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County of De Baca
Office of County Commissioners
248 E Avenue C
Fort Sumner, NM 88119

ORDINANCE No. 2023-01

AN ORDINANCE AUTHORIZING THE OPERATION OF RECREATIONAL OFF-HIGHWAY VEHICLES ON PAVED STREETS OR HIGHWAYS OWNED AND CONTROLLED BY THE COUNTY OF DE BACA, NEW MEXICO

WHEREAS, the New Mexico Legislature amended Section 66-3-1011 NMSA 1978, allowing a county by ordinance or resolution, to authorize the operation of off-highway motor vehicles on paved streets or highways owned and controlled by the County; and,

WHEREAS, currently no state law or county ordinance prohibits the use of off-highway motor vehicles on unpaved roads, streets, or highways owned and controlled by the county; and,

WHEREAS, the Board of County Commissioners of the County of De Baca, New Mexico (hereinafter referred to as "Governing Body") desire to adopt an ordinance that would authorize the operation of off-highway motor vehicles, as defined herein, on paved streets or highways owned and controlled by De Baca County; and,

WHEREAS, the Governing Body published notice of its intention to consider the present ordinance at least fourteen (14) days prior to the present meeting, in accordance with Section 4-37-7 NMSA 1978; and,

WHEREAS, the Governing Body held an open public hearing on the consideration of the present ordinance at which time there was an opportunity for public comment.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE COUNTY OF DE BACA, NEW MEXICO

SECTION 1. PURPOSE-AUTHORIZATION

The purpose of this Ordinance is to allow the operation of recreational off-highway vehicles (hereinafter referred to as "OHV") on a paved street or highway owned and controlled by the County of De Baca, New Mexico.

The Governing Body hereby authorizes such use as defined herein under the conditions set forth in the Off-Highway Motor Vehicle Act, Sections 66-3-1011 through 66-3-1016 NMSA 1978 (and any amendments thereto). The operation of off-highway motor vehicles is prohibited at all times on limited access highways and freeways, pursuant to Section 66-3-1011 (A) (1).

The authorization granted by this Ordinance for the operation of OHVs is limited to OHVs as defined in this Ordinance. No other vehicle defined as an OHV under 66-1001-1 (E) is authorized for operation on any paved street or highway owned and controlled by the County of De Baca.

SECTION 2. DEFINITIONS

As used in this Ordinance:

- A. An Off-Highway Motor Vehicle (OHV) is defined as a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:
1. Recreational Off-Highway Vehicle: a type of off-highway motor vehicle designed for travel on four (4) or more non-highway tires, for recreational use by one or more persons, and having:
 - a. a steering wheel for steering control;
 - b. non-straddle seating;
 - c. maximum speed capability greater than thirty-five (35) miles per hour;
 - d. gross vehicle weight rating no greater than one thousand seven hundred fifty (1,750) pounds;
 - e. less than eighty (80) in overall width, exclusive of accessories;
 - f. engine displacement of less than one thousand (1,000) cubic centimeters;
 - g. identification by means of seventeen (17) character vehicle identification number or;
 2. By rule of the Department of Game and Fish, any other vehicles that may enter the market that fit the general profile of vehicles operated off the highway for recreational purposes.

All-Terrain Vehicles are not permitted on paved streets or Highways owned and controlled by the County of De Baca. An All -Terrain is a type of off-highway motor vehicle measuring fifty (50) inches or less in width, having unladen dry weight of one thousand (1,000) pounds or less, traveling on three (3) or more low-pressure tires and having a seat designed to be straddled by the operator and handle-bar type steering control.

SECTION 3. EQUIPMENT

- A. OHVs may not be operated on any paved street or highway owned and controlled by the County of De Baca unless:
1. the vehicle has one or more headlights and one or more taillights that comply with the Off-Highway Motor Vehicle Act;
 2. the vehicle has brakes, mirrors, (including driver's side rear view), mufflers and a signal horn;
 3. the operator of the vehicle is using eye protection that complies with the Off-Highway Motor Vehicle Act;
 4. all passengers and operators under the age of eighteen (18) are wearing eye protection and securely fastened safety helmets in compliance with Section 66-3-1010.3 (B) (1);
 5. the vehicle is equipped with a spark arrester approved by the United States Forest Services; and,
 6. wearing a properly adjusted and fastened seatbelt if the OHV is so equipped.

SECTION 4. LICENSE, PERMITS, INSURANCE, REGISTRATION

- A. A person must have obtained the following in order to operate an OHV:

1. A valid Driver's License. Neither a learner's permit nor a motorcycle license shall satisfy this requirement;
 2. An OHV Education Card issued by the New Mexico Department of Game and Fish if eighteen (18) years of age or younger;
 3. Insurance or evidence of financial responsibility for OHVs being operated in compliance with the provisions of the Mandatory Financial Responsibility Act Section 66-5-205 NMSA 1978. A home owner's policy will not satisfy this requirement;
 4. Unless excepted under 66-3-1 NMSA 1978, registration of OHV being operated for New Mexico residents, OHVs must be registered at the New Mexico Motor Vehicle Division. For nonresidents, OHVs must be registered in the owner's state of residence. For nonresidents whose state of residence does not provide for registration of OHVs, nonresidents must obtain a nonresident permit through the New Mexico Department of Game and Fish.
- B. If applicable, proof of items (1) through (4) must be in a person's possession while operating an OHV.

SECTION 5. OPERATION OF RECREATIONAL OFF-HIGHWAY VEHICLES ON PAVED STREETS OWNED AND CONTROLLED BY THE COUNTY OF DE BACA

- A. A person shall not operate an OHV on any paved street or highway owned and controlled by the County of De Baca:
1. in a careless, reckless or negligent manner so as to endanger the person or property of another, or in excess of posted speed limits or as otherwise prohibited by state law;
 2. while under the influence of intoxication liquor or drugs as provided by Section 66-8-102 NMSA 1978;
 3. while in pursuit of and with intent to hunt or take a species of animal or bird protected by law unless otherwise authorized by the State Game Commission;
 4. in pursuit of or harassment of livestock in any manner that negatively affects the livestock's condition;
 5. to intentionally approach wildlife;
 6. in a manner that has a direct negative effect on or interferes with persons engaged in agricultural practices;
 7. in excess of ten (10) miles per hour within two hundred (200) feet of a business, animal shelter, horseback rider, bicyclist, pedestrian, livestock or occupied dwelling, unless the person operates the OHV on a closed course or track or a public roadway;
 8. when conditions such as darkness limit visibility to five hundred (500) feet or less, unless the vehicle is equipped with:
 - a. one or more headlights of sufficient candlepower to light objects at a distance of one hundred fifty (150) feet; and,
 - b. at least one taillight of sufficient intensity to exhibit a red or amber light at a distance of two hundred (200) feet under normal atmospheric conditions;

9. that produces noise that exceeds ninety-six (96) decibels when measured using test procedures established by the Society of Automotive Engineers pursuant to Standard J-1287;
 10. unless the OHV is equipped with a spark arrestor approved by United States Forest Service;
 11. in the left lane of traffic or in a side-by-side manner. OHVs must be operated single file and as far to the right of the right lane as safely possible;
 12. all occupants are sitting in a designated seat in the OHV;
 13. where off-highway motor vehicle traffic is prohibited under local, state or federal rules or regulations; or,
- B. Operators must follow this Ordinance and all state laws pertaining to the operation of motor vehicles as set forth in the Motor Vehicle Code, Chapter 66, NMSA 1978.
- C. OHVs may cross streets or highways, except limited access highways or freeways, if the crossing is made after coming to a complete stop prior to entering the street. OHVs shall yield the right of way to oncoming traffic and shall begin a crossing only when it can be executed safely and then crossing in the most direct manner, as close to a perpendicular angle as possible.
- D. A person shall not operate an OHV on State Game Commission owned, State Game Commission controlled or State Game Commission administered land, except as specifically allowed pursuant to the Habitat Protection Act, Chapter 17, Article 1 NMSA 1978.
- E. A person shall not operate an OHV on land owned, controlled or administered by the State parks Division of the Energy, Minerals and Natural Resources Department, pursuant to the State parks Division Statute, Chapter 16, Article 2 NMSA 1978 except in areas designated by and permitted by rules adopted by the Secretary of Energy, Minerals and Natural Resources.
- F. Unless authorized, a person shall not;
1. remove, deface or destroy any official sign installed by a state, federal, local or private land management agency; or,
 2. install any OHV related sign.

SECTION 6. AGE RESTRICTIONS

- A. A person must be at least sixteen (16) years of age to operate an OHV.
- B. A person under the age of eighteen (18) shall not operate an OHV unless the person is supervised at all times by a parent, lawful guardian or a person over the age of twenty-one (21) who has a valid driver's license.
- C. A person under the age of eighteen (18) shall be required to successfully complete an off-highway motor vehicle safety training course for which the person shall have parental permission. The course shall be conducted by an off-highway motor vehicle safety training organization that is approved and certified by the Department of Game and Fish. Upon successful completion of the course, the person shall receive an OHV safety permit issued by the organization, pursuant to 66-3-1010.2 NMSA 1978.

SECTION 7. SPEED LIMITS

By Ordinance or Resolution, a local authority or State Transportation Commission may establish separate speed limits and operating restrictions for OHVs where they are authorized to operate on paved streets or highways pursuant to Section 66-3-1011 (C) NMSA 1978. OHVs operating on streets or highways owned and controlled by the County of De Baca shall operate at either the posted speed limit or at a speed limit that may be established by the New Mexico State Transportation Commission for such vehicles, whichever is slower.

SECTION 8. EXEMPTIONS

OHVs being used for agricultural operation are exempt from this Ordinance.

SECTION 9. ENFORCEMENT

Prosecutions of violations under this Ordinance may be commenced by the issuance of a citation charging the violation. Upon displaying the officer's badge of office, citations may be issued by a deputy from the De Baca County Sheriff's Department, a wildland conservation officer, a New Mexico State Police officer or another Peace Officer with jurisdiction in the County of De Baca and may:

- A. require an off-highway motor vehicle operator to produce:
 - 1. the registration certificate or nonresident permit;
 - 2. proof of successful completion of an off-highway motor vehicle training course conducted by an off-highway safety training organization approved and certified by the New Mexico Department of Game and Fish when required by Section 66-3-1010(2) NMSA 1978;
 - 3. the personal identification of the operator; and,
- B. issue citations for violations of the provisions of the Off Highway Motor Vehicle Act.

SECTION 10. PENALTIES

Any individual, firm, partnership, corporation or other entity who violates this Ordinance shall be guilty of a penalty assessment misdemeanor and subject to penalties as listed at Section 66-3-1020 NMSA 1978.

SECTION 11. SEVERABILITY

In the event that any clause, sentence, paragraph, section, or other portion of this Ordinance is found by any Court of competent jurisdiction to be invalid, it is the intent of the Governing Body that the remaining portions of this Ordinance be given full force and effect. It is the expressed intent of the Governing Body to adopt each section, phrase, paragraph, and word of this Ordinance separately.

SECTION 12. EFFECTIVE DATE

This Ordinance shall be recorded and authenticated by the County Clerk following adoption by the Governing Body. The effective date of this Ordinance shall be thirty (30) days after the Ordinance has been recorded.

PASSED, APPROVED AND ADOPTED this 26th day of September, 2022.

BOARD OF COUNTY COMMISSIONERS
OF DE BACA COUNTY, NEW MEXICO

Scot Stinnett

Scot Stinnett
Chairman

William W. West

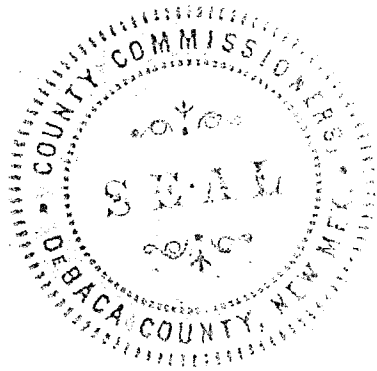
William W. West
Member

Joe Steele

Joe Steele
Vice Chairman

Jenny Thomas

Attest: County Clerk/Chief Deputy Clerk



STATE OF NEW MEXICO
COUNTY OF DE BACA

063167

File for Record
September 26, 2022

At 4:00 O'Clock PM

Book 119 Page 434-439

Jenny Thomas County Clerk
Deputy

