

ORDINANCE NO. 2021-2

CHARTER TOWNSHIP OF FILER  
MANISTEE COUNTY, MICHIGAN

AN ORDINANCE TO AMEND THE CHARTER TOWNSHIP OF FILER CODE OF ORDINANCES BY ADDING NEW CHAPTER 32, TO AUTHORIZE AND REGULATE THE OPERATION OF OFF-ROAD VEHICLES (ORVs) ON THE ROADS IN THE CHARTER TOWNSHIP OF FILER, TO PROVIDE PENALTIES FOR THE VIOLATION THEREOF, TO PROVIDE FOR APPROPRIATION OF FINES AND DAMAGES RESULTING FROM THE OPERATION OF ORVs, AND TO REPEAL ALL ORDINANCES IN CONFLICT HEREWITH

THE CHARTER TOWNSHIP OF FILER ORDAINS:

Section 1. Amendment to Code of Ordinances. The Charter Township of Filer Code of Ordinances is hereby amended by the addition of a new Chapter 32, which reads, in its entirety, as follows:

**CHAPTER 32 – OFF-ROAD VEHICLE OPERATION ON ROADS**

**32.01 Definitions**

As used in this ordinance, the following terms shall have the meanings hereinafter stated:

*County* means the County of Manistee.

*County Road* means a county primary road or county local road as described in Section 5 of 1951 PA 51, as amended, MCL 247.655, or a segment thereof.

*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.

*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.

*Far Right of the Maintained Portion* means the shoulder of a 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 a right-of-way when the roadway is not improved by pavement, tar and chips, concrete, or other similar materials.

*Forest Road* means a hard surfaced road, gravel or dirt road, or other route capable of travel by a 2-wheel drive, 4-wheel conventional vehicle designed for road use. Forest road does not include a county road or highway.

*Highway* means a state trunk line highway or a segment of a state trunk line highway.

*Maintained portion* means the roadway and any shoulder of a county road or highway.

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

*Operator* means an individual who operates or is in actual physical control of the operation of an ORV.

*ORV* or, unless the context implies a different meaning, *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. ORV or vehicle includes, but is not limited to, a multi-track or multi-wheel drive vehicle, a motorcycle or related 2-wheel, 3-wheel, or 4-wheel vehicle, an amphibious machine, a golf cart, a ground effect air cushion vehicle, an ATV as defined in Section 81101 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.81101, or other means of transportation deriving motor 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 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.

*ORV Safety Certificate* means a certificate issued under Section 81130 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.81130, or a comparable ORV safety certificate issued under the authority of another state or a province of Canada.

*Owner* means any of the following:

- i. A vendee or lessee of an ORV that is the subject of an agreement for the conditional sale or lease of the ORV, with the right of purchase upon performance of the conditions stated in the agreement, and with an immediate right of possession vested in the conditional vendee or lessee.
- ii. A person renting an ORV, or having the exclusive use of an ORV, for more than 30 days.
- iii. A person who holds legal ownership of an ORV.

*Road Commission* means the Board of County Road Commissioners for the County of Manistee.

*Roadway* means the portion of a county road or highway improved, designed, or ordinarily used for travel by vehicles registered under the Michigan Vehicle Code, 1949 PA 300, MCL 257.1 to 257.923. Roadway does not include the shoulder.

*Shoulder* means that portion of a county road or highway contiguous to the roadway and generally extending the contour of the roadway, not designed for vehicular travel but maintained for the temporary accommodation of disabled or stopped motor vehicles otherwise permitted on the roadway.

*Township* means the Charter Township of Filer, Michigan.

*Unmaintained Portion* means the portion of a county road or highway that is not the maintained portion.

### **32.02 Operation of ORVs on County Roads**

Subject to Section 5 of this ordinance, Part 811 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.81101 to 324.81151, and the rules and regulations administered by the Michigan Department of Natural Resources, an individual may operate an ORV with the flow of traffic on the far right of the maintained portion of any county road located within the Township, except for the following:

- a. Maple Road.
- b. Merkey Road, 21st Street, and Filer City Road east of US-31.
- c. South County Line Road between Maple Road and US-31.
- d. Stronach Road.

### **32.03 Operation of ORVs on State or Federal Highway Prohibited; Exception**

Subject to State or Federal law, rule, or regulation, an individual shall not operate an ORV on any roadway, shoulder, or right-of-way of any State or Federal highway, including, but not limited to, US-31, except that an individual may operate an ORV to cross a highway at a right angle if the operation can be done safely. The operator shall bring the ORV to a complete stop before proceeding to cross a State or Federal highway, and shall yield the right-of-way to any approaching traffic.

### **32.04 Operation of ORVs on Federally Managed Forest Roads Prohibited.**

Unless otherwise provided by Federal law, rule, or regulation, an individual shall not operate an ORV on any forest road under the management of the United States Forest Service.

### **32.05 Operation Conditions and Regulations**

Except as set forth herein or otherwise provided by law, the following requirements apply to the operation of an ORV on a county road within the Township under this ordinance:

- a. Except for when crossing at a right angle, an ORV shall travel only on the far right of the maintained portion of the road, and in the direction of the flow of traffic.
- b. A person shall not operate an ORV at a speed greater than 25 miles per hour, or a lower posted ORV speed limit.
- c. Notwithstanding subsection (b), 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 road conditions.
- d. A person shall not operate an ORV in a manner that interferes with traffic.
- e. ORVs shall travel in single file, except when passing or being passed by another ORV.
- f. ORVs shall display a lighted headlight and taillight at all times while operating.
- g. A person shall not operate an ORV during the hours of 1/2 hour after sunset and 1/2 hour before sunrise without a working brake light that is brighter than the taillight.
- h. Unless a person possesses 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, 1949 PA 300, MCL 257.201 to 257.259, and the ORV is either more than 65 inches wide or has three wheels.
- i. A person under the age of 12 shall not operate an ORV on any road.
- j. A person under the age of 18 shall not operate an ORV on a county 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 the State of Michigan, another state, or a province of Canada. A person 18 years of age or older shall not operate an ORV on a road in the Township without a valid driver's license.
- k. A child less than 16 years of age shall not operate a 3-wheeled ORV.
- l. All operators must, upon demand by a law enforcement officer, present either an ORV safety certificate or driver's license.

- m. An owner or person in control or charge of an ORV shall not allow the ORV to be operated by an individual who is not competent to operate a vehicle because of a mental or physical disability.
- n. 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 subsection 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.
- o. 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.
- p. No person who is an operator or passenger of an ORV shall transport or possess alcoholic liquor in a container that is open or uncapped, or upon which the seal is broken.
- q. An ORV shall be equipped with a spark arrester type United States Forest Service approved muffler in good working order and in constant operation.
- r. An ORV shall have 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.
- s. 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, 1994 PA 451, MCL 324.81101 to 324.81151.
- t. An ORV shall not be operated upon any portion of a state highway unless specifically authorized by the Michigan Department of Transportation pursuant to MCL 324.81131(6) and (7).
- u. An ORV shall not be operated upon any portion of an interstate highway.

### **32.06 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 or road, of an ORV.

### **32.07 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 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.

### **32.08 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.

### **32.09 Agricultural Use**

Notwithstanding any provision to the contrary in this ordinance, a farmer, employee of a farmer, or family member of a farmer who is at least 16 years of age may operate an ORV on the far right of the maintained portion of a road or highway while traveling to or from the farmer's residence, work location, or field during the course of farming operations. An ORV shall not be operated pursuant to this subsection during the period of 30 minutes before sunset to 30 minutes after sunrise, or when visibility is substantially reduced due to weather conditions. An operator of an ORV under this subsection shall have attached to the ORV a flag made of reflective material. The flag shall extend not less than 8 feet from the surface of the ground, road, or highway beneath the ORV, and not less than 4 feet above the top of the ORV. The flag shall be not less than 12 inches high by 18 inches long and not measure less than 100 square inches.

### **32.10 Enforcement and Penalties**

- a. A violation of this ordinance is a municipal civil infraction, and a person responsible for a municipal civil infraction under this ordinance shall pay a fine of not more than \$500.00 plus costs and actual reasonable attorney fees incurred by the Township or County 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 agents of the Manistee County Sheriff's Office 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 in accordance with the applicable provisions of Section 8379 of the Revised Judicature Act, 1961 PA 236, MCL 600.8379, into a fund designated as the "ORV Fund."
- d. The Township Board of Trustees shall appropriate revenue in the ORV Fund as follows:

- i. Fifty percent to the Manistee 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 Manistee County Sheriff for ORV enforcement and training.

Section 2. Severability. The provisions of this ordinance are hereby declared to be severable. If any clause, sentence, word, section, or provision is hereafter declared void or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of this ordinance, which shall continue in full force and effect.

Section 3. Repealer. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Section 4. Effective Date. This ordinance shall be effective on the day following its publication as required by law.

THOSE VOTING IN FAVOR: Walker, Chycinski, Kolanowski, Kruse, Stege, Krus

THOSE VOTING AGAINST: Ball

THOSE ABSENT OR ABSTAINING: None

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Shirley Ball  
Township Clerk

#### CERTIFICATION

I, Shirley Ball, Clerk of the Charter Township of Filer, Manistee County, Michigan, do hereby CERTIFY that the foregoing is a true and correct copy of the Ordinance adopted by the Township Board at a regular meeting held on the 6<sup>th</sup> day of April, 2021.

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Shirley Ball  
Township Clerk