

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS
OF SAN MIGUEL COUNTY, COLORADO
ORDAINING THE OPERATION OF
UNLICENSED "OFF- HIGHWAY VEHICLES"
ON CERTAIN DESIGNATED SAN MIGUEL COUNTY ROADS**

Ordinance #2018 -1

WHEREAS, pursuant to C.R.S. §33-14.5-110, the Board of County Commissioners of San Miguel County, Colorado ("BOCC") has the authority to regulate the operation of off-highway vehicles ("OHV") on public lands, waters and property under its jurisdiction and on streets and highways within its boundaries by resolution or ordinance; and

WHEREAS, pursuant to C.R.S. §30-15-401(l)(h), the BOCC is authorized to adopt ordinances to control and regulate the movement and parking of vehicles and motor vehicles on public property; and

WHEREAS, on January 19, 1994, the BOCC adopted Resolution #1994-1, "Authorizing the Use of Unlicensed Off-Highway Vehicles on Certain Designated San Miguel County Roads" which designated certain County roads as being open to OHV use, which roads did not include those County roads which access County Road K68 ("Imogene"), County Road K69 ("Black Bear"), and County Road D65 ("Ophir") Passes; and

WHEREAS, on May 25, 2005 the BOCC adopted Resolution #2005-12, "Concerning the Operation of Unlicensed Off-Highway Vehicles on Certain Designated San Miguel County Roads and Amending Resolution# 1994-1 for that Purpose," which resolution designated certain sections of County Road K68 ("Imogene"), County Road K69 ("Black Bear"), and County Road D65 ("Ophir") Passes, as open to OHV traffic, subject to certain rules, regulations, and restrictions set forth therein; and

WHEREAS, on June 21, 2006 the BOCC adopted Resolution #2006-29, "Concerning the Operation of Unlicensed Off-Highway Vehicles on Certain Designated San Miguel County Roads and Amending Resolution #1994-1 for that Purpose," which resolution designated certain sections County Road K68 ("Imogene"), County Road K69 ("Black Bear"), and County Road D65 ("Ophir") Passes, as open to OHV traffic, subject to certain rules, regulations, and restrictions set forth therein; and

WHEREAS, on April 18, 2007 the BOCC adopted Ordinance #2007-2 "Ordaining the Operation of Unlicensed Off-Highway Vehicles on Certain Designated San Miguel County Roads" which Ordinance designated certain sections of County Road K68 ("Imogene"), County Road K69 ("Black Bear"), and County Road D65 ("Ophir") Passes, as open to OHV traffic, subject to certain rules, regulations, and restrictions set forth therein, and which kept the provisions of Resolution #1994-1 in full force and effect and repealed and superseded Resolutions #2005-12 and #2006-29; and

WHEREAS, on March 29, 2018, Governor Hickenlooper signed House Bill 2018-1103 "Concerning the Ability of a Local Government to Require a Driver to Meet Safety Standards for the Use of an Off-Highway Vehicle" expanding the safety requirements that the BOCC may impose when an OHV is being driven on a street, road, or highway within the jurisdiction of San Miguel County; and

WHEREAS, the BOCC, in order to remain consistent with neighboring San Juan, Ouray and Hinsdale counties for the Alpine Loop, has reviewed the above-mentioned Resolutions and Ordinance, as well as House Bill 2018-1103, with regard to what safety requirements have been required in San Miguel County and what additional safety requirements could be required by resolution or ordinance within the County; and,

WHEREAS, the BOCC does hereby find and determine that it is appropriate to designate enforcement personnel pursuant to C.R.S. §30-15-402.5 to enforce the provisions of this County Ordinance through the issuance of citations or summonses and complaints without regard to the peace officer certification requirements pursuant to C.R.S. §24-31-305, while also recognizing that C.R.S. §30-15-410 provides that "It is the duty of the sheriff and undersheriff and deputies, in their respective counties, to enforce the provisions of county ordinances;" and that such designated enforcement personnel, while not required to be a Colorado certified peace officer, shall be at least eighteen years of age, and a citizen of the United States of America, and that any persons authorized to serve as ordinance enforcement personnel shall be specifically designated by the BOCC for that purpose by formal resolution of official action of the Board, and that any such designated ordinance enforcement personnel shall serve at the pleasure of the Board; and,

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

SECTION 1: PURPOSE

1. Pursuant to C.R.S. §33-14.5-110, the Colorado Board of County Commissioners of San Miguel County, has the authority to regulate the operation of off-highway vehicles ("OHV") on public lands, waters and property under its jurisdiction and on streets and highways within its boundaries by resolution or ordinance and pursuant to C.R.S. §30-15-401(l)(h), the BOCC is authorized to adopt ordinances to control and regulate the movement and parking of vehicles and motor vehicles on public property.
2. Except as specifically amended by this Ordinance, the provisions of Resolution #1994 -1 shall remain in full force and effect. However, the provisions of San Miguel County Board of Commissioners' Ordinance #2007-2, shall be deemed to be repealed and superseded by this Ordinance and is specific to the roads referenced herein.
3. This Ordinance does not affect Resolution #2010-23 "Concerning the Operation of Unlicensed Off-Highway Vehicles on Certain Designated San Miguel County Roads Located on Wrights Mesa and Amending Resolution #1994-1 for that Purpose" or Resolution #2010-37 "Concerning the Operation of Unlicensed Off-Highway Vehicles on Certain Designated San Miguel County Roads Located Near Egnar".

4. The provisions of this Ordinance shall not apply to any person operating an OHV on those San Miguel County roads designated in Section 4 of this Ordinance or in Resolution #1994-1 for bona fide agricultural purposes as defined in Section 2.2.

SECTION 2: DEFINITIONS

1. "Off-highway vehicle" ("OHV") shall be defined as provided in C.R.S. §33-14.5-101(3): any self-propelled vehicle which is designed to travel on wheels or tracks in contact with the ground, which is designed primarily for use off of the public highways, and which is generally and commonly used to transport persons for recreational purposes. "Off-highway vehicle" does not include vehicles designed and used primarily for travel on, over, or in the water, snowmobiles, military vehicles, golf carts, vehicles designed and used to carry individuals with disabilities, vehicles designed and used specifically for agricultural, logging, or mining purposes, or vehicles registered pursuant to article 3 of title 42, C.R.S.
2. "Agricultural purposes" is defined to mean the use of land for the production of food and fiber, including the growing of crops and/or the grazing of animals on natural prime or improved pastureland, as well as the clearing of vegetation exclusively for the growing of crops and/or grazing of animals.

SECTION 3: DESIGNATION OF SAN MIGUEL COUNTY ROADS FOR THE OPERATION OF OFF-HIGHWAY VEHICLES

1. The following San Miguel County roads, or portions thereof, are hereby designated as off-highway vehicle routes; such road, or portion thereof, and its location is also designated on the San Miguel County Road Map, attached hereto and incorporated herein by reference as Exhibits A and B:
 - A. **Ophir Pass Road**, also known as County Road D65 or USFS Road 630, from the border of San Miguel County and San Juan County west to the eastern boundary of the Town of Ophir, and as depicted on said County Road Map (Exhibit "A"). OHV travel is prohibited through the Town of Ophir and that OHVs must turn around before reaching the town limits and signage shall remain posted to inform the traveling public that OHV travel is prohibited through the Town of Ophir and that OHVs must turn around before reaching the town limits.
 - B. **Imogene Pass Road or Tomboy Road**, also known as County Road K68, from the border of San Miguel County and Ouray County west to the intersection of said County Road K68 and the historic Marshall Creek route, and as depicted on said County Road Map (Exhibit "B"). Signage shall remain posted where this road enters San Miguel County, as well as at an appropriate location in proximity to the terminus of such designated OHV road.

- C. **Black Bear Pass Road**, also known as County Road K69, from the border of San Miguel County and San Juan County west to the Valley View Parking Area directly east of Idarado's Pandora Mill Building, and as depicted on said County Road Map. This designation of Black Bear Pass Road/County Road K69 will continue to have specific signage at a turnout at or near the start of the one-way, downhill portion of the road located above Ingram Falls. Due to this downhill portion of the road being one-way, this signage will inform road users that they will not be able to turn around at the bottom of Black Bear Pass and that unlicensed off-highway vehicles must arrange for pickup at the Valley View Parking Area (Exhibit "B"). In addition, signage shall remain posted where this road enters San Miguel County, as well as at an appropriate location in proximity to the terminus of such designated OHV road.

SECTION 4: RESTRICTIONS PERTAINING TO THE OPERATION OF OFF-HIGHWAY VEHICLES ON DESIGNATED SAN MIGUEL COUNTY ROADS

1. No OHV shall be operated at any time on any public road within San Miguel County, unless such public road is open to such use as designated within this Ordinance or another resolution or ordinance duly adopted by the Board.
2. No OHV shall be operated at any time, unless the operator of the OHV has in his or her possession a valid motor vehicle driver's license or operator's license.
3. No OHV shall be operated at any time, unless the operator of the OHV is insured to the minimum level required by the State of Colorado for automobiles.
4. Seat belt use is required if seatbelts are incorporated into the OHV by the OHV manufacturer. In the event an OHV is manufactured to incorporate child car seats, child car seats and restraints shall be used in accordance with laws for motor vehicles under Colorado law.
5. Eye protection is required of all operators and passengers of any OHV without a full windshield, which is hereby defined to be a windshield which completely protects the driver's entire head behind its surface.
6. OHVs shall contain no more occupants than for which the OHV was designed and manufactured.
7. Helmets are required for OHV operators and passengers under the age of 18, unless a passenger is properly contained in a child seat or restraint appropriate to the child's age. This child helmet exception is applicable only to OHVs designed and manufactured to support a child seat.
8. OHV operators and passengers are subject to all traffic laws applicable to motor vehicles, including but not limited to, any state, federal, or county law applicable to motor vehicle operation. This shall include, without limitation, compliance with the applicable provisions of Title 42, C.R.S. and the Colorado Model Traffic Code.

9. Reckless driving as provided by C.R.S. §42-4-1401 and Careless driving as provided by C.R.S. §42-4-1402 apply to the operation of OHVs hereunder and is prohibited. A violation of these prohibitions is subject to punishment pursuant to C.R.S. §42-4-1401 and C.R.S. §42-4-1402.
10. Littering as provided by C.R.S. §42-4-106 is prohibited. A violation of this prohibition is subject to punishment pursuant to C.R.S. §42-4-106.
11. It shall be unlawful for any person to knowingly allow, authorize, suffer or permit an OHV owned or belonging to him or her, or which is under his or her possession or authority, to be operated by any person who is under the age of 16 and who is not properly licensed pursuant to this Section 4.1.

SECTION 5: ENFORCEMENT

1. The BOCC does hereby authorize the designation of enforcement personnel pursuant to C.R.S. §30-15-402.5 whose official duties and responsibilities shall include, but need not be limited to, the enforcement of the provisions of this Ordinance through the issuance of citations or summonses and complaints, without regard to the peace officer certification requirements of C.R.S. §24-31-305, and such designated enforcement personnel, while not required to be a Colorado certified peace officer, shall be at least eighteen years of age, and a citizen of the United States of America. Any persons authorized to serve as enforcement personnel for purposes of this Ordinance shall be specifically designated by the San Miguel County Board of Commissioners for that purpose by formal resolution or other official action of the Board. Any such designated ordinance enforcement personnel shall serve at the pleasure of the Board of County Commissioners of San Miguel County, Colorado.
2. Pursuant to C.R.S. §30-15-410, it is the duty of the San Miguel County Sheriff, Undersheriff and deputies to enforce the provisions of this Ordinance.

SECTION 6: VIOLATIONS - PENALTIES

1. Subject to Section 6.2 below, and pursuant to C.R.S. §30-15-402, any person who violates any provision of Section 3 of this Ordinance shall be guilty of a class 2 petty offense and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1000) for each separate violation.
2. The penalty assessment procedure provided for in C.R.S. §16-2-201 shall be followed for any violation of this Ordinance. Any person who violates any provision of this Ordinance shall be given a penalty assessment notice by the apprehending peace officer or by the designated County enforcement personnel. The penalty assessment notice shall be a summons and complaint which contains: (i) the identity of the alleged offender by name and address, (ii) specifies the offense with which the person is charged;

(iii) states both the applicable maximum fine for the violation of Section 4 of \$1,000.00 (if imposed by the Court) and the optional \$150.00 fine which may be paid directly to the San Miguel County Treasurer at their office in Telluride, CO, and (iv) states the requirement that the alleged offender either pay the \$150.00 fine to the San Miguel County Treasurer in person or by mail, at the address specified in the penalty assessment notice within fourteen days of such penalty assessment notice, or else be required to appear to answer the charge before the San Miguel County Court, at the County Courthouse in Telluride, CO, at the date and time specified in the penalty assessment notice. Any person who chooses to acknowledge that they are guilty of the charge specified in the penalty assessment notice may, within fourteen days of the date of issuance of the penalty assessment notice, pay a fine of \$150.00 to the San Miguel County Treasurer either in person at the San Miguel County Courthouse in Telluride, CO, or by mail to the County Treasurer's address as specified on the penalty assessment notice. Any such payment of the optional fine specified in the penalty assessment notice shall be accompanied by a copy of the penalty assessment notice signed by the person acknowledging their guilt. Timely payment of the optional fine specified in the penalty assessment notice shall relieve the person receiving such notice of any further obligation to appear in the San Miguel County Court, at the date and time specified in such notice, to answer the offense charged in the notice.

3. All fines, penalties or forfeitures for the violation of this Ordinance, but not any surcharge imposed by the Court upon conviction pursuant to C.R.S. §30-15-402, shall be paid to the County Treasurer of San Miguel County, CO, within thirty days of the Court's receipt of any such fines, penalties, and/or forfeitures.
4. Pursuant to C.R.S. §30-15-410, the San Miguel County Court shall have jurisdiction in prosecutions of violations of this Ordinance. The simplified county court procedures set forth in Part 1 of Article 2 of Title 16, C.R.S., and the penalty assessment procedures set forth in Part 2 of said Article shall be applicable to the prosecutions of alleged violations of this Ordinance. Any summons and complaint brought in the San Miguel County Court for the alleged violation of this Ordinance, shall be filed in the name of San Miguel County, by and on behalf of the people of the state of Colorado, and any process issued by the San Miguel County Court in such proceedings shall be likewise so denominated.
5. All suits for the recovery of any fine and prosecutions for the commission of any offense made punishable under this Ordinance shall be barred if not commenced within one year after the commission of the alleged Ordinance offense pursuant to C.R.S. §30-15-409.

SECTION 7: ORDINANCE EFFECTIVE DATE

1. Pursuant to §30-15-405, C.R.S., this Ordinance shall take effect and shall be in force beginning on the 30th day after publication of the Notice of Adoption by the San Miguel County Board of Commissioners in the Norwood Post.

SECTION 8: SEVERABILITY

1. Should any section, clause, sentence, or part of this Ordinance be adjudged by any Court of competent jurisdiction, to be unconstitutional or invalid, the same shall not affect, impair, or invalidate this Ordinance as a whole or any part thereof, other than a part so declared to be invalid.

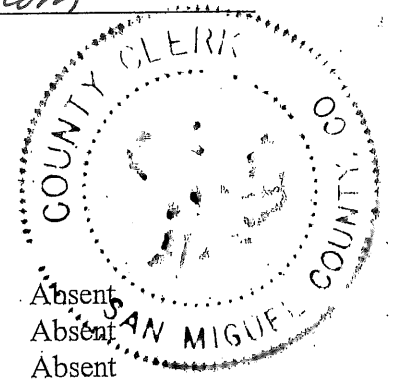
INTRODUCED, READ, ADOPTED ON FIRST READING, AND ORDERED PUBLISHED AS ADOPTED, at Telluride, Colorado, on July 25, 2018.

**SAN MIGUEL COUNTY,
COLORADO BOARD OF COUNTY
COUNTY COMMISSIONERS**

Kris Holstrom
Kris Holstrom, Chair

ATTEST:

Carmen Warfield
Carmen Warfield, Chief Deputy Clerk



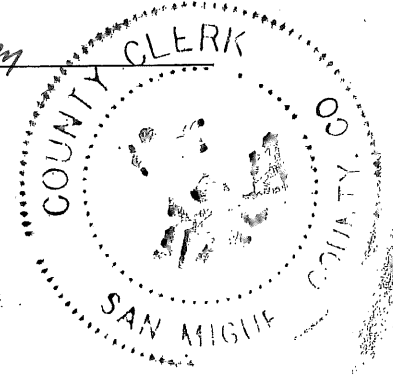
Vote:

Kris Holstrom	<u>Aye</u>	Nay	Abstain	Absent
Hilary Cooper	<u>Aye</u>	Nay	Abstain	Absent
Joan May	<u>Aye</u>	Nay	Abstain	Absent

ADOPTED ON SECOND AND FINAL READING, at Telluride, Colorado on August 22, 2018, 2018.

**SAN MIGUEL COUNTY, COLORADO
BOARD OF COUNTY
COMMISSIONERS**

Kris Holstrom
Kris Holstrom, Chair



ATTEST:

Carmen Warfield
Carmen Warfield, Chief Deputy Clerk

Vote:

Kris Holstrom	Aye	Nay	Abstain	Absent
Hilary Cooper	Aye	Nay	Abstain	Absent
Joan May	Aye	Nay	Abstain	<u>Absent</u>

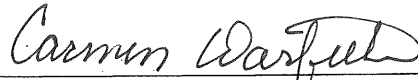
CERTIFICATE

I hereby certify that the foregoing ordinance entitled:

**AN ORDINANCE OF THE BOARD OF COUNTY
COMMISSIONERS OF SAN MIGUEL COUNTY,
COLORADO
ORDAINING THE OPERATION OF
UNLICENSED "OFF - HIGHWAY
VEHICLES"
ON CERTAIN DESIGNATED SAN MIGUEL COUNTY
ROADS**

Ordinance #2018 -1

was introduced, read and adopted on first reading at a regular meeting of the San Miguel County, Colorado, Board of Commissioners on July 25, 2018, 2018, and the same was published in full in the Norwood Post on July 11, 2018 and thereafter was adopted on second and final reading at a regular meeting of the San Miguel County, Colorado, Board of Commissioners on August 22, 2018, 2018, and Notice of the Adoption of the foregoing ordinance following such second and final reading was published in the Norwood Post on August 1, 2018.



Carmen Warfield, Chief Deputy Clerk