

Board of County Commissioners Agenda Request

Date of Meeting: November 21, 2006
Date Submitted: October 24, 2006
To: Honorable Chairman and Members of the Board
From: Marlon Brown, County Manager
Farnita L. Saunders, Director Community Development
Subject: Public Hearing of All Terrain Vehicle (ATV) Ordinance 2006

Statement of Issue:

This item presents the All Terrain Vehicle (ATV) ordinance for discussion and adoption by the Board of County Commissioners.

Background:

The Gadsden County Parks and Recreation Coordinator has been asked to present the ATV ordinance for consideration by the Board of County Commissioners.

Analysis:

A new addition to the Florida Statutes, Section 316.2123, allows for the operations of ATVs during the daytime on an unpaved roadway where the posted speed limit is less than 35 miles per hour by a licensed driver or by a minor under the supervision of a licensed driver. A county is exempt from this section if the governing body of the county, by majority vote, following a noticed public hearing, votes to exempt the county from this section. The ATV Ordinance drafted restricts the use of ATVs on unpaved public roads.

The Board of County Commissioners of Gadsden County is responsible for the health, safety and welfare of the citizens of Gadsden County and must determine whether the operation and use of ATVs on the roadways of the county is safe for those operating the ATV as well as those who may encounter ATVs on the public roadways.

Staff believes it is in the best interest of the health, safety and welfare of the citizens of Gadsden County to exempt Gadsden County from the provisions of Section 316.2123, Florida Statutes, which otherwise allows the operation of an ATV on certain roadways within the County. Allowance of ATVs on unpaved roadways would damage County roads and may result in higher maintenance costs for repairs. The County is exempting only from the exception that allows ATVs to be driven on unpaved roads. ATVs may not be operated upon the public roads, streets, or highways of this state as expressly prohibited under Section 316.2074(5), Florida Statutes.

Options:

- Option 1: Approve the ATV Ordinance.
- Option 2: Do not approve and adopt the ATV Ordinance.
- Option 3: Provide other direction.

Recommendation:

- Option 1: Approve the ATV ordinance.

Attachment(s):

1. Ordinance.
2. Section 316.2123, Florida Statutes.
3. Section 317.0003, Florida Statutes.
4. Section 316.2074(5), Florida Statutes.

NOTICE OF INTENT

NOTICE IS HEREBY GIVEN to all concerned that the Board of County Commissioners of Gadsden County, Florida, Intends at its (regularly scheduled meeting, at 6:00 PM, at the Gadsden County Governmental Complex, 9-B East Jefferson Street, Quincy, Florida, on the 21st day of November, 2006, to consider enactment of the following:

AN ORDINANCE AMENDING CHAPTER 78 OF THE CODE OF ORDINANCES OF GADSDEN COUNTY, FLORIDA, BY ENACTING SECTION 78-3 RELATING TO ALL TERRAIN VEHICLES (ATV); EXEMPTING GADSDEN COUNTY FROM THE PROVISIONS OF FLORIDA STATUTE 316.2123 REGARDING THE OPERATION OF AN ATV ON CERTAIN ROADWAYS; DEFINING TERMS; PROVIDING FOR TERRITORY EMBRACED; PROVIDING FOR SEVERABILITY; PROVIDING FOR VIOLATION AND PENALTY; AND PROVIDING AN EFFECTIVE DATE.

INTERESTED PARTIES MAY APPEAR AT THE MEETING AND BE HEARD WITH RESPECT TO THE PROPOSED ORDINANCE. IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD OF COUNTY COMMISSIONERS WITH RESPECT TO THIS MATTER, HE WILL NEED A RECORD OF PROCEEDINGS, AND FOR SUCH PURPOSE, HE MAY NEED TO ASSURE THAT A VERBATIM RECORDING OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

The proposed ordinance is available for public inspection at the Office of the Clerk, Gadsden County Courthouse, 10 E. Jefferson St., Quincy, Florida.

BOARD OF COUNTY COMMISSIONERS OF
GADSDEN COUNTY, FLORIDA

By: _____
Nicholas Thomas, Clerk

Published one time
November 9, 2006
Gadsden County Times
Havana Herald
Twin City News

ORDINANCE NO. 06- _____

AN ORDINANCE AMENDING CHAPTER 78 OF THE CODE OF ORDINANCES OF GADSDEN COUNTY, FLORIDA, BY ENACTING SECTION 78-3 RELATING TO ALL TERRAIN VEHICLES (ATV); EXEMPTING GADSDEN COUNTY FROM THE PROVISIONS OF FLORIDA STATUTE 316.2123 REGARDING THE OPERATION OF AN ATV ON CERTAIN ROADWAYS; DEFINING TERMS; PROVIDING FOR TERRITORY EMBRACED; PROVIDING FOR SEVERABILITY; PROVIDING FOR VIOLATION AND PENALTY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Legislative has enacted Florida Statute 316.2123 regarding the operation of an ATV on certain roadways; and

WHEREAS, the operation of an ATV as defined in Section 317.0003, Florida Statutes, upon the public roads or streets of Gadsden County and the State of Florida is prohibited, except an ATV may be operated during the daytime on an unpaved roadway where the posted speed limit is less than 35 mph by a licensed driver or by a minor under the supervision of a licensed driver. The operator must provide proof of ownership pursuant to Chapter 317, Florida Statutes, upon request of a law enforcement offices; and

WHEREAS, Florida Statutes, Section 316.2123, provides a county is exempt from this law if the governing body of the county, by a majority vote, following a noticed public hearing, votes to exempt the county from this Section of the law; and

WHEREAS, the Board of County Commissioners of Gadsden County is responsible for the health, safety and welfare of the citizens of Gadsden County and must determine whether the operation and use of ATVs on the roadways of the county is safe for those operating the ATV as well as those who may encounter ATVs on the public roadways; and

WHEREAS, the Board of County Commissioners of Gadsden County believes it is in the best interest of the health, safety and welfare of the citizens of Gadsden County to exempt

Gadsden County from the provisions of Section 316.2123, Florida Statutes, which otherwise allows the operation of an ATV on certain roadways within the County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF GADSDEN COUNTY, FLORIDA AS FOLLOWS:

Section 1: ENACTMENT OF ORDINANCES.

New Section 78-3 is hereby enacted as part of "Traffic and Vehicles" of Chapter 78 of the Code of Ordinances of Gadsden County, Florida, pursuant to section 125.01, Florida Statutes, which sections shall read as follows:

Sec. 78-3. Exemption to the Provisions of Florida Statute 316.2123 Regarding the Operation of an ATV on Certain Roadways.

(a) Definitions.

"ATV" means any motorized off-highway or all-terrain vehicle 50 inches or less in width, having a dry weight of 900 pounds or less, designed to travel on three (3) or more low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control, and intended for use by a single operator and with no passenger as provided by Section 317.0003(1), Florida Statutes.

(b) Florida Statute 316.2123 Restated.

Florida Statute 316.2123, "Operation of an ATV on Certain Roadways," states that the operation of an ATV, as defined in Section 317.0003, F.S., upon the public roads or streets of this state is prohibited, except that an ATV may be operated during the daytime on an unpaved roadway where the posted speed limit is less than 35 miles per hour by a licensed driver or by a minor under the supervision of a licensed driver. A county is exempt from this section if the

governing body of the county, by majority vote, following a noticed public hearing, votes to exempt the county from this section.

(c) Exemption.

The Board of County Commissioners of Gadsden County, Florida, exempts Gadsden County from Florida Statute 316.2123, which otherwise allows the operation of an ATV on certain unpaved public roadways within Gadsden County. An ATV may not be operated during the daytime on an unpaved roadway where the posted speed limit is less than 35 miles per hour by a licensed driver or by a minor under the supervision of a licensed driver. The County is exempting only from the exception that allows ATVs to be driven on unpaved roads. ATVs may not be operated upon the public roads, streets, or highways of this state as expressly prohibited under Section 316.2074(5), Florida Statutes.

(d) Territory Embraced.

This Ordinance shall apply to both the incorporated and unincorporated area of Gadsden County, Florida.

(e) Severability.

If any section, subsection, sentence, clause, phrase or provision of this Ordinance or the particular application thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, administrative agency or other body with appropriate jurisdiction, the remaining sections, subsections, sentences, clauses or phrases and their applications shall not be affected thereby.

(f) Violation and Penalty.

A violation of this section is a non-criminal traffic infraction, punishable as a nonmoving violation as provided in Chapter 318, Florida Statutes.

Section 2. Effective Date.

EFFECTIVE DATE; FILING WITH DEPARTMENT OF STATE

This Ordinance shall take effect upon filing with the Department of State.

DULY PASSED AND ADOPTED BY a vote of ___ to ___ by the Board of County Commissioners of Gadsden County, Florida, this the ___ day of _____, 2006.

BOARD OF COUNTY COMMISSIONERS OF
GADSDEN COUNTY, FLORIDA

By: _____
ED DIXON, Chairman

Nicholas Thomas
Clerk of the Circuit Court

NOTICE OF INTENT

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The proposed ordinance is available for public inspection at the Office of the Clerk, Gadsden County Courthouse, 10 E. Jefferson St., Quincy, Florida.

BOARD OF COUNTY COMMISSIONERS OF
GADSDEN COUNTY, FLORIDA

Bill to Department of Purchasing and Personnel

The 2006 Florida Statutes
Chapter 316

316.2123 Operation of an ATV on certain roadways.--

(1) The operation of an ATV, as defined in s. 317.0003, upon the public roads or streets of this state is prohibited, except that an ATV may be operated during the daytime on an unpaved roadway where the posted speed limit is less than 35 miles per hour by a licensed driver or by a minor under the supervision of a licensed driver. The operator must provide proof of ownership pursuant to chapter 317 upon request by a law enforcement officer.

(2) A county is exempt from this section if the governing body of the county, by majority vote, following a noticed public hearing, votes to exempt the county from this section.

317.0003 Definitions.--As used in this chapter, the term:

(1) "ATV" means any motorized off-highway or all-terrain vehicle 50 inches or less in width, having a dry weight of 900 pounds or less, designed to travel on three or more low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control, and intended for use by a single operator and with no passenger.

316.2074 All-terrain vehicles.--

(5) Except as provided in this section, an all-terrain vehicle may not be operated upon the public roads, streets, or highways of this state, except as otherwise permitted by the managing state or federal agency.