



City Attorney

DATE: May 20, 2019

FROM: Janelle Combs, City Attorney

ITEM: Consider discussion of which Off-Highway Vehicle ordinance to amend

REQUEST

Consider discussion regarding the two different proposals for the OHV ordinance.

Please place this item on the 5/28/2019 City Commission meeting agenda.

BACKGROUND INFORMATION

At the December 18, 2018, City Commission meeting, staff was directed to draft an Off-Highway Vehicle ("OHV") ordinance. Ordinance 6375 was introduced at the March 26, 2019 meeting and had a public hearing at the April 9, 2019 hearing. At that hearing, the City Commission requested that the proposed ordinance be amended either to match state law or remove the modifications that various staff requested from the Mandan and Lincoln ordinances. Both of those are attached. Since there was a call for public hearing on this ordinance, once the Commission decides which option is used to proceed, the amendment can proceed under Ordinance 2-04-01 to be republished and have a public hearing at the next meeting in June.

The first option only removed those items that various staff had requested be changed from the combination of the Lincoln and Mandan ordinances. A requirement for fenders, knobby tires and insurance were deleted as well as raising the speed limit from 45 to 55. The second option also changed the above options as well as deleted the following items: a minimum of 50 inches for width, 16 age minimum to drive, roll cage requirement, turn signal requirement, suspension and license plate requirements. It provided that the OHV can cross divided highways, added lights on only when required for other vehicles, can operate in the City ditches and sidewalks so long as on right of way, can tow a trailer, sled, sky and vehicle, can operate in highway right of way if doing pest control for a political subdivision or upon an OHV trail. Added that speed can be a nuisance, operate in a tree nursery and the minimum speed is 30 mph not 25 mph. This also changed the requirement to only have one brake light and one headlamp instead of two of each.

RECOMMENDED CITY COMMISSION ACTION

Direct staff as to which version of the ordinance to publish for public hearing.

STAFF CONTACT INFORMATION

Janelle Combs | City Attorney, 355-1340 or jcombs@bismarcknd.gov

OPTION 1
CITY OF BISMARCK
Ordinance No. 6375

| | |
|-----------------------------------|-------|
| <i>First Reading</i> | _____ |
| <i>Second Reading</i> | _____ |
| <i>Final Passage and Adoption</i> | _____ |
| <i>Publication Date</i> | _____ |

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 12-09-42 OF THE CITY OF BISMARCK CODE OF ORDINANCES (1986 Rev.) BY AMENDING THE SECTION RELATING TO RULES FOR OPERATION OF ALL-TERRAIN VEHICLES AND ADDING SECTIONS 12-09-42.1, 12-09-42.2 AND 12-09-42.3.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 12-09-42 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Rules for Operation of All-Terrain Vehicles is hereby amended and re-enacted as follows:

12-09-42. Rules for Operation of All-Terrain Vehicles.

* * * * *

b. "Off-highway vehicle" or "OHV" means any motorized vehicle not designed for use on a highway and capable of cross-country travel on land, snow, ice, marsh, swampland, or other natural terrain.

bc. "Operate" means to ride in or on and control the operation of an all-terrain vehicle.

ed. "Operator" means a person who operates or is in actual physical control of an all-terrain vehicle.

de. "Owner" means a person, other than a lienholder, having the property in or title to an all-terrain vehicle and entitled to its use or possession.

ef. "Utility Task Vehicle" (UTV) means any motorized utility/off road vehicle designed with seating for the operator and one or more passengers, side by side, and a steering wheel for steering control.

(Ord. 5659, 05-13-08; Ord. 5777, 06-22-10; Ord. 6113, 04-28-15)

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Section 2. Enactment. Section 12-09-42.1 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Rules for Operation of OHVs is hereby enacted as follows:

12-09-42.1 Rules for Operation of OHVs.

1. An OHV may only be operated in accordance with the rest of the requirements in Section 12-09-42 on city streets if:

a. The OHV is a "Class III off-highway vehicle" that weighs less than 8,000 pounds (3628.74 kilograms); travels on tracks, or four or more tires; has a seat; has a wheel for steering control; and is designated for or capable of cross-country on or over land, water, sand, snow, ice, marsh, swampland, or other natural terrain, but does not include a vehicle registered by the state under N.D.C.C. chapter 39-04 or 39-24.

b. Only an OHV with a minimum width of 50 inches meeting the requirements of this Section may be operated on city streets. No other class of OHV's are allowed to operate upon any road, street or highway in this city kept open for vehicular traffic.

2. An individual may not operate an OHV on the roadway, shoulder, or inside bank or slope of any road, street, or highway except as provided in Section 12-09-42 and 12-09-42.1.

3. Except in emergencies, an individual may not operate an OHV within the right-of-way of any controlled-access highway. An individual may operate a registered OHV on a gravel, dirt, or loose surface roadway.

4. A licensed driver over 16 years of age may operate a registered OHV on a paved highway designated and posted at

a speed not exceeding 55 miles per hour. An individual may not operate an OHV on a paved highway if the OHV is unable to attain a speed, on a paved level surface, of at least 25 miles per hour.

5. The operator of an OHV may make a direct crossing of a street only if:

- a. The crossing is made at an angle of approximately 90 degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
- b. The OHV is brought to a complete stop before crossing the shoulder or main traveled way of the highway;
- c. The operator yields the right-of-way to all oncoming traffic which constitutes an immediate hazard.

6. An individual may not operate an OHV in the following ways, which are declared to be unsafe and a public nuisance:

- a. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage to another person or the property of another person.
- b. While under the influence of intoxicating liquor or a controlled substance.
- c. Without a manufacturer-installed or equivalent muffler in good working order and connected to the OHV's exhaust system.
- d. On any private land where the private land is posted prohibiting trespassing. The name and address of the person posting the land and the date of posting must appear on each sign in legible characters. The posted signs must be readable from outside the land and be placed conspicuously at a distance of not more than

880 yards apart. Land entirely enclosed by a fence or other enclosure is sufficiently posted by posting of these signs at or on all gates through the fence or enclosure.

- e. An individual may not operate an OHV without having in possession a valid driver's license.
- f. When an OHV is operated within the right-of-way of any road, street, or highway, headlamps and tail lamps must always be on.
- g. An individual may not operate an OHV within the right-of-way of any highway while towing a trailer, unless the trailer being towed is connected to the OHV by a secure hitch.
- h. An individual under the age of 18 years may not operate, ride, or otherwise be propelled on an OHV unless the person wears a safety helmet meeting United States Department of Transportation standards.
- i. An operator of an OHV may not carry a passenger while operating the vehicle unless the OHV is equipped and recommended by the manufacturer to carry a passenger and the passenger is carried as recommended by the manufacturer.

7. Only peace officers of this state and their respective duly authorized representatives may enforce this chapter.

8. Any person who violates subsection a, b or d of paragraph 6 of this section is guilty of an offense. Any person who violates any other provision of this section shall be assessed a fee of fifty dollars.

Section 3. Enactment. Section 12-09-42.2 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to OHV Equipment is hereby enacted as follows:

12-09-42.2 OHV Equipment.

1. To operate a OHV on city streets, the OHV must be equipped with all of the following:

- a. one mirror on the driver side and one mirror on the passenger side;
- b. a horn;
- c. a speedometer;
- d. two tail/brake lights;
- e. two headlights;
- f. a motor of at least 550 cubic centimeters;
- g. a factory installed roll cage;
- h. turn signals on the front and rear of the vehicle;
- i. factory installed suspension; and
- j. a metal license plate centered on the rear of the vehicle, with a license plate light.

2. Both headlights and taillights must be on at all times while the vehicle is in operation. No auxiliary lights may be turned on while the vehicle is in operation.

3. If the vehicle is being operated with tracks, they must be made of rubber or similar material. No metal can come in contact with the street surface while the vehicle is in motion.

Section 4. Enactment. Section 12-09-42.3 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Operation by Persons under age 16 is hereby enacted as follows:

12-09-42.3 Operation by Persons under age 16.

An individual must be age 16 or over and have in their possession a valid driver's license to operate an OHV in any city right-of-way.

Section 5. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 6. Effective Date. This ordinance shall take effect following final passage and adoption.

OPTION 2
CITY OF BISMARCK
Ordinance No. 6375

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| <i>First Reading</i> | _____ |
| <i>Second Reading</i> | _____ |
| <i>Final Passage and Adoption</i> | _____ |
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12-09-42. Rules for Operation of All-Terrain Vehicles.

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- b. "Off-highway vehicle" or "OHV" means any motorized vehicle not designed for use on a highway and capable of cross-country travel on land, snow, ice, marsh, swampland, or other natural terrain.

- bc. "Operate" means to ride in or on and control the operation of an all-terrain vehicle.

- ed. "Operator" means a person who operates or is in actual physical control of an all-terrain vehicle.

- de. "Owner" means a person, other than a lienholder, having the property in or title to an all-terrain vehicle and entitled to its use or possession.

ef. "Utility Task Vehicle" (UTV) means any motorized utility/off road vehicle designed with seating for the operator and one or more passengers, side by side, and a steering wheel for steering control.

(Ord. 5659, 05-13-08; Ord. 5777, 06-22-10; Ord. 6113, 04-28-15)

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Section 2. Enactment. Section 12-09-42.1 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Rules for Operation of OHVs is hereby enacted as follows:

12-09-42.1 Rules for Operation of OHVs.

1. An OHV may only be operated in accordance with the rest of the requirements in Section 12-09-42 on city streets if:

a. The OHV is a "Class III off-highway vehicle" that weighs less than 8,000 pounds (3628.74 kilograms); travels on tracks, or four or more tires; has a seat; has a wheel for steering control; and is designated for or capable of cross-country on or over land, water, sand, snow, ice, marsh, swampland, or other natural terrain, but does not include a vehicle registered by the state under N.D.C.C. chapter 39-04 or 39-24.

b. No other class of OHV's are allowed to operate upon any road, street or highway in this city kept open for vehicular traffic.

2. An individual may not operate an OHV on the roadway, shoulder, or inside bank or slope of any road, street, or highway except as provided in Section 12-09-42 and 12-09-42.1.

3. Except in emergencies, an individual may not operate an OHV within the right-of-way of any controlled-access highway. An individual may operate a registered OHV on a gravel, dirt, or loose surface roadway.

4. A licensed driver may operate a registered OHV on a paved highway designated and posted at a speed not exceeding 55 miles per hour. An individual may not operate an OHV on a paved highway if the OHV is unable to attain a speed, on a paved level surface, of at least 30 miles per hour.

5. The operator of an OHV may make a direct crossing of a street only if:

- a. The crossing is made at an angle of approximately 90 degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
- b. The OHV is brought to a complete stop before crossing the shoulder or main traveled way of the highway;
- c. The operator yields the right-of-way to all oncoming traffic which constitutes an immediate hazard; and
- d. In crossing a divided highway, the crossing is made only at an intersection of the highway with another public street or highway.

6. An individual may not operate an OHV in the following ways, which are declared to be unsafe and a public nuisance:

- a. At a rate of speed greater than reasonable or proper under all the surrounding circumstances.
- b. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage to another person or the property of another person.
- c. While under the influence of intoxicating liquor or a controlled substance.
- d. Without a lighted headlamp and taillamp except when used by an off-highway vehicle instructor during a certified off-highway vehicle safety training course.
- e. In any tree nursery or planting in a manner that damages growing stock.

- f. Without a manufacturer-installed or equivalent muffler in good working order and connected to the OHV's exhaust system.
- g. On any private land where the private land is posted prohibiting trespassing. The name and address of the person posting the land and the date of posting must appear on each sign in legible characters. The posted signs must be readable from outside the land and be placed conspicuously at a distance of not more than 880 yards apart. Land entirely enclosed by a fence or other enclosure is sufficiently posted by posting of these signs at or on all gates through the fence or enclosure.
- h. An individual may not operate an OHV without having in possession a valid driver's license.
- i. When an OHV is operated within the right-of-way of any road, street, or highway, during times or conditions that warrant the use of lights by other motor vehicles, the OHV must be operated in the same direction as the direction of other motor vehicles traveling on the side of the roadway immediately adjacent to the side of the right of way traveled by the OHV.
- j. An individual may not operate an OHV within the right-of-way of any highway while towing a sled, skid, or other vehicle, unless the object being towed is connected to the OHV by a hinged swivel and secure hitch.
- k. An individual under the age of 18 years may not operate, ride, or otherwise be propelled on an OHV unless the person wears a safety helmet meeting United States Department of Transportation standards.
- l. An operator of an OHV may not carry a passenger while operating the vehicle unless the OHV is equipped and recommended by the manufacturer to carry a passenger and the passenger is carried as recommended by the manufacturer.

m. An OHV may be operated on an aggregate road surface only when designed as part of an active off-highway vehicle trail by the managing entity.

n. A person who is performing pest control or survey work for a political subdivision may operate an OHV on the bottom, backslope, inside slope, and shoulder of a highway other than a controlled-access highway.

7. Only peace officers of this state and their respective duly authorized representatives may enforce this chapter.

8. Any person who violates subsection b, c or g of paragraph 6 of this section is guilty of an offense. Any person who violates any other provision of this section shall be assessed a fee of fifty dollars.

Section 3. Enactment. Section 12-09-42.2 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to OHV Equipment is hereby enacted as follows:

12-09-42.2 OHV Equipment.

1. To operate a OHV on city streets, the OHV must be equipped with all of the following:

a. A mirror in compliance with N.D.C.C. § 39-27-09;

b. a horn in compliance with N.D.C.C. § 39-27-15;

c. a speedometer and odometer in compliance with N.D.C.C. § 39-27-16;

d. a brake light in compliance with N.D.C.C. § 39-27-17.1;

e. a lighted headlamp in compliance with N.D.C.C. § 39-27-17.1; and

f. a motor of at least 350 cubic centimeters.

Section 4. Enactment. Section 12-09-42.3 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Operation by Persons under age 16 is hereby enacted as follows:

12-09-42.3 Operation by Persons under age 16.

An individual over the age of 12 but under the age of 16 must have in their possession a valid driver's license to operate an OHV in any city right-of-way and must have completed an off-highway vehicle safety training course prescribed by the director of the parks and recreation department and has received the appropriate off-highway vehicle safety certificate issued by the director of the department of transportation. The failure of an operator to exhibit an off-highway vehicle safety certificate on demand to any official authorized to enforce this chapter is presumptive evidence that that person does not hold a certificate.

Section 5. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 6. Effective Date. This ordinance shall take effect following final passage and adoption.