



## ATV / UTV Routes

Local governments have broad authority to open their highways to all-terrain vehicles (ATVs) and utility terrain vehicles (UTVs) by creating ATV/UTV routes. A route is a highway or sidewalk designated for ATV/UTV use. A trail, on the other hand, is another marked corridor on public or private property designated by a governmental agency for use by ATVs/UTVs. Wis. Stat. § 23.33(1). Trails are usually obtained via a public easement or lease agreement.

### **Q. What authority does a town or village have in establishing a highway as an ATV/UTV route?**

A. A town or village board may designate its roads as ATV/UTV routes by adopting an ordinance at a properly noticed board meeting. See Wis. Stat. § 23.33(8)(b)2. The language in the ordinance must be in strict conformity with the statute and administrative rules governing ATVs. See Wis. Stat. § 23.33(11). So, for example, since this statute allows individuals to ride ATVs without a license, a local ordinance requiring otherwise would not be enforceable as it would not be in strict conformity with the law.

**Note:** Ordinances adopted by the board must be properly posted or published in accordance with Wis. Stat. § 60.80(1). Additionally, the adopted ordinance must be sent to the DNR, the state patrol, and to local or county law enforcement agencies.

### **Q. May a town or village establish an ATV route on a highway not under its jurisdiction?**

A. Yes. Wis. Stat. § 23.33(11)(am)4. authorizes a town or village to designate roads that are not part of the national system of interstate and defense highways but are located within its boundaries and that have a speed limit of 35 mph or less, as ATV/UTV routes. Consequently, a town or village may designate county or state highways located within its territorial boundaries and that have a speed limit of 35 mph or less as an ATV/UTV route.

Counties, on the other hand, only have the authority to designate their own county roads as ATV/UTV routes.

### **Q. Must ATV/UTV routes be signed? Who is responsible for doing so?**

A. Yes. Pursuant to § 23.33(8)(e)2., Wis. Stat., and NR 64.12(7)(d), Wis. Admin. Code. the unit of government designating the route is responsible for signing or overseeing the signing of the routes. Even if private organization agrees to pay the upfront costs associated with signing an ATV/UTV route, the town or village will ultimately be responsible for any ongoing maintenance.

**Q. What options does a town or village have when signing?**

- 1) If the town or village opens all of its highways to ATVs, it can post signs at all entrances to the municipality indicating that all highways are open to ATVs. See Wis. Stat. § 23.33(8)(e)3.;
- 2) If the town or village opens a majority of its roads to ATVs, it may post signs at all entrances to the municipality noting that all of its highways are open to ATVs, unless otherwise indicated. See Wis. Stat. § 23.33(8)(e)2.b.;
- 3) If the town or village opens a majority of its roads to ATVs, it could also erect signs on the highway where the route begins, and then erect signs on the highway every time it intersects a trail or route not open to ATVs. See Wis. Stat. § 23.33(8)(e)4.;
- 4) If the town or village opens a majority of its roads to ATVs where there are multiple intersections, the municipality could opt to place signs every ½ mile on the route. See Wis. Stat. § 23.33(8)(e)2.a.

**Q. Does opening up a highway as an ATV route increase municipality liability?**

A. When a board adopts an ordinance, it is using legislative authority to do so. Pursuant to Wis. Stat. § 893.80(4), the board has immunity from these types of decisions. However, a town board is required to “as soon as practicable take action to make the highway safe for travel” upon learning of any “depression, ditch, hump or embankment that impedes the use of the highway.” See Wis. Stat. §§ 82.03(1) & 82.05(3). So, while a board may have immunity in enacting the ordinance, it is still required to fulfill its duties to keep the highways passable and safe for all users of the highway – including ATV/UTV users.

**Q. Do town electors have the authority to direct the town board to open ATV routes?**

A. No. Often times we hear of electors approving a referendum or voting at the annual meeting or special town meeting of electors to authorize the town board to open the town roads for ATV use. This is, however, not a power the electors have. Any such vote would be advisory only, ultimately leaving the board to determine whether or not to create a route.

**Q. Can a town or village set a lower speed limit for ATVs/UTVs relative to what is posted for other users of the highway?**

A. Yes. Though many local governments have posted a lower speed limit that applies only to ATV and UTV traffic, it has not been clear until now that they have had the legal authority to do so. 2021 Act 164 clarified that local governments do in fact have the authority to post a lower speed limit for ATV/UTV traffic if desired. This authority can be applied to all roads open as ATV/UTV routes, or to only those roads where a lesser speed limit is desired. WTA pursued this clarification in order to bolster local control and avoid potential local government liability should a lesser speed limit have been deemed invalid.

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