

RESOLUTION

Councilman _____, seconded by
Councilman _____, introduced the following proposed
local law, to be known as Local Law No. ____ of 2008, entitled A
LOCAL LAW OF THE TOWN OF WASHINGTON, DUTCHESS COUNTY, NEW YORK
TO REGULATE THE USE AND OPERATION OF OFF-ROAD VEHICLES.

BE IT ENACTED by the Town Board of the Town of Washington
as follows:

Section 1. "OFF-ROAD VEHICLES" to read in its entirety as
follows:

OFF-ROAD VEHICLES

1. LEGISLATIVE FINDINGS, PURPOSES AND AUTHORITY

A. The use and operation of off-road vehicles is a
hobby gaining increasing interest in the Town of Washington.
The Town Board finds that it is in the public interest to
promote the proper and safe use and operation of such vehicles;
to limit the operation of off-road vehicles upon public property
and private property without the consent of the owner; to reduce
the effect of excess noise on the residents of the Town; and to
afford the opportunity for compatible enjoyment of various
recreational activities in the Town.

B. This law is enacted pursuant to the Town's authority under the Municipal Home Rule Law.

2. DEFINITIONS

OFF-ROAD VEHICLES: Any all-terrain vehicle that is motor-propelled or contains a motor to assist the operation of said vehicle and which vehicles are commonly referred to as "dirt bikes", "minibikes", "trail bikes", "motorized sport bikes", "GoKarts" "all-terrain vehicles (ATVs)", "trikes", "quads", "snowmobiles", "dune buggies" and "golf carts," etc., which vehicles, by their nature and design, are not intended to be used and operated along paved roads and highways but are intended, rather, to be operated in dirt, sand, up and down hills, along trails and in similar-type areas.

OPERATE: To ride in or on, other than as a passenger, or to use or control the operation of an off-road vehicle in any manner.

OPERATOR: Every person who operates or is in actual physical control of an off-road vehicle.

PRIVATE PROPERTY: All land and buildings in the Town of Washington which is neither included in the definition of "public property" nor part of the public road system.

PUBLIC PROPERTY: Lands and buildings, including Town parks owned or leased by the Town of Washington, any school district, Dutchess County or the State of New York or any other equivalent public body. This definition specifically excludes any public roadways owned or maintained by any of the aforementioned public entities.

RACE: The operation of more than two off-road vehicles (as that term is defined herein) either simultaneously or under timed conditions, at any speed on the same parcel of land.

3. PROHBITED ACTS

It shall be unlawful to operate an ATV in the following locations and/or manner:

- A. Upon any parcel of land with the Town, as a participant in a race.
- B. Upon public property at any time without express consent or a permit issued by the governmental agency in control of said property, which shall include easements granted to the Town including the same or similar restrictions.
- C. Upon private property (other than that private property owned by the family of the operator) without the written consent of all of the owners of the private property. Said written permission must be in the possession of the person operating the off-road vehicle and must be presented, upon demand, to any code enforcement officer, peace officer or police officer so demanding.
- D. In violation of the requirements and regulations of the Department of Motor Vehicles of the State of New York. Should the Department of Motor Vehicles require registration or licensing of said vehicles, then it shall be unlawful to operate said vehicle without proper registration and licensing.
- E. In a manner that is disturbing and bothersome to adjoining property owners.
- F. Within 100 feet of any dwelling other than the dwelling house of the operator or of the property owner(s) consenting to the operation of an off-road vehicle on its property.
- G. In a manner which causes or otherwise results in the propulsion of sand, dirt, dust, rocks, gravel or other similar materials beyond a property line.
- H. Upon public or private property in such a way as to harass, worry or disturb farm animals,

domestic livestock or wildlife or further to destroy or damage crops or farm produce.

- I. Without an operable muffler or other similar device to reduce the sound emitted from the vehicle or at a noise level of 75 decibels at a property or street line.
- J. On or near any public roadway so as to cause operators of other motor vehicles to take evasive or irregular action to distance said motor vehicle(s) from an off-road vehicle.
- K. Which is not in proper operating condition, which means that all of the original operating equipment specified by the original manufacturer or replacement equipment equal to the specifications of the original manufacturer's equipment must be present.
- L. Upon any private street or right-of-way within the Town of Washington without the written permission of the owner of the private street or right-of-way. Said written permission must be in the possession of the person operating the off-road vehicle and must be presented, upon demand, to any code enforcement officer, peace officer or police officer so demanding.
- M. While under the influence of liquor or drugs.
- N. Without a protective helmet of a type which has been approved by the Commissioner of Motor Vehicles.

4. EXCLUSIONS

This law shall not apply to the following:

- A. The operation of off-road vehicles on premises owned by the operator in the course of his business or by employees of the owner on property on which the business of the owner is located; or

- B. Any snowmobile or all terrain vehicles (ATVs) registered with the Commissioner of Motor Vehicles that is owned by a governmental agency or volunteer organization and is used exclusively for emergency purposes.

5. ENFORCEMENT and PENALTIES FOR OFFENSES

- A. This local law may be enforced by any code enforcement officer of the Town of Washington or any peace officer or police officer having jurisdiction within the Town of Washington.
- B. Any person, firm group, partnership corporation or other entity who is guilty of a violation of this Local Law shall, upon conviction thereof, be subject to a fine of \$250 for a first offense and \$500 for a second offense and any subsequent offense within a twelve-month period measured from the date of the first alleged violation of this Local Law. Each day that a violation continues shall be deemed a separate offence.
- C. Appropriate actions and proceedings may be taken at law or in equity to prevent or remedy unlawful violations or infractions of any portion of this local law, and these remedies shall be in addition to penalties otherwise prescribed by law.

Section 2. The Zoning Code of the Town of Washington is hereby amended as follows:

- A. Section 610 "Definitions" is amended to add the following:

1. OFF-ROAD VEHICLES: Any all-terrain vehicle that is motor-propelled or contains a motor to assist the operation of said vehicle and which vehicles are commonly referred to as "dirt bikes", "minibikes", "trail bikes", "motorized sport bikes", "GoKarts" "all-terrain vehicles (ATVs)", "trikes", "quads", "snowmobiles", "dune buggies" and "golf carts," etc., which vehicles, by their nature and design, are not intended to

be used and operated along paved roads and highways but are intended, rather , to be operated in dirt, sand, up and down hills, along trails and in similar-type areas.

2. RACE: The operation of more than two motorized vehicles, off-road vehicles (as that term is defined herein) or motorcycles, either simultaneously or under timed conditions, at any speed on the same parcel of land.

3. RACE TRACK: Any area of land where three or more motorized vehicles, off-road vehicles (as that term is defined herein) operate simultaneously, or under timed conditions, at any speed. The term shall include any area of land whether or not the area of land consists of a circuit or continuous loop, or whether or not the area of land consists of a defined path or course.

4. SPECIAL EVENT: An organized rally, race, exhibition or demonstration of limited duration which is conducted according to a prearranged scheduled and in which general public interest is manifested.

B. A new Section 397 is added to read in its entirety as follows:

397. OFF-ROAD VEHICLES

A. Town of Washington Town Code Section 310(1) states that "Only those uses specifically listed shall be permitted." However, the Town Board believes that, given the emergence of various individuals throughout the Town who are using their property for the operation of off-road vehicles, the Town Board believes that a specific zoning code section regarding the operation of off-road vehicles is necessary to better state the Town Board's original intent.

B. This section is intended to regulate the use of property for the operation of off-road vehicles. Regulations governing the operation of an off-road vehicle are included within a separate local law entitled "OFF-ROAD VEHICLES".

C. The use of property for a race, as a race track or for a special event in which off-road vehicles are displayed, exhibited or demonstrated is prohibited. Any property owner allowing his/her property to be used as described herein shall

be subject to the penalties provided in Section 490 of this Zoning Code.

D. Any organizer or manager of a race or special event in which off-road vehicles are displayed, exhibited or demonstrated shall be in violation of this Section 397 and shall be subject to the penalties provided in Section 490 of this Zoning Code. For purposes of this section, an organizer or manager shall be any person, firm, group, corporation or other entity that leads, conducts, stages or is the sponsor of such race or special event.

E. The operation of less than two (2) off-road vehicles on a property is permitted subject to the following:

1. Operation shall only be permitted between the hours of ____ and ____.

2. Such operation is only permitted within the following zoning districts: _____

Section 3. This local law shall take effect immediately upon filing with this state's Secretary of State.

Councilman _____ advised the Town Board that, pursuant to the Municipal Home Rule Law of the State of New York, it will be necessary to hold a public hearing upon this local law. Councilman _____ offered the following resolution which was seconded by Councilman _____, who moved its adoption:

WHEREAS, on _____, Councilman _____ has introduced this local law for the Town of Washington, to be known as "Town of Washington Local Law No. __ of the Year 2008,

a local law of the Town of Washington, Dutchess County, New York, to REGULATE THE USE AND OPERATION OF OFF-ROAD VEHICLES.

RESOLVED, that a public hearing be held in relation to the proposed changes as set forth in the form of notice, hereinafter provided, at which hearing parties in interest and citizens shall have an opportunity to be heard, to be held at the Town Hall, 10 Reservoir Drive, Millbrook, New York, on _____, 2007 at _____ o'clock, __.m., Prevailing Time, and that notice of said meeting shall be published in the official newspaper of general circulation in the Town of Washington, by the Town Clerk, at least five (5) days before such hearing and that such notice shall be in the following form:

NOTICE OF PUBLIC HEARING

TAKE NOTICE, that the Town Board of the Town of Washington will hold a public hearing at the Town Hall, 10 Reservoir Drive, Millbrook, New York on _____, 2008 at _____ o'clock, ____m., on Local Law No. ___ of the Year 2008, TO REGULATE THE USE AND OPERATION OF OFF-ROAD VEHICLES.

TAKE FURTHER NOTICE, that copies of the aforesaid proposed local law will be available for examination at the office of the Clerk of the Town of Washington, at the Town Hall, 10 Reservoir Drive, Millbrook, New York between the hours of 9:00 a.m. to 12:30 p.m. and then between 1:30 p.m. to 3:00 p.m.. on all business days between the date of this notice and the date of the public hearing.

TAKE FURTHER NOTICE, that all person interested and citizens shall have an opportunity to be heard on said proposal at the time and place aforesaid.

DATED: Millbrook, New York

MARY ALEX, TOWN CLERK

The foregoing resolution was duly put to a vote which resulted as follows:

Supervisor Prisco _____

Councilman Turletes _____

Councilman Rappleyea _____

Councilman Murphy _____

Councilman Audia _____

DATED: Millbrook, New York

MARY ALEX, Town Clerk
Town of Washington