

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: February 6, 2007 ☐ Consent ☒ Regular  
☐ Ordinance ☐ Public Hearing  
 Department: Administration

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve on preliminary reading and advertise for public hearing on February 27, 2007 at 9:30 a.m. AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA ENTITLED "ALL TERRAIN VEHICLE (ATV) OPERATION ON UNPAVED ROADWAYS"; PROVIDING FOR THE INAPPLICABILITY OF SECTION 316.2123, FLORIDA STATUTES IN PALM BEACH COUNTY; PROVIDING FOR ATV OPERATION; PROHIBITION; PROVIDING FOR APPLICABILITY; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

**Summary:** Section 316.2123, Florida Statutes, related to Highway Safety, became effective October 1, 2006 and allows an ATV to 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 law also allows for the governing body of the county, following a public hearing by majority vote to exempt the county from this section. Passage of this Ordinance will exempt Palm Beach County from Section 316.2123, Florida Statutes. Staff was directed at the January 9, 2007 meeting to prepare this Ordinance. Countywide (DW)

**Background and Policy Issues:** Enacted by the 2006 session of the Florida Legislature, House Bill 7079 created Florida Statute 316.2123, thereby allowing the operation of ATVs on county unpaved roads. The Board of County Commissioners finds that such law would endanger the health, safety, and welfare of its residents and visitors and desires to be exempt from this section of Florida Statute 316.2123, thereby prohibiting the operation of ATVs on county unpaved roads or streets.

**Attachments:**

1. Ordinance
2. October 30, 2006 Memorandum

Recommended By: \_\_\_\_\_  
 Department Director Date

Approved By:  \_\_\_\_\_  
 Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget?      Yes \_\_\_\_\_      No X

Budget Account No: Fund \_\_\_\_\_ Dept \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_

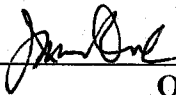
B. Recommended Sources of Funds/Summary of Fiscal Impact:

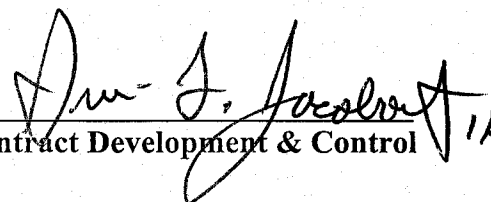
The impact of the \$500 fine is expected to be minimal.

C. Department Fiscal Review: \_\_\_\_\_

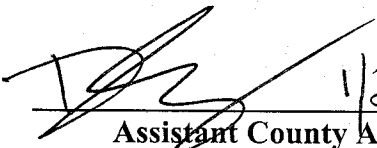
III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

 1-25-07  
OFMB  
DAN 1-25-07  
DM 1-24-07

 1/26/07  
Contract Development & Control

B. Approved as to Form  
and Legal Sufficiency:

 1/29/07  
Assistant County Attorney

C. Other Department Review:

\_\_\_\_\_  
Department Director

ORDINANCE NO. 2007-\_\_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA ENTITLED "ALL TERRAIN VEHICLE (ATV) OPERATION ON UNPAVED ROADWAYS"; PROVIDING FOR THE INAPPLICABILITY OF SECTION 316.2123, FLORIDA STATUTES IN PALM BEACH COUNTY; PROVIDING FOR ATV OPERATION; PROHIBITION; PROVIDING FOR APPLICABILITY; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature enacted section 316.2123, Florida Statutes, to prohibit All-Terrain Vehicles ("ATVs") from being operated on public roads and streets; and

WHEREAS, the 2006 Florida Legislature created section 316.2123, Florida Statutes, to allow ATVs to 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 who is supervised by a licensed driver; and

WHEREAS, following a noticed public hearing, a County may exempt itself from section 316.2123, Florida Statutes, by majority vote of the governing board; and

WHEREAS, the Board of County Commissioners of Palm Beach County has determined that ATVs are inherently dangerous due to the large number of fatalities and injuries that occur each year from operating ATVs; and

WHEREAS, the Board finds that the public health, safety, and welfare would be served by exempting Palm Beach County from section 316.2123, Florida Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

**Section 1. RECITALS:**

The foregoing recitals are true and correct and are incorporated herein.

**Section 2. TITLE:**

This Ordinance shall be entitled the Palm Beach County All Terrain Vehicle (ATV) Operation on Unpaved Roadways Ordinance.

**Section 3. ATV OPERATION; PROHIBITION:**

Palm Beach County is exempt from the provisions of section 316.2123, Florida Statutes, which allows All-Terrain Vehicles (ATVs) to be operated during the daytime on

1 unpaved roadways where the posted speed limit is less than 35 miles per hour by a licensed  
2 driver or by a minor under the supervision of a licensed driver. ATVs are defined in  
3 accordance with section 317.0003, Florida Statutes. ATVs may not be operated during anytime  
4 of day or night on an unpaved roadway within Palm Beach County.

5 **Section 4. APPLICABILITY:**

6 This Ordinance shall apply countywide.

7 **Section 5. ENFORCEMENT:**

8 This Ordinance is enforceable by all means provided by law. The provisions of this  
9 Ordinance shall be enforced by the Palm Beach County Sheriff's Office and municipal law  
10 enforcement officers within their jurisdiction. Additionally, the County may choose to enforce  
11 this Ordinance by seeking injunctive relief in the Circuit Court of Palm Beach County.

12 (1) Any violation of this Ordinance is a civil infraction.

13 (2) Any person who has committed an act in violation of this Ordinance shall  
14 receive a citation from the Sheriff or any law enforcement officer who has probable cause to  
15 believe that the person has committed a civil infraction in violation of this Ordinance.

16 (3) The county court shall have jurisdiction over all violations of this  
17 Ordinance.

18 (4) The county clerk shall:

19 (a) Accept designated fines and issue receipts therefore;

20 (b) Provide a uniform citation form serially numbered for notifying alleged  
21 violators to appear and answer to charges of violation of this Ordinance.

22 (5) Violation of any provision of this Ordinance shall be punishable by a fine of  
23 Five Hundred dollars (\$500.00).

24 (6) Any person issued a citation shall be deemed to be charged with a civil violation  
25 and shall comply with the directives on the citation.

26 (7) Payment shall be made, either by mail or in person, to the Violations Bureau  
27 within the time specified on the citation. If a person follows this procedure, s/he shall be  
28 deemed to have admitted the infraction and to have waived his/her right to a hearing on the  
29 issue of commission of the infraction.

30 (8) All fines collected as a result of said citations (except those fines collected as a  
31 result of citations issued by municipal law enforcement officers, which shall be remitted by the

1 Clerk of the Court directly to the municipality issuing the citation) shall be paid into the County  
2 Treasury and deposited into the County's general fund.

3 (9) Any person who fails to make payment within the specified period shall be  
4 deemed to have waived his/her right to pay the civil penalty as set forth in the citation.

5 (10) Any person who elects to appear before the court to contest the citation shall be  
6 deemed to have waived his/her right to pay the civil penalty. The court, after a hearing, shall  
7 make a determination as to whether a violation has occurred and may impose a civil penalty of  
8 Five Hundred dollars (\$500.00) plus court costs.

9 (11) If a person fails to pay the civil penalty, or fails to appear in court to contest the  
10 citation, s/he shall be deemed to have waived his/her right to contest the citation; and in such  
11 case, a default judgment may be entered and the judge shall impose a fine at that time. An order  
12 to show cause may be issued. If the fine is paid, the case shall be dismissed. If the fine is not  
13 paid, judgment may be entered up to the maximum civil penalty.

14 (12) Any person cited for an infraction under this Ordinance shall sign and accept the  
15 citation indicating a promise to pay the fine or appear in court. Any person who willfully  
16 refuses to sign and accept a citation issued by an officer shall be guilty of a misdemeanor of the  
17 second degree, punishable as provided by Florida Statute 775.082 or 775.083.

18 (13) Failure to comply with the requirements of this Ordinance shall constitute a  
19 violation of a County Ordinance, and shall be punishable, upon conviction, pursuant to Section  
20 125.69(1), Florida Statutes, by a fine of Five Hundred dollars (\$500.00) per violation or  
21 imprisonment not exceeding sixty (60) days, or both such fine and imprisonment. In addition to  
22 the sanctions contained herein, the County shall take any other appropriate legal action,  
23 including, but not limited to, administrative action and requests for temporary and permanent  
24 injunctions to enforce the provisions of this Ordinance. It is the purpose of this Ordinance to  
25 provide additional cumulative remedies.

26 **Section 6. PENALTY:**

27 Any violation of any portion of this Ordinance shall be punishable as provided by law.  
28 A person who violates this Ordinance shall be punished by a fine of \$ 500.00 or by  
29 imprisonment for a term not exceeding 60 days, or by both such fine and imprisonment. Any  
30 person violating any of the provisions of this Ordinance shall be prosecuted in the same manner  
31 as misdemeanors are prosecuted.

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**Section 7. SEVERABILITY:**

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

**Section 8. REPEAL OF LAWS IN CONFLICT:**

All local laws and ordinances in conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict.

**Section 9. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

The provisions of this Ordinance shall become and be made a part of the Palm Beach County Code. The sections of this Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**Section 10. CAPTIONS:**

The captions, section headings, and section designations used in this Ordinance are for convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

**Section 11. EFFECTIVE DATE:**

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the \_\_\_\_ day of \_\_\_\_\_, 2007.

SHARON R. BOCK  
CLERK & COMPTROLLER

PALM BEACH COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

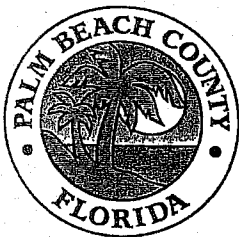
By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Addie L. Greene, Chairperson

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By:  \_\_\_\_\_  
Assistant County Attorney

EFFECTIVE DATE: Filed with the Department of State on the \_\_\_\_ day of \_\_\_\_\_, 2007.



**County Administration**

P.O. Box 1989

West Palm Beach, FL 33402-1989

(561) 355-2030

FAX: (561) 355-3982

www.pbcgov.com



**Palm Beach County  
Board of County  
Commissioners**

Tony Masiolotti, Chairman

Addie L. Greene, Vice Chairperson

Karen T. Marcus

Jeff Koons

Warren H. Newell

Mary McCarty

Burt Aaronson

**County Administrator**

Robert Weisman

**INTEROFFICE COMMUNICATION**

**DATE:** October 30, 2006  
**TO:** Commissioner Karen Marcus, District 1  
**FROM:** Todd J. Bonlarron, Director, Legislative Affairs  
**RE:** All-Terrain Vehicles (ATV) Ordinance

A handwritten signature in black ink, appearing to be "TB", written over the "FROM:" line.

House Bill 7079 related to Highway Safety became effective October 1, 2006. One provision of the legislation amended Florida Statute 316.2131, which allows an ATV to 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. It did allow, however, for the governing body of the county, following a public hearing, by majority vote to exempt the county from this section.

I have attached a memo from the Sheriff's Office recommending that Palm Beach County take the necessary steps to exempt the County from this section of the bill. It provides justification for their recommendation based on the increased volume of traffic on our roadways and the number of safety concerns regarding the use of ATVs.

Additionally, a sample resolution provided by the Florida Association of Counties relating to exempting the operation of ATV's on unpaved county roadways has been attached.

Please let me know if you need additional information regarding this subject.

TB

enc.

cc: Members, Board of County Commissioners  
Robert Weisman, County Administrator  
Verdenia Baker, Deputy County Administrator  
Brad Merriman, Assistant County Administrator  
Vince Bonvento, Assistant County Administrator  
Jon Van Arnam, Assistant County Administrator  
Shannon LaRocque, Assistant County Administrator  
George Webb, County Engineer



**PALM BEACH COUNTY**  
**SHERIFF'S OFFICE**  
RIC L. BRADSHAW, SHERIFF



**INTER-OFFICE MEMORANDUM**  
**Contracts / Wildlands Unit**

**TO:** Captain Alan Fuhrman

**DATE:** July 20, 2006

**FROM:** D/S John Gibson

**SUBJECT:** OHV (Off highway vehicle) Exemption Justification

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Under the 2006 legislation affecting traffic and motor vehicle laws, HB 7079 Highway Safety, FSS 316.2123 (1) and (2), becomes effective October 1, 2006.

**FSS 316.2123 "Operation of an ATV on certain roadways."**

**316.2123(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.

**316.2123(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.

In addition to increasing traffic volume on our communities' unpaved roads where the posted speed limit is less than 35 mph, after October 1<sup>st</sup> our roadways will be shared by all-terrain-vehicles (ATVs), golf carts, mini-bikes, go-carts, dirt bikes, and wheel type swamp buggies. It is estimated at least half of the drivers will be unlicensed minors.

From a public safety standpoint, it would be difficult, at best, for a licensed driver to supervise an unlicensed minor operating an OHV capable of speeds up to 70 mph. A licensed driver traveling behind the minor on a separate OHV would be unable to communicate with the minor due to engine noise, wind, and helmet use. This becomes critical when approaching oncoming traffic and intersections. Traffic conditions in PBC can be challenging for experienced, licensed drivers. An unlicensed, inexperienced 11 year old child riding a camouflaged colored ATV along a tree lined roadway will complicate this further.

During the past three years, OHV complaints to law enforcement, such as reckless driving, loud noise, road destruction, trespassing, traffic crashes, injuries and deaths, have dramatically increased in PBC. Nationwide, the number of ATV fatalities has climbed with the number of ATVs purchased since the 1980s when recreational riding started becoming popular.



There now are approximately 6.3 million ATVs used by 15 million people, according to the Specialty Vehicle Institute of America, a trade association for major ATV manufacturers. Florida ranks among the top ten states in sales.

In a report published last year, the safety commission found that there were 6,494 ATV-related deaths between 1982 and 2004. Approximately one-third of these deaths involved children under 16. There also were 136,100 injuries with 44,700 of them involving children – and that was in 2004 alone. Florida had 72 ATV-related deaths between 2002 and 2004, the fifth highest number of any state; the data was incomplete for 2004, so final totals may be higher.

Additional concerns for law enforcement include: OHVs crossing higher speed, paved roadways intersecting with unpaved roadways; the unlawful removal of 35 mph and above speed limit signs; and increased debris from the use of nails, nail boards, and strung up wire by property owners trying to prevent access to their property. The new law would also provide legal access to roadways that border natural areas, preserves, construction sites, and posted private properties where OHV operation is prohibited. Law enforcement would need additional resources, such as an OHV enforcement unit, to handle the increase in OHV complaints. This unit would have to be equipped with ATVs to be effective. Road maintenance budgets would have to be increased to address the damage caused by heavy OHV use.

Based on the above, it is recommended that Palm Beach County government take the necessary steps to vote to exempt the County from this section of HB 7079, F.S. 316.2123(1).