

**ORDINANCE NO.: 2023 - \_\_**

AN ORDINANCE RELATING TO FLORIDA STATUTE § 316.2123, WHICH  
ALLOWS FOR THE OPERATION OF ALL TERRAIN VEHICLES ON  
UNPAVED ROADWAYS UNDER SPECIFIED CIRCUMSTANCES;  
INCORPORATING RECITALS; AMENDING SECTION 20-2 AND CREATING  
SECTION 20-4 TO EXEMPT HERNANDO COUNTY FROM FLORIDA  
STATUTE § 316.2123; PROVIDING FOR SEVERABILITY; PROVIDING FOR  
INCLUSION IN THE CODE; PROVIDING FOR THE REPEAL OF  
CONFLICTING PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature has enacted Fla. Stat. § 316.2123 regarding the operation  
of all terrain vehicles (“ATV’s”); and,

WHEREAS, Fla. Stat. § 316.2123 prohibits people from driving ATV’s upon public roads  
or streets; provided, that a licensed driver, or a minor under the supervision of a licensed driver, may  
drive an ATV during the daytime on an unpaved roadway where the posted speed limit is less than  
35 miles per hour; and,

WHEREAS, Fla. Stat. § 316.2123 further provides that a county may exempt itself from the  
provision which allows for the operation of an ATV on unpaved roadways, if its governing body,  
by majority vote following a noticed public hearing, votes to exempt the county from this provision;  
and,

1           WHEREAS, the Board of County Commissioners of Hernando County, Florida, finds that  
2 it is in the best interest of the health, safety and welfare of the citizens of Hernando County, Florida  
3 to exempt Hernando County from the provision of Fla. Stat. § 316.2123 which allows for the  
4 operation of an ATV during the daytime on unpaved roadways within the County where the posted  
5 speed limit is less than 35 miles per hour.

6           NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY  
7 COMMISSIONERS OF HERNANDO COUNTY:

8           **Section 1. Incorporation of Recitals.** The above-stated recitals are hereby accepted and  
9 approved as being true and accurate, and are adopted and incorporated herein as if set out further at  
10 length.

11           **Section 2. Repealing Authorization for ATV's to Be Operated on Unpaved Roads.**  
12 Hernando County Code § 20-2, "Parking, Standing or the Presence of Vehicles in, on, or upon  
13 Drainage Retention Areas, Lakes, Ponds, Utility Property or Easements Prohibited," is hereby  
14 amended to read as follows:

15           Sec. 20-2. Parking, Standing or the Presence of Vehicles in, on, or upon Drainage  
16 Retention Areas, Lakes, Ponds, Utility Property or Easements Prohibited.

17           (a) Short Title. This section may be known as the Drainage Retention Areas,  
18 Lakes, Ponds, Utility Easements and Property Protection Ordinance.

1 (b) Definitions. The following words and phrases when used in this ordinance  
2 shall have the meanings respectively ascribed to them in this section, except where  
3 the context otherwise requires:

4 *All-Terrain Vehicle* (“ATV”) ~~means any motorized off-highway or all-terrain~~  
5 ~~vehicle fifty (50) inches or less in width, having a dry weight of one thousand two~~  
6 ~~hundred (1,200) pounds or less, designed to travel on three (3) or more non-highway~~  
7 ~~tires, manufactured for recreational use by one (1) or more persons~~ shall have the  
8 same definition as provided for in Fla. Stat. § 316.2074(2), as it may be amended or  
9 renumbered from time to time.

10 *Drainage Retention Area* means any parcel of property generally, but not  
11 necessarily, having sloped soil sides sometimes covered by vegetation or containing  
12 water and with an arenaceous or soil bottom with inlets to deliver storm water runoff  
13 and designed for the purpose of retaining storm water runoff; or any area or parcel  
14 of property generally recognized as a drainage retention area or any property certified  
15 by the county engineer or his designee that the area is currently being used and serves  
16 the purpose of a drainage retention area.

17 *Lake or Pond* means a body of water that in its natural state is substantially  
18 at rest with a discernible shoreline regardless of the depth of the water or whether the  
19 water is navigable or whether the land surface is wholly or partly submerged or at  
20 certain periods the surface is entirely exposed to the atmosphere.

1           *Motor Vehicle* ~~means any self-propelled vehicle including motorcycles and~~  
2           ~~all terrain vehicles not operated upon rails or tracks, but not including any bicycle or~~  
3           ~~moped~~ shall have the same definition as provided for in Fla. Stat. 316.003(46), as it  
4           may be amended or renumbered from time to time.

5           *Motorcycle* ~~means any motor vehicle having a seat or saddle for the use of the~~  
6           ~~rider and designed to travel on not more than three (3) wheels in contact with the~~  
7           ~~ground~~ shall have the same definition as provided for in Fla. Stat. 316.003(47), as it  
8           may be amended or renumbered from time to time.

9           *Vehicle* ~~means every device in, on, or upon which any person or property is~~  
10          ~~or may be transported. The vehicle does not include devices used exclusively upon~~  
11          ~~stationary rails or tracks~~ shall have the same definition as provided for in Fla. Stat.  
12          316.003(106), as it may be amended or renumbered from time to time.

13          (c)     Presence of vehicles in, on, or upon drainage retention areas, utility property  
14          or easements. It shall be a violation of this section for any motor vehicle, including  
15          motorcycles and ATV's to be in, on, or upon any lakes, ponds, or county drainage  
16          retention areas regardless whether the drainage retention area is denoted as such by  
17          a sign or other notice. It shall further be a violation of this ordinance for any motor  
18          vehicle including recreational or camper type vehicle, motorcycles and ATV's to be  
19          in, on, or upon any right-of-way, easement, or utility property with electrical  
20          apparatus or equipment including, but not limited to electric towers, electric

1 transmission lines, poles, or other support structures, fans, cooling apparatus, or  
2 transformers where the utility is regulated either by the state public service  
3 commission or the natural rural utilities service. This provision also applies to areas  
4 where any utility has an easement within a right-of-way, including, but not  
5 necessarily limited to electric substations or other apparatus used for the transmission  
6 or delivering of electricity even where such equipment is isolated and stands apart.  
7 Further, it shall also be a violation of this ordinance for anyone to damage such  
8 equipment including but not limited to hurling or shooting any projectiles or missiles  
9 at any electric substation, other electrical generating equipment, or towers or by  
10 hurling other objects including, but not limited to rocks, stones, dirt, debris, or trash.

11 ~~ATVs may be operated upon any unpaved roadways in Hernando County where the~~  
12 ~~posted speed limit is less than thirty-five (35) miles per hour.~~

13 (d) Territorial Applicability. This section shall be applicable in all the  
14 unincorporated areas of Hernando County.

15 (e) Penalties. Any violation of this section may be prosecuted as follows:

16 (1) For the first violation of any provision of this section, any law  
17 enforcement officer with jurisdiction in the unincorporated areas of Hernando  
18 County, may issue a written warning.

1           (2) For the second violation of any provision of this section, any law  
2 enforcement officer with jurisdiction in the unincorporated areas of Hernando  
3 County, may issue a citation with a fine not to exceed fifty dollars (\$50.00).

4           (3) For the third violation of any provision of this section, any law  
5 enforcement officer with jurisdiction in the unincorporated areas of Hernando  
6 County, may issue a citation for a fine not to exceed one hundred dollars (\$100.00).

7           (4) For any violations subsequent to the fourth violation, a law  
8 enforcement officer with jurisdiction in the unincorporated areas of Hernando  
9 County, shall issue a mandatory court appearance where the violation may be  
10 prosecuted as described in Chapter 2, Article III as amended from time to time. Each  
11 violation of this ordinance shall be deemed a separate offense and a separate offense  
12 shall be deemed committed on each day during or on which a violation occurs or  
13 continues. In assessing fines hereunder, the special master may consider whether the  
14 violator has been convicted of or pleaded guilty to prior violations of this section.

15           (5) Notwithstanding the above, a law enforcement officer in his or her  
16 own discretion in light of the circumstances, including their experience as law  
17 enforcement officers, the number of people observed violating the ordinance,  
18 potential damage to public or private property or other activities occurring in the area  
19 may arrest an individual even for a first offense and prosecute them pursuant to the  
20 provisions of subsection (e)(4) of this section.

1           **Section 3. Prohibiting the Operation of ATV's on County Roads.** A new Hernando  
2 County Code Section 20-4, to be entitled "Operation of All Terrain Vehicles on Unpaved  
3 Roadways," is hereby enacted to read as follows:

4           Sec. 20-4. Operation of All Terrain Vehicles on Unpaved Roadways.

5           (a) Exemption. Pursuant to Fla. Stat. § 316.2123(2), Hernando County shall be  
6 exempt from the provision of Fla. Stat. § 316.2123(1) which would otherwise allow  
7 the operation of an all terrain vehicle ("ATV") during the daytime on an unpaved  
8 roadway where the posted speed limit is less than 35 miles per hour by a licensed  
9 driver or by a minor under the supervision of a licensed driver. The term "ATV" shall  
10 have the same definition as provided for in Fla. Stat. § 316.2074(2), as it may be  
11 amended or renumbered from time to time.

12           (b) Territory Embraced. Pursuant to Fla. Stat. § 316.2123(2), this section shall  
13 apply to both the incorporated and unincorporated areas of the county.

14           **Section 4. Severability.** It is declared to be the intent of the Board of County  
15 Commissioners that if any section, subsection, clause, sentence, phrase, or provision of this  
16 ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the  
17 validity of the remaining portions of this ordinance.

18           **Section 5. Inclusion in the Code.** It is the intention of the Board of County Commissioners  
19 of Hernando County, Florida, and it is hereby provided, that the provisions of this Ordinance shall  
20 become and be made a part of the Code of Ordinances of Hernando County, Florida. To this end, the

1 sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and that  
2 the word "ordinance" may be changed to "section," "article," or any other appropriate designation.

3 **Section 6. Conflicting Provisions Repealed.** All ordinances or parts of ordinances in  
4 conflict with the provisions of this ordinance are hereby repealed.

5 **Section 7. Effective Date.** This ordinance shall take effect immediately upon receipt of  
6 official acknowledgment from the office of the Secretary of State of Florida that this ordinance has  
7 been filed with said office.

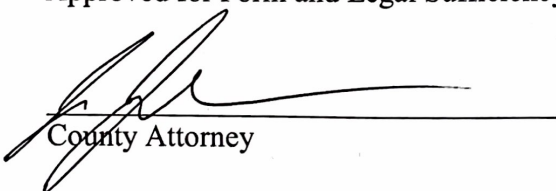
8 **BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF**  
9 **HERNANDO COUNTY** in Regular Session this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

10  
11 **BOARD OF COUNTY COMMISSIONERS**  
12 **HERNANDO COUNTY, FLORIDA**  
13  
14

15  
16 Attest: \_\_\_\_\_  
17 DOUGLAS CHORVAT, JR.  
18 Clerk and Comptroller

19  
20 By: \_\_\_\_\_  
21 JOHN ALLOCCO  
22 Chair

23 Approved for Form and Legal Sufficiency

24   
County Attorney