



REPORT TO COUNTY COUNCIL

FROM: Brian Lima, Director of Engineering Services

Peter Dutchak, Deputy Director of Engineering Services

DATE: September 15, 2020

SUBJECT: Legislative Amendments to the Highway Traffic Act - Off Road Vehicle Use on Public Roads

RECOMMENDATION:

THAT the appropriate by-law be prepared to prohibit the use of “Off Road Vehicles” as defined by the Highway Traffic Act on Elgin County roads, and;

THAT a copy of the report be provided to Elgin’s local municipal partners and the Elgin Group Police Services Board.

INTRODUCTION:

Effective July 1, 2020 the Ministry of Transportation has made legislative amendments to the Highway Traffic Act (HTA) to add additional types of off-road vehicles (ORVs) to the existing list of ORVs permitted on public roads. Municipalities must create new permissive by-laws to enable their use on public roads under the municipality’s jurisdiction if so desired.

Effective January 1, 2021, for municipalities listed in Regulation 8/03, all ORV types, including the new vehicle types, will automatically be permitted to use municipal roads unless a municipality passes a by-law restricting or prohibiting their use. The list of municipalities provided in Regulation 8/03 includes all of Elgin’s local municipal partners with the exception of the Town of Aylmer and does not include the County of Elgin.

Staff reports regarding the use of ORVs on County roads have been tabled before County Council on two previous occasions; in March 2004 and September 2015 respectively (reports attached). In both instances County Council supported the following resolution; “THAT the County of Elgin does not agree to allow use of County Roads by “Off Road Vehicles” as defined under the Highway Traffic Act, Section 191.8.”

DISCUSSION:

Recent legislative amendments have increased the ORV types permitted on municipal roads and allow municipalities to create new by-laws prohibiting their use.


Proposed for January 1, 2021, in local municipalities listed in Regulation 8/03, all types of ORVs will automatically be permitted to use municipal roads. Municipalities must create a by-law to restrict or prohibit their use. Regulation 8/03 lists all of Elgin's local municipal partners with the exception of the Town of Aylmer and does not include the County of Elgin.

Staff consulted the OPP, the County Solicitor and the County's Insurer for their comments as it relates to ORV use on County roads. Received comments are summarized below.

OPP – Does not support ORV use on County roads for numerous reasons. Speed variation between cars and trucks with ORVs could be catastrophic. Size and speed variation of vehicles is a great causal factor in motor vehicles collisions. Enforcement related to ORVs has proven to be difficult as there seems to be a large number of riders who fail to stop for police which can prove to be dangerous to the operator and public. There are certainly responsible riders and owners who comply with the laws and regulation laid out for ORVs. However, the added complexity of slower moving vehicles on County Roads may have dire consequences.

County Solicitor – The expansion and permission of use of ORVs on County highways will attract a significant risk of liability for personal injury/death and property claims to Elgin County as owner/municipal authority with applicable jurisdiction over such highways in respect of inevitable accident/collision incidents thereon. In my opinion, it is both short-sighted and naïve to simply take the position that extended permission for ORV on County highways is acceptable simply because the Province of Ontario has moved to allow such use. In a province as vast as Ontario, there are practical realities, including but not limited to the nature and volume, which should be accounted for in determining whether such extended permission should be granted. The result of such differing realities is that the extension for use of ORVs in southwestern Ontario will and should be different from that in, for example, remote areas in northwestern Ontario. I strongly recommend that use of ORV on Elgin County highways be prohibited, and out of an abundance of caution, Elgin County enact a by-law prohibiting such use on Elgin County highways.

County Insurer and Consultant - I don't believe ORVs have a place on public roads. Bodily injury is greater and essentially, I see more liability policy claims from accident victims. It would be prudent for the County of Elgin to continue in



the same direction as they have in the past...with continued restriction for ORV use on County Roads by by-law. Furthermore, many ORVs are generally not recommended for use on paved surfaces by ORV manufacturers. Municipalities already have numerous areas of potential risk exposure. As such, it would make sense to not introduce another risk exposure, especially one from an inherently high-risk activity.

County staff share similar opinions to the comments received from the OPP, County Solicitor and County Insurer. Staff are also cognizant of roadway design fundamentals that have not explicitly incorporated ORVs as vehicle types using County roads into road design. In addition, staff would anticipate an increased road maintenance demand on road shoulder sections that experience high ORV usage.

Acknowledging County Council's previous position regarding ORV use on County roads, and considering comments received from the OPP, the County Solicitor and the County's Insurer, staff continues to recommend the prohibition of ORV use on County roads.

Anticipated legislation amendments on January 1, 2021 will automatically permit ORV use upon the municipal roads under the jurisdiction of local municipalities listed in Regulation 8/03. Although the County of Elgin is not listed within Regulation 8/03, it is prudent for the purposes of public clarity to pass a by-law prohibiting such use. The County Solicitor has also recommended to enact a by-law prohibiting the use of ORVs on County roads.

FINANCIAL IMPLICATIONS:

None.



ALIGNMENT WITH STRATEGIC PRIORITIES:

Serving Elgin	Growing Elgin	Investing in Elgin
<input checked="" type="checkbox"/> Ensuring alignment of current programs and services with community need. <input type="checkbox"/> Exploring different ways of addressing community need. <input type="checkbox"/> Engaging with our community and other stakeholders.	<input type="checkbox"/> Planning for and facilitating commercial, industrial, residential, and agricultural growth. <input type="checkbox"/> Fostering a healthy environment. <input type="checkbox"/> Enhancing quality of place.	<input type="checkbox"/> Ensuring we have the necessary tools, resources, and infrastructure to deliver programs and services now and in the future. <input type="checkbox"/> Delivering mandated programs and services efficiently and effectively.

LOCAL MUNICIPAL PARTNER IMPACT:

Proposed legislation amendments to the Highway Traffic Act will automatically permit ORV use on local municipal roads throughout Elgin County (with the exception of the City of St. Thomas and the Town of Aylmer which are not included in Regulation 03/08) beginning January 1, 2021. Depending on the action of Elgin's local municipal partners, signage may be necessary to inform road users as to which roads ORVs are permitted to use.


COMMUNICATION REQUIREMENTS:

It is recommended that a copy of this report be circulated to the Elgin Group Police Services Board. It is also recommended that the notice of ORV prohibition on Elgin County Roads be posted on the County of Elgin's website to increase public awareness.

CONCLUSION:

Effective January 1, 2021, for municipalities listed in Regulation 8/03, all ORV types, will automatically be permitted to use municipal roads unless a municipality passes a by-law restricting or prohibiting their use. The list of municipalities provided in Regulation 8/03 includes all of Elgin's local municipal partners with the exception of the Town of Aylmer and does not include the County of Elgin.

Staff solicited comments from the OPP, County Solicitor and the County's Insurer with respect to ORV use on Elgin County Roads. All parties endorsed the prohibition of



ORV use on County roads based upon their experience and professional fields of expertise.

County Council has previously supported the prohibition of ORV use on County roads by resolution in 2004 and in 2015. As recommended by the County Solicitor, a by-law should be enacted prohibiting ORV use on County Roads out of an abundance of caution.

All of which is Respectfully Submitted

Approved for Submission

Brian Lima
Director of Engineering Services

Julie Gonyou
Chief Administrative Officer

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