

**CITY COUNCIL
CITY OF NEWAYGO
Newaygo County, Michigan**

Council member Palmiter, supported by Council member Walerczyk, moved the adoption of the following Ordinance:

ORDINANCE NO. 12-05

**AN ORDINANCE FOR THE ADDITION OF ARTICLE IX, SECTION 74-210,
TO CHAPTER 74 OF THE CODE OF ORDINANCES OF THE CITY OF
NEWAYGO, MICHIGAN, REGARDING OFF ROAD VEHICLES (ORV).**

THE CITY OF NEWAYGO ORDAINS:

Article 1. Addition. Chapter 72 (Traffic and Vehicles), Article IX , Section 74-210 through 74-220, of the Code of Ordinances of the City of Newaygo, Michigan is hereby added as follows:

Sec. 74-210. Definitions.

- A. “City” means the City of Newaygo.
- B. “City Street” - means a City street, street, right-of-way, roadway, alley, public parking lot or any parking lot or any other area that is generally accessible to the public including the frozen surfaces of a body of water.
- C. “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
- D. Law Enforcement officer means any City police officer, any deputy sheriff, the county Sheriff, the Chief of Police or any other City enforcement officer
- E. “Operate” means to ride in or on and be in actual physical control of the operation of an ORV.
- F. “Operator” means a person who operates or is in actual physical control of the operation of an ORV
- G. “ORV” means a motor driven off street recreation vehicle capable of cross country travel without benefit of a street 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, golf cart, a motorcycle or related 2-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. 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.
- H. “Allowed ORV” - means a commercially made, mass produced vehicle with no less than four wheels. An “allowed ORV” is further defined as being a vehicle that is commonly

referred to as a Golf cart, a “quad” or “side by side” or Utility Terrain Vehicle (UTV) only. Use of tracks (rather than wheels) are prohibited on all allowed ORV’s.

- I. “Street” means a City street, street, right-of-way, roadway, alley, public parking lot or any parking lot or any other area that is generally accessible to the public.

Section 74-211. Allowable ORV Operation Locations.

An allowed ORV may be operated on the far right of the maintained portion of City streets within the City, along or upon the gravel shoulder wherever possible. If a gravel shoulder is not available then at the extreme right of the maintained portion of the street/roadway. An ORV may not be operated on the road surface, road way, shoulder or right-of-way of any State or Federal highway in the City (i.e. M-37 or M-82).

Section 74-212. Street Restrictions/Speed Limits.

The City Council, City Manager or the Chief of Police may close certain streets in the City to protect the environment or if the operation of ORV’s pose a particular and demonstrable threat to public safety. The City Council may reduce the speed limit on any street where ORV’s are authorized under this ordinance to 15 miles per hour if the City Council determines that such reduction is reasonable and necessary to public safety and provided such lowered speed limit is posted at reasonable intervals.

Section 74-213. Hours of Operation.

An ORV may not be operated between the hours of 10:00 pm and 6:00 am.

Section 74-214. Conditions/Requirements.

Except as set forth herein or otherwise provided by law, an ORV meeting all of the following conditions may be operated on City streets:

- a) only “allowed ORV’s” shall be operated on City streets;
- b) at a speed of no more than 25 miles per hour or a lower posted ORV speed limit;
- c) by a person possessing a valid, unrestricted driver’s license;
- d) with the flow of traffic;
- e) in a manner which does not interfere with traffic on the street;
- f) traveling single file except when overtaking and passing another ORV;
- g) while at all times displaying a lighted headlight and lighted taillight and equipped with a working brake light as defined under the Michigan Motor Vehicle Code.
- h) 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. Protective eyewear must be worn unless a United States Department of Transportation approved windshield is in place upon the vehicle; seatbelt use and child restraints shall conform to state law requirements 257.710a, 257.710b, 257.710d, 257.710e and federal requirements 49 CFR 571.213;
- 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;
- 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;
- k) the ORV must have a current ORV registration sticker/permit affixed in the manner provided by state law;

- l) while being operated upon City streets, ORV's shall at all times yield the right of way to registered motor vehicles, pedestrians and bicycles. 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)]*
- m) pursuant to noise and emission standards defined by law;
- n) operated in a manner that does not cause damage to the environment, a street or other property; and,
- o) an ORV shall not be operated:
 - 1) On or upon a City sidewalk or non motorized pathway intended for pedestrian or bicycle use only; (City maintenance vehicles exempted);
 - 2) On private property without written permission from the owner;
 - 3) In any other area closed by a governmental authority;
 - 4) By anyone under the influence of intoxicating liquor or any controlled substance or by anyone whose ability to operate said ORV may be impaired thereby;
 - 5) On or upon any body of water or wetland frozen or otherwise;
 - 6) By anyone transporting thereon a firearm, unless the same is unloaded and securely encased; except as provided by Michigan law pertaining to permitted concealed weapons.
 - 7) In any manner that is not in compliance with State of Michigan laws and regulations pertaining to off-road vehicles;
 - 8) With any passenger unless the ORV is specifically designed to carry passengers;

Section 74-215. Noise.

ORV operation will be treated the same as other motor vehicles and be subject to the noise, smoke and emission provisions of the Michigan Motor Vehicle Code 257.707, 257.707a, 257.707b, 257.707c and 257.707d.

Section 74-216. Impoundment of ORV's

A law enforcement officer may impound any ORV used or operated in violation of any provisions of this ordinance for a period not-to-exceed thirty (30) days, and the owner or operator of the ORV shall be responsible for all costs involved in the storage and/or removal of the impounded ORV. If the operator of the impounded ORV is not the owner the law enforcement officer shall notify the owner of such impoundment by telephone, letter or personal contact as soon as practical, but within 48 hours unless extenuating circumstances prevent contact within that time frame. All ORV's not reclaimed by the owner within the time frames set by law shall be disposed of in accordance with MVC 257.252a-g.

Section 74-217. Violations.

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 \$200 per offense. A City Police Officer, a County Sheriff Deputy or the County Sheriff and any enforcement officer for the City of Newaygo may enforce this ordinance. If an enforcement officer determines that there is probable cause that this ordinance has been violated, the officer is authorized to issue and serve municipal civil infraction notice upon a person or entity violating this ordinance. The citation may be paid at the

Municipal Civil Infractions Violations Bureau of the City of Newaygo pursuant to Newaygo Ordinance 1-7 (Chapter 1 General Provisions – Municipal Civil Infractions). Or, if a “not responsible” plea is made, shall be heard at the 78th District Court of Newaygo County as outlined in Chapter 1, Ordinance 1-7.

Fine monies collected are to be distributed by the City Treasurer according to MCL 324.81131 (14 a&b).

Section 74-218. Restitution.

A court may order a person who causes damage to the environment, a street 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 74-219. Law Enforcement Exempted.

Any law enforcement officer while enforcing provisions of this ordinance or any other law, are exempt from the provisions thereof.

Section 74-220. Ordinance Amendment, Repeal, and Expiration.

This ordinance can be repealed or modified at any time, has a sunset provision, and is not effective after August 22, 2013 unless reauthorized by the Newaygo City Council.

Article 2. Effective Date. This ordinance and any amendments thereto shall become effective upon approval by the City Council and after proper notice and publication as required by law.

YEAS: Council members: Bumstead, Day, Fedell, Mast, Palmiter, Walerczyk

NAYS: Council members: _____

ABSENT: Council members: Wisner

ABSTAIN: Council members: _____

Ordinance No. 12-05 declared adopted.

Introduced: June 11, 2012

Adopted: August 13, 2012

Published: August 22, 2012

Effective: August 22, 2012

Kim Biegalle, City Clerk

CERTIFICATION

I, Kim Biegalle, hereby certify the foregoing to be a true copy of an Ordinance adopted at a regular meeting of the City Council of the City of Newaygo on August 13, 2012, held pursuant to the required statutory procedures and notice.

Kim Biegalle, City Clerk