

ORDINANCE NO. 2023-25

AN ORDINANCE OF THE CITY OF NEW BRAUNFELS, TEXAS AMENDING CHAPTER 126, ARTICLE X, GOLF CARTS, NEIGHBORHOOD ELECTRIC VEHICLES AND OTHER TYPES OF RECREATIONAL OFF-HIGHWAY VEHICLES, INCLUDING DEFINITIONS, EQUIPMENT, AND A LOCAL PROHIBITION OF ATVS AND SAND RAILS ON PUBLIC STREETS IN THE INTERESTS OF PUBLIC SAFETY; PROVIDING A SAVINGS CLAUSE, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Texas Transportation Code authorizes the governing body of a municipality to regulate and control the operation of off-highway vehicles within the city's legal boundaries and on its public streets to ensure the public safety of the community; and,

WHEREAS, in the state law amendments, the term off-highway vehicle was amended to include ATVs, utility vehicles, sand rails, and recreational off-highway vehicles; and,

WHEREAS, the City Council adopted the original ordinance in 2015 that created Article X, for the purpose of regulating the operation of golf carts, NEVs, all-terrain vehicles (ATVs), and recreational off-highway vehicles (ROVs) on public streets; and

WHEREAS, the ordinance as adopted in 2015 prohibited the operation of all-terrain vehicles and recreational off-highway vehicles on public streets, unless allowed by state law; and

WHEREAS, in 2015, state law prohibited ATVs and ROVs on public streets, however, allowed them on certain public lands; and

WHEREAS, due to subsequent legislative amendments to the state law governing certain types of off-highway vehicles, the law expanded the places where off-highway vehicles can be driven such as on certain public streets, unless the City finds that such operation on public streets should be prohibited because it is not in the interests of public safety; and

WHEREAS, the City's intent in 2015 and in the present is to continue to prohibit the operation of certain off-highway vehicles, specifically ATVs and Sand rails, in the interest of public safety so that the City must amend the wording of its ordinance to enforce a prohibition of off-highway vehicles on public streets; and

WHEREAS, both the Transportation and Traffic Advisory Committee and a citizen committee of stakeholders recommend these changes in the interests of public safety.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, THAT:

SECTION 1. Findings. The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2: That Chapter 126, Article X, of the New Braunfels Code of Ordinances shall be amended to hereinafter read as follows, with deleted language indicated with strikethrough font and new language indicated with underlined font:

***ARTICLE X. GOLF CARTS, NEIGHBORHOOD ELECTRIC VEHICLES AND OTHER TYPES OF
RECREATIONAL-OFF-HIGHWAY VEHICLES***

Sec. 126-476. Definitions.

All-terrain vehicle (ATV) means a motor vehicle that is:

- (1) Equipped with a seat or seats for the use of:
 - a. The rider; and
 - b. A passenger, if the motor vehicle is designed by the manufacturer to transport a passenger;
- (2) Designed to propel itself with three or more tires in contact with the ground;
- (3) Designed by the manufacturer for off-highway use;
- (4) Not designed by the manufacturer primarily for farming or lawn care; and
- (5) not more than 50 inches wide.

Recreational off-highway vehicle (ROV) means a motor vehicle that is:

- (1) Equipped with a seat or seats for the use of:
 - a. The rider; and
 - b. A passenger or passengers, if the vehicle is designed by the manufacturer to transport a passenger or passengers;
- (2) Designed to propel itself with four or more tires in contact with the ground;
- (3) Designed by the manufacturer for off-highway use by the operator only; and
- (4) Not designed by the manufacturer primarily for farming or law care.

Sand rail vehicle means a motor vehicle, as that term is defined by state law, that is:

- (1) Is designed or built primarily for off-highway use in sandy terrains;
- (2) Has a tubular frame;
- (3) Has an integrated roll cage;
- (4) Has an engine that is rear-mounted or placed midway between the front and rear axles;
- (5) Has a gross vehicle weight between 700 and 2,000 pounds.

Utility Vehicle (UTV) is a motor vehicle that is:

- (1) Has side by side seating for the operator and passenger;

- (2) Has four or more tires;
- (3) Is designed for off-highway use;
- (4) Is designed by the manufacturer for utility work and not for recreational purposes.

~~**Specifically excluded from the definitions of golf cart and NEV are those motorized conveyances commonly referred to as all-terrain vehicles ("ATVs"), off-road vehicles (also known as ROVs), four-wheelers, mules, gators and design-altered golf carts which have been altered to allow them to travel at a speed greater than 25 miles per hour.~~

(Ord. No. 2015-50, § 2, 10-12-15)

Sec. 126-477. Limited operation.

(a) Golf carts, ~~and NEVs~~, ROVs and UTVs are permitted to be operated on:

(1) Streets where the posted speed limit is 35 miles per hour or less, with the exception of the following:

- a. E. Common Street from Gruene Road to FM 306;
- b. W. County Line Road;
- c. Landa Street from Wald Road to Spring Hills Drive;
- d. McQueeney Road; and
- e. Walnut Avenue from Landa Street to W. Klein Road;

(2) Business 46 located between Coll St. and Walnut Ave.; and

(3) A parking area as defined by this article.

(b) The operation of a golf cart, ROV and UTV shall be prohibited on any street in the state highway system, regardless of the speed limit, including Farm-to-Market Roads located within the corporate boundaries of the city. A state highway system includes, but is not limited to, Interstate Highway 35, Loop 337, FM 725, Business 35, FM 1044, FM 758, FM 1101, FM 306, FM 1102, FM 482, FM 2722, SH 46 and Business 46 (excluding Business 46 located between Coll St. and Walnut Ave).

(c) A golf cart, ROV and UTV may not be driven across intersections where the cross street has a posted speed limit of more than 35 miles per hour.

(d) Nighttime driving of golf carts, ROVs and UTVs is prohibited. ~~Golf carts~~ These vehicles can only be driven during the daytime.

(e) An operator of a golf cart, ROV and UTV may only drive a distance of up to ~~two~~ five (5) miles from the location where the vehicle is usually parked.

(f) A NEV may drive across intersections where the cross street has a posted speed limit of more than 45 miles per hour even if the cross street is otherwise a prohibited street under this article.

(Ord. No. 2015-50, § 2, 10-12-15; Ord. No. 2019-82, § I, 11-25-19)

Sec. 126-478. Required equipment for Golf Carts, ROVs and UTVs.

- (a) ~~A golf cart.~~ In order to operate on permitted locations, a golf cart, ROV and UTV operated under this article must be equipped at a minimum, with the following equipment, at a minimum, as mandated by the V.T.C.A., Transportation Code §551.4040(b), as amended, and/or required by the city to operate on permitted locations in addition to any other equipment required by the Texas Transportation Code, as amended:
- (1) Operational headlamps;
 - (2) Operational tail lamps;
 - (3) Side reflectors;
 - (4) Operational parking brake; ~~and~~
 - (5) Rearview mirror(s); and
 - (6) Operational horn.
- (b) A golf cart that is operated at a speed of not more than 25 miles per hour shall display a "slow-moving-vehicle emblem" as defined by V.T.C.A., Transportation Code § 547.703.
- (c) A golf cart, ROV and UTV must display a valid state license plate.
- ~~(d)~~ (d) Equipment and its installation and maintenance must meet standards provided by the Texas Transportation Code, as amended.

(Ord. No. 2015-50, § 2, 10-12-15)

Sec. 126-480. Operator regulations.

All operators of golf carts, ROVs, UTVs or NEVs shall:

- (1) Be licensed to operate a motor vehicle as provided by V.T.C.A., Transportation Code § 521.021, as amended, and carry a valid driver's license as provided by V.T.C.A., Transportation Code § 521.025, and all state law driver's license permissions and restrictions shall apply to the operation of ~~a~~ these vehicles ~~golf cart or NEV~~;
- (2) Abide by all state and local traffic regulations applicable to vehicular traffic;
- (3) Use standard hand signals for turning during daylight if the operator's golf cart is not equipped with turn signals;
- (4) Not operate or park on a sidewalk or hike and bike trails at any time;
- (5) Not use the vehicle to pull any object or person at any time;
- (6) Not exceed the seating capacity of the vehicle as designed by the manufacturer;
- (7) Remain seated at all times while the vehicle is in motion and ensure the same for passengers. Passengers can be issued a citation for not remaining seated while vehicle is moving;

- (8) Not have or permit a passenger younger than four years of age;
- (9) Maintain financial responsibility as defined in V.T.C.A., Transportation Code §601.051; and
- (10) Not intentionally or knowingly allow an unlicensed operator to operate the vehicle.

Sec. 126-481. ATVs and Sand Rails Prohibited ~~All terrain vehicles, recreational off highway vehicles.~~

(a) It shall be unlawful for a person to operate an ATV or ~~ROHV~~ Sand rail on a public street or location. ~~except as provided by state law and this section.~~ A person may only drive these types of prohibited vehicles across a public street or highway that is not an interstate or limited-access highway, if done so in accordance with state law. ~~(See V.T.C.A., Transportation Code § 663.037, and as amended.)~~

Sec. 126-482. Exemptions. ~~All terrain vehicles, recreational off highway vehicles.~~

~~In accordance with state law, generally, a person may not operate an ATV or ROHV on a public street, road or highway, except as allowed under V.T.C.A., Transportation Code § 663.037. In limited circumstances when allowed by state law, an operator of ATVs or ROHVs may drive on streets with a speed limit of 35 miles per hour or less, (not interstate highway or limited access highway), but only if the transportation falls within the exceptions contained in V.T.C.A., Transportation Code § 663.037(d), including those vehicles owned by the city, county or state, and used for public safety and welfare purposes, or within the limits of V.T.C.A., Transportation Code § 663.037(d). Such operator must be licensed and may also cross a public street, road or highway that is not a limited access highway or an interstate highway, with a posted speed limit of not more than 45 miles per hour.~~

~~(Ord. No. 2015-50, § 2, 10-12-15)~~

Sec. 126-483. Safety equipment for exempt ATVs and ROVs.

~~Exempt vehicles must have the following safety equipment:~~

- ~~(1) ——— Affix an eight-foot pole on back with orange triangle flag;~~
- ~~(2) ——— Headlamps illuminated while operated;~~
- ~~(3) ——— Tail lamps illuminated while operated;~~
- ~~(4) ——— Brake system;~~
- ~~(5) ——— Muffler system maintained in good operating condition;~~
- ~~(6) ——— U.S. Forest Service spark arrester; and~~
- ~~(7) ——— Off-highway vehicle decal from Texas Parks & Wildlife.~~

~~(Ord. No. 2015-50, § 2, 10-12-15)~~

Secs. 126-482—126-483. Reserved.

Sec. 126-484. – Penalties.

~~Only warning citations may be issued for the first 60 days following the effective date of this article so that an education effort by the city may be conducted to inform the public about the importance and requirements of this article. In addition to traffic violations for which the~~
The owner or driver of a the golf cart or NEV vehicle regulated by this article may be subject to
~~pursuant to state law, any person who violates this article shall be guilty of a misdemeanor punishable by a fine as follows:~~

- (1) First offense shall have a minimum fine of \$100.00 and a maximum fine of \$500.00; however, an offense under Section 126-480(8) for having or permitting a passenger in the vehicle under four (4) years of age, shall be punishable by a minimum fine of \$250.00 for the first offense.
- (2) Second offense ~~shall have a minimum fine of \$200.00 and a maximum of \$500.00 and~~ subsequent offenses shall have a minimum fine of \$500.00.
- ~~(3) Third and subsequent offenses shall have a minimum fine of \$500.00.~~

Each day's any violations continues shall constitute a separate and distinct offense. Any prior conviction under this article will count towards a second and subsequent third charge regardless of when it occurred. The culpable mental state required by the Texas Penal Code §6.02 is specifically negated and clearly dispensed with, and such offense is declared to be a strict liability offense.

(Ord. No. 2015-50, § 2, 10-12-15)

Secs. 126-485—126-490. Reserved.

SECTION 3: Savings Clause.

All ordinances or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed. The balance of such ordinance is hereby saved from repeal.

SECTION 4: Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause, or phrase thereof,

irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared void.

SECTION 5: Effective Date.

This Ordinance shall become adopted and effective after its final reading and publication in a newspaper of general circulation at least one time within ten (10) days after its final passage, as required by the City Charter of the City of New Braunfels.

PASSED AND APPROVED: First reading this 27th day of March, 2023.

PASSED AND APPROVED: Second reading this 10th day of April, 2023.

CITY OF NEW BRAUNFELS, TEXAS

RUSTY BROCKMAN, Mayor

ATTEST:

Gayle Wilkinson, City Secretary

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney