

AGENDA REPORT

TO: Mayor & City Commission
FROM: Ken Hibl, City Manager
DATE: January 27, 2010
RE: Operation of Off-Road Vehicles (ORVs) in City Limits



For the Agenda of February 1, 2010

Background. The State of Michigan changed the law governing the operation of Off Road Recreation Vehicles (ORVs) in 2008, thereby allowing “up north” communities to regulate the operation of these vehicles within prescribed municipal jurisdictions with certain limitations. Clare County adopted an ordinance (*copy att'd*) regarding ORVs. The City Commission discussed the matter in 2008 and opted not to participate (*see copy of att'd letter*) or allow ORVs within its geographical boundaries.

Commissioner John Koch asked that this matter be placed before the City Commission for possible reconsideration. Consequently, I asked our City Attorney to provide guidance and recommendations related to the subject; Jaynie’s response is attached. Jaynie has also attached the ordinance adopted by the City of Sault St. Marie regarding ORV operations as an example. This municipality (the Soo) has essentially precluded the use of ORVs anywhere within the City except on private property or with special permission and for special events.

The Commission is asked to review and discuss this matter; determine whether it desires to reconsider its previous stance on the subject; and provide the City Staff general guidance regarding the parameters the Commission would like to establish for ORV operations in Clare. Based on this guidance, we will conduct any necessary studies and formulate recommendations, to include a proposed ordinance code.

Issues & Questions Specified. Should the City Commission reconsider its previous stance regarding the operation of ORVs in the City?

Alternatives.

1. Discuss the topic and outline general guidance which will be used to develop an ordinance allowing the operation of ORVs in Clare.
2. Direct that an ordinance be developed similar to that of Sault St. Marie.
3. Direct that no further action be taken regarding this matter.
4. Set aside decision regarding this matter to a later date.

Financial Impact. The fiscal impact is presently indeterminable but will ultimately be dependent on the alternative selected, which will in turn determine the costs, e.g., costs for a traffic consultant (if required), required public hearings and readings, publication of required notices, costs to develop an ordinance, etc..

Recommendation. I recommend that the City Commission discuss this matter and provide the City Staff guidance regarding desired actions desired.

Attachments.

1. Clare County Ordinance.
2. Attorney Opinion Letter.
3. ORV Ordinance of Sault St. Marie.

**STATE OF MICHIGAN
COUNTY OF CLARE
ORV ORDINANCE
ORDINANCE No. 22**

An ordinance adopted for the purpose of authorizing and regulating the operation of Off Road Vehicles (ORVs) on roads in County, for the purpose of providing penalties for the violation thereof, and for the distribution of public funds resulting from those penalties pursuant to 2008 PA 240, MCL 324.81131.

THE COUNTY OF CLARE ORDAINS:

Sec. 1 As used in this ordinance, the following definitions shall apply:

- a) "County" means the County of Clare
- b) "Driver license" means an operator's or chauffeur's license or permit issued to an individual by the secretary of state under chapter III of the Michigan vehicle code, 1949 PA 300, MCL 257.301 to 257.329, for that individual to operate a vehicle, whether or not conditions are attached to the license or permit.
- c) "Operate" means to ride in or on, and be in actual physical control of the operation of an ORV.
- d) "Operator" means a person who operates or is in actual physical control of the operation of an ORV.
- e) "ORV" means a motor driven off road recreation vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. ORV or vehicle includes, but is not limited to, a multi-track or multi wheel drive vehicle, an ATV, a motorcycle or related 2-wheel, 3-wheel, or 4-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation deriving motive power from a source other than muscle or wind.
- f) "Road" means a county primary road or county local road as described in section 5 of 1951 PA 51, MCL 247.655.
- g) "Road Commission" means the Board of County Road Commissioners for the County of Clare.
- h) "Safety certificate" means a certificate issued pursuant to 1994 PA 451 as amended, MCL 324. 81129, or a comparable ORV safety certificate issued under the authority of another state or a province of Canada."
- i) "Township" means an individual township within the County of Clare
- j) "Township Board" means a board of trustees of any township within the County of Clare.
- k) "Visual supervision" means the direct observation of the operator with the unaided or normally corrected eye, where the observer is able to come to the immediate aid of the operator.

Sec. 2 An OR V may be operated on the far right of the maintained portion of a road within the county with these exceptions:

- a) Surrey Road from U.S. 10 East to Cornwell Road.
- b) Maple Grove Road from Bringold Avenue East to M-115

Sec. 3 A township board of a township in the county may adopt an ordinance to close any roads within the boundaries of the township to the operation of ORVs permitted by the county. Beginning July 17,2009, the township board of a township in the county may adopt an ordinance authorizing the operation of OR Vs: on the maintained portion of 1 or more roads located within the township," pursuant to MCL 324.81131 (3).

Sec. 4 The county road commission may close no more than 30% of the total linear miles of roads in the county to protect the environment or if the operation of OR Vs pose a particular and demonstrable threat to public safety. The road commission may not close a municipal street to ORVs opened under Section 5 of this ordinance.

Sec. 5 An ORV may not be operated on the road surface, roadway, shoulder or right-of-way of any state or federal highway in the county.

Sec. 6 Except as set forth herein or otherwise provided by law, an OR V meeting all of the following conditions may be operated on a road or street in the county:

- a) at a speed of no more than 25 miles per hour or a lower posted ORV speed limit.
- b) by a person not less than 12 years of age.
- c) with the flow of traffic.
- d) in a manner which does not interfere with traffic on the road or street.
- e) traveling single file except when overtaking and passing another ORV.
- f) when visibility is not substantially reduced due to weather conditions unless displaying a lighted headlight and lighted taillight.
- g) 1/2 hour before sunrise until 1/2 after sunset unless displaying a lighted headlight and lighted taillight.
- h) while displaying a lighted headlight and lighted taillight at all hours beginning January 1,2010.
- i) while the operator and each passenger is wearing a crash helmet and protective eyewear approved by the United States department of transportation unless the vehicle is equipped with a roof that meets or exceeds standards for a crash helmet and the operator and each passenger is wearing a properly adjusted and fastened seat belt.
- j) with a throttle so designed that when the pressure used to advance the throttle is removed, the engine speed will immediately and automatically return to idle.
- k) while the ORV is equipped with a spark arrester type United States forest service approved muffler in good working order and in constant operation.
- l) pursuant to noise emission standards defined by law.

Sec. 7 A child less than 16 years of age shall not operate an ORV on a road in the county unless the child is under the direct visual supervision of an adult and the child has in his or her immediate

possession a Michigan issued ORV safety certificate or a comparable ORV safety certificate issued under the authority of another state or a province of Canada.

Sec. 8 Unless a person possesses a valid driver's license, a person shall not operate an ORV on a road or street in the county if the ORV is registered as a motor vehicle and is either more than 60 inches wide or has three wheels.

Sec. 9 Any person who violates this ordinance is guilty of a municipal civil infraction and may be ordered to pay a civil fine of not more than \$500.00.

Sec. 10 A 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 above and beyond the penalties paid for civil fines.

Sec. 11 The County Treasurer shall deposit all fines and damages collected under this ordinance into a fund to be designated as the ORV Fund. The County of Board of Commissioners shall appropriate revenue in the ORV Fund as follows:

a) Fifty percent the County Road Commission for repairing damage to roads and the environment that may have been caused by ORVs, and for posting sign indicating ORV speed limits, or indicating whether roads are open or closed to the operation of ORVs.

b) Fifty percent to the County Sheriff for ORV enforcement and training.

Sec. 12 This ordinance shall become effective on the date upon which notice of its adoption is published in a newspaper of general circulation in Clare County

This Ordinance is adopted by action of the County Board of Commissioners
this 15th day of October, 2008

Commissioners voting "Aye": 7

Commissioners voting "Nay": 0

Commissioners Absent: 0

Karen Lipovsky, Chair, Board of Commissioners

Certification

_____, I, Carol A. McAulay, Clerk of the County of Clare, do hereby certify that this is a true and correct copy of the Ordinance duly adopted by the Clare County Board of Commissioners on the 15th day of October, 2008.

Carol A. McAulay, County Clerk



CITY OF CLARE

202 WEST FIFTH STREET • CLARE, MICHIGAN 48617-1490
989/386-7541 • FAX 989/386-4508

AN EQUAL OPPORTUNITY EMPLOYER

July 29, 2008

Commissioner Karen Lipovsky
Chairperson, Clare County Board of Commissioners
225 West Main Street
P.O. Box 438
Harrison, Michigan 48625

Dear Commissioner Lipovsky,

Thank you for providing us an opportunity to respond to the proposal to open roads within the City of Clare for Off-Road Recreational Vehicle (ORV) use.

We have reviewed the proposal and believe it may have merit within certain areas within Clare County. But we do not recommend that any roads within the geographical boundaries of the City of Clare be included in this proposal due to potential public safety issues and concerns.

Sincerely yours,



Ken Hibl
City Manager

CITY HALL

PH 989/386-7541
FX 989/386-4508
WWW.CITYOFCLARE.ORG

DEPARTMENT OF PUBLIC WORKS

PH 989/386-2182
FX 989/386-3445

W/WWT PLANT

PH 989/386-2321
FX 989/386-2387

POLICE DEPT.

NON-EMERGENCY
PH 989/386-2121
FX 989/386-0440

FIRE DEPT. NON-EMERGENCY

PH 989/386-2151
FX 989/386-3020

AIRPORT

PH 989/386-0445
FX 989/386-4508

MAIN STREET MANAGER

PH 989/386-9190
FX 989/386-9190

JAYNIE SMITH HOERAUF, P.C.
ATTORNEY AT LAW

601 Beech Street / P.O. Box 67 / Clare, Michigan 48617
Phone (989) 386-3434 / Fax (989) 386-3636
E-mail / hoerauf@sbcglobal.net

January 25, 2010

Mr. Ken Hibl
City of Clare
202 West Fifth
Clare MI 48617

RE: Operating ORVs

Dear Ken:

Per your request I have looked at the question of operating ORVs on city streets. In 2008, the legislature made substantial changes to local regulation of ORVs, which took effect in 2009. Under that scheme, the City of Clare (because it is in an "eligible county" – meaning that we are "up north") may adopt an ordinance that will permit the operation of ORVs on city streets. Here is the scope of the City's authority:

- The City's action must be by ordinance. A resolution or other simpler, more flexible action will not suffice.
- The ordinance may authorize the operation of ORVs on the maintained portion of streets within the City, but need not authorize operation on all streets.
- If the ordinance is adopted, ORVs may be operated as follows:
 - With the flow of traffic
 - On the far right of the maintained portion of the road or street
 - Not more than 25 mph or a lower posted ORV speed limit
 - And not so as to interfere with traffic on the road or street

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- A driver's license is required if the ORV is registered as a motor vehicle and is more than 60 inches wide or a three wheeler
 - ORVs must travel single file unless overtaking and passing another ORV
 - If operated when visibility is reduced by weather, a headlight and taillight must be on
 - No operation by a person under 18 years old unless the person has a valid driver's license or is under the direct supervision of a parent or guardian and has a valid ORV safety education certificate in his or her possession.
 - No operation by any person 12 and under
 - If involved in a collision with a motor vehicle, the ORV driver is essentially presumed to be at fault
- Violations of the ordinance are municipal civil infractions carrying a \$500 fine plus restitution for damage to the environment, road, or public property.
- Governmental immunity (the normal type, excluding gross negligence) is extended to the City for claims for injury related to operation of ORVs

In the absence of an ordinance, and outside the parameters of a valid ordinance, ORVs that are not registered as motor vehicles (most of them) cannot be operated on a public highway, street or right of way except:

- To cross a public highway at right angles to get from one legal operation area to another, if it can be done safely. (Normal traffic regulations involving stopping and yielding before the crossing applies.)
- May be operated on a public street for a special event of limited duration (parades and such) by prearrangement and with a permit.
- In connection with farm operations.

Mr. Ken Hibl

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I would think that, if the City Commission is considering whether to permit operation of ORVs on City streets, it would solicit the following information:

- A traffic study that would indicate areas where operators would be safe or unsafe.
- Input on the impact on the City's investment in streets and curbs.
- The experience with ORV operation in other jurisdictions with similar traffic volume.

I will include with this missive, some additional resources. As always, I remain at your service.

Sincerely,

JAYNIE SMITH HOERAUF, P.C.

BY _____
JAYNIE SMITH HOERAUF

JSH/ss
Attachments

ARTICLE VII. OFF-ROAD VEHICLES

Sec. 24-157. Definitions.

The definitions herein shall be the same as those defined in Act No. 319 of the Public Acts of 1975, as amended, being Section 257.1601 et seq. of the Michigan Compiled Laws, the definitions used therein shall be deemed to apply to the words and phrases used in this chapter. These definitions are as follows:

- (a) *City*: The City of Sault Ste. Marie.
 - (b) *Dealer*: A person engaged in the sale, lease or rental of an ORV as a regular business.
 - (c) *Decal*: A pressure sensitive adhesive backed label, of size and color to be determined by the department of state, to indicate the certificate of registration number awarded the ORV and is valid until the expiration date shown thereon.
 - (d) *Department*: Department of state.
 - (e) *Forest road*: A hard-surfaced road, gravel or dirt road, fire lane, abandoned railroad right-of-way, logging road, or a way capable of travel by a four-wheel vehicle except on interstate, state, county or city highway.
 - (f) *Highway*: The entire width between the boundary lines of a way or alley publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.
 - (g) *Operate*: To ride in or on and be in actual physical control of the operation of an ORV.
 - (h) *Operator*: A person who operates or is in actual physical control of the operation of an ORV.
 - (i) *ORV* or *Vehicle*: 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. It includes, but is not limited to, a multi-track or multi-wheel drive or low pressure tire vehicle, a motorcycle or related two-wheel or three-wheel 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. 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 construction or logging vehicle used in the performance of its common function or a registered aircraft.
 - (j) *Owner*: Any of the following:
 - (1) A vendee or lessee of an ORV which is the subject of an agreement for the purpose of conditional sale or lease thereof;
 - (2) A person renting an ORV or having the exclusive use of an ORV for more than thirty (30) days;
 - (3) A person who holds legal ownership of the vehicle.
 - (k) *Roadway*: That portion of a highway unpaved, designated or ordinarily used for vehicular travel including city alleys.
 - (l) *Public property*: Property owned, leased or otherwise controlled by the city, including parks, parking lots and recreational areas.
 - (m) *Private property open to the public*: Property which is privately owned but is open to public access.
- (Ord. No. 194, 8-7-78)

Sec. 24-158. Conditions under which operation allowed--Generally.

Off-road vehicles may be operated within the city limits as follows:

- (a) An ORV operated exclusively on land owned by or under the control of the **vehicle** owner;
- (b) An ORV which is operated exclusively in a special event of limited duration which is conducted according to a pre-arranged schedule under a permit from the city;
- (c) An ORV which is operated exclusively in an approved DNR safety and training program;
- (d) An ORV operated on approved DNR trails in the city provided the ORV operator and **vehicle** are being operated in full compliance of state and local ORV laws;
- (e) An ORV operated on city property so designated for ORV use by the city commission.

(Ord. No. 194, 8-7-78)

Sec. 24-159. Same--Additional conditions and prohibitions.

No **off-road vehicles** shall be operated within the city limits of the City of Sault Ste. Marie except as follows:

- (a) A person shall not operate an ORV in the city limits of Sault Ste. Marie except as provided in section 24-158.
- (b) No person shall operate an ORV during the hours of one-half hour after sunset to one-half before sunrise without displaying a lighted headlight and lighted taillight.
- (c) No person shall operate an ORV on any city alley, city park or city parking lot.
- (d) No person shall operate an ORV on any city street or sidewalk.
- (e) No person shall operate an ORV on property owned or leased by the Sault Area Public Schools.
- (f) No person shall operate an ORV on private land open to public access.
- (g) The owner of an ORV shall not allow the ORV to be operated in the city except as provided.
- (h) The operation of an ORV on private land under the control of the ORV owner in the city shall not be allowed if the ORV is not equipped with a spark arrester type muffler in good working order and in constant operation. Maximum permissive noise levels are as follows: 90db(A) for ORV made before Jan. 1, 1973; 88db(A) for ORV made after Jan. 1, 1973; and 86db(A) for ORV made after Jan. 1, 1975. Noise levels are for full throttle operation at fifty (50) feet at right angles.
- (i) ORV operators ages twelve (12) through sixteen (16) must possess valid DNR certificates and decals and produce same at the request of a law enforcement officer.
- (j) No ORV may be operated on public property or private property open to the public at a speed greater than is reasonable and proper having due regard for existing conditions.

(Ord. No. 194, 8-7-78)

Cross references: Parking lots, § 24-63 et seq.

Sec. 24-160. Reckless operation, operation in cemeteries prohibited.

- (a) An ORV shall not be operated in a reckless, careless or negligent manner or at a speed so as to be likely to endanger persons or property.
- (b) **Off-road vehicles** shall not be operated in cemeteries, except by cemetery officials, and no person under the age of twelve (12) years shall operate an **off-road vehicle** in the City of Sault Ste. Marie, Michigan, unless the operator is accompanied by an adult.

(Ord. No. 194, 8-7-78)

Sec. 24-161. Responsibility of owner for violation.

In a proceeding for a violation of this article involving prohibited operation or conduct, the decal number displayed on the ORV constitutes prima facie evidence that the owner of the ORV was the person operating the ORV at the time of this offense.

(Ord. No. 194, 8-7-78)

Sec. 24-162. Penalty.

Any person violating any of the provisions of this article shall be subject to those penalties as set forth in section 1-6 of the city Code.

(Ord. No. 194, 8-7-78)

Sec. 24-163. Owner not to allow unlawful operation.

No person shall knowingly authorize or permit an off-road vehicle owned by him or under his control to be driven by any person in violation of the provisions of this article.

(Ord. No. 194, 8-7-78)

Sec. 24-164. Operators to obey uniformed police officers.

The operator of an ORV who is given by hand, voice, emergency light or siren a visual or audible signal by a uniformed police officer, acting in the lawful performance of his duty, directing the operator to bring his/her ORV to a stop, shall do so. An operator shall not willfully fail to obey the direction by increasing his speed or otherwise attempting to flee or elude the officer.

(Ord. No. 194, 8-7-78)

Sec. 24-165. Operation while under influence of intoxicating drugs prohibited.

No person shall operate an ORV in the city or any approved ORV area while under the influence of intoxicating liquor, narcotic drug, barbitol or other prohibited controlled substance.

(Ord. No. 194, 8-7-78)

Sec. 24-166. Operation upon the property of another.

No person shall operate an ORV upon the property of another without the permission of the owner. The operator of an ORV is liable for damage to private property including but not limited to damage to trees, shrubs, injury to living creatures or erosive or other ecological damage to the private or public property. Failure to post or otherwise fence any public or private property or to personally communicate against trespass shall not imply consent for ORV use.

(Ord. No. 194, 8-7-78)

Sec. 24-167. Operation near dwellings.

No person shall operate an ORV within one hundred (100) feet of any dwelling or house in the City of Sault Ste. Marie.

(Ord. No. 194, 8-7-78)