

CITY OF UNALASKA
UNALASKA, ALASKA

ORDINANCE 2024-15

AN ORDINANCE OF THE UNALASKA CITY COUNCIL AMENDING TITLE 14 OF THE UNALASKA CODE OF ORDINANCES REGULATING THE USE OF OFF-ROAD OR ALL-PURPOSE VEHICLES WITHIN CITY LIMITS

WHEREAS, in 2022, state regulations were amended to allow all-purpose vehicles to operate on public roadways where not prohibited by local law or ordinance; and

WHEREAS, off-road vehicles, also known as all-purpose vehicles, are presently prohibited in the City of Unalaska; and

WHEREAS, the use of off-road vehicles or all-purpose vehicles is both convenient and economical, subject to state law and to city ordinances as this Council may adopt, to ensure public safety and lack of conflict with other drivers and pedestrians.

NOW THEREFORE BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF UNALASKA, as follows:

Section 1: Classification. This is a Code Ordinance.

Section 2: Amendment of Section 14.04.010 Definitions. Section 14.04.010 (M) of the Unalaska Code of Ordinances is hereby amended to read as follows [new language is underlined; deleted language is ~~overstruck~~]:

(M) “All-purpose vehicle (APV)” as defined in 13 AAC 40.010(a)(67) means any self-propelled vehicle designed to travel on wheels or tracks in contact with the ground and is commonly used to transport persons for recreational purposes, including vehicles such as four-wheel-drive units, all-terrain vehicles (ATVs), or utility terrain vehicles (UTVs); the definition does not include off-highway vehicles as defined in 13 AAC 40.010(a) or snowmobiles. “OFF ROAD VEHICLE” means any vehicle that is being operated off a highway.

Section 3: Amendment of Section 14.08.020 Off Road Vehicle Operation. Section 14.08.020 of the Unalaska Code of Ordinances is hereby amended to read as follows:

§ 14.08.020 ~~OFF ROAD~~ ALL-PURPOSE VEHICLE OPERATION.

It shall be unlawful to operate an all-purpose vehicle ~~off-road vehicle~~ in the City of Unalaska:

(A) On private property owned by a person other than the driver without having the written consent of the owner of the property in the driver's possession.

~~(B) On public property which has not been officially designated as an area for off road vehicle operation.~~

~~(B) On a sidewalk or trail designed and maintained for non-motorized travel unless such travel is necessary for the purpose of directly crossing, at approximately a ninety-degree angle, from one area of lawful operation to another, after coming to a complete stop and yielding to all pedestrians or other traffic.~~

~~(D) Repealed.~~

~~(E) In such a manner as to throw or scatter debris or other material onto:~~

~~— (1) Any improved real property;~~

~~— (2) Any sidewalk;~~

~~— (3) Any paved driveway; or~~

~~— (4) Any paved highway.~~

~~(F) On a highway, or sidewalk, unless such travel is necessary for the purpose of directly crossing, at approximately a ninety degree angle, from one area of lawful operation to another, after coming to a complete stop and yielding to all pedestrians or other traffic.~~

~~(G) Between the hours of 10:00 p.m. and 8:00 a.m.~~

~~(CH) This section shall not apply to an employee of a municipal or state law enforcement agency while in the performance of the employee's official duties.~~

Section 4: Amendment of Section 14.04.025. Section 14.04.025(C), FINE SCHEDULE FOR LOCAL TRAFFIC OFFENSES, of the Unalaska Code of Ordinances is hereby amended to read as follows:

(C) An offense listed in this schedule may not be disposed of without court appearance if the offense is in connection with a motor vehicle accident that results in the death of a person.

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Code Section	Offense Description	Fine Amount
14.08.020(A)	Unlawful operation of <u>APV</u> ATV: driving on private property	\$100 <u>\$1,000</u>
14.08.020(B)	Unlawful operation of ATV: driving on non-designated public property	\$100

14.08.020(BG)	Unlawful operation of <u>APV</u> ATV: driving on sidewalk <u>or</u> nonmotorized trail	\$100 <u>\$1,000</u>
14.08.020(E)(1)	Unlawful operation of <u>APV</u> ATV: scattering debris on improved real property	\$100
14.08.020(E)(2)	Unlawful operation of ATV: scattering debris on sidewalk	\$100
14.08.020(E)(3)	Unlawful operation of ATV: scattering debris on paved driveway	\$100
14.08.020(E)(4)	Unlawful operation of ATV: scattering debris on paved highway	\$100
14.08.020(F)	Unlawful operation of ATV: highway or sidewalk	\$100
14.08.020(G)	Unlawful operation of ATV: between hours of 10:00 p.m. and 8:00 a.m.	\$100

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Section 5: Effective Date. This ordinance shall take effect upon adoption.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on January 14, 2025.


 Vincent M. Tutiakoff, Sr.
 Mayor

ATTEST:


 Alicia Aguilar
 Acting City Clerk



MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Marjie Veeder, Deputy City Manager
Through: William Homka, City Manager
Date: November 12, 2024 (Memo updated for November 26 Council Meeting – updates are shown in bold *italics*)
Re: Ordinance 2024-15: Amending Title 14 of the Unalaska Code of Ordinances regulating the use of off-road or all-purpose vehicles within the city limits

SUMMARY: Following a work session conducted on the same topic, on September 24, 2024, Council unanimously directed the City Manager to “bring to council an ordinance change to allow APV use on public roads in Unalaska.” Ordinance 2024-15 accomplishes this directive.

PREVIOUS COUNCIL ACTION:

November 12, 2024: Council introduced Ordinance 2024-15 and scheduled it for public hearing and second reading on November 26, 2024. Council also amended the fine amount for unlawful operation of an APV, driving on private property, from \$100 to \$1,000; and deleted the fine for unlawful operation of APV, driving on sidewalk or nonmotorized trail. See further information below in the legal section.

December 28, 2021: Staff provided information in work session in response to an inquiry from Council, and submitted a proposed ordinance amending local code to provide clarification as a result of the State’s code change.

February 8, 2022: Council directive to bring a draft ordinance on February 22, 2022, regarding off-road vehicle use.

February 22, 2022: Proposed Ordinance 2022-04 was introduced but failed to go to 2nd reading. This ordinance edited the definition of off-road vehicle and indicated that it would be unlawful to operate an off-road vehicle in the city on public property which had not been designated by the City as an area for off-road vehicle operation.

February 22, 2022: Council directive to bring a draft ordinance allowing APV use on public roads in Unalaska.

March 22, 2022: Proposed Ordinance 2022-05 was introduced, but failed to go to 2nd reading. This ordinance:

- Edited the definition of off-road vehicle;
- Indicated that it would be unlawful to operate an off-road vehicle in the city on public property which had not been designated by the City as an area for off-road vehicle operation;
- Allowed use of off-road vehicles on city roads by striking the word highway in the list of areas that such use was prohibited;

- Added that all off-road vehicles operated on the roadway must comply with all National Highway Traffic Safety, United States Department of Transportation, and State of Alaska regulations to include registration and insurance requirements; and
- Added that snowmobiles are prohibited from being operated on the roadway, unless such travel is necessary for the purpose of directly crossing, at approximately a ninety degree angle, from one area of lawful operation to another, after coming to a complete stop and yielding to all pedestrians or other traffic.

During the meeting on March 22, 2022, a motion was made to edit the ordinance to strike the restriction on hours of operation; but this motion failed. It was also moved to postpone consideration of the ordinance, which also failed.

June 11, 2024: Council directive to place on agenda an ordinance change to allow APV use on public roads in Unalaska.

September 24, 2024: Work session discussion of proposed ordinance in response to the June 11 directive.

BACKGROUND: Beginning January 1, 2022, the state of Alaska began to allow all-purpose vehicles on roadways where the speed limit is less than 45 miles per hour and where boroughs or municipalities have not banned their use within their boundaries. Our city code presently prohibits off-road vehicle use in the city, which was in effect before the state law changed in 2022. If the Council chooses to allow use of all-purpose vehicles, state laws will still apply. The city attorney's memo from the September 24, 2024 packet lists some of those laws that will still apply in Unalaska if Council decides to allow all-purpose vehicle use.

DISCUSSION: Ordinance 2024-15 (1) amends the definition of off-road or all-purpose vehicles; (2) removes the prohibition of all-purpose vehicle use on city roads; and (3) amends the related fine schedule for local traffic offenses accordingly.

ALTERNATIVES: Council's alternatives include adopting the ordinance as presented; proposing amendments to the ordinance; or doing nothing, which means the prohibition against all-purpose vehicles will continue in Unalaska.

FINANCIAL IMPLICATIONS: None at this time, other than attorney fees.

LEGAL: City attorney Sam Severin authored the proposed ordinance, and has been working closely with city staff on this issue.

City Attorney Sam Severin remotely attended the November 12 Council meeting and responded to inquiries from Council. A question was asked about what happens if we delete the fine for driving on a sidewalk? Does it just default to state law? Mr. Severin interpreted the question to mean what happens if we delete both 14.08.020 B (the actual prohibition against driving on a sidewalk) as well as the corresponding entry in the fine schedule. If both are deleted, there would essentially be no city law on that point and state law would govern.

Simply deleting the fine would have a different effect. That effect is the person would have to go to court, because UCO 14.04.025 states:

§14.04.025 FINE SCHEDULE FOR LOCAL TRAFFIC OFFENSES.
[emphasis added]

(A) In accordance with AS 28.05.151(a), citations for the following offenses may be disposed of as provided in AS 12.25.195-.230, without a court appearance, upon payment of the fine amounts listed below plus the state surcharge required by AS 12.55.039 and AS 29.25.074. Fines must be paid to the court. The Rules of Minor Offense Procedure in the Alaska Rules of Court apply to all offenses listed below. Citations charging these offenses must meet the requirements of Minor Offense Rule 3. If a person charged with one of these offenses appears in court and is found guilty, the penalty imposed for the offense may not exceed the fine amount for that offense listed below. These fines may not be judicially reduced. If an offense is not listed on the fine schedule, or if the citation indicates a court appearance is required, the defendant must appear in court to answer to the charges.

Because Council deleted the fine only, and not the prohibition of driving on the sidewalk, the effect then is a person would have to go to court to get sentenced. Alternatively, law enforcement could write the citation under state law, which would then avoid having to go to court. At the end of the day, there is a default - it defaults to the court system to impose a fine. The court would likely consider state law for guidance on the fine amount.

STAFF RECOMMENDATION: No recommendation, as the proposed ordinance is in response to a directive from Council. However, Staff believes the proposed ordinance complies with Council's directive.

As for driving an APV on a sidewalk or nonmotorized trail and the related fine, Staff recommends that Council either (1) amend the ordinance to insert a local fine; or (2) amend the ordinance to remove the prohibition of driving on a sidewalk or nonmotorized trail. In the first instance, both the prohibition of driving on a sidewalk and the fine would be contained in our local ordinance. In the second instance, the default would fully be to state law.

A mandatory court appearance, which would be the result of the recent amendment, does have a benefit. It creates a degree of accountability by having the offender attend court. On the other hand, this requires an officer to prepare for and attend court. Legal counsel believes that setting a fine in the city code is preferable. The state laws are not particularly easy to research; stating a clear prohibition in the city code provides the best actual notice to the public. Additionally, to the extent that driving on sidewalks proves problematic, the city can easily increase the fine in response.

Staff recommends that Council amend the ordinance to insert a local fine for driving an APV on the sidewalk or non-motorized trail. The amount of the fine is at Council's discretion, but the State's fine for driving a vehicle on the sidewalk is \$150.

PROPOSED MOTION: First reading: I move to introduce Ordinance 2024-15 and schedule it for public hearing and second reading on November 26, 2024.

Second reading: I move to adopt Ordinance 2024-15.

If Council wishes to amend the ordinance to add back in the fine for driving on a sidewalk or non-motorized trail, the proposed motion is as follows, including the desired amount of the fine:

I move to amend Section 4 of Ordinance 2024-15, UCO 14.04.025 Fine Schedule, to include a fine of \$_____ for violation of 14.08.020(B), Unlawful operation of an APV: driving on sidewalk or non-motorized trail.

CITY MANAGER COMMENTS: I concur with the Staff Recommendation.

ATTACHMENTS: Council packet documents from September 24, 2024.