

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2013-14 (SUB-1)

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL REPEALING AND REENACTING CHAPTER 11.20 OF THE DILLINGHAM MUNICIPAL CODE PERTAINING TO THE USE OF OFF-ROAD VEHICLES WITHIN THE BOUNDARIES OF THE CITY OF DILLINGHAM

WHEREAS, the City Council has determined that regulating the use of off-road vehicles within the City's boundaries is beneficial to the health, safety, and welfare of City residents; and

WHEREAS, the City is aware that some residents of the community wish to use off-road vehicles as their method of vehicular transportation within the City instead of using automobiles; and

WHEREAS, the price of gasoline has increased substantially in western Alaska making it more costly to operate an automobile; and

WHEREAS, the residents of the community benefit by using off-road vehicles for transportation because these vehicles can travel more miles per gallon than most automobiles; and

WHEREAS, certain rules and regulations are required in order to provide for the safety and general welfare of the community and to meet the needs of those who desire or depend upon ATVs as their primary or sole means of transportation; and

WHEREAS, the City Council has previously enacted Chapter 11.20 of the Dillingham Municipal Code, but was not intended to repeal sections in 11.20 that were not specifically laid out in Ordinance No. 2005-05; and

WHEREAS, Ordinance No. 2005-05 has caused some confusion about the contents of Chapter 11.20 of the Dillingham Municipal Code; and

WHEREAS, the City Council has determined a map that clearly identifies the boundaries of the "business district" should be added to Chapter 11.20 of the Dillingham Municipal Code;

NOW BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Repeal and Reenactment of Chapter 11.20 of the Dillingham Municipal Code. Chapter 11.20 of the DMC as amended by Ordinance No. 2005-05 is hereby repealed and reenacted as follows:

Chapter 11.20 Off-Road Vehicles

Sections:

- 11.20.010** Definitions
- 11.20.020** Operation of off-road vehicles within business district prohibited
- 11.20.030** Operation of off-road vehicles on state roadways outside business district
- 11.20.040** Prohibitions on the off-road vehicles on state roadways within the city's boundaries
- 11.20.050** Operation of off-road vehicles on city roadways outside business district

- 11.20.060 Prohibitions on the off-road vehicles on city roadways within the city's boundaries**
- 11.20.070 Age**
- 11.20.075 Helmets required**
- 11.20.080 Headlights**
- 11.20.090 Parental responsibilities**
- 11.20.100 Lawful operation**
- 11.20.110 Operation on private property**
- 11.20.120 Penalty**
- 11.20.130 Public nuisance and impoundment**

11.20.010 Definitions

"Business District" means the area south of the area just north of the Elementary School toward E Street, west of Denny Way to Main Street to Kenny Wren Road, north of A Street and east of First Avenue to Central Avenue to E Street.

"Off-road vehicle" means a motorized wheeled vehicle that is primarily designed for off-road use and that is not equipped, registered, or licensed for use on the street under current Alaska Statute.

"Operate" means to control the operation of an off-road vehicle.

"Posted Property" means property on which the owner gives notice that trespass is forbidden by posting in a reasonably conspicuous manner under the circumstances so as to allow a person approaching the property to recognize that trespassing is prohibited.

"Roadway" means the entire width between the boundary lines of every way that is publicly maintained when a part of it is open to the public for vehicular travel, including, but not limited to, all City streets and alleys and any shoulder immediately adjacent to the area where automobiles and trucks travel.

- "State roadway" includes roads within city limits maintained by the State of Alaska Dept. of Transportation (DOT) which are Lake Aleknagik Road, Wood River Road, Squaw Creek Road, and Kanakanak Road.
- "City roadway" includes all other roads within city limits maintained by the City of Dillingham.

11.20.020 Operation of off-road vehicles within business district prohibited.

No person shall operate an off-road vehicle within the business district of the City of Dillingham.

11.20.030 Operation of off-road vehicles on state roadways outside Business District.

Off-road vehicles are allowed on state roadways outside the Business District with the following provisions:

1. Operators must yield the right-of-way to all vehicles and pedestrians.
2. Off-road vehicles within the right-of-way of a state roadway shall travel no faster than 20 miles per hour.
3. Off-road vehicles shall be maintained to insure the proper operation of all safety equipment, including brakes, tires, headlights, and other such equipment as originally installed by the manufacturer and such equipment will be utilized when operating under this ordinance.
4. Off-road vehicles may be operated within the right-of-way of a roadway as long as the operation is not on the roadway or shoulder, and no closer than three feet from the nearest edge of the roadway.
5. Night driving may be only on the right-hand side of the roadway and in the same direction as the roadway motor vehicle traffic in the nearest lane of the roadway.

11.20.040 Prohibitions on the operation of off-road vehicles on state roadways within the City's boundaries.

A. No person shall operate an off-road vehicle on state roadways in the City's boundaries except as allowed by DMC 11.20.030 and as follows: under the following circumstances:

~~1. Within the Business District;~~

~~1.2. On any state roadway or roadway shoulder except:~~

~~a. When crossing a roadway if:~~

~~a. (4) The crossing is made approximately at a right angle to the roadway and at a location where visibility along the roadway in both directions is clear for a sufficient distance to assure safety, and the crossing can be completed safety and without interfering with other traffic on the roadway; and~~

~~b. The vehicle is brought to a complete stop before crossing the shoulder or roadway, and the driver yields the right-of-way to all traffic on the roadway.~~

~~c. When traversing a bridge or culvert on a highway, but then only by driving at the extreme right-hand edge of the bridge or culvert and only when the traverse can be completed with safety and without interfering with other traffic on the highway.~~

~~3. On any public park, pathway, or pedestrian walkway, sidewalk, public school ground or playground, including but not limited to, baseball fields, or other recreational areas maintained for public use, without the express permission to do so by the proper authority;~~

~~4. On Posted Property without the permission of consent of the owner, leaseholder, or person lawfully in charge of the property. Permission of consent to operate an off-road vehicle on Posted Property shall be in writing and carried by the operator of the off-road vehicle;~~

B. No person shall operate an off-road vehicle on state roadways in the City boundaries:

1.5. When the off-road vehicle emits more noise than emitted by the off-road vehicle as originally manufactured; or

2.6. In a manner as to create a loud, unnecessary or unusual noise as to disturb or interfere with the peace and quiet of other persons; or

3.7. In a careless or negligent manner that debris is scattered or thrown by its tracks or wheels.

11.20.050 Operation of off-road vehicles on city roadways outside Business District.

Off-road vehicles are allowed on city roadways outside the Business District with the following provisions:

1. Operators must yield the right-of-way to all vehicles and pedestrians.

2. Off-road vehicles within the right-of-way of a city state roadway shall travel no faster than 20 miles per hour.

3. Off-road vehicles shall be maintained to insure the proper operation of all safety equipment, including brakes, tires, headlights, and other such equipment as originally installed by the manufacturer and such equipment will be utilized when operating under this ordinance.

4. Off-road vehicles may be operated on the extreme right shoulder right-hand side of the roadway, as long as the operation is not on the roadway.

5. Night driving may be only on the extreme right-hand side of the roadway and in the same direction as the roadway motor vehicle traffic in the nearest lane of the roadway.

6. The use of off-road vehicle within the right-of-way of a roadway shall be for travel from one place to another please in the most reasonable direct route, and not for recreational purposes.

7. Off-road vehicles are not permitted to operate between the hours of 12:00 am and 5:00 am from September 1 until June 1.

11.20.060 Prohibitions on the operation of off-road vehicles on city roadways within the City's boundaries.

No person shall operate an off-road vehicle in the City's boundaries under the following circumstances:

~~1. Within the Business District;~~

~~1.2.~~ On any public park, pathway, or pedestrian walkway, sidewalk, public school ground or playground, including but not limited to, baseball fields, or other recreational areas maintained for public use, without the express permission to do so by the proper authority;

~~2.3.~~ On Posted Property without the permission of consent of the owner, leaseholder, or person lawfully in charge of the property. Permission of consent to operate an off-road vehicle on Posted Property shall be in writing and carried by the operator of the off-road vehicle;

~~3.4.~~ When the off-road vehicle emits more noise than emitted by the off-road vehicle as originally manufactured.

~~4.5.~~ In a manner as to create a loud, unnecessary or unusual noise as to disturb or interfere with the peace and quiet of other persons.

~~5.6.~~ In a careless or negligent manner that debris is scattered or thrown by its tracks or wheels.

11.20.070 Age.

No person under the age of fourteen (14) and in possession of a valid Alaska instructional permit shall be permitted to operate an off-road vehicle unless they are under the direct supervision of a parent or guardian.

11.20.075 Helmets required.

No person under the age of eighteen years shall be allowed to ride, and/or operate, an ATV within city limits unless wearing a helmet meeting safety standards set forth by the State.

11.20.080 Headlights.

No person shall operate an off-road vehicle without use of headlights consistent with the headlight requirements for motor vehicles required by ~~promoted~~ under the Alaska Statutes.

11.20.090 Parental responsibilities.

No parent or guardian of a person under eighteen shall knowingly allow a violation of this chapter to occur or fail to take reasonable precautions to prevent any violation of this chapter.

11.20.100 Lawful operation.

Provisions of this chapter do not apply to police or public safety officers or their agents while in the lawful performance of their duties.

11.20.110 Operation on private property.

Provisions of this section do not apply to operation of off-road vehicles when operated on the private property of the operator.

11.20.120 Penalty.

Any person who violates any provision of this chapter shall, upon conviction of a first offense, pay a fine in the amount of fifty (\$50) dollars and shall also pay any surcharge required by state law. Said fine shall be subject to the bail procedures set forth in Section 1.20.010. Any person who violates any provision of this chapter shall, upon conviction of a second offense, pay a fine in the amount of seventy-five (\$75) dollars plus any surcharge required by state law. Said fine shall be subject to the bail procedures set forth in Section 1.20.010 except that the amount that must be mailed to the city's finance dept. shall be seventy-five (\$75) dollars plus any surcharge required by law. Any person who violates any provision of this chapter shall, upon conviction of a third offense, pay a fine of one hundred dollars and shall also pay any surcharge required by state law. Said fine shall be subject to the bail procedure set forth in Sect. 1.20.010 except that the amount that must be mailed to the city's finance department shall be one hundred dollars (\$100) plus any surcharge required by law. Each subsequent violation shall subject the violator to a fine of two hundred dollars plus any surcharge required by state law for each such violation. Said fine shall

be subject to the bail procedure set forth in Section 1.20.010 except that the amount that must be mailed to the city's finance department shall be two hundred dollars plus any surcharge required by state law.

11.20.130 Public nuisance and impoundment.

A. The purposes of this section include protecting the public, removing public nuisances, and deterring violation of Chapter 11.20 but, do not include the generation of revenue for the city.

B. Any off-road vehicle operated or modified in a manner that violates this Chapter is hereby declared a public nuisance.

C. Any off-road vehicle that is a public nuisance under this chapter may be impounded immediately by any police officer if the off-road vehicle or the operator of the off-road vehicle has been cited for a violation of this Chapter one or more times within the preceding 12 months. Impoundment may last for up to thirty (30) days and is in addition to any other penalty imposed by this code. Impoundment may be accomplished through a seizure of the off-road vehicle at the time the citation is issued, or pursuant to a court order entered in the course of civil or criminal enforcement proceedings. Impoundment under this section at the time of issuance of a citation is at the discretion of the citing officer. This section does not limit a citing officer's authority to impound an off-road vehicle for any other legal reason.

D. A police officer shall release an impounded off-road vehicle to the owner upon receipt of proof of ownership, and payment of all storage fees and civil fines owed to the City or upon a finding by the magistrate that of the off-road vehicle was impounded without probable cause.

E. It shall be presumed that an off-road vehicle operated by, or driven by, or in the actual physical control of, an individual cited for violation of any section of Chapter 11.20 has been so operated by owners thereof, or has been operated is declared to be a public nuisance for which the owners hold legal responsibility subject only to the defenses as set forth by law.

F. A case seeking civil impoundment may be heard and decided either by the District Court or the City Manager. Hearings before the City Manager shall take place no less than seven (7) days, and no more than thirty (30) days, after the owner of the off-road vehicle requests a hearing, however, in cases in which impoundment occurs at the time the citation is issued, hearings before the City Manager shall take place no less than twenty-four hours (24) hours and no more than forty-eight (48) hours after issuance of the citation. Notice of any hearing shall be provided by certified mail or through service of process on:

1. The owner of the off-road vehicle;
2. Lien holders of record; and
3. The operator of the off-road vehicle at the time of the alleged violation.

G. At the hearing, a person who claims an ownership interest in an off-road vehicle may avoid impoundment if the claimant can establish by a preponderance of the evidence that:

1. The claimant had an interest in the off-road vehicle at the time of the alleged violation;
2. A person other than the claimant was in possession of the off-road vehicle and was responsible for or caused the act which resulted in impounds;
3. Before permitting the alleged operator to gain custody or control of the off-road vehicle, the claimant did not know or have reasonable cause to believe, that if the off-road vehicle were operated by the alleged operator it would be operated in violation of Chapter 11.20.

H. At any impoundment hearing, the City must establish by a preponderance of the evidence the off-road vehicle was operated or driven or in the actual physical control of any individual whose actions violated Chapter 11.20.0

I. The owner of any off-road vehicle impounded by the City may obtain the release of the off-road vehicle upon providing proof of ownership and payment of, a towing fee of seventy-five dollars (\$75) and a twenty-five (\$25) storage fee.

J. An off-road vehicle seized for impoundment shall be held in the custody of the public safety department.

K. For the purposes of this section:

1. "Owner" means that person in possession of a bill of sale for the machine which contains specific identification information, such as a vehicle identification number, serial number or engine serial number, or who presents a notarized affidavit of ownership attested to by at least one (1) witness expressly stating that the purported owner understands that falsification of ownership claims is punishable under Alaska Statute.

2. "Lien holders of record" means any person identified in a Uniform Commercial Code filing in the records of the State of Alaska as holding a security interest in the off-road vehicle.

Section 2. Effective Date. This ordinance shall be made effective immediately upon passage.

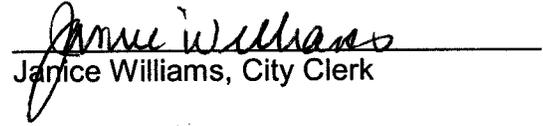
PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on

June 27, 2013.

SEAL:


Alice Ruby, Mayor

ATTEST:


Janice Williams, City Clerk

