



BY-LAW

NO. 2008 - 142

BEING A BY-LAW TO PERMIT AND CONTROL THE OPERATION OF "ALL TERRAIN VEHICLES" (ATV'S) ON HIGHWAYS UNDER THE JURISDICTION OF THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

AND WHEREAS pursuant to the Municipal Act, 2001, S.O. 2001, c. 25 as amended, Section 8 (1) and 9 provide that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues and has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS Section 191.8 (3) of the Highway Traffic Act, R.S.O. 1990, c.H.8, as amended, authorizes the Council of a municipality to pass by-laws permitting the operation of off-road vehicles on any highway within the municipality that is under the jurisdiction of the municipality, or on any part or parts of such highway;

WHEREAS Sections 11 (1) and (3) of the Municipal Act, 2001, S.O. 2001, c. 25 as amended gives broad authority to lower-tier municipalities to provide any service or thing that the municipality considers necessary or desirable for the public and respecting matters within the sphere of jurisdiction highways, including parking and traffic on highways;

NOW THEREFORE the Council for The Corporation of the Municipality of Kincardine **ENACTS** as follows:

1.0 DEFINITIONS

- 1.1 "All-Terrain Vehicle" or "ATV" – means an off-road vehicle that:
- a) has four wheels, the tires of all of which are in contact with the ground;
 - b) has steering handlebars;
 - c) has a seat that is designed to be straddled by the driver, and
 - d) is designed to carry a driver only and no passengers;

For the purpose of this By-law, ATV vehicle does not include dune buggies, 2 or 3 wheeled vehicles, and vehicles propelled or driven by muscular power or wind.

- 1.2 "Boulevard" – means that part of the highway situated between the curb line and the property line of the lot abutting the highway, but does not include a sidewalk or shoulder.

- 1.3 “By-law Enforcement Officer – means a commissioner, assistant or and other officer or civilian person engaged by the South Bruce O.P.P and/or appointed by the Municipality of Kincardine to enforce or carry out the provisions of this by-law or any part or parts thereof.
- 1.4 “Core Services” – means accessing lodging, or fuel within the urban areas of the Municipality.
- 1.5 “Highway” – includes a common and public highway, street, avenue, parkway, driveway, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.
- 1.6 “Municipality” – means The Corporation of the Municipality of Kincardine.
- 1.7 “Recognized Agencies” – shall be the Ontario Federation of All-Terrain Vehicle Clubs, South Bruce Peninsula ATV Club and the Huron Shores ATV Club.
- 1.8 “Sidewalk” – means that portion of a highway between the curb line and the property line of the lot abutting the highway improved for the use of pedestrians.
- 1.9 “Urban Area” - means an area that has more than 400 people per square kilometre and has more than 1,000 people. If two or more urban areas are within two kilometres of each other, they are merged into a single urban area. For the Municipality of Kincardine, the urban areas shall be defined as all of Ward 1, subdivisions in Wards 2 and 3 north of Ward 1 and west of County Road #23 and Highway #21, Underwood, Inverhuron, Tiverton, and Bervie.

2.0 REGULATIONS

- 2.1 All-Terrain Vehicles shall be permitted upon the highways under the jurisdiction of The Corporation of the Municipality of Kincardine and in accordance with regulation 316/03 of the Highway Traffic Act, the Off-Road Vehicle Act in accordance with the provisions of this by-law.
- 2.2 The exemptions as set out in sections 25 through 28 of Ontario Regulation 316/03, as amended from time to time, regarding the operation of Off-Road Vehicles on highways shall apply to this By-law and the permission granted hereunder.
- 2.3 Unless such lands form part of a trail route approved and maintained by a Recognized Agency, no person shall operate an All-Terrain Vehicle over or upon the following areas:
 - a) Any Community Centre under the jurisdiction of the Municipality;
 - b) Any park, playground, trail, sand dune or beach area under the jurisdiction of the Municipality;
 - c) Any shoreline road allowance under the jurisdiction of the Municipality;
 - d) Any sports field under the jurisdiction of the Municipality; or
 - e) Any cemetery under the jurisdiction of the Municipality;

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- f) On any municipal public property in the Municipality without the consent of the Municipality;
- g) Along any sidewalk or boulevard within the Municipality;
- h) All ATV's shall travel on shoulder of road, but may operate on road if shoulder is not safe;
- i) Schedule "A" list person(s) or companies exempt from this by-law.

2.4 No person shall operate an All-Terrain Vehicle:

- a) In such a way as to disturb or distort the natural environment including fish habitats, property, and any flora or fauna;
- b) In any urban area including but not limited to Kincardine, Tiverton, Inverhuron except as a means of direct access to the approved trail routes or to obtain core services;
- c) Without a valid all terrain vehicle license plate and insurance.

2.5 If a court of competent jurisdiction should declare any section or part of this by-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of the by-law and it is hereby declared that the remainder of the by-law shall be valid and shall remain in force.

3.0 PENALTIES/ENFORCEMENT

3.1 Every person(s) who violates a provision of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for in the Provincial Offences Act.

3.2 All provisions of this by-law may be enforced by a By-law Enforcement Officer of The Corporation of the Municipality of Kincardine.


4.0 GENERAL

4.1 That Schedule 'A' is attached hereto and forms part of this by-law.

4.2 This by-law shall come into force and effect upon its final passage.

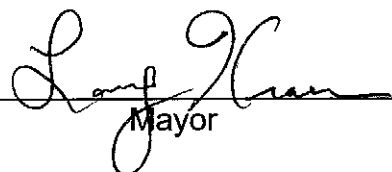
4.3 This by-law may be cited as the "All-Terrain Vehicles Use By-law."

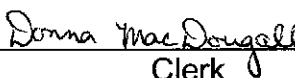
READ a FIRST, and SECOND time this 13th day of August, 2008

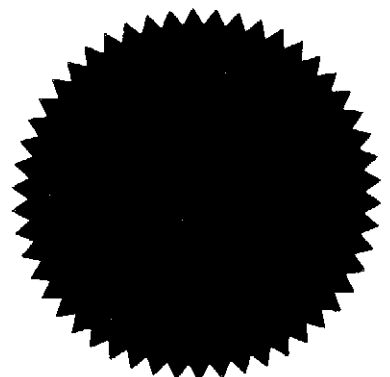

Mayor


Clerk

READ a THIRD time and FINALLY PASSED this 13th day of August, 2008.


Mayor


Clerk



Schedule 'A'

The following are exempt from By-law number 2008 - 142

1. By-law Department employees for The Corporation of the Municipality of Kincardine.
2. All Police Officers while performing his or her duties.
3. All Fire Department personnel while performing his or her duties.
4. All Medical Rescue personnel while performing his or her duties.
5. All employees of the Municipality of Kincardine while performing his or her duties.
6. Hydro One or Westario Power Employee(s) and its contractors while performing his or her duties.
7. Ministry of Natural Resources employees while performing his or her duties.
8. Farmers(s), Trapper(s), Public Utility Worker(s), and Commercial Snow Removal are exempt while performing his or her duties.
9. County of Bruce By-law Enforcement personnel while performing his or her duties.
10. Any person operating an ATV for the purpose of rendering assistance during a declared emergency within the Municipality.