

## ALLEGAN COUNTY

### ORV ORDINANCE # \_\_\_\_\_

This ordinance authorizes, and regulates the operation of Off-Road Vehicles (“ORVs”) on county roads in Allegan County, as authorized by Part 811 of the Michigan Natural Resources and Environmental Protection Act 451 of 1994 (“Act”) as amended, being MCL 324.81131 *et. seq.*

#### ARTICLE I – Purpose and Designation

**Section 101. Purpose and Intent.** This ordinance is adopted to allow operation of ORVs on county roads within the County of Allegan, with the powers, duties, and limitations provided by the Act and subject to the terms and conditions of this Ordinance and any future amendments thereto.

**Section 102. Designation.** This Ordinance shall be known as, The Allegan County ORV Ordinance.

#### ARTICLE II – Definitions

**Section 201. Definitions.** When the following terms are used in this Ordinance, the following definitions apply:

- a. “County” means the County of Allegan.
- b. “County road” means a county primary road or county local road, as described in section 5 of 1951 PA 51, MCL 247.655, or a segment thereof, under the jurisdiction of the Allegan County Road Commission.
- c. “Highway” means a state trunk line highway or a segment of a state trunk line highway.
- d. “License” means any driving privileges, license, temporary instruction permit, commercial learner’s permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles. MCL 257.25
- e. “Local unit of government” means a county, township, or municipality.
- f. “Maintained portion” means the roadway and any shoulder of a street, county road, or highway.

- g. “Municipality” means city or village.
- h. “Operate” means to ride in or on, and be in actual physical control of, the operation of an ORV.
- i. “Operator” means an individual who operates or is in actual physical control of the operation of an ORV.
- 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.
- k. “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.
- 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.
- m. “Road commission” means the Allegan County Road Commission.
- n. “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.

### **ARTICLE III – ORV Operation**

**Section 301. ORV Operation.** 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:

- 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 county road or at a speed greater than conditions allow.
- b. A person possesses a license as defined in Section 25 of the Michigan Vehicle Code, MCL 257.25.
- c. ORVs operated as authorized shall travel single file, except that an ORV may travel abreast of another ORV when it is overtaking and passing, or being overtaken and passed by, another ORV.
- d. A person shall not operate an ORV without displaying a lighted headlight and lighted taillight.
- 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.
- f. No person under the age of 12 may operate an ORV on any road described herein.
- g. 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 unless the ORV is equipped with a roof that meets or exceeds United States Department of Transportation standards for a crash helmet and the individual is wearing a properly adjusted and fastened safety belt.
- h. The ORV is fitted 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.
- i. The ORV is equipped with a spark arrester type United States Forest Service approved muffler, in good working order and in constant operation.
- 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.
- k. The ORV is operated pursuant to noise emission standards defined by law.

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

#### **ARTICLE IV - Authorization**

**Section 401. Authorization.** Should any term of this ordinance be found to be inconsistent with the authorizing statute; MCL 324.81131, as amended, the provisions of the statute, including any amendments thereto shall apply.

**Section 402. Closed Roads.** ORVs may be operated pursuant to this Ordinance on all county roads within Allegan County, except the board of the road commission may close a county road to the operation of ORVs otherwise authorized pursuant to this Ordinance. 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 this Ordinance. The road commission may not close more than 30% of the linear miles of county roads to the operation of ORVs.

**Section 403. ORV Operation Prohibited.** Should the road commission close certain county roads to ORV use pursuant to MCL 324.81131(4), operation of an ORV on such roads is prohibited under this Ordinance.

#### **ARTICLE V – Violations and Penalties**

**Section 501. Evidence.** 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 Michigan Vehicle code was in a collision on a roadway with an ORV that is not registered under the Michigan Vehicle code, the operator of the ORV shall be considered prima facie negligent.

**Section 502. Penalties.** A person who violates this Ordinance is guilty of a municipal civil infraction and shall pay a civil fine not more than \$500.00. In addition the court shall order the defendant to pay the cost of repairing any damage to the environment, a street, county road, or highway, or public property as a result of the violation.

**Section 503. ORV Fund.** The treasurer of the county shall deposit fines and damages collected for violations of this Ordinance into a fund to be designated as the “ORV fund”. The Allegan County Board of Commissioners shall appropriate revenue in the ORV fund consistent with the authorizing statute, MCL 324.81131, as amended.

## **ARTICLE VI – Severability and Immunity**

**Section 601. Severability.** If any part of this Ordinance shall be determined to be unenforceable by a court of competent jurisdiction, that part shall be deemed to be severed and removed from the body of this Ordinance, and the rest shall remain in full force and effect.

**Section 602. Immunity.** The road commission, the County Board of Commissioners, the County of Allegan and any township or municipality are all immune from tort liability for injuries or damages sustained by any person arising out of the operation or use of an ORV on maintained or unmaintained roads, streets, shoulders, and rights of way over which they have jurisdiction.

## **ARTICLE VII – Prior Ordinances and Effective Date**

**Section 701. Repealer Clause.** All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

**Section 702. Savings Clause.** This Ordinance shall in no manner affect pending litigation, either civil or criminal, founded or growing out of any ordinance, resolution, order or parts thereof, hereby repealed. This Ordinance shall in no manner affect any rights, claims, privileges, immunities or causes of action of the County, or other person, either criminal or civil, that may have already occurred, accrued or grown out of any ordinance, resolution, order or policy, or any part thereof, hereby repealed.

**Section 703. Effective Date.** This Ordinance shall be effective immediately after publication of notice of its adoption.

**AUTHORIZATION OF ORVs ON ROADS, STREETS AND HIGHWAYS**  
**PURSUANT TO MCL 324.81131**

**I. COUNTY ROADS**

**A. County Ordinance Authorizing ORVs on County Roads.** Subsection (2) provides that, 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.

**1. Notice.** 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.

**2. Southern Counties.** 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.

- a. "Southern county" means Muskegon, Kent, Ionia, Clinton, Shiawassee, Genesee, Lapeer or Macomb county, or a county lying south of the territory constituted by these counties.

**B. Township or Municipality Ordinance Authorizing ORVs on County Roads.** Subsection (3) provides that, subject to subsection (4), 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.

**1. Notice.** Not less than 28 days before a public hearing on the ordinance, the clerk of the township or municipality (city or village) shall send notice of the public hearing, by certified mail, to:

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

2. **Southern Counties.** If the township or municipality (city or village) 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.

a. “Southern county” means Muskegon, Kent, Ionia, Clinton, Shiawassee, Genesee, Lapeer or Macomb county, or a county lying south of the territory constituted by these counties.

C. **Closure of County Roads to ORVs Where Otherwise Authorized.** Subsection (4) provides that:

1. **Closure by Road Commission.** 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. 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).

2. **Closure by Township or Municipality.** 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).

3. **Closure by Village.** 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).

4. **Reason for Closure.** 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.

## II. **MUNICIPAL STREETS**

A. **Municipal Ordinance Authorizing ORVs on Streets.** Subsection (5) provides that 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.

## III. **STATE HIGHWAYS**

A. **Local Unit Request for State Authorization of Ordinance Authorizing ORVs on Highways.** Subsection (6) provides that the legislative body of a local unit of government (county, township, city or village) may request the state transportation department to authorize the local unit of government to adopt an ordinance authorizing the operation of ORVs on a highway, other than an interstate highway, located within the local unit of government.

1. **Content of Request.** The request shall describe how the authorization would meet the requirements of subsection (7).

2. **Comments on Request.** The state transportation department shall solicit comment on the request from the department, ORV clubs, and local units of government where the highway is located. The state transportation department shall consider comments received on the request before making a decision on the request.

3. **Granting of Request.** The state transportation department shall grant the request in whole or in part or deny the request not more than 60 days after the request is received.

4. **Effect of Granting of Request.** If the state transportation department grants a request in whole or in part under this subsection, the local unit of government that submitted the request may adopt an ordinance authorizing the operation of ORVs on the highway that was the subject of the request.

5. **County Request on Behalf of Local Units.** A county may submit a request for authorization under this subsection on behalf of 1 or more local units of government located within that county if requested by those local units of government.

**B. Requirements for State Authorization upon Local Unit Request.** Subsection (7) provides that the state transportation department shall authorize operation of an ORV under subsection (6) only on a highway that is not an interstate highway and that meets 1 or more of the following requirements:

1. Serves as a connector between ORV areas, routes, or trails designated by the department or an ORV user group.

2. Provides access to tourist attractions, food service establishments, fuel, motels, or other services.

3. Serves as a connector between 2 segments of the same county road that run along discontinuous town lines and on which ORV use is authorized pursuant to subsection (2) or (3).

4. Includes a bridge or culvert that allows an ORV to cross a river, stream, wetland, or gully that is not crossed by a street or county road on which ORVs are authorized to operate under subsection (2), (3), or (5).

**C. Closure of Highway to ORVs Where Otherwise Authorized.** Subsection (8) provides that the state transportation department may close a highway to the operation of ORVs otherwise authorized pursuant to subsection (6) after written notice to the clerk of each local unit of government where the highway is located and the senate and house committees with primary responsibility for natural resources, recreation, and transportation.

1. The notice shall be in writing and sent by first-class United States mail or personally delivered not less than 30 days before the adoption of the rule or order closing the highway.

2. The notice shall set forth specific reasons for the closure.

**Off-Road Vehicle (ORV) Question and Answer Document**  
**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)

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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)

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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.