



**County Attorney's Office**  
2725 Judge Fran Jamieson Way  
Building C, Room 308  
Viera, Florida 32940

**BOARD OF COUNTY COMMISSIONERS**

**TO:** Jim Liesenfelt, Interim County Manager

**FROM:** Morris Richardson, County Attorney

**SUBJ:** Citizen Efficiency and Effectiveness Recommendation #2025062

Updated 5/6/2025 to address state legislative action on UTVs

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CEER #2025062, titled A tradition being taken away, was received by the County from James T. Erdman.

**Citizen Statement:**

"For many years it has been a way of life in north Brevard for people to ride there side by sides ATVS and golf carts around the back roads. Recently the sheriff department has started to harasses people and write tickets for people riding down the back roads trying to force people to change their way of life to fit in to there new view of how north Brevard should be. when there is so much crime in Brevard county why is it the sheriffs office big concern is to pull a family on a golf cart over for riding the back roads on a nice afternoon?"

**Citizen Recommendation:**

"In Viera they made an ordinance allowing golf carts to ride around in the city kids under 16 are driving them to school. I suggest Brevard county makes and ordinance allowing people to ride their side by sides golf carts and ATVS on county roads in north Brevard with speed limits less than 45. with all the development going on we need to save the way of life we grew up with as kids in north Brevard and help keep north Brevard Rural to our child can grow up the same way"

**Staff Analysis:**

*A. Golf Carts*

A golf cart is defined in section 316.003(29), Florida Statutes, as "a motor vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes."

The operation of golf carts upon the public roads or streets in Florida is generally prohibited. Section 316.212, Florida Statutes. However, a golf cart may be operated upon a county road that has been designated by the Board of County Commissioners for use by golf carts. Before making such designation, the Board of County Commissioners must first determine that golf carts may safely travel on or cross the public road, considering factors including the speed, volume, and character of motor vehicle traffic using the road. Section 316.212(1), Florida Statutes.

To conduct a traffic study sufficient for the Board of County Commissioners' consideration of whether golf carts may safely travel on or cross certain roads, the roads proposed for golf cart usage would have to be specifically identified. Each road would then be analyzed based on factors including the speed, volume, and character of motor vehicle traffic using the road. The need for this road-specific assessment would make it virtually impossible to implement the citizen's recommendation to authorize golf cart use on all county roads in north Brevard with speed limits of 45 miles per hour or less.

Moreover, according to the Florida Department of Highway Safety and Motor Vehicles and consistent with existing County golf cart regulations, golf carts may only be operated on roads that are designated for golf carts with a posted speed limit of 30 miles per hour or less. See Section 106-73(b)(3)j., Brevard County Code of Ordinances. This is contrary to the citizen's recommendation that golf carts be allowed to operate on roads with a posted speed limit of 45 miles per hour or less.

Further, central to the citizen recommendation is that "kids" be allowed to operate "side by sides" golf carts and ATVs on county roads in north Brevard ... to save the way of life we grew up with as kids ... [so] our child can grow up the same way." However, effective October 1, 2023, a person operating a golf cart on public roads who is under 18 years of age must possess a valid learner's driver license or valid driver license. Section 316.212(7), Florida Statutes. A person must be at least 15 years old to obtain a Florida learner's license. Brevard County has no jurisdiction or authority to allow unlicensed minors to operate golf carts on public roads. Therefore, depending on how the citizen defines "kids," it is unclear whether designating roads in north Brevard for golf cart operation would achieve his stated goal.

#### *B. ATVs*

An all-terrain vehicle, or ATV, is defined in section 317.0003(1), Florida Statutes, as "any motorized off-highway or all-terrain vehicle 55 inches or less in width which has a dry weight of 1,500 pounds or less, is designed to travel on three or more nonhighway tires, and is manufactured for recreational use by one or more persons."

Section 316.2074, Florida Statutes, regulates the use of ATVs. Subsection (5) of the statute states that except as provided in that section or as otherwise permitted by the managing state or federal agency, ATVs may not be operated upon public roads, streets, or highways. Thus, in AGO 04-39, the Attorney General stated that while a municipality was authorized to regulate the recreational use of ATVs on municipal property, it was precluded from regulating the use of ATVs on streets and highways.

In 2006, the Legislature enacted section 316.2123(1), Florida Statutes, the current version of which provides:

- (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.

- (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. Alternatively, a county may, by majority vote after such a hearing, designate certain unpaved roadways where an ATV may be operated during the daytime as long as each such designated roadway has a posted speed limit of less than 35 miles per hour and is appropriately marked to indicate permissible ATV use.
- (3) Any operation that is permitted under subsection (1) or subsection (2) may be undertaken only by a licensed driver or a minor who is under the direct supervision of a licensed driver. The operator must provide proof of ownership under chapter 317 upon the request of a law enforcement officer.

Thus, section 316.2123, Florida Statutes, creates a limited exception to the prohibition in section 316.2074, Florida Statutes, for use of ATVs on public roads, by permitting the use of such vehicles during the daytime on unpaved roadways where the speed limit is less than 35 miles per hour by a licensed driver or a minor under the supervision of a licensed driver.

A county is permitted to exempt itself from section 316.2123's limited exception allowing ATV operation on certain unpaved roads. The Board of County Commissioners has already acted on this issue. In 2006, the Board of County Commissioners adopted an ordinance exempting itself from section 316.2123, Florida Statutes, thereby prohibiting the use of ATVs on public roads altogether. See Section 106-7, Brevard County Code of Ordinances. As expressed in Brevard County Ordinance No. 06-57, "the Board of County Commissioners is responsible for the health, safety and welfare of the citizens of Brevard County, Florida and has determined that to permit the use of ATVs on its unpaved roads would be unsafe, would lead to accidents, roll-overs, serious injury and death...."

The Board of County Commissioners is without jurisdiction or authority to implement the citizen's recommendation to generally authorize the operation of "ATVs on county roads in north Brevard with speed limits less than 45." In AGO 2007-16, the Attorney General explained:

When the legislature has prescribed the manner in which something is to be done, it effectively operates as a prohibition against its being done in any other manner. Prior to the enactment of section 316.2123, Florida Statutes, counties had no authority to permit the operation of ATVs on public streets and highways of this state. The intent of the Legislature in enacting section 316.2123 appears to have been to permit the limited use of ATVs during daylight hours on certain roadways by licensed drivers or minors under the supervision of a licensed driver, and to allow a county to exempt itself from such an authorization. In such a case, the provisions of section 316.2074, Florida Statutes, would prohibit the use of ATVs

on the public roads and highways. I have found nothing in either the language of the statute or in the legislative history surrounding the enactment of section 316.2123 which permits a county to partially opt-out of the statute or otherwise grants the county authority to regulate in this area.

### *C. Side-by-Sides (UTVs)*

Current Florida law does not contain a specific definition for a “side-by-side.” The state law label that best fits is probably “ROV”, defined by section 317.0003(9), Florida Statutes, to mean any motorized recreational off-highway vehicle 80 inches or less in width which has a dry weight of 3,500 pounds or less, is designed to travel on four or more nonhighway tires, and is manufactured for recreational use by one or more persons. The term does not include a golf cart or a low-speed vehicle. More broadly, side-by-sides are “off-highway vehicles,” a term defined by section 317.0003(6), Florida Statutes, to mean any ATV, two-rider ATV, ROV, or OHM that is used off the roads or highways of this state and that is not registered and licensed for highway use pursuant to chapter 320, Florida Statutes.

Regardless of the label, current Florida law does not allow for side-by-sides to be operated on public roads or streets, nor does it allow counties to authorize such use.

Florida Senate Bill 88, introduced on December 6, 2024, seeks to include side-by-sides in the new term “utility terrain vehicle” (or UTV), defined as a vehicle less than 70 inches in width which has at least two seats allowing passengers to sit in a side-by-side manner, is operated by foot controls and a steering wheel, and is equipped with headlamps, stop lamps, turn signals, tail lamps, rearview mirrors, a windshield, seat belts, and a horn. The bill would authorize a UTV to legally operate on two-lane county roads and two-lane municipal streets in which the posted speed limit is less than 55 miles per hour. The bill would allow the operator to drive the UTV during all hours, however, a UTV may only be operated by a licensed driver or a person possessing a learner’s driver license who is under the direct supervision of a licensed driver.

The bill requires that the UTV owner fulfill insurance requirements, maintain the registration certificate in the UTV, and ensure that the UTV has a proper license plate. The bill provides that a county may enact an ordinance regulating UTV operation and equipment that is more restrictive than statutory requirements. It also authorizes a county to prohibit the operation of a UTV on any road under its jurisdiction if the governing body determines that such prohibition is necessary in the interest of safety. The bill passed the Senate on March 27, 2025, and is “in messages” (meaning it has been transmitted to the House for consideration). UPDATE: On May 3, 2025, the House indefinitely postponed the proposed legislation and withdrew it from consideration.

### **Staff Recommended Action:**

It is recommended that Board of County Commissioners reject CEER #20240062. As to golf carts, it would be virtually impossible and prohibitively expensive to undertake the traffic study

necessary to support the recommended authorization of golf cart use on all County roads in north Brevard with speed limits of 45 miles per hour or less, and thus the CEER would not enhance the effectiveness and efficiency of County government as contemplated by Section 2.9.10 of the Home Rule Charter. Even if such a broad designation of roads in north Brevard were possible, generally golf carts may only be operated on roads with a posted speed limit of 30 miles per hour or less – not 45 miles per hour or less, as recommended by the citizen. Finally, current Florida law requires a person operating a golf cart on public roads who is under 18 years of age to possess a valid driver license or learner’s driver license. Thus, the citizen recommendation that “kids” be authorized to drive golf carts in north Brevard is inconsistent with state law.

As to ATVs, state law prohibits the operation of such vehicles upon public roads, streets, or highways. The Board of County Commissioners has already established policy on this issue, opting out of a limited state law authorization for the use of ATVs during daylight hours on unpaved roads where the speed limit is 35 miles per hour or less. The Board is without jurisdiction or authority to more broadly allow ATV operation “on county roads in north Brevard with speed limits less than 45,” and could never allow their use on paved roads.

As to side-by-sides, a bill is pending in the Legislature that would include side-by-sides in the new defined term “utility terrain vehicle” and authorize their use on two-lane county roads where the posted speed limit is less than 55 miles per hour. The County currently has no jurisdiction or authority to allow the use of side-by-sides “on county roads in north Brevard with speed limits less than 45.” The County can only wait and see what the Legislature does in this regard. UPDATE: On May 3, 2025, the House indefinitely postponed the proposed legislation and withdrew it from consideration.

CC: Frank Abbate, County Manager

## Horst, Rachel

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**From:** CEER@brevardfl.gov  
**Sent:** Thursday, January 30, 2025 5:06 AM  
**To:** Horst, Rachel  
**Subject:** A new CEER Recommendation has been submitted as ID #2025062

### Recommendation # 2025062

Dear CEER Administrator,

Speak Up Brevard Recommendation ID #2025062 has been submitted. Please login to the CEER Application to start the recommendation evaluation workflow.

#### Contact Information:

##### Group/Organization

**Name** james t erdman  
**Address** 4061 fairfax drive, mims FL 32754  
**Phone** (321) 720-1185  
**Email** jterdman1992@aol.com  
**Alternate Email**

#### Recommendation Information:

**Recommendation ID** 2025062  
**Recommendation Title** A tradition being taken away  
**Areas Affected** north brevard  
**Department Affected** SHERIFF'S OFFICE  
**Current problem** For many years it has been a way of life in north Brevard for people to ride there side by sides ATVS and golf carts around the back roads. Recently the sheriff department has started to harasses people and write tickets for people riding down the back roads trying to force people to change their way of life to fit in to there new view of how north Brevard should be. when there is so much crime in Brevard county why is it the sheriffs office big concern is to pull a family on a golf cart over for riding the back roads on a nice afternoon?  
**Recommendation** In Viera they made an ordinance allowing golf carts to ride around in the city kids under 16 are driving them to school. I suggest Brevard county makes and ordinance allowing people to ride their side by sides golf carts and ATVS on county roads in north Brevard with speed limits less than 45. with all the development going on we need to save the way of life we grew up with as kids in north Brevard and help keep north Brevard Rural to our child can grow up the same way  
**Attachments** No Documents were attached.

Please do not reply to this e-mail, as it will go to an unmonitored mailbox.

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