

ORDINANCE # 789

AN ORDINANCE ADOPTED FOR THE PURPOSE OF AUTHORIZING AND REGULATING THE OPERATION OF OFF ROAD VEHICLES (ORVs) ON CERTAIN STREETS WITHIN THE CITY OF ALMA, 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 City of Alma Ordains:

Chapter 54 of the Ordinances of the City of Alma is amended by the addition of Article VII, to read as follows:

Article VII. Off Road Vehicles

Sec. 54-224: As used in this ordinance, the following definitions shall apply:

- a) "City" means City of Alma.
- b) "Driver's 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. *[MCL 324.81101 (m)]*
- d) "Operator" means a person who operates or is in actual physical control of the operation of an ORV. *[MCL 324.81101 (n)]*
- e) "ORV" or "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 golf cart, a multi-track or multi-wheel drive vehicle, an ATV, a motorcycle or related 2-wheel, 3-wheel, 4-wheel, or 6-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 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. *[MCL 324.81101 (o)]*
- f) "Commission" means the city commission for the City of Alma.
- g) "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.
- h) "Street" means a City Major Street, road or alley or city local Street, alley or road as described in Section 9 of 1951 PA 51, MCL 247.659.
- i) "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. *[MCL 324.81101 (w)]*
- j) "Official state personal identification card" means the official identification card issued by the Michigan Secretary of State under Act 222 of the Public Acts of 1972, as amended, or issued under a comparable statute by any state, territory, or possession of the United States, Indian country as defined in 18 USC 1151, the District of Columbia, the Dominion of Canada, or any province or territory of the Dominion of Canada to a person who is not legally blind and who has not currently had his or her driver's license suspended, revoked, or restricted.

Sec. 54-225:

The city commission, by resolution and at its discretion, may close any city street to protect the environment, or if the operation of ORVs pose a particular and demonstrable threat to public safety.

Sec. 54-226:

- a) An ORV shall not be operated on any state trunkline or business loop (US-127) right-of-way. *[MCL 324.81131 (15) (d); (e)]* The operator of a vehicle may cross a public highway or designated street (see 5a below), other than a limited access highway, at right angles, for the purpose of getting from one area to another, if the operation can be done in safety. The operator shall bring the vehicle to a complete stop before proceeding across a public highway, and shall yield the right-of-way to oncoming traffic. *[MCL 324.81122- (a)]*
- b) An ORV shall not be operated on the Fred Meijer Heartland Trail.
- c) An ORV shall not be operated on the Alma River Walk.
- d) An ORV shall not be operated in any public park; provided, however, that nothing contained herein shall prohibit the parking of an ORV in any designated parking area within or adjacent to any public park.
- e) An ORV shall not be operated in Riverside Cemetery.

Sec. 54-227:

An ORV cannot be operated anywhere while transporting a passenger without a seat as designed by the manufacturer.

Sec. 54-228:

Except as set forth herein or otherwise provided by law, an ORV, meeting all of the following conditions, may be operated on a Street in the city May 1 - October 31 from 6:00 a.m. - 10:00 p.m., and November 1 - April 30 from 8:00 a.m. - 5:00 p.m.:

- a) On the far right of the maintained portion of a Street within the city *[MCL 324.81131 (6)], [324.81133 (l)]*
- b) At a reasonable and proper speed of no more than 25 miles per hour or a lower posted speed limit. *[MCL 324.81131 (6)], [MCL 324.81133 (a)]*
- c) By a person not less than 14 years of age.
- d) With the flow of traffic. *[MCL 324.81131 (6)]*
- e) In a manner which does not interfere with traffic on the road or Street. *[MCL 324.81131 (6)]*
- f) While traveling single file except when overtaking or passing another ORV. *[MCL 324.81131 (6)]*
- g) While displaying a lighted headlight and a lighted taillight at all times. *[MCL 324.81131 (8)]*
- h) When the person and any passenger in or on the vehicle is wearing on his or her head, a crash helmet and protective eyewear approved by the United States Department of Transportation. This subdivision does not apply if the vehicle is equipped with a windshield and a roof or roll bar that meets or exceeds standards for a crash helmet, and the operator and each passenger is wearing a properly adjusted and fastened safety belt. *[MCL 324.81133 (b)]*
- i) 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. *[MCL 324.81133 (d)]*
- j) While the ORV is equipped with a spark arrester type United States Forest Service approved muffler in good working order and in constant operation. *[MCL 324.81133 (g)]*
- k) When 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, **and** a brake light brighter than a tail light, visible when the brake is activated to the rear of the vehicle. *[MCL 324.81133 (g)]*
- l) Pursuant to noise and emission standards defined by law. *[MCL 324.81133 (g)]*
- m) While displaying proper and current registration (ORV license/sticker). *[324.81122 (1a)]*

Sec. 54-229:

In a court action in this state where competent evidence demonstrates that a vehicle is permitted to be operated on a roadway pursuant to the Michigan Vehicle Code, 1949 PA 300, MCL 257.1 to 257.923, collided with an ORV on a roadway, the driver of the ORV involved in the collision shall be considered prima facie negligent. *[MCL 324.81131 (12)]*

Sec. 54-230:

A person less than 18 years of age shall not operate an ORV on a Street in the City unless the person is in immediate possession of a valid driver license or under the direct supervision of a parent or guardian and the person has in his or her immediate possession a Michigan issued ORVS Safety Certificate or a comparable ORV Safety Certificate issued under the authority of another state or a province of Canada. *[MCL 324.81131(9)]*

Sec. 54-231:

An ORV operator, 18 years and older, shall have in their immediate possession a valid drivers license or a valid official state personal identification card.

Sec. 54-232:

Unless a person possesses a valid drivers license, a person shall not operate an ORV on a Street in the City if the ORV is registered as a motor vehicle and is either more than 60 inches wide or has three wheels. *[MCL 324.81131 (6)]*

Sec. 54-233:

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. *[MCL 324.81131 (6)]*

Sec. 54-234:

A court may order a person who causes damages 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. *[MCL 324.81131 (13)]*

Sec. 54-235:

The City Treasurer shall deposit all fines and damages collected under this ordinance into a fund to be designated as the ORV Fund. The City of Alma city commission shall appropriate revenue in the ORV Fund as follows: *[MCL 324.81131 (18)]*

- a) Fifty percent to the City DPW for repairing damage to roads and 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 to the City Police Department for ORV enforcement and training.

Sec. 54-236:

This Ordinance shall in no manner affect pending litigation, either civil or criminal, founded or growing out of and Ordinance, Resolution, Order or parts thereof, hereby repealed, and this Ordinance shall in no manner affect any rights, claims, privileges, immunities or causes of action of the city, or other person, either civil or criminal, that may have already occurred, accrued or grown out of any Ordinance, Resolution, Order or policy, or any part thereof, hereby repealed.

Sec. 2. Separability. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Sec. 3. Ordinances Repealed. All ordinances and/or parts of ordinances inconsistent with this ordinance are hereby repealed.

Sec.4. Effective Date. This ordinance shall take effect and be in force 30 days from and after its enactment as provided by the City Charter.

Passed and approved by the City commission of the City of Alma, Michigan, in regular session, held September 13, 2016.

We, the undersigned, Mayor and Clerk of the City of Alma, Michigan, do hereby certify that the above and foregoing Ordinance, known as Ordinance No. 789 of the City of Alma, Michigan, was introduced at a regular meeting of the City commission, held on August 9, 2016 and was thereafter passed as a regular meeting on September 13, 2016, at least two weeks elapsing between the introduction and the enactment.

Dated at Alma, Michigan, this 13th day of September, 2016.

Melvin Nyman, Mayor

Sheila Letourneau, Clerk

I, the undersigned, City Clerk, DO HEREBY CERTIFY that the foregoing and above Ordinance No. 789 of the City of Alma, Michigan, is a true and compared copy of the original ordinance, now on file in my office, and of the whole thereof; that the same was published within 10 days from its adoption in the Morning Sun, a newspaper printed, published and circulated in the City of Alma, Michigan, on September 19, 2016 and that the Affidavit of Publication thereof is now on file in my office and is a part of the original records pertaining to the adoption of the aforesaid ordinance.

I FURTHER CERTIFY that in accordance with the provisions of Section 5.3 and 5.5 of Chapter V of the Charter of Alma, Michigan, the foregoing ordinance shall take effect 15 days after its enactment as aforesaid.

Dated September 13, 2016 at Alma, Michigan.

Sheila Letourneau, City Clerk