Laws, and shall be subject to a civil fine of not more than Five Hundred and 00/100 (\$500.00) Dollars.

(b). In addition to the fine specified in subsection (a) above, the court may order a person who causes damage to the environment, a road or other property as a result of the operation of an ORV to pay full restitution for that damage, or community service time to repair the damage.

**Section 7. Enforcement Officers:**

Police officers of the Montmorency County Sheriffs Department are hereby designated as the authorized officials to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court. Michigan State Police officers and Michigan Department of Natural Resources Conservation Officers may also issue citations according to their department's instructions.

**Section 8. ORV Fund:**

The County Treasurer shall deposit all fines and damages collected under Section 6 of this Ordinance into a fund to be designated as the "ORV Fund." The county board of commissioners shall appropriate revenue in the ORV Fund as follows:

(a). Fifty percent (50%) to the Montmorency 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 and/or indicating whether roads are open or closed to the operation of ORVs.

(b). Fifty percent (50%) to the Montmorency County Sheriffs Department for ORV enforcement and training.

**Section 9. Validity:**

If any section, provision or clause of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any remaining portions or application of this Ordinance which can be given effect without the invalid portion or application.

**Section 10. Effective Date:**

This Ordinance shall become effective ten (10) days after its publication on May 13, 2009, which is May 23, 2009. This Ordinance will end, or sunset, after one (1) year, that being May 23, 2010.

COUNTY OF MONTMORENCY

Adopted April 28, 2009

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By: Albert LaFleche, Chairperson, Montmorency County Board of Commissioners

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By: Cheryl Neilsen, County Clerk