

*First Reading: October 14, 2014
Adopted: December 9, 2014
Effective: December 13, 2014*

**PERE MARQUETTE CHARTER TOWNSHIP
ORDINANCE NO. 136**

(ORV ORDINANCE)

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES BY ADDING ARTICLE III OF CHAPTER 26 TO AUTHORIZE AND REGULATE THE OPERATION OF OFF ROAD VEHICLES ON COUNTY PRIMARY AND LOCAL ROADS WITHIN THE TOWNSHIP; TO PROVIDE FOR PENALTIES FOR VIOLATORS; TO PROVIDE FOR THE DISTRIBUTION OF FINES AND COSTS RESULTING FROM THE PENALTIES, AND TO PROVIDE FOR ITS EFFECTIVE DATE.

THE CHARTER TOWNSHIP OF PERE MARQUETTE, MASON COUNTY, MICHIGAN ORDAINS:

Section 1. ADDITION OF ARTICLE III TO CHAPTER 26 OF THE PERE MARQUETTE CHARTER TOWNSHIP CODE.

Article III of Chapter 26 – Streets, Sidewalks, and other Public Places of the Pere Marquette Charter Township Code (“Code”) is hereby created to read as follows:

“Article III – Operation of Off Road Vehicles on County Roads.

Sec. 26-37. Definitions.

- (a) “Township” means the Charter Township of Pere Marquette, Mason County.
- (b) “County” means Mason County.
- (c) “Drivers 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) “Maintained Portion” means that portion of a road improved, designated or ordinarily used for vehicular traffic, including the gravel shoulder or paved shoulder of the road.

- (e) "Operate" means to ride in or on, and be in actual physical control of the operation of the Off Road Vehicle.
- (f) "Operator" means a person who operates or is in actual physical control of the operation of an Off Road Vehicle.
- (g) "Off Road Vehicle" or "ORV" 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.
 - (1) ORV or vehicle includes, but is not limited to, a multi-track or multi-wheel drive vehicle, an ATV, a motorcycle or related 2-wheel, 3-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.
 - (2) 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) "Road" means a County primary road or county local road as described in Section 5 of 1951 PA 51, MCL 247.655.
- (i) "Road Commission" means the Board of County Road Commissions for the County of Mason.
- (j) "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.
- (k) "Visual Supervision" means 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.
- (l) "Township Board" means the Township Board of the Township.
- (m) "Equestrian or Horse and Rider" means an equine animal accompanied by a human being, whether mounted or on foot.
- (n) "Pedestrian" means a human being on foot.

- (o) "Bicyclist or Bicycle Rider" means a human being riding or walking a vehicle moved by human peddle power regardless of the number of wheels.

Sec. 26-38. Roads Authorized for ORV Operation.

- (a) A person may operate an ORV on any Road within the Township located south of Pere Marquette Lake and the South Branch of the Pere Marquette River and also located north of the North Branch of the Pere Marquette River east of the Pere Marquette Highway and east of the east right-of-way line of North Jebavy Drive.
 - (1) Exceptions:
- (b) A person operating an ORV may cross a state highway, other than a limited access highway, at an intersection of such highway and an authorized ORV Road, but shall not otherwise operate an ORV on or along the highway unless the State has designated such highway for ORV operation. The operator shall bring the ORV or vehicle to a complete stop before proceeding across a state highway and shall yield the right of way to oncoming traffic.

Sec. 26-39 Regulations.

- (a) The ORV shall be operated only with the flow of traffic and on the far right of the maintained portion of the Road.
- (b) A person shall not operate an ORV at a speed greater than 25 miles per hour, or a lower posted ORV speed limit, or in a manner that interferes with the traffic on the Road, or in a careless manner without due regard for conditions.
- (c) ORV'S shall travel in single file, except when passing or being passed by another ORV.
- (d) All ORV'S operating must have a lighted headlight and lighted taillight and working brake light and brake system.
- (e) Unless a person possesses a driver's license, a person shall not operate an ORV on a Road if the ORV is registered as a motor vehicle under the Michigan Vehicle Code and the ORV is either more than 65 inches wide or has three wheels.
- (f) A person under the age of 12 shall not operate an ORV on a Road; nor shall a person under the age of 18 operate an ORV on a Road unless the

person is in possession of a valid driver's license, or is under the direct supervision of a parent or guardian who possesses a valid driver's license, or the person has in his/her possession an ORV Safety Certificate issued by Michigan, another state or a province of Canada.

- (g) All operators, must, upon demand by a law enforcement officer, present either an ORV Safety Certificate or driver's license.
- (h) An owner or person in charge of an ORV shall not allow an ORV to be operated by an individual who is incompetent to operate a vehicle because of mental or physical disability.
- (i) A person less than 16 years of age shall not operate a 3-wheeled all-terrain vehicle or ATV.
- (j) A person shall not operate or ride on an ORV unless they are wearing on their head a helmet and protective eyewear approved by the United States Department of Transportation. This section does not apply if the vehicle is equipped with a roof that meets or exceeds the standard for a crash helmet and the operator and each passenger is wearing a properly adjusted and fastened safety belt.
- (k) A person shall not operate an ORV between the hours of 11:00 PM and 6:00 AM.
- (l) No person shall transport a passenger on an ORV unless the manufacturing standards for the vehicle make provisions for transporting passengers.
- (m) All ORV'S shall conform to the noise emission levels established by the United States Environmental Protection Agency under the noise control Act of 1972, 42 USC 4901 to 4918.
- (n) No person shall operate an ORV with an opened container of alcohol unless it is in a trunk, separate compartment or is encased or enclosed.
- (o) The ORV shall otherwise be operated in full compliance with all applicable provisions of state law, including, but not limited to, Part 811 of the Natural Resources and Environmental Protection Act, MCL 324.81101, et seq.
- (p) ORV operators must yield to equestrian, pedestrian and bicycle traffic.

Sec. 26-40 No Duty to Maintain Road and Immunity.

- (a) Pursuant to MCL 324.81131(14), by authorizing the operation of ORVs on Roads within the Township, the Township has no duty, and does not undertake any duty, to maintain the maintained portion or the unmaintained portion of any road in a condition reasonably safe and convenient for the operation of ORVs.
- (b) The Township has and retains all governmental immunity available to the Township and its employees as provided by MCL 324.81131(15) and MCL 691.1401, et seq. Authorization and regulation of ORVs under this Section does not, and shall not be construed, as any waiver of such immunity and protection.

Sec. 26-41 Penalties, Fines and ORV Account.

- (a) Under the provisions of the State law and of this Code, a violation of this Article shall be a municipal civil infraction. See, MCL 324.81131(17) and Code Sec. 2-95.
- (b) The penalty of a violation shall be a civil fine, plus any costs, damages, expenses, and other sanctions as provided in Sec. 1-7(c) of this Code. In addition, pursuant to MCL 324.81131(17) the court shall order the violator to pay the costs of repairing any damage to the environment, road, highway or public property as a result of the violation.
- (c) The Township shall establish and maintain an account within the Trust and Agency Fund designated as the "Due to ORV Account." The Treasurer shall deposit the fines collected by the Township under the provisions of MCL 600.8379 and MCL 324.81161(17) together with any damages collected under subsection (b) into the Due to ORV Account. The Treasurer shall distribute revenue in the Due to ORV Account as follows:
 - (1) Forty-five percent to the Mason County Sheriff's Department, responsible for ORV enforcement and training.
 - (2) Forty-five percent to the Mason County Road Commission for repairing damage to roads or streets and the 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 under this article, within the Township,
 - (3) Ten percent to Pere Marquette Charter Township for the administration of the account."


Section 2. SEVERABILITY AND CAPTIONS. This Ordinance creating Article III of Chapter 26 of the Code and the various parts, sections, subsections, sentences, phrases and clauses thereof, are hereby declared to be severable. If any part, section, subsection, sentence, phrase or clause is adjudged unconstitutional or invalid, the remainder of this Ordinance and Chapter 26, Article III shall not be affected thereby. The captions included at the beginning of each section of this Ordinance and Chapter 26, Article III are for convenience only and shall not be considered a part of this Ordinance or the Code.

Section 3. REPEAL. All Ordinances or portions of the Code, or parts thereof in conflict with this Ordinance, are hereby repealed to the extent of such conflict.

Section 4. EFFECTIVE DATE. This Ordinance was approved and adopted by the Township Board on December 9, 2014, after introduction and first reading on October 14, 2014, and publication after such first reading as required by Michigan Act 359 of 1947, as amended. This Ordinance shall be effective the day after publication thereof.



Paul A. Keson
Township Supervisor



Rachelle D. Enbody, CMC
Township Clerk