

ORDINANCE NUMBER 198

AN ORDINANCE TO AMEND ORDINANCE NUMBER 196 (Chapter 74) ENTITLED "ORV-SPECIAL USE ORDINANCE" FOR THE PURPOSE OF AUTHORIZING AND REGULATING THE USE AND OPERATION OF OFF ROAD VEHICLES (ORVs) ON ROADS WITHIN THE CITY OF WAKEFIELD, GOGEBIC COUNTY, STATE OF MICHIGAN, FOR THE PURPOSE OF PROVIDING PENALTIES FOR THE VIOLATION THEREOF, AND FOR THE DISTRIBUTION OF PUBLIC FUNDS RESULTING FROM THOSE PENALTIES.

THE CITY OF WAKEFIELD ORDAINS:

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SECTION I DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ALLEY** – a narrow thoroughfare through the middle of a block giving access to the rear of lots or buildings.

**CITY** – means that area within the political/geographic boundaries of the City of Wakefield.

**DRIVER LICENSE** – means an operator's or chauffeur's license or permit issued to an individual by the Secretary of State under Chapter III of the Michigan Vehicle Code, MCL 257.301, et seq., for that individual to operate a vehicle, whether or not conditions are attached to the license or permit.

**OPERATE** – to ride in or on, and be in actual physical control of the operation of an ORV.

**OPERATOR** – any person who operates or is in actual physical control of the operation of an ORV.

**ORV** – or "Off Road Vehicle" means a motor driven off road recreation vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. "ORV" or "Off Road Vehicle" includes, but is not limited to, a multi-track or multi-wheel drive vehicle, an All Terrain Vehicle, a motorcycle or related 2-wheel, 3-wheel, 4-wheel, or 6-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation deriving motive power from a source other than muscle or wind. It does not include a registered snowmobile, a farm vehicle being used for activities related to farming, a vehicle used for military, fire, emergency, or law enforcement purposes, a

vehicle owned and operated by a utility company or an oil or gas company when performing maintenance of its facilities or on property over which it has an easement, a construction or logging vehicle used in the performance of its common function, or a registered aircraft.

**OWNER** – any person, other than a lienholder, having the property in or title to an ORV entitled to the use or possession thereof.

**PERSON** – an individual, partnership, corporation, the state, and any of its agencies, or subdivisions, and any body or person, whether incorporated or not.

**ROADWAY** – that portion of an alley or street improved, designated or ordinarily used for vehicular travel.

**STREET** - the entire width between the boundary lines of every publicly maintained highway or street when any portion thereof is open to the use of the public for purposes of vehicular travel and a City major street or City local street as described in section 9 of 1951 PA 51, MCL 247.659.

## SECTION II INCORPORATION OF STATUTORY PROVISIONS

This ordinance hereby includes and incorporates by reference Act 451 of the Public Acts of Michigan of 1994, as amended, (being MCL 324.81101, et seq.) to provide for the regulation and registration of Off Road Vehicles. It is the intention of this Ordinance to permit those actions that are permissible under state law and prohibit those actions that are not permissible under state law as pertains to ORVs.

## SECTION III GENERAL REGULATIONS ON USE AND OPERATION

- B. ORVs shall not be operated upon any City owned property including, but not limited to side-walks, cemeteries, or pedestrian trails unless hereinafter provided.
- B. Operation in the City's parks is permitted if going to or from a park destination or if an individual has a valid camping permit. However, park operation is only permitted if the park is open.
- D. ORVs for the purpose of obtaining access to recognized off road trails, and for the operator to purchase retail goods and services in conjunction with the legal operation of an ORV, may, by the most direct route available, utilize the public roadways located in the City and in so doing, travel in the most direct perpendicular manner available.
- D. Except as otherwise provided, no ORV shall be operated within the City, unless registered by the owner as provided by state law. No registration is required for an ORV operated exclusively on lands owned or under the control of the ORV owner.

- E. The owner of any ORV having been issued a certificate of registration for the ORV must have an ORV sticker attached to the vehicle as required by state law. No numbers other than the registration number awarded to an ORV under state law, or granted reciprocity under state law, shall be painted, attached, or otherwise displayed on the ORV.
- F. ORVs shall be brought to a complete stop before crossing any highway or roadway, shall not interfere with the free movement of vehicular traffic approaching from any direction, and shall yield the right of way to oncoming traffic.
- G. ORVs may not be operated on roadways in the City, which are not regularly maintained for vehicular traffic.
- H. ORVs shall be operated with the flow of traffic on the far right side of the maintained portion of a street or shall utilize the outermost five (5) feet of an alley. An ORV may not be operated on the road surface, roadway, shoulder, or right-of-way of any state or federal highway in the City. ORVs shall travel in single file with the flow of traffic, except when overtaking or passing another ORV.
- I. ORVs shall utilize the alleys in areas of the City where alleys parallel adjacent streets. ORVs utilizing streets that parallel adjacent alleys or recreation trails shall be deemed in violation of this ordinance.
- J. No ORV shall travel in excess of 25 miles per hour or a lower posted ORV speed limit or at a rate of speed greater than is reasonable and proper having due regard for conditions then existing.
- K. No person shall operate an ORV while under the influence of intoxicating liquor, fermented malt beverages, narcotic drugs, barbital or any derivative thereof.
- L. No person shall operate an ORV in any nursery, planting area or natural area of forest reproduction or where growing stock may be damaged.
- M. No person under the age of 16 shall operate an ORV on any roadways within the City.
- N. A person 16 or older, who never obtained a driver's license or who never reinstated his/her license after expiration of a suspension or revocation, is permitted to operate an ORV on the City's roadways.
- O. Any person operating an ORV on a City roadway shall wear a crash helmet and protective eyewear. Said equipment shall be approved by the State Police and/or United States Department of Transportation.
- P. No ORV is to be ridden by more riders than the manufacturer recommends.

- Q. An ORV shall not be operated when visibility is substantially reduced due to weather conditions, or one-half hour before sunrise or one-half hour after sunset, unless displaying a lighted headlight and lighted taillight. Beginning January 1, 2010 an ORV shall display a lighted headlight and lighted taillight at all hours.
- R. An ORV shall be equipped with a throttle so designed that when the pressure used to advance the throttle is removed, the engine speed will immediately and automatically return to idle.
- S. Unless a person possesses a valid driver license, a person shall not operate an ORV on a City roadway if the ORV is registered as a motor vehicle and is either more than 60 inches wide or has three wheels.

#### SECTION IV NOISE EMISSION

- B. ORVs shall have, in good working condition and in constant use, a spark arrester type forest service approved muffler that is in compliance with all the provisions of MCL 324.81133(g), as amended, as well as all other statutes, rules, regulations and ordinances applicable to ORV operation.

#### SECTION V NOTICE OF ACCIDENT

The operator of an ORV involved in an accident resulting in injuries to or death of any person or property damage in an estimated amount of \$100 or more, or some person acting for him or the owner of the ORV having knowledge of the accident, shall immediately, by the quickest means of communication, notify the County Sheriff's Department.

#### SECTION VI PENALTIES

- C. Any person violating this ordinance shall be deemed to have committed a municipal civil infraction, subject to the payment of civil fines of \$50.00 plus costs, for the first violation.
- D. Any repeated offense shall be subject to increased fines, as follows:
1. First repeated offense shall be no less than \$150.00 plus costs.
  2. A fine for any second repeated offense or any subsequent repeated offense shall be no less than \$250.00 but not more than \$500.00 plus costs.
- C. A court may order a person who causes damage to the environment, a roadway or other property as a result of the operation of an ORV to pay

full restitution for that damage above and beyond the penalties paid by civil fines and costs.

D. The City Treasurer shall deposit all fines and damages collected under this ordinance into a fund to be designated as the ORV fund. The City Council shall appropriate revenue in the ORV fund as follows:

1. Fifty percent (50%) to the City's public works for repairing damage to roads and the environment that may have been caused by ORVs, and for posting signs indicating ORV speed limits, or indicating where the roads are open or closed to the operation of ORVs.
2. Fifty percent (50%) to the County Sheriff or local police department for ORV enforcement and training.

#### SECTION VII SEVERABILITY

The sections of this ordinance shall be deemed to be severable and should any section, paragraph, or provision hereof be declared by the Courts to be unconstitutional or invalid, such holding shall not affect the validity of this Ordinance as a whole.

This ordinance becomes effective thirty (30) days after publication.

Adopted and approved by the City Council of the City of Wakefield this 24<sup>th</sup> day of November, 2008.

Jennifer L. Jacobson, City Clerk

Richard Bolen, Mayor