

Chapter 45

ALL TERRAIN AND OFF-ROAD RECREATION VEHICLES

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[HISTORY: Adopted by the Town Board of the Town of Patterson 6-14-2006 by L.L. No. 3-2006. Amendments noted where applicable.]

General References

Noise - See Ch. 109

Trespassing - See Ch. 145

Vehicles and traffic - See Ch. 150

§ 45-1. Legislative intent; purpose.

A. The Town Board of the Town of Patterson finds that the unrestricted use of off-road recreation vehicles can result in environmental damage, including but not limited to native habitat destruction and fragmentation, soil compaction, soil erosion, stream channel disturbance, and water quality degradation. Further off-road recreation vehicles often cause unreasonably loud or disturbing noise, the duration of which may last for extended periods of time, that affect the general welfare of the surrounding residents. Off-road recreation vehicles driven in an unsafe or reckless manner, or on highways used by the public for vehicular traffic present a concern to the residents of the Town of Patterson.

B. The regulation of off-road recreation vehicle use within the Town of Patterson is deemed necessary to preserve the public peace and good order, to prevent unreasonable loud or disturbing noises which the Town Board of the Town of Patterson determines to be detrimental to the peace, welfare and good order of the people and to promote the health, safety, morals and general welfare of the community, including the protection and preservation of public and private property.

C. It is the purpose of this article to promote the safe and proper use of off-road recreation vehicles for recreation and commerce in the Town of Patterson, to prevent accidents, to ensure the safety and well-being of all persons involved in the use of off-road recreation vehicles, to minimize detrimental effects of such use upon the environment, to prevent accidental petroleum spills into the Town's surface water; to minimize the detrimental effects of operating off-road recreation vehicles upon the residents of the Town, and to protect the rights of private property owners whose property is used for the operation of off-road recreation vehicles without the permission of said landowners.

§ 45-2. Authority

This local law is adopted pursuant to Article 2 of the NYS Municipal Home Rule Law, Article 48-C and Section 2404(6) of the NYS Vehicle and Traffic Law, and Article 25 of the NYS Parks, Recreation and Historic Preservation Law

§ 45-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ALL TERRAIN VEHICLE or "ATV" - Any self-propelled three-, or four wheel vehicle which is manufactured for sale for operation primarily on off-highway trails or off-highway competitions and only incidentally operated on public highways.

COMMISSIONER - The Commissioner of Motor Vehicles

DEALER - Any person or business organization engaged in the business of selling off-road recreation vehicles at wholesale or retail, including but not limited to any individual, corporation,

unincorporated association, proprietorship, firm partnership, joint venture, or joint-stock association who sells or offers for sale an off-road recreation vehicle to any person within the Town of Patterson for compensation.

HIGHWAY - The entire width between the boundaries of the right of way of any lands used for the purposes of conveying vehicular traffic, or in the case of a highway by use as defined by NYS Highway Law §189, shall also include any lands within twenty-five (25) feet of the center of said highway. The term highway shall also be interchangeable with the term "road".

OFF-ROAD RECREATION VEHICLE - Snowmobiles, motorcycles, minibikes, trail bikes, dirt bikes, motorbikes, all-terrain vehicles and other motorized two-, three- and four-wheeled vehicles and similar vehicles and contrivances designated for operation on off-highway trails.

OPERATE- To ride in or on, other than as a passenger, or use or physically control the operation of an off-road recreation vehicle in any manner, whether or not said vehicle is under way.

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

OWNER - Any person having a title to an off-road recreation vehicle. If an off-road recreation vehicle 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 off-road recreation vehicle, 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 off-road recreation vehicle shall not be deemed an owner unless such person also has possession of such off-road recreation vehicle.

SNOWMOBILE - A self-propelled vehicle designed for travel on snow or ice, steered by skis or runners and supported in whole or in part by one or more skis, belts or cleats.

§ 45-4. Operation Restricted

No person shall operate, drive, or ride upon, or permit to be operated, driven, or permit to be ridden upon, any recreational motor vehicle as defined in this chapter within the corporate limits of the Town of Patterson under any of the following circumstances.

A. On the private property of another without the express prior written consent of the owner and the occupant of such property. Such consent may be revoked at any time by the grantor thereof. Where such express prior written consent has been obtained, the operator shall keep such consent on his person and available for immediate display at all times during the period of such operation. Such express prior written consent shall not be deemed a consent hereunder as to any person whose name is not set forth therein. Failure to produce such express prior written consent upon demand therefor by any individual or agency charged with the enforcement of this Chapter shall be

presumptive evidence that such consent has not been given or received.

B. On any public lands, grounds or property owned or operated by the Town of Patterson except that an off-road recreation vehicle may be operated on any such lands which have been designated and posted for travel by off-road recreation vehicles in accordance with the provisions of § 45-9 of this article.

C. On any Town highway, private highway, alley or public driveway, unless said highway, alley or driveway has been posted so as to allow the use of off-road recreation vehicles and that the off-road recreation vehicle is operated in a manner consistent with this Chapter.

D. In such a manner as to produce noise by an off-road recreation vehicle, on any property within any residential or nonresidential zoning district within the Town of Patterson which exceeds sixty-five (65) dB(A) between 7:00 a.m. and 8:00 p.m. prevailing time on weekdays, including Saturday, or forty-five (45) dB(A) during the hours of 8:00 p.m. to 7:00 a.m. weekdays, all day Sunday and on Holidays.

E. In a careless, reckless or negligent manner.

F. On private property within one hundred (100) feet of property owned by another.

G. No person shall operate an off-road recreation vehicle on or in any open waters, streams or wetlands.

H. While in an intoxicated condition or under the influence of alcohol, narcotics or drugs as set forth in §1192 of the NYS Vehicle and Traffic Law.

I. On any lake or body of water when frozen or covered with ice.

J. On public property owned by the State, County or other government agency, or property owned and operated by a qualified land trust, unless such agency has expressly permitted the use of such lands by off-road recreational vehicles, or such land has been designated and posted for travel by off-road recreation vehicles by such agency, or unless the prior written consent of the agency or land trust has been issued to the individual.

§45-5. Responsibility of parent or guardian.

It shall be unlawful for the parent, guardian or any person having the care, custody and control of any child under the age of eighteen (18) years knowingly to permit such child to operate an off-road recreation vehicle in violation of this Chapter. Any parent, legal guardian or other person having the care, custody and control of any child under the age of eighteen (18) years at the time of the violation of this Chapter by such person under the age of eighteen (18) years shall likewise be guilty of a violation if, after a hearing by a court of competent jurisdiction, a determination is made that such violation occurred by such person under the age of eighteen (18) years, and shall be subject

to a fine as set forth herein.

§ 45-6. Limitations on the use of an off-road recreation vehicle.

The following limitations on the use and operation of an off-road recreation vehicle are imposed;

A. An off-road recreation vehicle may make a direct crossing on a highway other than an interstate highway or a controlled access highway, provided:

- (1) 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;
- (2) The vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway;
- (3) The driver yields the right-of-way to all oncoming traffic that constitutes an immediate hazard;
- (4) In crossing a divided highway, the crossing is made only at an intersection of the highway with another public street or highway, and
- (5) If the crossing is made between the hours of one-half hour after sunset to one-half hour before sunrise or in conditions of reduced visibility, only if both front and rear lights are lighted.

B. An Off-road recreation vehicle may be operated on any highway which has been designated and posted as open for travel by off-road recreation vehicles in accordance with the provisions of section § 45-9 of this article.

C. No person shall operate an off-road recreation vehicle:

- (1) 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;
- (2) In a careless, reckless or negligent manner so as to unreasonably endanger the person or property of another or cause injury or damage thereto;
- (3) On the tracks or right-of-way of an operating railroad;
- (4) In any tree nursery or farm-operation crop field in a manner that damages or destroys growing stock, or creates a substantial risk thereto;
- (5) While pulling a person on skis or drawing or towing a sleigh, sled, toboggan,

inflatable device or trailer which carries or transports any person unless attached by a rigid support, connection or towbar;

(6) On the frozen surface of any lakes, ponds or other bodies of water for which the use of a recreational vehicle has not been otherwise expressly prohibited;

(a) Within one hundred feet of any person other than a person riding on an off-road recreation vehicle except at the minimum speed required to maintain forward movement of the Off-road recreation vehicle, nor

(b) Within one hundred feet of a fishing shanty or shelter except at the minimum speed required to maintain forward movement of the off-road recreation vehicle nor on an area which has been cleared of snow for skating purposes unless the area is necessary for access to the public waters, nor

(c) Within one hundred feet of any dam or outlet structure;

(7) Within one hundred (100) feet of a dwelling between midnight and six a.m., at a speed greater than minimum required to maintain forward movement of the off-road recreation vehicle;

D. The operator of an off-road recreation vehicle shall:

(1) Stop and yield to an authorized ambulance, civil defense, or police off-road recreation vehicle or police vehicle being operated as an emergency vehicle and approaching from any direction;

(2) Comply with any lawful order or direction of any police officer or other person duly empowered to enforce the laws relating to off-road recreation vehicles.

E. A person operating an off-road recreation vehicle 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 off-road recreation vehicle unless such off-road recreation vehicle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the off-road recreation vehicle at the rear or side of the operator.

§ 45-7. Exemptions

This Chapter shall not apply to;

A. Farm vehicles used during the course of farming operations,

B. Police, emergency or other government vehicles.

- C. Construction vehicles employed in lawful construction activities.
- D. Landscape equipment, including lawnmowers, and snowthrowers.
- E. Golf carts and battery-powered vehicles designed for children.
- F. Vehicles serving a medical function or assisting a person with a disability.

§ 45-8. Notice by Dealers

Any Dealer who sells or offers for sale an off-road recreation vehicle to any person within the Town of Patterson for compensation shall conspicuously post notice of these regulations at each point of sale. Said notice shall be not less than 8.5 inches by 11 inches using all capital letters not less than one and one-half inches in height on a contrasting background. The notice shall state “NOTICE TO OFF-ROAD RECREATION VEHICLE OPERATORS. OPERATION OF AN OFF ROAD RECREATION VEHICLE IS REGULATED BY THE TOWN OF PATTERSON PURSUANT TO CHAPTER 45 OF THE PATTERSON TOWN CODE. IT IS UNLAWFUL TO OPERATE AN OFF-ROAD RECREATION VEHICLE ON A PUBLIC HIGHWAY UNLESS OTHERWISE POSTED. OFF-ROAD RECREATION VEHICLES SHALL NOT BE OPERATED ON PRIVATE PROPERTY WITHOUT THE WRITTEN CONSENT OF THE PROPERTY OWNER”.

§ 45-9. Designation of highways and public lands for travel by Off-road recreation vehicles.

A. No off-road recreation vehicle shall operate on, or otherwise use any Town-owned public lands, or any Town Road or any private road, except where said lands or highway have been designated and posted as open for travel by Off-road recreation vehicle’s in accordance with the requirements contained herein.

B. Upon receipt by the Town Clerk of a petition signed by a majority of the owners of real property abutting a Town highway or a private highway, requesting to designate said highway, or portion thereof to be open for travel by off-road recreation vehicles, or upon its own motion, the Town Board shall provide notice and conduct a public hearing consistent with the provisions contained herein.

(1) Within fourteen days of receipt of a petition, the Town Clerk shall verify that the signatures contained thereon represent the owners of real property attested to in the petition, and shall present the petition to the Town Board at the next meeting of said Board.

(2) Within forty-five (45) days of the receipt of the petition from the Town Clerk, the Town Board shall provide notice and conduct a public hearing on the petition. Each property owner who abuts said highway, or portion thereof considered for designation as open for travel by off-road recreation vehicles shall be notified of said public hearing by certified

mail, return receipt requested at least fourteen days prior to the date of the public hearing.

(3) If after the public hearing the Town Board determines that the road should be open to off-road recreation vehicles, they shall by local law or ordinance designate said highway, or portion thereof as open for travel by off-road recreation vehicles, and cause said highway, or portion thereof so affected to be posted with signs designating the road, or portion thereof as open for travel by off-road recreation vehicles.

C. The designation of Town-owned public lands shall follow the procedures provided in subsection B, above.

D. Such designated highways or portions thereof or designated public lands shall be identified by markers in such manner as may be provided by rules and regulations of the Commissioner of Motor Vehicles. All signs or markers shall be erected at the expense of the state or municipality, provided, however, that the municipality may accept funds or contributions therefor from private persons, clubs or associations interested in the promotion of off-road recreation vehicles.

E. Any regulation, order, local law or ordinance which designates a highway or portion thereof or designated lands which may be used for off-road recreation vehicle operations may include rules and impose restrictions and conditions for the regulation and safe operation of off-road recreation vehicles on the highways and lands so designated, including but not limited to limits on the hours of use and speed restrictions. Any restriction or condition not contained in this chapter must be posted.

F Copies of orders, regulations, local laws or ordinances adopted by governmental agencies pursuant to this section shall be filed with the Commissioner of Motor Vehicles.

§ 45-10. Required Equipment.

A. No person shall operate an off-road recreation vehicle unless it is equipped with:

- (1) Brakes in good operating condition;
- (2) A muffler system in good operating condition which meets federal standards as established in 40 CFR (Code of Federal Regulations) Part 205.166, sub Part E;
- (3) A spark arrester approved by the United States Forest Service;
- (4) Tires having at least two-thirty seconds of an inch of tread with no visible breaks, cuts, exposed cords, bumps or bulges;
- (5) A lighted white headlight approved by the commissioner and a lighted red taillight approved by the commissioner when operated for one-half hour after sunset to one-half hour before sunrise.

B. No person shall operate an off-road recreation vehicle or ride as a passenger on an off-road recreation vehicle unless he is wearing a protective helmet of a type approved by the commissioner pursuant to subdivision six of section three hundred eighty-one of Vehicle and Traffic Law.

C. No person shall operate an off-road recreation vehicle:

(1) On a highway with tires equipped with any studs other than automotive studs;

(2) Which displays one or more lighted red or a combination red or white lights which are revolving, rotating, flashing, oscillating or constantly moving, except when in use as an authorized emergency off-road recreation vehicle, police, or civil defense off-road recreation vehicle being used during an emergency;

(3) as an authorized emergency off-road recreation vehicle or civil defense off-road recreation vehicle, unless it is equipped with one or more lighted, red or combination red or white light or lights which is or are revolving, rotating, flashing, oscillating or constantly moving and which has or have minimum candle power of sufficient intensity to be plainly visible from a distance of five hundred feet in all directions under normal atmospheric conditions.

§ 45-11. Liability insurance.

A. An off-road recreation vehicle which is operated anywhere in the Town of Patterson other than on lands of the owner of the off-road recreation vehicle shall be covered by a policy of insurance, in such language and form as required for ATV's pursuant to § 2407 of NYS Vehicle and Traffic Law, or for snowmobiles pursuant to §25.13 of NYS Parks, Recreation and Historic Preservation Law. Proof of insurance as required by this section shall be produced and displayed by the owner or operator of such off-road recreation vehicle upon the request of any person having authority to enforce the provisions of this chapter. The failure to produce such proof upon the request of any such person shall not be an offense but shall be presumptive evidence that the off-road recreation vehicle is being operated without having such insurance in force and effect.

B. Proof of insurance as required by this section shall be produced and displayed by the owner or operator of such off-road recreation vehicle to any person who has suffered or claims to have suffered either personal injury or property damage as a result of the operation of such off-road recreation vehicle by the owner or operator, if such insurance coverage was required under the circumstances of such operation. It shall be an affirmative defense to any prosecution for a violation of this subdivision that such proof was so produced or displayed within twenty-four hours of receiving notice of such injury or damage, or the claim of such injury or damage.

C. No owner of an off-road recreation vehicle shall operate or permit the same to be operated anywhere in the Town of Patterson other than on lands of the owner of the off-road recreation vehicle without having in full force and effect the liability insurance coverage required by this section, and no person shall operate an off-road recreation vehicle anywhere in the Town of

Patterson other than on lands of the owner of the off-road recreation vehicle with the knowledge that such insurance is not in full force and effect.

§ 45-12. Operation by minors.

A. Except as provided by subdivision "B" of this section, no person under the age of sixteen years shall operate an off-road recreation vehicle except upon lands owned or leased by his parent or guardian, unless he is under general supervision of a person eighteen years of age or over or a person sixteen years of age or over who holds an off-road recreation vehicle safety certificate. "Leased lands" as herein used shall not include lands leased by an organization of which said operator or his parent or guardian is a member.

B. A person ten years of age but less than sixteen years of age who has received safety training as prescribed by the commissioner and has received the appropriate off-road recreation vehicle safety certificate issued by the commissioner may operate an off-road recreation vehicle in the same manner as a person who is sixteen years of age or older.

C. The failure of a person to exhibit an off-road recreation vehicle safety certificate upon demand to any officer having authority to enforce the provisions of this article shall not be an offense, but shall be presumptive evidence that such person is not the holder of such certificate.

D. No parent or guardian shall authorize or knowingly permit his child or ward, if under sixteen years of age, to operate an off-road recreation vehicle in violation of any provision of this article, any rules or regulations promulgated thereunder, or the provisions of any local law or ordinance.

E. No owner or other person in possession of any off-road recreation vehicle shall authorize or knowingly permit any person under sixteen years of age to operate such an off-road recreation vehicle in violation of any provision of this article, any rules or regulations promulgated thereunder, or the provisions of any local law or ordinance.

§ 45-13. Liability for negligence.

Negligence in the use or operation of an off-road recreation vehicle shall be attributable to the owner. Every owner of an off-road recreation vehicle used or operated in this state shall be liable and responsible for death or injury to person or damage to property resulting from negligence in the use or operation of such off-road recreation vehicle by any person using or operating the same with the permission, express 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 injuries or death.

§45 -14. Vehicle Identification Numbers Required

A. All off road vehicles must have a vehicle identification number permanently affixed to the frame in a form and manner as require by NYS Vehicle and Traffic Law Article 48-A, and no person shall operate any Off-road recreation vehicle within the Town of Patterson unless such off-road recreation vehicle has been registered and numbered in accordance with the provisions of NYS Vehicle and Traffic Law Article 48-B. [*§2286 NYS VTL specifically excludes municipalities from requiring licensing or registration of Off-road recreation vehicle's*]

§ 45-15. Penalties for offenses.

A. The provisions of this Chapter shall be enforced by the Patterson Code Enforcement Officer and any duly appointed assistant thereto, the Patterson Code Compliance Officer, or any police officer, peace officer, or any Environmental Conservation Officer charged with the enforcement of the State laws and codes.

B. Any person or corporation, whether as owner, lessee, principal, agent, employee or otherwise, which violates any of the provisions of this chapter or permits any such violation or fails to comply with any of the requirements thereof shall be guilty of a violation, punishable by a fine not exceeding two hundred fifty dollars or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine of not less than three hundred fifty dollars nor more than seven hundred dollars or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars nor more than one thousand dollars or imprisonment for a period not to exceed six months, or both. For the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter or any part thereof or any condition or requirement of subdivision approval shall be deemed misdemeanors. Each week's continued violation shall constitute a separate additional violation.

C. In addition to the penalties of subsection "A" above, the parent or legal guardian, other than a state or legal social services department foster parent having the care, custody and control of any un-emancipated person under the age of 18 years of age found guilty of a violation of this article shall also be responsible for the payment of the fine imposed by a court of competent jurisdiction for such violation. In no event shall it be a defense that the parent or legal guardian has exercised due diligent supervision over the activities of the person under the age of 18 years of age.

D. In addition to the penalties of subsection "B" above, the parent or legal guardian, other than a state or legal social services department foster parent having the care, custody and control, of any un-emancipated person under the age of 18 years of age found guilty of a violation of this article shall be responsible for restitution for any damage caused to real property or improvements located thereon owned and/or operated by the Town of Patterson. In no event shall it be a defense that the parent or legal guardian has exercised due diligent supervision over the activities of the person under the age of 18 years of age.

§ 45-16. Impoundment, redemption and forfeiture.

A. In addition to the penalties set forth in § 45-15 of this article, the Code Enforcement Officer or duly appointed assistant, the Code Compliance Officer, a police officer or peace officer, or a Environmental Conservation Officer charged with the enforcement of the State laws and codes, shall have the authority to immediately impound an off-road recreation vehicle operated in violation of this Chapter. Such impounded off-road recreational vehicle shall be stored by the pertinent police department or enforcement agency pending the identification of the owner as registered with the New York State Department of Motor Vehicles. Such titled owner shall be sent notice of such impoundment at the address on file with the New York State Department of Motor Vehicles by certified mail within five days after the impoundment. The enforcement agency shall not be liable for any damages arising out of the provisions of an erroneous name or address of such owner. The off-road recreation vehicle shall be returned to the owner upon payment of any applicable fines imposed and any reasonable and customary towing and daily storage fees, if any, or upon the direction of the Court.

B. All off-road recreation vehicle's seized pursuant to this article shall be subject to reasonable and customary towing and daily storage fees. Such fees shall be payable to the seizing agent prior to the release of said property.

§45-17. Severability.

If any clause, sentence, paragraph, section , article, chapter or part of this local law or of any local law, ordinance or resolution included in this Code now or through supplementation shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, article, chapter or part thereof directly involved in the controversy in which such judgement shall have been rendered.

Pursuant to NYS VTL §2405(5) a copy of this local law shall be filed with the Commissioner of Motor Vehicles. Pursuant to §25.09 of the NYS Parks, Recreation and Historic Preservation Law a copy of this local law shall be filed with the NYS Office of Parks, Recreations and Historic Preservation.