

ORDINANCE NO. 24-02

An Ordinance Amending Chapter 7 of the Elkhorn Municipal Code to Amend 7.02 and Add “Section 7.245” Entitled “Use and Regulation of All-Terrain Vehicles (ATVs) and Utility Terrain Vehicles (UTVs) on Elkhorn City Streets and Other Areas”

INTRODUCTION:

WHEREAS, the City Council has been asked to consider designating specific roadways, alleyways, or other public rights of way in the City of Elkhorn to be permitted as ATV/UTV routes on highways as those terms are defined within Wisconsin Statute 232.33, within the territorial jurisdictional limits of the City of Elkhorn, and;

WHEREAS, an Ordinance is needed to describe the circumstances and conditions required for such use by such person or persons, and;

WHEREAS, the City Council, has considered the anticipated positive economic impact of such use to the City’s taxpayers and businesses balanced against the need to allow such use only in a manner consistent with the safety of all citizens within the City;

THEREFORE, BE IT ORDAINED that under the City’s general regulatory authority pursuant to Wis. Stats., §62.11(5), that the City adopts Wisconsin Statute 23.33 in its entirety as if fully set forth within this Elkhorn Municipal Code (EMC)

AND BE IT FURTHER ORDAINED, by the Common Council of the Elkhorn that the Municipal Code is hereby amended as follows:

Section 7.02 is amended to state:

“Administrative Regulations Adopted: The following rules and regulation published in the Wisconsin Administrative Code, exclusive of any penalty provisions therein, are hereby adopted by reference and made a part of this chapter as if fully set forth herein.”

Said section is further modified to add NR 64 as the first Administrative Code section adopted in the table set forth in 7.02(1).

Section 7.245 is created to read:

SECTION 7.245:

1. PURPOSE.

The purpose of this section is to establish routes for and regulate the operation of all-terrain vehicles and utility terrain vehicles in the City.

2. DEFINITIONS.

This ordinance adopts all definitions set forth in Wis. Stats., §340.01 and Administrative Code Section NR 64.02 and Wis. Stats., §23.33. The following are specifically identified for clarity:

- (A) “All-terrain Vehicle”: As defined in Wis. Stats., §340.01(2g), which states:

“All-terrain vehicle” means a commercially designed and manufactured motor-driven device that has a weight, without fluids, of 900 pounds or less, has a width of not more than 50 inches as measured laterally between the outermost wheel rim on each side of the vehicle, exclusive of tires, mirrors, and accessories that are not essential to the vehicle’s basic operation, is equipped with a seat designed to be straddled by the operator, and travels on 3 or more tires.

- (B) “Bicycle Lane”: As defined in Wis. Stats., §340.01(5e), which states:

“Bicycle lane” means that portion of a roadway set aside by the governing body of any city, town, village, or county for the exclusive use of bicycles, electric scooters, electric personal assistive mobility devices, or other modes of travel where permitted under s. 349.23 (2) (a), and so designated by appropriate signs and pavement markings.

- (C) “Highway”: As defined in Wis. Stats., §340.01(22), which states:

“Highway” means all public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel. It includes those roads or driveways in the state, county or municipal parks and in state forests which have been opened to the use of the

public for the purpose of vehicular travel and roads or driveways upon the grounds of public schools, as defined in s. 115.01 (1), and institutions under the jurisdiction of the county board of supervisors, but does not include private roads or driveways as defined in sub. (46).

(D) “Utility Terrain Vehicle”: As defined in Wis. Stats., §23.33(1ng), which states:

“Utility terrain vehicle” means any of the following:

1. A commercially designed and manufactured motor driven device that does not meet federal motor vehicle safety standards in effect on July 1, 2012, that is not a golf cart, low-speed vehicle, dune buggy, mini-truck, or tracked vehicle, that is designed to be used primarily off of a highway, and that has, and was originally manufactured with, all of the following:
 - a. A weight, without fluids, of 3,000 pounds or less.
 - b. Four or more tires.
 - d. A steering wheel.
 - e. A tail light.
 - f. A brake light.
 - g. Two headlights.
 - h. A width of not more than 65 inches as measured laterally between the outermost wheel rim on each side of the vehicle, exclusive of tires, mirrors, and accessories that are not essential to the vehicle’s basic operation.
 - i. A system of seat belts, or a similar system, for restraining each occupant of the device in the event of an accident.
 - j. A system of structural members designed to reduce the likelihood that an occupant would be crushed as the result of a rollover of the device.
2. A commercially designed and manufactured motor driven device to which all of the following applies:
 - a. It does not meet federal motor vehicle safety standards in effect on July 1, 2012; is not a golf cart, low-speed vehicle, dune buggy, mini-truck, or tracked

vehicle; is designed to be used primarily off of a highway; and has, and was originally manufactured with, a weight, without fluids, of not more than 3,000 pounds.

- b. It has a width of 65 inches or less as measured laterally between the outermost wheel rim on each side of the vehicle, exclusive of tires, mirrors, and accessories that are not essential to the vehicle's basic operation.
- c. It is equipped with a seat designed to be straddled by the operator.
- d. It travels on 3 or more tires.
- e. It is not an all-terrain vehicle, as defined in s. 340.01 (2g).

3. DESIGNATION OF ATV/UTV ROUTES.

(A) MARKED ROADS ONLY. Pursuant to Wis. Stats. § 23.33(4)(d)4., except as otherwise provided in Wis. Stats. § 23.33(4), no person may operate an all-terrain or utility terrain vehicle on any road, freeway, or highway in the city, except on those roadways that are designated as all-terrain and utility terrain vehicle routes by this section.

(B) ALL ROADWAYS AT OR BELOW 35 MPH. Pursuant to Wis. Stats. § 23.33(11)(am)4, the City designates as ATV/UTV routes in the City of Elkhorn all public highways that are wholly within the City of Elkhorn which have a speed limit of 35 mph or below in the City except as designated in section (C) below.

(C) EXCLUDED ROUTES.

Public Properties.

Routes do not include public properties, city-owned parks, except for those area which are designated parking areas where motorized vehicles normally park. No riding is permitted in areas designated as being for pedestrian use, including any sidewalk. No riding is permitted in bicycle lanes as marked by signal or road markings. Only residents of the City of Elkhorn may use public alleyways from their residence to gain access to the nearest designated ATV/UTV designated route. Such residents shall take the most direct route to and from their residence.

Private Property. Routes do not include private roads or driveways nor any private property in the city except with the permission of the owner.

Special Events. The city retains the right to close any city street to ATV/UTV operation for special events or street construction/repair without notice.

Proper Signage Required. Pursuant to Wis. Stats. § 23.33(8)(d), Riding is only permitted on routes marked with uniform all-terrain and utility terrain vehicle

route signs in accordance with section NR 64.12(7), Wisconsin Administrative Code.

Non-Route Crossings. Consistent with Wis. Stats., §23.33(4)(d), nothing in this Ordinance shall permit operation of an ATV/UTV on any highway with speed limits above 35 mph within the territorial limits of the City of Elkhorn, unless the rider is:

1. Crossing such roadway is incidental to an existing authorized trail or route use. Such crossing shall be in the most direct manner possible after coming to a complete stop on the authorized route and looking both ways before proceeding.
2. No crossing is permitted at any point an obstruction exists that prevents a quick and safe crossing.
3. During any such crossing the ATV/UTV operator must yield to all vehicles and pedestrian traffic.

4. TAMPERING WITH SIGNAGE PROHIBITED. No person may do any of the following unless authorized to do so.

- (A) Intentionally remove, damage, deface, move, or obstruct any uniform all-terrain and utility vehicle route or trail sign or standard or intentionally interfere with the effective operation of any uniform ATV/UTV route or trail sign or standards if the sign or standard is legally placed by the state, any municipality, or any authorized individual.
- (B) Possess any uniform ATV/UTV route or trail sign or standard of the type established by the city for the warning, instruction, or information of the public, unless he or she obtained the uniform ATV/UTV route or trail sign or standard in a lawful manner.
- (C) Possession of a uniform all-terrain and utility terrain vehicle route or trail sign or standard creates a rebuttable presumption of illegal possession.

5. TIMES OF OPERATION AND OTHER LIMITATIONS.

- (A) Police Authority. Notwithstanding any other section herein, the Elkhorn City Police Department may temporarily close any ATV/UTV route whenever conditions require closure for safety, weather, or other legitimate police purposes.
- (B) Times. ATV/UTV's may not operate on any street in the City between the hours of 11:00 p.m. and 5:00 a.m.

- (C) Registration. No ATV/UTV shall be operated in the City of Elkhorn without proof of registration which is to be in the possession of the operator which shall be properly displayed on the vehicle or presented to any law enforcement officer or official upon request if not required by regulations to be affixed to the vehicle.
- (D) Licensure. No person may operate an ATV or UTV on any city street in the City of Elkhorn without a valid driver's license and shall display the license on demand to any law enforcement officer or official as described in Section 23.33(12) of Wisconsin Statutes. Instructional permits do not meet the criteria for a valid operator's license.

6. ROUTE SIGN MAINTENANCE.

- (A) All initial route signs will be installed and, thereafter, physically maintained by the City of Elkhorn Public Works Department in cooperation with Walworth County. No person may erect or remove any official designated route sign or signage, pursuant to this Ordinance, without the complete authorization of the City of Elkhorn Public Works Department in writing. Nothing in this section prevents groups, clubs, or organizations from paying or contributing to the cost of installation or maintenance of signage.
- (B) Any modification to the routes designated for ATV/UTV use must be approved by the City of Elkhorn Common Council by majority vote and no such modification is effective until new signage is installed.

7. OPERATION.

- (A) Operation of ATV/UTV's on designated routes shall be subject to all the provisions herein.
- (B) Operation of all ATV/UTV's shall be on the extreme right side of the roadway.
- (C) Regardless of posted speed limits, all ATV/UTV operation shall be at a safe, reasonable, and prudent speed considering all circumstances existing on the roadway at the time and place of operation. Under no circumstances shall an ATV/UTV rider exceed the posted speed limits.
- (D) ATV/UTV operators shall ride single file on all streets.
- (E) Proper headgear and seatbelts shall be worn consistent with Wisconsin Statutes Chapter 23.33 and Wisconsin Administrative Code NR 64 unless further restricted by other rules or regulations. (See Wis. Stat. 347.485(1)(a)).
- (F) All seatbelts shall be fastened as per Wis. Stat. 347.48

- (G) No operator or passenger of an ATV/UTV may possess on any street or roadway designated for use by ATV/UTV's any bottle or receptacle containing alcoholic beverages, if that bottle or receptacle has been opened, the seal has been broken, or the contents of the bottle or receptacle have been partially removed or released.
- (H) No person may ride in or on any part of an ATV/UTV that is not designated or intended by the manufacturer to be used by passengers.
- (I) All ATV/UTV's must operate with fully functional headlights, taillights, and brake lights. All head and taillights shall be always on.
- (J) Operation shall be on paved surfaces only, unless yielding the right of way. No operation shall be permitted on gravel shoulders, grassy in-slope, or ditches, unless yielding the right of way.
- (K) No ATV/UTV shall be operated on any City route unless it meets all applicable air pollution and noise reduction set by the manufacturer, or state or federal authorities.
- (L) No operation of any ATV/UTV upon any route in the City shall occur if the operation is in violation of Wis. Stats. Chapter 346 rules of the road and specifically related to alcohol or drug use impairment.

8. SEVERABILITY.

Should any subject, clause or provision of this Ordinance be declared by any court of competent jurisdiction to be invalid, this ruling shall not affect the validity of this Ordinance as a whole or any part thereof, other than the part declared invalid.

9. MAINTENANCE.

Designation of Elkhorn streets as ATV/UTV routes does not impose upon the City of Elkhorn any greater duty of care or responsibility for maintenance of those segments of streets or roadways than are required for any other street or road. Operators of ATV/UTV's on City streets assume all the usual and normal risks of ATV/UTV's operations.

10. VIOLATIONS AND PENALTIES.

Any individual violating any section of this Ordinance shall be subject to forfeiture and penalties consistent with EMC section 7.26. Consistent with Wis. Stats., §23.33(12) and (13) riders shall stop and present information when requested by authorized law enforcement officers.

This Ordinance shall be in force from and after its approval and publication as provided by Statutes.

APPROVED AND ADOPTED this 4th day of March, 2024.

Bruce A. Lechner
Bruce A. Lechner, Mayor

ATTEST:

Lacey L. Reynolds
Lacey L. Reynolds, City Clerk

1st Reading waived
2nd Reading March 4, 2024
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