

THE CORPORATION OF THE TOWNSHIP OF SEVERN

BY-LAW NO. 2009-101

BEING A BY-LAW TO PERMIT THE USE OF ALL TERRAIN VEHICLES ON CERTAIN MUNICIPAL HIGHWAYS

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WHEREAS the *Highway Traffic Act*, R.S.O. 1990, Chapter H.8, Section 191.8(1), provides that no person shall drive an off-road vehicle on a highway except in accordance with the *Highway Traffic Act* regulations and any applicable Municipal By-law;

AND WHEREAS the *Highway Traffic Act*, R.S.O. 1990, Chapter H.8, Section 191.8(3), provides that a municipality may pass By-laws permitting certain off-road vehicles on highways under the jurisdiction of the municipality and providing speed limits for such vehicles;

AND WHEREAS the operation of off-road vehicles on highways is a privilege and not a right;

AND WHEREAS the *Municipal Act*, S.O. 2001, Chapter 25, Section 11.(3), provides that a municipality may pass By-laws with respect to municipally owned roads, including parking and traffic on such highways;

AND WHEREAS requests have been received to permit off-road vehicles on certain municipally owned highways within the boundary of the Township of Severn;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF SEVERN HEREBY ENACTS AS FOLLOWS:

1. Definitions

That in this By-law:

- “All Terrain Vehicles”** shall mean any 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 designed to be straddled by the driver;
  - (d) is designed to carry a driver only and no passengers;
  - (e) has not been modified in any way from its manufactured design either by the addition of passenger seats or otherwise, or the removal of equipment such as mufflers; and
  - (f) is being operated, driven or used as designed by the manufacturer.

- “Township of Severn Highway”** shall mean any and all public highways assumed and maintained under the jurisdiction and ownership of the Township of Severn.
- “Off-Road Vehicle”** shall mean an off-road vehicle intended for off-road use within the meaning of the *Off-Road Vehicles Act*, and as defined by the *Highway Traffic Act* and or the regulations thereto and includes an all terrain vehicle as defined in Section 1.1(1)(a).

2. Compliance

That compliance with all of the criterion in Section 1. herein is mandatory. Any vehicle not meeting all of the criteria in Section 1. herein does not qualify as an all terrain vehicle under this By-law.

3. Limited & Conditional Privilege

- 3.1 That no person shall operate an all terrain vehicle on a Township of Severn Highway except in accordance with and subject to the conditions and permissions granted in this By-law.
- 3.2 That a limited and revocable conditional permission shall be and is hereby granted to persons to operate all terrain vehicles as defined in this By-law on Township of Severn Highways at any time from one half hour after sunrise to one half hour before sunset.
- 3.3 That all terrain vehicles shall not be operated on Township of Severn Highways at a rate of speed greater than:
- (a) 20 kilometres per hour, if the speed limit is not greater than 50 kilometres per hour; or
  - (b) 50 kilometres per hour, if the speed limit is greater than 50 kilometres per hour;
- and in accordance with Provincial Legislation.
- 3.4 That no person shall operate an all terrain vehicle in such a way as to disrupt or destroy the natural environment or private or municipal property.
- 3.5 That the following conditions shall be met both prior to and during the operation of all terrain vehicles for the permission granted herein to be valid:
- (a) each all terrain vehicle must qualify as an all terrain vehicle as defined in this By-law;
  - (b) all of the terms and conditions of this By-law shall be complied with at all times, including acceptance of the waiver as set out in this By-law; and
  - (c) all of the provisions of Regulation 316/03 under the *Highway Traffic Act*, as amended from time to time, and any other legislation governing the use of all terrain vehicles shall be complied with at all times.
- 3.6 That the permission granted herein includes all public highways assumed and maintained under the jurisdiction and ownership of the Township of Severn and does not apply to highways under the jurisdiction of the Province or the County of Simcoe, and does not apply to sidewalks, municipally owned parks, unopened road allowances or private roads which are not under the jurisdiction of the Township of Severn.

- 3.7 That persons purporting to operate all terrain vehicles under the permission granted herein shall obtain current and adequate insurance at all times. In the event that such insurance is inadequate in terms of deductibles, terminated or limited coverage or otherwise, the person operating the all terrain vehicle shall be responsible for any and all losses and costs of the Township of Severn which the Township may incur as a result of such inadequate insurance coverage which the person shall pay on demand forthwith. All persons operating all terrain vehicles on approved routes within the Township of Severn shall save harmless the Township of Severn, their servants and their agents for any loss that may have been incurred within the boundaries of the Township of Severn.
- 3.8 That in the event that the drawing of a trailer by an all terrain vehicle on highways is permitted by the *Highway Traffic Act*, including any regulations thereto, the following requirements shall apply:
- (a) any and all provisions of the *Highway Traffic Act* and regulations thereto applicable to trailers generally shall apply to trailers drawn by all terrain vehicles.
  - (b) the maximum width of the trailer shall be equal to the lesser of the width of the all terrain vehicle which is drawing the trailer or 1.35 metres;
  - (c) every trailer shall be supplied with mudguards, fenders and other devices adequate to reduce effectively the water spray or splash of water unless adequate protection is afforded by the body of the trailer; and
  - (d) the trailer shall not obstruct the view of any rear and/or brake lighting required unless equivalent lighting is affixed to the rear of the trailer and clearly visible to approaching traffic.

#### 4. Enforcement

- 4.1 That members of the Ontario Provincial Police shall be and they are hereby authorized and empowered to enforce this By-law.
- 4.2 That in a court proceeding of any kind whatsoever in which the presence of an all terrain vehicle on a Township of Severn Highway is in issue, the provisions of this By-law are not a defence unless the person claiming the benefits of this By-law establishes that he was in fact in compliance with the requirements herein at the time the defence is put forward. Any person who is unable or unwilling to provide such evidence shall be deemed to be trespassing on the Township of Severn Highways.
- 4.3 That no person shall interfere or obstruct an Officer carrying out his/her duties enforcing this By-law.

#### 5. Waiver, Warranty & Indemnity

- 5.1 That in recognition of the permission granted herein is a privilege, every person purporting to exercise the permission shall be deemed to have agreed to all of the terms and conditions of this By-law.
- 5.2 That each person exercising the permission granted herein acknowledges and accepts that the Township of Severn does not, in any way, shape or form, warrant, represent or undertake that the public highways to which permission applies are suitable for or maintained to permit use by all terrain vehicles. Each such person shall not, at any time or under any circumstances, claim or attempt to claim at any time in any proceedings whatsoever that the public highway was not suitable for all terrain vehicle use or not maintained properly.

5.3 That where the Township of Severn incurs any loss, costs or damages as a result of any person exercising permission as set out herein, each such person shall, upon request, reimburse the Township of Severn for all such loss, costs and damages. In addition to any remedies otherwise available by law, Section 3.2 herein shall not apply to any person who has failed to comply with this section.

6. Offences

6.1 That except as expressly permitted by a Provincial or Federal Act or Regulation, every person who contravenes any provision of this By-law is guilty of an offence.

6.2 That any person who contravenes any provision in Section 3.4 herein shall be guilty of an offence and upon conviction is liable to a fine or penalty as provided for in the Provincial Offences Act.

6.3 Section 6.1 herein does not apply if a person can establish that he was the driver of and operating an all terrain vehicle in accordance with the provisions of this By-law.

7. General

7.1 That this By-law shall come into force and effect on the date of passing thereof and remain in effect for a total of one (1) year.

7.2 That in the event that any provisions of this By-law are found by a Court of competent jurisdiction to be without effect under Section 14.(1) of the *Municipal Act*, S.O. 2001, Chapter 25, such provisions shall be deemed to be severed and the remainder of this By-law shall remain in full force and effect.

7.3 That without limiting the powers of the Township of Severn Council to amend, alter or revoke this By-law at any time, it is hereby recognized that this By-law may be revoked and repealed at any time.

7.4 That the Director of Public Works shall be and is hereby authorized, directed and empowered to obtain, install and maintain such signage as may be necessary to implement the terms of this By-law.

By-law read a first and second time this 3<sup>rd</sup> day of December, 2009.

By-law read a third time and finally passed this 3<sup>rd</sup> day of December, 2009.

CORPORATION OF THE TOWNSHIP OF SEVERN

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MAYOR

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CLERK-TREASURER