

**ONEIDA INDIAN NATION
ALL-TERRAIN VEHICLE ORDINANCE**

Ordinance No.: 0-04-07

Pursuant to the authority vested in the Oneida Indian Nation (the "Nation") by virtue of its sovereignty and inherent powers of self-government, the Nation hereby establishes an All-Terrain Vehicle Ordinance.

ARTICLE 1 - Purposes

1-101. To promote the safe and proper use of All-Terrain Vehicles for recreation on Nation land, to ensure the safety and well-being of all persons concerning the use of All-Terrain Vehicles, to minimize detrimental effects of such use upon the environment and to limit disruptions to the peace and quiet of residential areas within the Nation.

ARTICLE 2 - Definitions

2-101. For purposes of this Ordinance, the following words shall have the following meanings:

a) "*All Terrain Vehicle*" or "*ATV*" means any fuel or electric powered vehicle which is manufactured for operation primarily on off-highway trails or off-highway competitions and only incidentally operated on public highways, provided that such vehicle does not exceed sixty inches in width or eight hundred pounds dry weight. For the purpose of this Ordinance, an ATV includes, but is not limited to, 3 or 4 wheel vehicles, Snowmobiles and motorcycles designed primarily for off-highway use. An ATV shall not include any vehicle used for agricultural or snowplowing purposes.

b) "*Owner*" means any person having a title to an ATV. If an ATV is sold under a contract of conditional sale whereby the title remains in the vendor, such vendor or his assignee shall not, after delivery of such ATV, be deemed an owner within the provisions of this section, but the vendee or his assignee, upon receipt of possession thereof, shall be deemed such owner notwithstanding the terms of such contract, until the vendor or his assignee shall retake possession. A person holding only a security interest in an ATV shall not be deemed an owner unless such person also has possession of such ATV. There shall be a presumption the operator of the ATV is the owner of the ATV, and both the owner and the operator are responsible for its safe operation.

c) "*Police Department*" means the Oneida Indian Nation Police.

d) "*Resident*" means a person who is domiciled or resides within the territorial jurisdiction of the Oneida Indian Nation.

e) “*Snowmobile*” means any fuel or electric powered vehicle designed for travel on snow or ice, steered by skies or runners and supported in whole or in part by one or more skis, belts or cleats.

f) “*Territorial Jurisdiction*” means all lands possessed, occupied or held by or for the Nation in its sovereign capacity.

ARTICLE 3 – Prohibited areas

3-101. The Nation shall designate areas where operation of an ATV is prohibited. The Nation shall ensure that people affected by the prohibition are made aware of the prohibition by communicating it to the affected people, or by clearly and conspicuously marking the prohibited areas. No ATV may be operated in any area where ATV usage is prohibited.

ARTICLE 4 - Liability for Negligence

4-101. Every owner of an ATV used or operated within the territorial jurisdiction of the Nation shall be liable for death or injury to any person, or damage to any property, resulting from negligence in the use or operation of such ATV by any person using or operating the same with the permission, expressed or implied, of such owner, provided, however, that such operator’s negligence shall not be attributed to the owner as to any claim or cause of action accruing to the operator or his legal representative for such death, injuries or property damage. Parents or guardians shall be liable for the acts of their children/wards under the age of 21 years.

4-102. Notwithstanding any provision of this Ordinance or any other ordinance, including (but not limited to) the Nation’s Tort Claims Ordinance, No. O-94-02A, the Nation is immune from any claim or charge of liability arising or resulting from the use or operation of any ATV. Nothing in this Ordinance, or any other ordinance, shall be deemed to constitute a waiver of the Nation’s sovereign immunity.

ARTICLE 5 - Accidents; Reports

5-101. The operator of any ATV involved in any accident resulting in injuries to or death of any person or in which property damage is sustained shall immediately notify the Police Department and shall within ten days after such accident report the matter in writing to the Police Department. If such operator is physically incapable of making such report and there is another participant in the accident not so incapacitated, such participant shall make the report within the allotted time after such accident. In the event that there is no participant and the operator is other than the owner, then the owner shall within the prescribed period of time, after learning of the facts of such accident, report the matter to the Police Department, together with such information as may have come to his knowledge relating to such accident. Every such operator of an ATV, or participant of any such accident, or the owner of the ATV involved in any such accident, shall make such other and additional reports as the Police Department shall require.

5-102. A police officer who investigates or receives information of an accident involving an ATV shall make a written report of the investigation or information received, and such additional facts relating to the accident as may come to his or her knowledge.

ARTICLE 6 - Rules for Operation of ATVs

6-101. No person shall operate an ATV:

- a. at a rate of speed greater than five (5) miles per hour while within one hundred feet of a dwelling;
- b. between 11:00 p.m. and 7:00 a.m. while within one hundred feet of a dwelling, except to enter or exit the dwelling with the permission of the dwelling's occupant(s);
- c. at a rate of speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing, but not to exceed any posted speed limit;
- d. in a careless, reckless, unsafe or negligent manner so as to unreasonably endanger the operator of the ATV, his or her passengers or the person or property of another or cause injury or damage thereto;
- e. if the operator is under 16 years of age, unless under immediate supervision of a person of at least twenty-one years of age or he is operating the ATV on his own property;
- g. on the tracks or right-of-way of an operating railroad;
- h. on any grass, or in any tree nursery or planting, in a manner that damages or destroys growing stock, or creates a substantial risk thereto;
- i. while pulling a person on skis or drawing or towing a sleigh, sled, toboggan or trailer which carries or transports any person unless attached by an approved support, connection or towbar;
- j. on the frozen surface of public waters within one hundred feet of any person other than a person riding on an ATV, except at the minimum speed required to maintain forward movement of the ATV, nor on an area which has been cleared of snow for skating purposes unless the area is necessary for access to the public water;
- k. on the property of any other person without such person's permission;
- l. while in an intoxicated condition or under the influence of narcotics or drugs; or

m. on a highway except to make a direct perpendicular crossing, provided that the vehicle is brought to a complete stop prior to crossing the highway and the driver yields the right-of-way to all oncoming traffic that constitutes an immediate hazard.

6-102. The operator of an ATV shall:

a. stop and yield to an authorized emergency vehicle approaching from any direction;

b. comply with any lawful order or direction of any police officer or other person duly empowered to enforce the laws relating to ATVs;

c. strictly comply with and abide by posted signage; and

d. strictly comply with and abide by all restrictions and instructions for usage stated by the ATV's manufacturer and labeled on the ATV.

6-103. No person shall ride on or in a sleigh, sled, toboggan or trailer which is being towed or traileed by an ATV unless attached by an approved support, connection or towbar.

6-104. A person operating or riding on an ATV shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on an ATV unless such ATV is designed to carry more than one person.

6-105. No parent, guardian, ATV owner or other person in possession of any ATV shall authorize or knowingly permit any person to operate an ATV in violation of this Ordinance, or any other law, statute, rule or regulation of the Nation.

6-106. No person shall operate an ATV on the private property of another without the consent of the owner or lessee of the private property.

6-107. The rules set forth in this Ordinance do not supercede any other requirement or prohibition set forth in any other Nation law, rule, policy or agreement, including lease agreements.

ARTICLE 7 - Equipment

7-101. No person shall operate an ATV unless it is equipped with:

a. brakes in good operating condition;

b. a muffler system in good operating condition;

c. a spark arrester;

d. in the case of an ATV with wheels, tires having at least two-thirty seconds of an inch of tread with no visible breaks, cuts, exposed cords, bumps or bulges; and

e. a lighted white headlight and a lighted red taillight when operated from one-half hour after sunset to one-half hour before sunrise.

7-102. No person shall operate an ATV or ride as a passenger on an ATV unless he or she is wearing an approved protective helmet.

ARTICLE 8 - Rules and Regulations

8-101. The Police Department shall make such rules and regulations as it may deem necessary to carry out the provisions of this Ordinance.

ARTICLE 9 – Penalties

9-101. Violation of this Ordinance shall result in the following:

- a. For the first violation, a fine not to exceed \$10.00;
- b. For the second violation, a fine not to exceed \$25.00; and
- c. For all subsequent violations, a fine not to exceed \$40.00 for each subsequent violation.

9-102. In the event that a police officer witnesses a violation of this Ordinance in his or her presence, the officer may confiscate the ATV if such confiscation is reasonably necessary to protect public safety or ensure compliance with this Ordinance. In the event of a confiscation under this Article, the Police Department shall hold the ATV in its custody pending an order from the Oneida Nation Court directing the terms of a release of the ATV.

ARTICLE 10 - Interpretation

10-101. Sovereign Immunity. The Nation does not by enacting this Ordinance waive in any respect its sovereign immunity, or that of its agents, in any manner, under any law, for any purpose, nor in any place.


10-102. No Right of Action. This Ordinance does not create any right, cause of action or benefit enforceable at law or in equity by any person against the Nation, its agencies, its officers or employees, or any other person.

10-103. Not Subject to Review. This Ordinance establishes the sole procedure for regulating ATV's. This Nation Ordinance is not subject to review, enforcement or modification in any state or federal court or by any authority outside the Nation.

ARTICLE 11 - Effective Date

11-101. This Ordinance is effective upon enactment.

Enacted this 30th day of November, 2004.



Ray Halbritter
Nation Representative