

**STATE OF MICHIGAN  
COUNTY OF BENZIE  
THIRD AMENDED ORV ORDINANCE  
ORDINANCE NO. 2012-002**

An ordinance to amend Ordinance No. 2009-01 to permit the operation of an Off Road Vehicle (ORV) in compliance with this ordinance on roads which are closed according to the master map established by the County under certain conditions; to repeal said Ordinance No. 2009-01; and to restate the regulations regarding the operation of ORVs on road in Benzie County, for the purpose of providing penalties for the violation thereof, and for the distribution of public funds resulting from those penalties for the violation thereof, and for the distribution of public funds resulting from those penalties pursuant to 2008 PA 240, MCL 324.81 131.

**THE COUNTY OF BENZIE ORDAINS:**

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

- a) “County” means the County of Benzie.
- 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 257.325, 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, or ORV, 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 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 or 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.
- 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 Benzie.

- 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 with the County of Benzie.
- j) "Township Board" means a board of trustees of any township within the County of Benzie.
- k) "Direct Supervision" means the direct visual 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.

**Section 2.** An ORV may be operated on the far right of the maintained portion of a road within the county and the gravel portion of paved roads within the County when available except for the following:

- a) As designated by the master map referenced in Section 11, below, with special attention to the following closed roads: Thompsonville Highway (669), all county roads bordering Leelanau County; parts of Homestead Road (608), Pioneer Road (677), Cinder Road (608) and Grass Lake Damm Road, not of the river in Colfax Township. Thompsonville Highway (669) is open between Stanley Road and US-31 also between N. Carmean Road to Oakley Road and the crossing at Fewins Road and 669.
- b) Not after December 1 and not before March 01, of each year.
- c) Any roadway, shoulder or right-of-way of any State or Federal highway including but not limited to M-168, M-22, US-31 and M-115.
- d) Per this ordinance and the Betsie Valley Trail regulations ORV, use is strictly prohibited on the Betsie Valley Trail at any time.
- e) Residents, as established by the address on their current drivers license, or their parents' drivers license if they do not have a drivers license, may operate an ORV in compliance with this ordinance on roads which are closed according to the master map referenced in Section 11, below, for the purpose of accessing an open road, only from the residence to and from the closest open road which cannot be more than ½ mile from said residence. This subsection does not apply to roads exempt from opening by state statute, roads in townships which have elected to opt out of this ordinance, road closed by action of the Benzie County Road Commission and roads bordering counties which have not been opened by that county.

**Section 3.** The Benzie County Board of Commissioners will amend this ordinance to allow townships to opt in or out as requested by the majority vote of a township board. If a township board by a majority vote recommends closing any of its roads due to safety or environmental issues the Benzie County Board of Commissioners will consider an amendment to this ordinance. A township board of any township in the county may adopt their own 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 any township in the county may adopt an ordinance authorizing the

operation of ORVs on the maintained portion of 1 or more roads located within their township, pursuant to MCL 324.81131(3).

**Section 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 ORVs pose a particular and demonstrable threat to public safety. The road commission may not close any municipal street to ORVs opened under Section 2C of this ordinance.

**Section 5.** Except as set forth herein or otherwise provided by law, an ORV 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 taillights.
- g) Operation hours: one-half hour before sunrise until 11:00 p.m.
- h) While displaying a lighted headlight and lighted taillight at all operational 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.

**Section 6.** A person less than 18 years of age shall not operate an ORV on a road in the county unless the person is in possession of a valid drivers license or under the direct supervision of a parent or legal guardian and the person has in his or her possession an ORV safety certificate or a comparable ORV safety certificate issued under the authority of another state or a province of Canada. A person 18 years of age or older shall not operate an ORV on a road or street in Benzie County without a valid drivers license.

**Section 7.** In a court action in this state, if competent evidence demonstrates that a vehicle that is permitted to operate on a road or street pursuant to state law was in a collision with an ORV required to be operated on the far right of the maintained portion of the road or street pursuant to this ordinance, the operator of the ORV shall be considered prima facie negligent.

**Section 8.** Any person who violates this ordinance is guilty of a municipal infraction and may be ordered to pay a civil fine of not more than \$500.00.

**Section 9.** A court shall 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.

**Section 10.** 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 Board of Commissioners shall appropriate revenue in the ORV Fund as follows:

- a) Fifty percent (50%) to the Benzie County Board Commission or, in the case of a city or village, to the department responsible for street maintenance in the city or village, 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.
- b) Fifty percent (50%) to the Benzie County Sheriff for ORV enforcement and training.

**Section 11.** The County shall maintain a master map of all roads under jurisdiction of the Road Commission upon which shall be indicated those roads and parts of sections thereof upon which the operation of ORVs is permitted and prohibited pursuant to this ordinance. The county shall make such a master map available for interested groups or organizations to make copies for distribution to the general public, but shall have no obligation to make, or to assume any expense associated with the making of such copies.

- a) The county shall update the master map once annually, between January 1 and February 28 of each year, to incorporate any changes to the designation of any road, or parts or sections thereof, upon why the operation of ORV is permitted or prohibited pursuant to this ordinance.
- b) It shall be the responsibility of the respective Boards, Commissioners, or Councils within Benzie County to advise in writing to the Benzie County Board of Commissioners, prior to January 1 of each year, of any changes to be incorporated in to the master map for the year.

**Section 12.** Agricultural: Agricultural use of an ORV falls under State regulation MCL 324.81122.

**Section 13.** Ordinance No. 2009-01, 2010-001 and 2011-001 is hereby repealed and replaced by this ordinance. Any complaint and/or prosecution commenced under Ordinance No. 2009-01, 2010-001 and 2011-001 shall continue in effect and such prosecution may be continued under this Ordinance.

This Ordinance becomes effective: April 20, 2012.

Ayes: Damm, Halliday, Kelley, Roper, Stobie, Tanner and Walterhouse

Nays: None

Absent: None

Dated: March 20, 2012

/s/ Donald R. Tanner  
Donald R. Tanner, Chairman

I, Dawn Olney, Benzie County Clerk and Clerk to the Board of Commissioners, do hereby certify the foregoing ORV Ordinance was duly adopted by the Benzie County Board of Commissioners at a regular meeting of said board at which a quorum was present on the 20<sup>th</sup> day of March, 2012.

/s/ Dawn Olney  
Dawn Olney, Clerk  
Benzie County Board of Commissioners