

**RECORD OF PROCEEDINGS RELATING TO THE ADOPTION OF
RESOLUTION NO. R-17-26 OF THE BOARD OF COUNTY COMMISSIONERS
OF GRANT COUNTY, NEW MEXICO**

STATE OF NEW MEXICO)
) ss.
COUNTY OF GRANT)

The Board of County Commissioners (the “Board”) of Grant County (the “County”), in the State of New Mexico, met in an open regular meeting in full conformity with the law and rules of the County, in the Commissioners Chambers in the Grant County Administration Building, 1400 Highway 180 East, Silver City, New Mexico, being the regular meeting place of the Board, at 9:00 a.m., on Thursday, June 15, 2017, at which time there were present and answering the roll call the following members:

| | |
|----------------|--|
| Commissioners: | Brett Kasten Gabriel Ramos Alicia Edwards Gerald W. Billings, Jr. Harry Browne |
| Absent: | None |

Thereupon the following proceedings, among others, were had and taken, to wit:
There was officially filed with the County Clerk, the Chairman and each Commissioner, a copy of a resolution, which is as follows:

RESOLUTION NO. R-17-26

NOTICE OF INTENT TO CONSIDER AN ORDINANCE

WHEREAS, the New Mexico Legislature amended Section 66-3-1011 NMSA 1978, allowing a county, by ordinance or resolution, to authorize the operation of off-highway motor vehicles on paved streets or highways owned and controlled by the county; and

WHEREAS, the Board of Grant County Commissioners desires to consider an ordinance that would authorize the operation of off-highway motor vehicles on streets or highways owned and controlled by Grant County; and

WHEREAS, in order to consider such an ordinance, the Commission must publish notice of its intention to do so at least 14 days before the meeting at which the ordinance will be considered, in accordance with NMSA (1978) § 4-37-7.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF GRANT COUNTY, NEW MEXICO:

1. That an ordinance, entitled AN ORDINANCE AUTHORIZING THE OPERATION OF OFF-HIGHWAY MOTOR VEHICLES ON STREETS OR HIGHWAYS OWNED AND CONTROLLED BY GRANT COUNTY, to be introduced before the Board shall be filed with the County Clerk, and shall be considered by the Board at a regular meeting held on July 20, 2017, at 9:00 a.m. in Commissioners Chambers of the Grant County Administration Building, 1400 Highway 180 East, Silver City, New Mexico, being the regular meeting place of the Board.

2. That the following notice of intent shall be published one time in the Silver City Daily Press, a newspaper of general circulation in the County, following the adoption of this resolution:

(Form of Notice)

NOTICE OF INTENT TO CONSIDER AN ORDINANCE
GRANT COUNTY, NEW MEXICO

NOTICE IS GIVEN that the Board of County Commissioners, constituting the governing body of Grant County, New Mexico will consider the adoption of an ordinance (the "Ordinance") entitled: AN ORDINANCE AUTHORIZING THE OPERATION OF OFF-HIGHWAY MOTOR VEHICLES ON STREETS OR HIGHWAYS OWNED AND CONTROLLED BY GRANT COUNTY.

The Ordinance will be considered at a regular meeting of the Commission on Thursday, July 20, 2017, at 9:00 a.m., or as soon thereafter as the matter may be heard, in the Commissioners Chambers in the Grant County Administration Building, 1400 Highway 180 East, Silver City, New Mexico, being the regular meeting place of the Board.

A copy of the Ordinance in draft form is on file and available for inspection during normal business hours at the office of the County Clerk at the Grant County Administration Building, 1400 Highway 180 East, Silver City, New Mexico, New Mexico.

DATED: June 15, 2017.

Brett Kasten
Chairman, Board of County
Commissioners
Grant County, New Mexico

(End of Form of Notice)

PASSED, ADOPTED, SIGNED AND APPROVED THIS 15th DAY OF JUNE 2017.

[seal]


ATTEST:

A circular seal for Grant County, New Mexico, featuring the text "GRANT COUNTY, NEW MEXICO" around the perimeter and a central emblem.

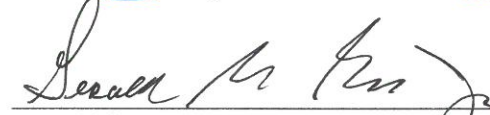
Marisa Castrillo, Clerk

**BOARD OF COUNTY COMMISSIONERS
GRANT COUNTY, NEW MEXICO**


Brett Kasten, Chairman


Gabriel Ramos, Member


Alicia Edwards, Member


Gerald W. Billings, Jr., Member


Harry Browne, Member

Commissioner Ramos then moved that the resolution be passed and adopted. Commissioner Billings seconded the motion. The question being upon the passage and adoption of said resolution, the motion was voted upon with the following result:


Those Voting Yea: 5

Those Voting Nay: 0

Those Absent:

The Chairman thereupon declared that at least a majority of all the members of that Commission having voted in favor thereof, the motion was carried and the resolution duly passed and adopted.

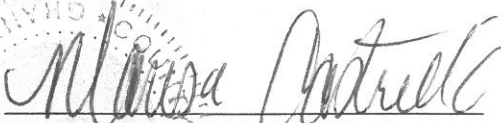
After consideration of matters not relating to the resolution, the meeting on motion duly made, seconded and unanimously carried, was adjourned.



Brett Kasten, Chairman
Board of County Commissioners

[SEAL]

Attest:



Marisa Castriello, County Clerk



STATE OF NEW MEXICO)
) ss.
COUNTY OF GRANT)

I, Marissa Castrillo, County Clerk of Grant County, New Mexico (the "County"), do hereby certify:

1. The foregoing pages are a true, correct and complete copy of the record of the proceedings of the Board of County Commissioners (the "Board") of the County, taken at a duly called, open meeting of the Commission held in the Commissioners Chambers in the Grant County Administration Building, 1400 Highway 180 East, Silver City, New Mexico, being the regular meeting place of the Commission on Thursday, June 15, 2017, beginning at 9:00 a.m., insofar as the same relate to consideration of the adoption of Grant County Resolution No. R-17-26 entitled, NOTICE OF INTENT TO CONSIDER AN ORDINANCE, a copy of which is set forth in the official records of the proceedings of the County kept in my office.

2. Notice of such meeting was given in compliance with the permitted methods of giving notice of meetings of the Commission as required by the open meetings standards then in effect, i.e., the Commission's Open Meetings Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Grant County, New Mexico, this 15th day of June 2017.

Attest:


Marisa Castrillo, County Clerk



**RECORD OF PROCEEDINGS RELATING TO THE ADOPTION OF
ORDINANCE NO. O-17-03 OF THE BOARD OF COUNTY COMMISSIONERS
OF GRANT COUNTY, NEW MEXICO**

STATE OF NEW MEXICO)
) ss.
COUNTY OF GRANT)

The Board of County Commissioners (the “Board”) of Grant County (the “County”), in the State of New Mexico, met in an open regular meeting in conformity with the law and the County’s Open Meetings Resolution, in the Commissioners Chambers in the Grant County Administration Building, 1400 Highway 180 East, Silver City, New Mexico, in the County, being the regular meeting place of the Board, at 9:00 a.m., on Thursday, July 20, 2017, at which time there were present and answering the roll call the following members:

Commissioners: Brett Kasten
 Gabriel Ramos
 Alicia Edwards
 Gerald W. Billings, Jr.
 Harry Browne

Absent:

Thereupon the following proceedings, among others, were had and taken, to wit:

There was provided to the County Clerk, the Chairman and each Commissioner, a copy of an ordinance in final form, which is as follows:

**GRANT COUNTY, NEW MEXICO
ORDINANCE NO. O-17-03**

**AN ORDINANCE AUTHORIZING THE OPERATION OF OFF-HIGHWAY
MOTOR VEHICLES ON STREETS OR HIGHWAYS OWNED AND
CONTROLLED BY GRANT COUNTY**

WHEREAS, the New Mexico Legislature amended Section 66-3-1011 NMSA 1978, allowing a county, by ordinance or resolution, to authorize the operation of off-highway motor vehicles on paved streets or highways owned and controlled by the county; and

WHEREAS, the Board of Grant County Commissioners desires to adopt an ordinance that would authorize the operation of off-highway motor vehicles, as defined herein, on streets or highways owned and controlled by Grant County; and

WHEREAS, the Board duly published notice of its intention to consider the present ordinance at least fourteen (14) days prior to the present meeting, in accordance with NMSA (1978) § 4-37-7; and

WHEREAS, the Board held an open public hearing on the consideration of the present ordinance at which there was an opportunity for public comment.

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of Grant County, New Mexico hereby authorize the operation of off-highway motor vehicles, as defined herein, on any street or highway owned and controlled by Grant County under the conditions set forth in Section 66-3-1011 NMSA 1978 (and any amendments thereto) and this Ordinance; and

BE IT FURTHER RESOLVED that off-highway motor vehicles operating on streets or highways owned and controlled by Grant County shall operate at either the posted speed limit or at a speed limit that may be established by the New Mexico State Transportation Commission for such vehicles, whichever is slower; and

BE IT FURTHER RESOLVED that an "Off-Highway Motor Vehicle" is defined as a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and for purposes of this Ordinance is limited to the following:

- (1) "All-Terrain Vehicle," which means a motor vehicle fifty inches or less in width, having an unladen dry weight of one thousand pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering control;

- (2) "Recreational Off-highway Vehicle," which means a motor vehicle designed for travel on four or more non-highway tires, for recreational use by one or more persons, and having:
- (a) a steering wheel for steering control;
 - (b) non-straddle seating;
 - (c) maximum speed capability greater than thirty-five miles per hour;
 - (d) gross vehicle weight rating no greater than one thousand seven hundred fifty pounds;
 - (e) less than eighty inches in overall width, exclusive of accessories;
 - (f) engine displacement of less than one thousand cubic centimeters; and
 - (g) identification by means of a seventeen-character vehicle identification number; or
- (3) By rule of the Department of Game and Fish, any other vehicles that may enter the market that fit the general profile of vehicles operated off the highway for recreational purposes.

PASSED, APPROVED, AND ADOPTED, this 20th day of July 2017.

[seal]

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
GRANT COUNTY, NEW MEXICO**

Marisa Castrillo, Clerk

Brett Kasten, Chairman

Gabriel Ramos, Member

Alicia Edwards, Member

Gerald W. Billings, Member

Harry Browne, Member

Commissioner _____ then moved that the ordinance as filed with the County Clerk at this meeting be passed and adopted. Commissioner _____ seconded the motion.

The question being upon the passage and adoption of the ordinance, the motion was voted upon with the following result:

Those Voting Yea:

Those Voting Nay:

Those Absent:

The Chairman thereupon declared that at least a majority of all the members of the Board having voted in favor thereof, the motion was carried and the ordinance duly passed and adopted.

After consideration of matters not relating to adoption of the Ordinance, the meeting on motion duly made, seconded and unanimously carried, was adjourned.

Brett Kasten, Chairman

[SEAL]

Attest:

Marisa Castrillo, County Clerk

[illegible]

I, Marisa Castrillo, County Clerk of Grant County, New Mexico certify:

1. The foregoing pages constitute a full and correct copy of the record of the proceedings taken by the Board of Grant County Commissioners (the "Board") at a regular meeting thereof held on July 20, 2017, so far as said minutes relate to an ordinance, a copy of which is therein set forth (the "Ordinance"). The Ordinance has been duly authenticated by the signatures of the Board and myself as County Clerk, sealed with the corporate seal of said County, and recorded in my office on July 20, 2017.

2. Notice of such meeting of July 20, 2017, was given by publishing a notice of the Board's intent to hold a regular meeting by publication in the *Silver City Daily Press*. Notice of the meeting was given in compliance with the permitted methods of giving notice of meetings of the Board as required by the open meetings standards then in effect, *i.e.*, the County's Open Meetings Resolution. An affidavit of publication with respect to such notice is attached as Exhibit A.

3. A majority of the members of the Board were present at said meeting, and the members of the Board voted on the passage of the Ordinance as set forth in such record of proceedings.

[seal]

Marisa Castrillo,
Grant County Clerk

EXHIBIT A


(Attach Affidavit of Publication of Notice of
July 20 2017, Meeting as published
in the *Silver City Daily Press*)

N.M. Stat. Ann. § 66-3-1011

Statutes current through all enactments of the 2017 Regular and first Special sessions of the 53rd Legislature

Michie's™ Annotated Statutes of New Mexico > New Mexico Statutes Annotated > Chapter 66 Motor Vehicles > Article 3 Registration Laws; Security Interests; Anti-Theft Provisions; Bicycles; Equipment; Unsafe Vehicles; Off-Highway Motor Vehicles; Other Vehicles > Part 11 Off-Highway Motor Vehicles

Notice

 This section has more than one version with varying effective dates.

Second of two versions of this section.

66-3-1011. Operation on streets or highways; prohibited areas. [Effective July 1, 2017]

- A. A person shall not operate an off-highway motor vehicle on any:
 - (1) limited access highway or freeway at any time; or
 - (2) paved street or highway except as provided in Subsection B, C, D or E of this section.
- B. Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the roadway. Off-highway motor vehicles shall yield the right of way to oncoming traffic and shall begin a crossing only when it can be executed safely and then cross in the most direct manner as close to a perpendicular angle as possible.
- C. If authorized by ordinance or resolution of a local authority or the state transportation commission, a recreational off-highway vehicle or an all-terrain vehicle may be operated on a paved street or highway owned and controlled by the authorizing entity if:
 - (1) the vehicle has one or more headlights and one or more taillights that comply with the Off-Highway Motor Vehicle Act;
 - (2) the vehicle has brakes, mirrors and mufflers;
 - (3) the operator has valid driver's licenses or permits as required under the Motor Vehicle Code and off-highway motor vehicle safety permits as required under the Off-Highway Motor Vehicle Act;
 - (4) the operator is insured in compliance with the provisions of the Mandatory Financial Responsibility Act;
 - (5) the operator of the vehicle is using eye protection that complies with the Off-Highway Motor Vehicle Act; and
 - (6) if the operator is under eighteen years of age, the operator is wearing a safety helmet that complies with the Off-Highway Motor Vehicle Act.
- D. Except for sections of the Motor Vehicle Code that are in conflict with the licensing and equipment requirements of the Off-Highway Motor Vehicle Act, any operator using an off-highway motor vehicle on a

paved street or highway shall be subject to the requirements and penalties for operators of moving and parked vehicles under the Motor Vehicle Code.

- E. By ordinance or resolution, a local authority or state transportation commission may establish separate speed limits and operating restrictions for off-highway vehicles where they are authorized to operate on paved streets or highways pursuant to Subsection C of this section.
- F. A person shall not operate an off-highway motor vehicle on state game commission-owned, -controlled or -administered land except as specifically allowed pursuant to Chapter 17, Article 6 NMSA 1978.
- G. A person shall not operate an off-highway motor vehicle on land owned, controlled or administered by the state parks division of the energy, minerals and natural resources department, pursuant to Chapter 16, Article 2 NMSA 1978, except in areas designated by and permitted by rules adopted by the secretary of energy, minerals and natural resources.
- H. Unless authorized, a person shall not:
 - (1) remove, deface or destroy any official sign installed by a state, federal, local or private land management agency; or
 - (2) install any off-highway motor vehicle-related sign.

History

1953 Comp., § 64-42-11, enacted by Laws 1975, ch. 240, § 11; recompiled as 1953 Comp., § 64-3-1011, by Laws 1978, ch. 35, § 207; 1985, ch. 189, § 11; 2005, ch. 325, § [14](#); 2009, ch. 53, § [7](#); [2016, ch. 91, § 1](#); [2017, ch. 70, § 4](#).

Annotations

Notes

Amendment Notes.

The 2005 amendment, effective January 1, 2006, added “prohibited areas” in the section heading; added the Paragraph A(1) designation and Paragraph A(2); in Subsection B, inserted “except limited access highways or freeways”; and added Subsections C and D.

The 2009 amendment, effective April 1, 2009, added (E).

The 2016 amendment, effective May 18, 2016, in A(2), deleted “any” at the beginning and added “C or D”; added C and D; and redesignated former C through E as E through G.

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N.M. Stat. Ann. § 66-3-1020

Statutes current through all enactments of the 2017 Regular and first Special sessions of the 53rd Legislature

**Michie's™ Annotated Statutes of New Mexico > Chapter 66 Motor Vehicles > Article 3
Registration Laws; Security Interests; Anti-Theft Provisions; Bicycles; Equipment; Unsafe
Vehicles; Off-Highway Motor Vehicles; Other Vehicles > Part 11 Off-Highway Motor Vehicles**

66-3-1020. Penalties.

- A. A person who violates the provisions of the Off-Highway Motor Vehicle Act [66-3-1001 NMSA 1978] is guilty of a penalty assessment misdemeanor. A parent, guardian or custodian who causes or knowingly permits a child under the age of eighteen years to operate an off-highway motor vehicle in violation of the provisions of the Off-Highway Motor Vehicle Act is in violation of that act and subject to the same penalty as the child operating the off-highway motor vehicle in violation of that act.
- B. As used in the Off-Highway Motor Vehicle Act [66-3-1001 NMSA 1978], "penalty assessment misdemeanor" means violation of any provision of the Off-Highway Motor Vehicle Act for which a violator may be subject to the following:

| CLASS 1 VIOLATIONS | SECTION VIOLATED | PENALTY ASSESSMENT |
|--|------------------|--------------------|
| failure to possess a registration certificate or nonresident permit | 66-3-1010.3 | \$10.00 |
| violations involving headlights or taillights | 66-3-1010.3 | 10.00 |
| failure to possess an off- <u>highway</u> motor vehicle safety permit | 66-3-1010.3 | 10.00 |
| selling a vehicle that produces noise in excess of ninety-six decibels | 66-3-1010.3 | 10.00 |
| any violation of the Off- <u>Highway</u> Motor Vehicle Act not otherwise specifically defined elsewhere in this section | 66-3-1010.3 | 10.00 |
| CLASS 2 VIOLATIONS | SECTION VIOLATED | PENALTY ASSESSMENT |
| failure to complete a required off- <u>highway</u> motor vehicle safety training course | 66-3-1010.2 | \$50.00 |
| operating a vehicle in excess of ten miles per hour within two hundred feet of a business, animal shelter, horseback rider, bicyclist, pedestrian, livestock or occupied dwelling | 66-3-1010.3 | 50.00 |
| a person under the age of eighteen but at least fifteen years of age who operates an off- <u>highway</u> motor vehicle in violation of the supervision requirements of the Off- <u>Highway</u> Motor Vehicle Act | 66-3-1010.3 | 50.00 |
| operating an off- <u>highway</u> motor vehicle that produces noise that exceeds ninety-six decibels | 66-3-1010.3 | 50.00 |
| unauthorized installation, removal, destruction or defacing of a motor vehicle sign | 66-3-1011 | 50.00 |
| CLASS 3 VIOLATIONS | SECTION VIOLATED | PENALTY ASSESSMENT |
| operating a vehicle that is not equipped with an approved spark arrester | 66-3-1010.3 | \$100.00 |

N.M. Stat. Ann. § 66-3-1020

| | | |
|--|-------------|--------|
| operating an off- <u>highway</u> motor vehicle while in pursuit of and with intent to hunt or take a species of animal or bird protected by law, unless otherwise authorized by the state game commission | 66-3-1010.3 | 100.00 |
| operating an off- <u>highway</u> motor vehicle in pursuit of or harassment of livestock in any manner that negatively affects the livestock's condition | 66-3-1010.3 | 100.00 |
| operating an off- <u>highway</u> motor vehicle on or within an earthen tank or other structure meant to water livestock or wildlife | 66-3-1010.3 | 100.00 |
| operating a motor vehicle in a manner that has a direct negative effect on or interferes with persons engaged in agricultural practices | 66-3-1010.3 | 100.00 |
| a person under the age of eighteen operating an off- <u>highway</u> motor vehicle without wearing eye protection and a safety helmet | 66-3-1010.3 | 100.00 |
| a person under the age of eighteen operating an off- <u>highway</u> motor vehicle while carrying a passenger | 66-3-1010.3 | 100.00 |
| a person under the age of fifteen but at least ten years of age who operates an off- <u>highway</u> motor vehicle in violation of the supervision requirements of the Off- <u>Highway</u> Motor Vehicle Act | 66-3-1010.3 | 100.00 |
| a person under the age of ten operating an all-terrain vehicle or recreational off- <u>highway</u> motor vehicle that is not an age-appropriate size-fit or who operates an off- <u>highway</u> motor vehicle in violation of the supervision requirements of this section | 66-3-1010.3 | 100.00 |

| CLASS 4 VIOLATIONS | SECTION VIOLATED | PENALTY ASSESSMENT |
|--|------------------|--------------------|
| operating an off- <u>highway</u> motor vehicle in a careless, reckless or negligent manner so as to endanger the person or property of another | 66-3-1010.3 | \$200.00 |
| operating an off- <u>highway</u> motor vehicle on any road or area closed to off- <u>highway</u> motor vehicle traffic under local, state or federal regulations | 66-3-1010.3 | 200.00 |
| operating an off- <u>highway</u> motor vehicle on a <u>limited-access highway</u> or freeway | 66-3-1011 | 200.00. |

- C. The penalty for second, third and subsequent violations within a three-year time period shall be increased as follows:
- (1) a second violation in a class 1 penalty category involving failure to possess a registration certificate or nonresident permit shall be increased to a class 2 penalty category;
 - (2) any class 2 or class 3 violation for a second or greater infraction within a three-year period shall be increased to the next-highest penalty assessment category; and
 - (3) each subsequent violation in a class 4 penalty category will result in an additional penalty of two hundred dollars (\$200).
- D. Multiple violations for the same incident shall be treated as a single event and shall not result in graduated penalties.

- E. The term “penalty assessment misdemeanor” does not include a violation that has caused or contributed to the cause of an accident resulting in injury or death to a person.
- F. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment, a fine imposed upon later conviction shall not exceed the penalty assessment established for the particular penalty assessment misdemeanor, and probation imposed upon a suspended or deferred sentence shall not exceed ninety days.

History

Laws 2005, ch. 325, § [22](#); 2009, ch. 53, § [12](#).

Annotations

Notes

Effective dates.

Laws 2005, ch. 325, § [26](#) makes the act effective on January 1, 2006.

Amendment Notes.

The 2009 amendment, effective April 1, 2009, rewrote the section, which formerly read: “A. Unless the violation is declared a felony, a petty misdemeanor or a citation under the Motor Vehicle Code, a person who violates the provisions of the Off-**Highway** Motor Vehicle Act is guilty of a misdemeanor pursuant to [Section 66-8-7 NMSA](#) 1978. B. When a person is convicted of a felony or misdemeanor committed while operating an off-**highway** motor vehicle, the court may order the person to complete a board-certified safety training course.”

Notes to Decisions

Construction.

Plain language of Subsection E of this section removes accidents involving an injury from penalty under the Off-**Highway** Motor Vehicle Act. [State v. Natoni, 2012-NMCA-062, 282 P.3d 769, 2012 N.M. App. LEXIS 22 \(N.M. Ct. App. 2012\)](#), cert. denied, 294 P.3d 445, 2012 N.M. LEXIS 145 (N.M. 2012).

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