

ORDINANCE:

USE OF MOTOR VEHICLES ON TOWN PROPERTY:

SECTION I: AUTHORITY:

This ordinance has been enacted pursuant to the authority granted the Board of Selectmen of the Town of Windham by NH RSA 41:11-a (Town Property), which allows the Board of Selectmen of the Town to adopt ordinances to regulate the use of Town owned lands.

SECTION II: PURPOSE AND INTENT:

- A) To protect the users of these areas from physical injury that may result from the unrestricted operation of motor vehicles at these locations.
- B) To limit the Town's potential financial liability for any injuries that might result from the unrestricted operation of motor vehicles at these facilities.
- C) To prevent damage to the playing fields, trails, roads, parking areas, steep slopes, wetlands, activity areas and other improvements, thereby reducing the cost to the taxpayers of Windham for operating and managing these facilities.
- D) To prevent soil erosion, damage to vegetation and turf, and other injury to the environment.
- E) To reduce the risk of fire.
- F) To reduce the amount of unwanted noise and dust.
- G) To encourage indigenous wildlife to inhabit Windham's major conservation areas.
- H) To protect the use and enjoyment of these areas for the users of these areas.

SECTION III: APPLICABILITY:

- A) This ordinance applies to any and all lands owned by the Town of Windham, but not to any Town owned land subject to statutory management by other Town entities, such as and including but not limited to, cemeteries (RSA 289:7), forest lands (RSA 31:112), conservation lands (36-A:4), and the Nesmith Library (RSA 202-A:6).

SECTION IV: DEFINITIONS:

- A) "*Motor Vehicles*" shall mean any and all liquid petroleum, gasoline, propane or electrically powered motor vehicles which travel on one or more wheels or tracks, including but not limited to "all terrain vehicles" (ATV), "off highway recreational vehicles" (OHRV), "utility terrain vehicle" (UTV), and "trail bikes" as defined by RSA 215-A:1. Such vehicles shall **not** include:
 - 1. Snowmobiles operated in accordance with the laws of the State of New Hampshire, provided they are propelled on snow by tracks or cleats and steered by skis;
 - 2. Wheeled devices typically designed and intended for use by, and operated by the handicapped which were not originally manufactured as motor vehicles such as trail bikes or ATVs;

3. Maintenance and repair equipment operated by, with the permission of, or on behalf of the Town of Windham and/or the Windham Highway Department;
4. Any emergency vehicles operated by or under the direction of the Windham Police, Fire, and/or Emergency Management Departments, along with similar vehicles of local, State or federal government agencies conducting similar activities;

B) "*Town-owned Land*" shall mean any and all land acquired by the Town of Windham whether by purchase, gift, tax deeding, or any other means in accordance with the laws of the State of NH, which may include but not be limited to recreational facilities and sports fields.

SECTION V: REGULATED ACTIVITIES:

- A) No person, of any age, shall operate a motor vehicle upon or within any Town-owned land including, but not limited to the Depot Road parking lot, designated trails, playing fields, tennis courts, activity areas, basketball courts, or grassed areas therein except as provided below:
1. Permitted areas of Use: The operation of motor vehicles shall be permitted in the following areas and for the following purposes only:
 - a. Operation of motor vehicles registered for use on public ways may be operated on or over Town roads and on or over portions of Town-owned land intended for such use, such as driveways, parking lots and access roads.

SECTION VI: ENFORCEMENT:

A) The provisions of this ordinance shall be enforceable by police and law enforcement officers, including but not limited to: State and Windham police officers, sheriffs, deputy sheriffs, fish and game officers, constables, and all persons empowered to make arrests in criminal cases.

SECTION VII: PENALTIES:

- A) Any person found guilty of violating the provisions of this ordinance shall be guilty of a violation under RSA 625:9 (V), and may be sentenced to a conditional or unconditional discharge or fine (RSA 651:2 (III-a), which shall not exceed \$1,000.00. RSA 651:2 (IV) (a).
- B) It will be the policy of the Town in such appropriate cases to seek restitution through a conditional discharge sentence under RSA 651:2 (VI-a) to repair all damages to Town-owned land or property caused by any person violating this ordinance.
- C) It will be the policy of the Town in such appropriate cases to seek civil damages for restitution from parents and/or legal guardians of minors violating this ordinance.

SECTION VIII: VALIDITY:

A) If any section, clause, provision, portion or phrase of this Ordinance shall be held to be invalid or unconstitutional by any court of competent authority, such holding shall not affect, impair, or invalidate any other section, clause or provision, portion or phase of this Ordinance.

B) The provisions of this Ordinance shall be valid in full force and effect whether or not there is snow cover on the ground or whether or not any, all or none of the borders of any Town-owned land are posted or identified by signs.

SECTION IX: CONFLICT WITH OTHER BY-LAWS OR POLICIES:

In the event that a section, clause, provision, portion or phrase of this Ordinance conflicts with a related section, clause, provision, portion or phrase of a Town By-Law or Policy that pertains to a particular property or groups of properties, that section, clause, provision, portion or phrase of the By-Law or Policy shall govern the particular situation.

SECTION X: EFFECTIVE DATE/AMENDMENTS:

This Ordinance shall become effective March 30, 2003, and may from time to time be amended by the Board of Selectmen at a regularly scheduled Selectmen's meeting subsequent to a public hearing duly posted fourteen (14) days prior.

Adopted by the Board of Selectmen this 4th day of December, 2002.

Margaret Crisler
Roger Hohenberger
Galen Stearns
Christopher Doyle
Alan Carpenter
Board of Selectmen

Amended by Board on April 18, 2016