



TOWN OF WINDHAM, NEW HAMPSHIRE

OFFICE OF THE BOARD OF SELECTMEN/TOWN ADMINISTRATOR

3 NORTH LOWELL ROAD – WINDHAM, NEW HAMPSHIRE 03087

TOWN OF WINDHAM, NH PUBLIC HEARING NOTICE

The Board of Selectmen will hold a public hearing on April 18, 2016 at 7:00 pm at the Community Development Department for the purpose of considering amendments to the Ordinance governing *Use of Off-Road Vehicles On Town Property (#WIN 3:00:11:02)*.

Changes being proposed within the ordinance are available for review on the Town website at WindhamNH.gov, or in hard copy at the Administrative Offices, 4 North Lowell Road. Proposed new language is reflected via underlined text; while language to be deleted is struck through.

Posted by: David Sullivan, Town Administrator

Dated: March 23, 2016:

Wendi Devlin

From: Ross McLeod <rmcleod@windhamNH.gov>
Sent: Wednesday, March 23, 2016 1:58 PM
To: Dave Sullivan - Windham, Town of
Cc: Wendi Devlin; Barbara O'Brien
Subject: Motor Vehicle Ordinance
Attachments: ATV Ordinance draft proposed v5.doc

Dave (Dave/Wendi - could you please forward this to Mark Samsel and the WRTA?),

(Note: I have included Barbara from the PWN as I realize the discussion Monday night was not among our clearest of discussions),

Please find attached an updated draft of the existing "Use of Off-Road Vehicles on Town Property" ordinance with proposed amendments based on Monday's meeting. Because of the confusion and murkiness of the thornier points discussed, I have enclosed multiple versions of the same section and commentaries so as to facilitate resolution of this at its next meeting.

Please include this email as part of what is available for the Board and public to review in advance so that the key issues and the range of options to be considered are as clear as can be in advance of the meeting and so that we won't have to repost for yet another meeting. The major points of unresolved discussion:

1. Section IV: Definitions. The discussion involved adding a subsection under Section IV (A) so as to specifically not include "mopeds, bicycles, Segways, and hoverboards." Since bicycles are not motorized to begin with, it would be confusing to mention them herein. Also, to avoid any trademark or brand-specific issues, I have included proposed language to more broadly and generally describe Segways and hoverboards. Further, since I believe that safety and "blurring of the lines" with ATV's could occur by exempting mopeds, I have also proposed not including mopeds as an exemption. Given the existing language on the one hand and the Board-proposed language of "mopeds, bicycles, Segways, and hoverboards" on the other hand, I believe that all four variations (Section IV (A) (5, 6, 7, 8)) are within the board's purview for discussion at the next meeting without needing to repost. I personally am leaning towards not supporting any of the four (bicycles are not motorized to begin with, mopeds could introduce a blurring of the lines with ATVs and could damage trails and cause safety issues and they are best suited to use as registered motor vehicles on paved roads and already covered by State law (RSA 263:33), and Segways and hoverboards could cause safety issues), with #8 being my least-objectionable, but invite and look forward to discussion of these options (#5, 6, 7, 8, or none of them).

2. Section V: Regulated Activities. Under Section V (A)(1)(a), a member of the public proposed striking the words "registered for use on public ways," but the board's direction on this point was unclear and I would consider it fair game as to whether or not to strike those words or leave them intact (I have not stricken them in the attached draft). Upon reflection, I am opposed to striking those words because "public way" has a legal significance and meaning within the State's motor vehicle code (see RSA 259:125) and removing those words would put the Town in the position of authorizing unregistered cars to be driven on Town roads, in contradiction with State law (see RSA 261:40).

3. Section V: Regulated Activities. The proposal to strike the existing Section V (A)(1)(b) is to ensure that no motor vehicles are operated in the Depot Road parking lot, other than registered motor vehicles (i.e., cars, trucks, motorcycles) and exempted vehicles (e.g., snowmobiles, motorized wheelchairs). Since ATV's are currently not allowed on the Greenway Trail or on the Rockingham Rail Trail, there is no point in allowing them to use the parking lot for the sole purpose "of ingress and egress to the State of NH's Rockingham Recreation Trail" as they should be using said trail primarily east of Route 28. This is also a safety issue given the often-congested and busy nature of the Depot Road

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ORDINANCE:
USE OF ~~OFF-ROAD~~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 ~~wheeled,~~ motor ~~driven~~ vehicles at these locations.
- B) To limit the Town's potential financial liability for any injuries that might result from the unrestricted operation of ~~wheeled,~~ motor ~~driven~~ 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.

G~~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, ~~including but not limited to recreational areas, conservation areas, and sportsfields.~~ 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) "~~Wheeled Motor Driven 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, ~~XIV~~. 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;~~
 - 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. ~~Lawnmowers, maintenance vehicles, construction and/or logging~~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;
5. Mopeds, bicycles, Segways, and hoverboards;
6. Mopeds, Segways, and hoverboards;
7. Segways and hoverboards;
- 4.8. Two-wheeled, single-user, electric powered platform devices not capable of exceeding 15 mph.

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

SECTION V -: REGULATED ACTIVITIES:

- A) No person, of any age, shall operate a ~~wheeled~~ motor ~~driven~~ 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 ~~wheeled~~ motor ~~driven~~ 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, including such as driveways, parking lots and access roads.
 - ~~b. Said vehicles may be operated within the boundaries of the Town-owned portion of the Depot Road parking area solely for the purposes of ingress and egress to the State of NH's Rockingham Recreation Trail. Any other operation shall be considered a violation of this ordinance, including reckless operation of said vehicles in accessing the trail.~~
 - ~~c. The use of said vehicles shall be permitted within the bounds of the Landry property on Lowell Road solely by the owners of the property, in accordance with the easement agreement with Town of Windham.~~

SECTION VI -: ENFORCEMENT:

- A) The provisions of this ordinance shall be enforceable by ~~p~~Police and law enforcement officers, including but not limited to: State and Windham pPolice officers, sheriffs, deputy sheriffs, fish and game officers, ~~policemen,~~ 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:

B) 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 IX-: 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