

VLCT MODEL ATV ORDINANCE AND GUIDANCE

INTRODUCTION

The VLCT Model ATV Ordinance has been developed to allow selectboards to regulate ATV use within the town. This Model also provides the means for selectboards to open additional town highways and sidewalks for ATV travel. Vermont State law prohibits the operation of ATVs on any town highway or town property/land unless opened to ATV travel by the selectboard. 23 V.S.A. § 3506. A town may also impose restrictions regarding the time and manner of operation of ATVs within the town. 23 V.S.A. § 3510; 24 V.S.A. § 2291(4). Such restrictions must be imposed in an ordinance in order to be enforceable.

HOW TO CUSTOMIZE THIS MODEL

This model ordinance should be customized to suit the particular needs of your municipality, giving careful consideration to each element in light of your community's resources and expectations. Opportunities for editing this ordinance are marked with *italicized* text. The selectboard should consult with law enforcement to insure that the provisions of the ordinance are relevant and realistic in terms of the resources needed for enforcement.

STATE RESTRICTIONS ON ATV OPERATION

Regardless of whether there is local ATV ordinance in place, ATV operators must comply with state laws regulating ATV operation. For information on these laws, consult the Vermont Department of Motor Vehicles "All-Terrain Manual", available on the DMV website: http://dmv.vermont.gov/sites/dmv/files/documents/VN-023-ATV_Driver_Manual.pdf.

RIGHTS CONFERRED BY STATE LAW

State law provides that, during any season, an ATV that is being used for agricultural purposes on a farm or for forestry purposes may be operated three or more feet from the traveled portion of any highway within the confines of that farm or forestry operation, respectively. 23 V.S.A. § 3506.

State law also grants the right to operate an ATV across a town highway, during any season, when all of the following are present:

1. the crossing is made at an angle of 90 degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
2. the operator brings the ATV to a complete stop before entering the traveling portion of the highway;
3. the operator yields the right of way to motor vehicles and pedestrians;
4. the operator is 12 years of age or older; and
5. in the case of an operator under 16 years of age, the operator is under the direct supervision of an individual 18 years of age or older who does not have a suspended operator's license or privilege to operate.

LOCAL RESTRICTIONS

The rights to operate an ATV that are bestowed by state law (see above) may not be prohibited by a town. A town may, however, impose its own local restrictions regarding the time, place, and manner of operation of ATVs such as setting limits on the speed and time of operation, prohibiting racing, or requiring single file operation. These limits are addressed in the VLCT Model Ordinance. Any ordinance regulating use must be consistent with state law.

OPENING TOWN HIGHWAYS TO ATVS

A selectboard may choose to allow ATV operation on town highways that are not otherwise open under state law. 23 V.S.A. § 3506(b)(1)(A). The best way to accomplish this is to adopt an ATV ordinance that lists the highways open to ATV travel and imposes any relevant regulation on the time and manner of ATV operation.

Any town highway that is open to ATV travel must be posted with signs that provide notice that the highway is open to ATV travel. Signage must be in conformance with the *Manual of Uniform Traffic Control Devices* (MUTCD), as required by 23 V.S.A. § 1025.

PENALTIES

State law prohibits certain conduct such as operation of an ATV without registration or operation within a public cemetery. See 23 V.S.A. § 3506. Engaging in such conduct constitutes a State “traffic violation” pursuant to 23 V.S.A. § 2302(a)(4) and therefore may only be enforced by issuance of a traffic ticket by a certified law enforcement officer. Financial penalties for such violations are set by the State:

https://www.vermontjudiciary.org/sites/default/files/documents/Waiver_Penalty_Schedule_2017.website.01.05.18.pdf.

ORDINANCE ENFORCEMENT

Tickets for violation of a town ordinance are issued by a certified law enforcement officer on the State's pre-printed "Uniform Traffic Complaints" which are available in booklets from the Vermont Judicial Bureau, P.O. Box 607, White River Junction, VT 05001-0607. When the issuing officer wishes to enforce a local ordinance, he or she will fill out a ticket, provide two copies to the alleged violator and retain two copies, one of which is sent to the Judicial Bureau. A ticket may be served in person or by mail. The law does not require it, but we recommend certified mail, return receipt requested.

A violator can respond to a ticket/complaint in one of four ways:

- Admit to the offense and pay the waiver fee.
- Not contest the charge and pay the waiver fee.
- Deny the charge and request a hearing.

- Fails to respond within the requisite 20 days, resulting in a default judgment. In such case, the violator is ordered to pay the full amount of the fine (rather than the waiver fee).

If the violator pays the waiver fee, the money collected by the Judicial Bureau is sent to the town, minus an administrative fee which is retained by the Bureau for administrative expenses.

If the violator asks for a hearing, it will be held by a hearing officer assigned by the Judicial Bureau. The Bureau is designed to be used without attorneys. Therefore, if there is a hearing in the Judicial Bureau the law enforcement officer who issued the ticket must appear to represent the town. The burden of proof is on the town and the violation must be proven by "clear and convincing evidence." If the defendant or town is unhappy with the outcome of the hearing at the Bureau, an appeal may be taken to Superior Court.

PENALTIES

The financial penalties for some ATV violations are set by the State and therefore may not be altered by town ordinance. These penalties are listed on the Judicial Bureau's website: <https://www.vermontjudiciary.org/judicial-bureau>.

Fines that are not set by the State must be set by the selectboard in amounts not to exceed \$800. The selectboard may also set a "waiver fee" for each offense. This is the fee that defendants pay to avoid contesting a municipal traffic ticket in the Judicial Bureau. When setting the penalty and waiver fee amounts, the selectboard must determine what amounts are sufficient to deter violations of the ordinance. Fines are punitive in nature, and, therefore, the amount of the penalty does not have to correspond to the costs incurred by the town in enforcing the ordinance. Waiver fees should be set to discourage contested actions. Subsequent violations of the same ordinance should lead to an increased penalty and waiver fee.

ORDINANCE ADOPTION PROCESS

The adoption of ordinances (other than zoning ordinances) is governed by 24 V.S.A. §§ 1972, 1973. The process starts with the drafting of the ordinance, and its review by the selectboard. The selectboard then adopts the ordinance formally, by a majority vote of its members at a duly-warned selectboard meeting ensuring that the action and a copy of the proposed ordinance are entered in the minutes of the meeting. The ordinance must be posted in at least five conspicuous places in town and must be published in a newspaper of general circulation on a day not more than 14 days after the selectboard's vote to adopt the ordinance. The information included in the newspaper must include the following: the name of the municipality; the name of the municipality's website, if the municipality actively updates its website on a regular basis; the title or subject of the ordinance or rule; the name, telephone number, and mailing address of a municipal official designated to answer questions and receive comments on the proposal; and where the full text of the ordinance may be examined. The

notice must also explain citizens' rights to petition for a vote on the ordinance or rule at an annual or special meeting as provided in 24 V.S.A. § 1973.

If a petition signed by at least five percent of the voters of the town is received by the town clerk within 44 days following the date of adoption of the ordinance, the selectboard must either: (1) call a special town meeting within 60 days from the date of receipt of the petition; or (2) if the annual town meeting falls within the 60-day period, include an article asking the voters whether they will disapprove of the ordinance in the warning for that annual meeting. 24 V.S.A. § 1973(c).

These model ordinances have been developed for illustrative purposes only. VLCT makes no express or implied endorsement or recommendation of any ordinance, nor does it make any express or implied guarantee of legal enforceability or legal compliance, or that any ordinance is appropriate for any particular municipality. Each municipality is advised to seek legal counsel to review any proposed ordinance before adoption and / or use. VLCT PACIF members are advised to seek input from their municipality's loss control specialist regarding insurance considerations and risk avoidance.

VLCT MODEL ATV ORDINANCE

If you plan to use this template as the basis for your municipality's ordinance, copy and paste the model language below the dotted line into a separate document.

TOWN OF _____ ORDINANCE REGULATING ALL-TERRAIN VEHICLES (ATVs)

SECTION 1. AUTHORITY. Under authority granted in 24 V.S.A. Chapter 59, 24 V.S.A. §§ 2291(1),(4), 23 V.S.A. § 3506, and 23 V.S.A. § 3510, the Selectboard of the Town of _____ hereby adopts the following civil ordinance regulating the time, manner, and location of operation of all-terrain vehicles within the town.

SECTION 2. PURPOSE. The purpose of this Ordinance is to promote and protect the public health, safety, and welfare of the Town, and to preserve residents' rights to quiet enjoyment of homes and properties by regulating the time, manner, and location of operation of all-terrain vehicles ("ATVs") within the Town.

SECTION 3. DEFINITIONS.

- A. "All-terrain vehicle," or "ATV," means any non-highway recreational vehicle, except snowmobiles, having not less than two low pressure tires (10 pounds per square inch, or less), not wider than 64 inches with two-wheel ATVs having permanent, full-time power to both wheels, and having a dry weight of less than 2,500 pounds, when used for cross-country travel on trails or on any one of the following or a combination thereof: land, water, snow, ice, marsh, swampland and natural terrain. An ATV does not include an electric personal assistive mobility device, a motor-assisted bicycle, or an electric bicycle.
- B. "Enforcement Officer" means any law enforcement officer certified by the Vermont criminal justice training council.
- C. "Operate" includes any attempt to operate and shall be construed to cover all matters and things connected with the presence and use of all-terrain vehicles within the town whether they be in motion or at rest.
- D. Other definitions found in 23 V.S.A. § 3501 are incorporated herein by reference.

SECTION 4. TOWN HIGHWAYS OPENED.

[If highways will be opened to ATV travel, insert the following language: "The following Town Highways shall be open to ATV traffic: [insert name of town highways, and whether they are open in their entirety or only on designated sections, e.g. "Main Street from the intersection with Elm Street, eastward to the intersection with Maple Street."]

SECTION 5. SPEED LIMITS AND TRAFFIC CONTROL DEVICES. All posted speed limits and traffic control devices on Town highways shall apply to the operation of ATVs. Notwithstanding the above, no person shall drive an ATV on a public right of way at a speed greater than is reasonable and prudent under the conditions, having regard to the actual and potential hazards there existing. In every event, speed shall be controlled as necessary to avoid collision with any person, vehicle, bicycle, ATV, or other object on or adjacent to the ATV trail.

SECTION 6. TIME OF OPERATION. ATVs may not be operated within the Town between [*insert time*] and [*insert time*], [*insert days of the week that the restriction applies*].

SECTION 7. SINGLE FILE; RACING. Where ATV travel on Town highways and sidewalks is permitted, such travel shall be single file. No racing shall be allowed.

SECTION 8. OPERATION ON PUBLIC PROPERTY AND CEMETERIES. ATVs [*may/may not*] be operated on Town property. [*If ATVs are allowed to operate on some but not all Town property, insert the following language: ATVs shall not be operated on the following public property: [insert identifiable town property such as "public bike paths," "public hiking trails," "the recreation field," "on the public green in the center of town," etc as deemed necessary]*]. Pursuant to 23 V.S.A. § 3506(10), ATVs shall not be operated in any burial ground in the Town.

SECTION 9. PENALTIES.

A. The Enforcement Officer is authorized to recover civil penalties for operation of an ATV in excess of the posted speed limit as specified in [*insert the name of the town's local traffic ordinance, if any*] and in the State of Vermont's Judicial Bureau Penalty Schedule.

B. The Enforcement Officer is authorized to recover civil penalties for violations of this Ordinance as set out below:

- Failure to operate in single file:
 - 1st Offense: \$___ fine. Waiver amount: \$___
 - 2nd Offense: \$___ fine. Waiver amount: \$___
 - 3rd Offense: \$___ fine. Waiver amount: \$___
- Engaging in racing:
 - 1st Offense: \$___ fine. Waiver amount: \$___
 - 2nd Offense: \$___ fine. Waiver amount: \$___
 - 3rd Offense: \$___ fine. Waiver amount: \$___
- Operation during hours when operation is prohibited:
 - 1st Offense: \$___ fine. Waiver amount: \$___
 - 2nd Offense: \$___ fine. Waiver amount: \$___
 - 3rd Offense: \$___ fine. Waiver amount: \$___
- Operation on public property:
 - 1st Offense: \$___ fine. Waiver amount: \$___
 - 2nd Offense: \$___ fine. Waiver amount: \$___
 - 3rd Offense: \$___ fine. Waiver amount: \$___

For the above offenses, the Enforcement Officer is authorized to recover a waiver fee, in lieu of a civil penalty, in the stated amount, for any person who declines to contest a municipal complaint and pays the waiver fee.

- C. The Enforcement Officer is authorized to recover civil penalties for the following violations is as set by the State of Vermont:
- Operation along a highway that has not been opened for use by the Selectboard. 23 V.S.A. § 3506(b)(1)(A).
 - Operation within a public cemetery. 23 V.S.A. § 3506(b)(10).
 - Operation on a sidewalk that has not been opened for travel by the Selectboard. 23 V.S.A. § 3206(b)(12).

SECTION 10. ENFORCEMENT. The violation of this ordinance shall be a civil matter which may be enforced in the Vermont Judicial Bureau in accordance with the provisions of 24 V.S.A. §§ 1974a and 1977 et seq. For purposes of enforcement in the Judicial Bureau, any Enforcement Officer shall have authority to issue tickets and may be the appearing officer at any hearing.

SECTION 11. OTHER LAWS. This Ordinance is in addition to all other ordinances of the Town and all applicable laws of the State of Vermont. All ordinances or parts of ordinances, resolutions, regulations, or other documents inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 12. SEVERABILITY. If any section of this Ordinance is held by a court of competent jurisdiction to be invalid, such finding shall not invalidate any other part of this Ordinance.

SECTION 13. EFFECTIVE DATE. This ordinance shall become effective 60 days after its adoption by the Selectboard. If a petition is filed under 24 V.S.A. § 1973, that statute shall govern the taking effect of this Ordinance.

Date of adoption by the Selectboard: _____

Signatures of Selectboard members:

DATE

Adoption History

1. Agenda item at regular Selectboard meeting held on _____.
2. Read and approved at regular Selectboard meeting on _____ and entered in the minutes of that meeting which were approved on _____.
3. Posted in public places on _____.
4. Notice of adoption published in the _____ newspaper on _____ with a notice of the right to petition.
5. Other actions [petitions, etc.]