

Bill No. 121

CITY OF HAMILTON

BY-LAW NO. 21-

Being A By-law to Regulate Off-Road Vehicles

WHEREAS Section 191.8 (3) (b) of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, authorizes municipalities to pass a by-law prohibiting the operation of off-road vehicles on any highway within the municipality that is under the jurisdiction of the municipality, or on any part or parts of such highway;

AND WHEREAS Council of the City deems it advisable to prohibit the operation of off-road vehicles on any highway within the municipality that is under the jurisdiction of the municipality;

AND WHEREAS the *Off-Road Vehicles Act*, R.S.O. 1990, c.O.4 ("*Off-Road Vehicles Act*") regulates the operation of off-road vehicles on property other than highways;

AND WHEREAS Council of the City deems it appropriate to prohibit and regulate certain public nuisances in relation to off-road vehicles on property and highways within the City pursuant to section 128 of the *Municipal Act, 2001* as amended;

AND WHEREAS in the opinion of Council for the City, the operation of off-road vehicles in the City of Hamilton is or could become a public nuisance;

AND WHEREAS Section 10 of the *Municipal Act, 2001*, as amended, authorizes municipalities to pass by-laws respecting the environmental well-being of the municipality, the health and safety and well-being of Persons, and the protection of Persons and property;

NOW THEREFORE the Council of the City enacts as follows:

PART I - INTERPRETATION

Definitions

1. In this By-law:

"All-terrain Vehicle" shall have the same definition as under Ontario Regulation 316/03: Operation of Off-Road Vehicles on Highways, which means an off-road vehicle that,

- a) has four wheels, the tires of which are all in contact with the ground,
- b) has steering handlebars,
- c) has a seat that is designed to be straddled by the driver, and
- d) is designed to carry,

- i) a driver only and no passengers, or
- ii) a driver and only one passenger, if the vehicle,
 - A) has one passenger seat that is designed to be straddled by the passenger while sitting facing forward behind the driver, and
 - B) is equipped with foot rests for the passenger that are separate from the foot rests for the driver;

“Boulevard” means that part of the Highway situated between the curb line and the property line of the lot abutting the Highway, but does not include a sidewalk, driveway apron or shoulder;

“By-law” shall refer to this by-law, being a By-law to Regulate Off-Road Vehicles;

“City” means City of Hamilton or the geographic area of the City of Hamilton as the context requires;

“Conservation Authorities Act” means the *Conservation Authorities Act*, R.S.O. 1990, c. C.27;

“Director” means the Director of Licensing and By-law Services for the City and their designate or successor;

“Extreme Terrain Vehicle” shall have the same definition as under Ontario Regulation 316/03: Operation of Off-Road Vehicles on Highways, which means an off-road vehicle that,

- a) has six or eight wheels, the tires of which are all in contact with the ground,
- b) has no tracks that are in contact with the ground,
- c) has seats that are not designed to be straddled, and
- d) has a minimum cargo capacity of 159 kilograms;

“Highway” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof;

“Highway Traffic Act” means the *Highway Traffic Act*, R.S.O. 1990, c. H. 8;

“Multi-purpose Off-highway Utility Vehicle” shall have the same definition as under Ontario Regulation 316/03: Operation of Off-Road Vehicles on Highways, which means an off-road vehicle that,

- a) has four or more wheels, the tires of which are all in contact with the ground,
- b) has a steering wheel for steering control,
- c) has seats that are not designed to be straddled, and
- d) has a minimum cargo capacity of 159 kilograms;

“Municipal Act, 2001” means the *Municipal Act, 2001*, S.O. 2001, c. 25;

“Occupier” includes,

- (a) a Person who is in physical possession of the land, or

(b) a Person who has responsibility for and control over the condition of land or the activities there carried on, or control over persons allowed to enter the land,
even if there is more than one occupier of the same land;

“Officer” means a Police Officer, or a Municipal Law Enforcement Officer appointed under any City by-law or any other Person assigned or appointed by Council of the City to administer or enforce this By-law and includes a person employed by the City whose duties are to enforce this By-law;

“Off-Road Motorcycle” shall have the same definition as under Ontario Regulation 316/03: Operation of Off-Road Vehicles on Highways, which means an off-road vehicle, designed primarily for recreational use that,

- a) has steering handlebars,
- b) has two wheels, the tires of which are all in contact with the ground,
- c) has a minimum wheel rim diameter of 250 millimetres,
- d) has a minimum wheelbase of 1,016 millimetres,
- e) has a seat that is designed to be straddled by the driver,
- f) is designed to carry a driver only and no passengers, and
- g) does not have a sidecar;

“Off-Road Vehicle” means a vehicle propelled or driven otherwise than by muscular power or wind and designed to travel,

- (a) on not more than three wheels, or
- (b) on more than three wheels and being of a prescribed class of vehicle under the regulations made under the *Off-Road Vehicles Act*;

“Off-Road Vehicles Act” means the *Off-Road Vehicles Act*, R.S.O. 1990, c. O. 4;

“Park” means a private or public park or recreational area that is open to the general public, whether or not a fee is charged, for sports, recreational uses and like activities and includes open space, campgrounds and picnic areas;

“Permitted Use” means driving a Vehicle on a Highway under the following circumstances:

- a) directly across a Highway; or
- b) on a Highway, if the Vehicle is designed to travel on more than two wheels and the driver is,
 - (i) a farmer, as defined under the *Farming and Food Production Protection Act*, 1998, S.O. 1998, c. 1, using the Vehicle for agricultural purposes (**“Farmer”**), or
 - (ii) a person licensed under the Fish and Wildlife Conservation Act, 1997 to trap furbearing mammals, if the person is using the Vehicle for trapping purposes (**“Trapper”**),

and the Vehicle or a vehicle drawn by it bears a slow-moving vehicle sign, pursuant to the Highway Traffic Act.

“Person” shall include a corporation, as the context requires;

“Public Property” includes a Highway and any lands owned by the City, the provincial or federal government or a Conservation Authority, as defined under the *Conservation Authorities Act*;

“Public Centre” means a parcel of land on which is situated a cemetery, place of worship, public hall, community centre, day nursery, community sports facility, hospital, school or golf course;

“Public Trail” means a managed pathway or designated travel corridor which is open to use by the general public for the purpose of walking, biking, hiking, cross country skiing or other means of travel; and

“Recreational Off-highway Vehicle” shall have the same definition as under Ontario Regulation 316/03: Operation of Off-Road Vehicles on Highways, which means an off-road vehicle that,

- a) has four or more wheels, the tires of which are all in contact with the ground,
- b) has a steering wheel for steering control,
- c) has seats that are not designed to be straddled, and
- d) has an engine displacement equal to or less than 1,000 cubic centimetres;

“Restricted Area” shall include the areas listed in Section 8 of this By-law; and

“Vehicle” shall mean an All-terrain Vehicle, Extreme Terrain Vehicle, Multi-purpose Off-highway Utility Vehicle, Off-Road Motorcycle, Off-Road Vehicle, or Recreational Off-highway Vehicle.

Application

2. This By-law applies to all Persons and properties in the City.
3. Where the provisions of this By-law conflict with the regulations or requirements of any provincial or federal government or agency established by the provincial or federal government, the regulations or requirements of that government or agency shall prevail.

Exemptions

4. The following are exempt from this By-law:
 - a) Officers who are actively enforcing this By-law;
 - b) all police officers while performing their duties;
 - c) all fire department personnel while performing their duties;
 - d) all paramedics or other medical rescue personnel while performing their duties;
 - e) all employees of the City while performing their duties;
 - f) Hydro One or power employee(s) and their contractors while performing their duties;
 - g) Ministry of Natural Resources employees while performing their duties; and

- h) Farmers(s), Trapper(s), public utility worker(s), and commercial snow removal operator (s) while performing their duties.

PART II - RESTRICTIONS

5. No Person shall operate, or permit to be operated a Vehicle:
 - a) in such a way as to disturb the natural environment including, but not limited to, fish habitats, property, and any flora or fauna;
 - b) without due care and attention or without reasonable consideration for other Persons or property;
 - c) on any Highway in the City unless for a Permitted Use; or
 - d) on private property in the City without the land owner or Occupier's written consent, if the person operating the Vehicle or the Person who is the registered owner of the Vehicle is not the owner or Occupier of the land.
6. With regards to Subsection 5 (d), it is not an exemption to subsection 5 (a) or (b) to claim that the operator of the Vehicle, or the registered owner of the Vehicle who permitted the operator to use the Vehicle, had the written consent of the land owner or Occupier.
7. Where a contravention of this By-law has occurred, every owner or Occupier of land shall take reasonable precautions to prevent the continuation or repetition of the contravention on such land.
8. Unless such lands form part of a trail route approved and maintained by a recognized agency for the use of a Vehicle, no Person shall operate or permit to be operated a Vehicle over or upon the following Restricted Areas:
 - a) a Public Trail;
 - b) a Park;
 - c) a Public Centre;
 - d) Public Property;
 - e) any sand dune or beach area under the jurisdiction of the City;
 - f) any shoreline road allowance under the jurisdiction of the City; or
 - g) along any sidewalk or boulevard within the City.

PART III – OWNER LIABILITY

9. The registered owner of a Vehicle may be charged with and convicted of an offence under this By-law for which the driver of the Vehicle is subject to be charged and on conviction, the registered Vehicle owner is liable to the penalty prescribed for the offence.

10. Section 9 does not apply where, at the time of the offence, the Vehicle was in the possession of a person other than the registered owner without the registered owner's consent.

PART IV - ADMINISTRATION

- 11.(1) The Director is authorized to administer and enforce this By-law including,
- a) arranging for:
 - i. the assistance or work of City staff, City agents or the assistance of police officers;
 - ii. the making of orders or other requirements;
 - iii. the obtaining of court orders or warrants as may be required; and
 - iv. the commencement of such actions on behalf of the City to recover costs or restrain contravention of this By-law as deemed necessary;
 - b) prescribing the format and content of any forms or other documents required under this By-law.
- (2) The Director may assign Officers to enforce this By-law and Officers so assigned or appointed by Council to enforce this By-law shall have the authority to:
- a) carry out inspections;
 - b) make orders under this By-law; and
 - c) give immediate effect to any orders made under this By- Law.
- (3) The Director may assign duties or delegate tasks under this By-law to be carried out in the Director's absence or otherwise.

PART V - ENFORCEMENT

12. Any person other than a corporation who contravenes any provision of this By-law or who fails to comply with an order made under this By-law or who obstructs or attempts to obstruct an officer in carrying out his or her duties under this By-law is guilty of an offence and on conviction is liable to a maximum fine of \$10,000 for a first offence, and a maximum fine of \$20,000 for a subsequent offence, recoverable under the provisions of the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended, or any successor legislation thereto.
13. Any corporation which contravenes any provision of this By-law or who fails to comply with an order made under this By-law or who obstructs or attempts to obstruct an officer in carrying out his or her duties under this By-law is guilty of an offence and on conviction is liable to a maximum fine of \$50,000 for a first offence and \$100,000 for any subsequent offence, recoverable under the provisions of the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended, or any successor legislation thereto.

14. Despite section 12, every director or officer of a corporation who knowingly contravenes any provision of this By-law or who fails to comply with an order made under this By-law or who obstructs or attempts to obstruct an officer in carrying out his or her duties under this By-law is guilty of an offence and on conviction is liable to a maximum fine of \$50,000 for a first offence and \$100,000 for any subsequent offence, recoverable under the provisions of the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended, or any successor legislation thereto.
15. If a Person is convicted of an offence under this By-law, in addition to any other remedy or any penalty imposed, the court in which the conviction has been entered, and any court of competent jurisdiction, may make an order prohibiting the continuation or repetition of the offence by the Person convicted.
16. (1) An Officer may enter upon land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
 - a) this By-law;
 - b) a direction or order made under the *Municipal Act, 2001* or this By-law;(2) An Officer carrying out an inspection under subsection (1) may:
 - a) require the production and inspection of documents or things relevant to the inspection;
 - b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - c) require information from any Person concerning a matter related to the inspection; and
 - d) alone or in conjunction with a Person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
17. (1) If an Officer is satisfied that a contravention of this By-law has occurred, the Officer may make an order requiring the Person who contravened the By-law, or who caused or permitted the contravention to:
 - a) discontinue the contravening activity, or
 - b) do work to correct or prevent the contravention.(2) An order made under subsection (1) shall set out:
 - a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
 - b) the date on which there must be compliance with the order.

(3) An order issued under subsection (1) shall be served personally or by registered mail to the last known address on the Person whom the Officer believes is contravening this By-law.

18. (1) No Person shall contravene an order made pursuant to this By-law.
- (2) If a Person fails to comply with an order under this By-law, the City may do the thing required by the order at the Person's expense.
- (3) The City may recover the costs of doing any thing or matter under subsection (2) by action or by adding the costs to the tax roll and collecting in like manner as taxes.
19. No Person shall prevent, hinder or obstruct, or attempt to hinder or obstruct an officer who is exercising a power or performing a duty under this By-law, including refusing to identify themselves when requested to do so by an officer.

PART VI – MISCELLANEOUS

Severability

20. Where a court of competent jurisdiction declares any provision of this By-law invalid, or to be of no force or effect, the provision shall be deemed conclusively to be severable from the By-law and every other provision of this By-law shall be applied and enforced in accordance with its terms to the extent possible according to law.

Plural/Singular

21. In this By-law, unless the context otherwise requires, words imparting the singular number shall include the plural and further, the converse of the foregoing also applies where the context requires.

Short Title

22. The short title of this By-law is the "Hamilton Off-Road Vehicle By-law".

Enactment

23. This By-law comes into force and effect on the day it is passed.

PASSED this 9th day of July, 2021.

F. Eisenberger
Mayor

A. Holland
City Clerk