

At a Regular Session of the County Commission of Raleigh County, West Virginia, held on the 19th day of April, 2005, the following was made and entered:

RALEIGH COUNTY ALL-TERRAIN VEHICLES (ATV) ORDINANCE

WHEREAS, Chapter 17F-1-3, states the County Commission of any county which has in effect and is operating under a countywide comprehensive plan may be lawfully enacted ordinance regulate or prohibit the operation of all-terrain vehicles on any road in the county, except interstate highways; provided that any county which enacts any such ordinance shall notify the West Virginia State Police and all law enforcement agencies in the county of its action in writing, together with a copy of the ordinance; and

WHEREAS, at the direction of the Raleigh County Commission the Raleigh County Planning Commission has conducted a series of community input meetings regarding additional all-terrain vehicle regulation; the meetings were held at Lake Stephens (Surveyor), Independence High School (Coal City), Shady Spring High School (Shady Spring) and Bradley Elementary (Bradley); and

WHEREAS, from these meetings there were a number of residents requesting that all-terrain vehicles be prohibited from traveling on public roads due to the narrow road conditions as well as the safety of the operators of licensed motor vehicles as well as the operators of all-terrain vehicles; and,

WHEREAS, additional public input has been received from a number of phone calls, emails and letters both in support of all-terrain vehicle regulation and in opposition to additional regulation; and,

WHEREAS, according to reputable and nationally recognized manufacturers of ATVS they warn against improper use of ATVS as the are unsuitable and unsafe on public roads and paved surfaces; and,

WHEREAS, banning all-terrain vehicles from public roads would be for the betterment and safety of the general public who use the same roads for transportation; and the banning of all-terrain vehicles does not include any roads within municipalities; and,

WHEREAS, this action does not affect the municipalities' ability to regulate all-terrain vehicles as long as the appropriate law enforcement agencies are notified of such action; and,

NOW, BE IT ENACTED BY THE RALEIGH COUNTY COMMISSION THAT, all-terrain vehicles shall be regulated in the unincorporated areas of Raleigh County as follows:

SECTION 1 REGULATION OF ALL-TERRAIN VEHICLES

(A) No all-terrain vehicle may be operated in the unincorporated area of this county:

(1) On any interstate highway except by public safety personnel responding to emergencies;

(2) On any road or highway with a center line or more than two lanes except for the purpose of crossing the road, street or highway, if:

(a) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(b) The vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway;

(c) The operator yields his or her right-of-way to all oncoming traffic that constitutes an immediate potential hazard; and

(d) Both the headlight and taillight are illuminated when the crossing is made if the vehicle is so equipped;

(3) With more than one passenger unless more passengers are allowed under manufacturers' recommendations;

(4) With a passenger under the age of eighteen, unless the operator has at a minimum a level two intermediate driver's license or its equivalent or is eighteen years of age or older;

(5) Unless riders under the age of eighteen are wearing size appropriate protective helmets that meet the current performance specifications established by the American national standards institute standard, z 90.1, the United States department of transportation federal motor vehicle safety standard no. 218 or Snell safety standards for protective headgear for vehicle users;

(6) Anytime from sunset to sunrise without an illuminated headlight or lights and taillights;

(7) Without a manufacturer-installed or equivalent spark arrester and a manufacturer-installed or equivalent muffler in proper working order and properly connected to the vehicle's exhaust system; or

(8) Unless operating in compliance with the provisions of section two of this article.

(B) An all-terrain vehicle may, for the sole purpose of getting from one trail, field or area of operation to another, be operated upon the shoulder of any road, street or highway referred to in subdivision (2), subsection (A) of this section, other than an interstate highway, for a distance not to exceed ten miles, if:

(1) The vehicle is operated at speeds of twenty-five miles per hour or less; and

(2) The vehicle is operated at any time from sunset to sunrise, the all-terrain vehicle must be equipped with headlights and taillights which must be illuminated.

(C) Operation of an all-terrain vehicle in accordance with subsection (B) shall not constitute operation of a motor vehicle on a road or highway of this state as contemplated by the provisions of section seven of this article.

(D) Notwithstanding any provision of this ordinance the county commission may authorize the operation of all-terrain vehicles on certain specified roads, streets or highways which are marked with centerline pavement markings, other than interstate highways, to allow participation in parades, exhibitions and other special events, in emergencies or for specified purposes.

SECTION 2 SAFETY AWARENESS COURSES

(A) On and after the first day of January, two thousand five, no person under the age of eighteen may operate an all-terrain vehicle without a certificate of completion of a vehicle rider awareness course as offered or approved by the Commissioner of the West Virginia Motor Vehicles.

(B) The provisions of subsection (A) of this section do not apply to the operation of an all-terrain vehicle on any private or public recreational trail or area or affiliated trail or area operated by a person or entity which has in place a safety program.

SECTION 3 LOCAL GOVERNMENT AUTHORITY TO REGULATE

(A) Homeowner associations may petition the county commission to regulate or prohibit the operation of all-terrain vehicles upon any street, road or avenue within the area regulated by the homeowner association. County commissions, upon receipt of a petition, may enact an ordinance regulating or prohibiting the operation of all-terrain vehicles.

SECTION 4 ALL-TERRAIN VEHICLE RENTAL DEALERS REQUIRED TO PROVIDE SAFETY EQUIPMENT

Any person or entity renting or leasing all-terrain vehicles for recreational purposes must provide protective helmets as defined by the provisions of subdivision (5), subsection (A), section one of this ordinance, to all persons using such vehicles who are under the age of eighteen and offer protective helmets to all persons eighteen and older using the rented or leased vehicles: *Provided*, That for the provisions of this section to be applicable, the age and identity of the

users of the all-terrain vehicle must be disclosed to the person or entity providing the rented or leased vehicle.

SECTION 5 PRIVATE PROPERTY EXEMPTION

Except as provided by the provisions of subdivisions (3), (4) and (5), subsection (A), section one of this ordinance, and except as provided by the provisions of section two of this ordinance, the provisions of this ordinance do not apply if the all-terrain vehicle is operated exclusively on lands owned or leased by the vehicle owner or on private lands of others with the owner's permission.

SECTION 6 EXEMPTION FOR FARM, COMMERCIAL USE; CURRENT REGULATIONS

(A) Except as provided by the provisions of subdivisions (4) and (5), subsection (A), section one, nothing in this ordinance may be construed to preclude or limit the use or operation of all-terrain vehicles for lawful non-recreational commercial purposes, including, but not limited to, farm use, oil and gas operations, timbering, surveying and public utilities access.

(B) Nothing in this ordinance may be construed to supersede or contravene the provisions of any agreement between the state of West Virginia and any private or governmental entity entered into prior to the effective date of this ordinance, or any lawfully promulgated legislative rule, including any emergency legislative rule, regulating the operation of all-terrain vehicles.

SECTION 7 APPLICABILITY OF RULES OF OPERATION

(A) Every person operating an all-terrain vehicle upon a public road or highway of this county shall be subject to all of the duties applicable to the driver of a vehicle by the provisions of chapter seventeen-c of the West Virginia Code except where inconsistent with the provisions of this article and except as to those provisions of chapter seventeen-c of the West Virginia Code which by their nature can have no application.

(B) Notwithstanding the provisions of subsection (A) of this section, a motor vehicle operator's license is not required of an operator of an all-terrain vehicle when he or she is operating said vehicle in conformity with the provisions of subdivision (2), subsection (A) or subsection (B), section one of this ordinance except when the operator is under the age of eighteen and is transporting a passenger under the age of eighteen.

Section 8 ENFORCEMENT AND CRIMINAL PENALTIES

(A) The Sheriff of Raleigh County is hereby authorized and directed to enforce this ordinance. Further, the Sheriff is hereby authorized the use of all-terrain vehicles and other lawful means to enforce this ordinance.

(B) Except as provided in the provisions of subsection (B) of this section and in addition to any other legal remedy for violation of civil or criminal provisions of this ordinance or the West Virginia Code , any person who violates the provisions of this county ordinance enacted pursuant to the provisions of section three of this ordinance or who owns or has control over an all-terrain vehicle and knowingly permits it to be used in violation of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars.

(C) Any parent, legal guardian or person who has actual responsibility for a child under eighteen years of age who knows or should have known the child is operating or is a passenger on an all-terrain vehicle without a helmet as required by the provisions of section one of this article is guilty of a misdemeanor and shall, upon conviction, be subject to the following penalties:

(1) For a first offense, a fine of not less than fifty dollars nor more than one hundred dollars or not more than ten hours of community service, or both;

(2) For a second offense, a fine of not less than one hundred dollars nor more than two hundred dollars or not more than twenty hours of community service, or both;

(3) For a third or subsequent offense, a fine of not less than two hundred dollars nor more than five hundred dollars or not more than one hundred hours of community service, or both.

SECTION 9 DEFINITION OF ALL-TERRAIN VEHICLE

As used in this ordinance, "all-terrain vehicle" or "ATV" shall mean any motor vehicle, fifty-two inches or less in width, having an unladen weight of eight hundred pounds or less, traveling on three or more low pressure tires with a seat designed to be straddled by the rider, designed for or capable of travel over unimproved terrain.

The motion to adopt the All-Terrain Vehicle (ATV) ordinance was offered by Commissioner Pat Reed, seconded by Commissioner John Humphrey.

WHEREUPON, John L. Aliff, President, declared said motion duly adopted by unanimous vote and it is hereby ADJUDGED and ORDERED that the said motion be, and the same is hereby adopted this 19th day of April, 2005.

SIGNATURES ON FILE_____

John L. Aliff, President

Pat Reed, Commissioner

John D. Humphrey, Commissioner

Attest: _____
Betty Riffe, County Clerk