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Town of NORTH COLLINS

Proposed Local Law No. of the Year 2018

A Local Law to Regulate the Use and Operation of All Terrain Off-Road Motorized Vehicles

Be it enacted by the Town Board of the Town of North Collins as follows:

Section 1. Legislative Intent.

The Town Board of the Town of North Collins finds that the use of certain off-road motorized vehicles within the Town without regard for the noise, dirt and dust caused by the operation of such off road motor vehicles and in violation of traffic and safety laws or in violation of this chapter creates a hazard and detriment to the health, safety and welfare of the residents of the Town and its property owners as well as the operators of said off-road motorized vehicles. The Town Board further finds that the regulation of the use of such off-road motorized vehicles within the Town will help protect residents and property owners from health and safety risks arising from the operation of said off-road vehicles. This chapter is intended to serve the foregoing purposes by regulating the use of off-road motorized vehicles in the Town of North Collins except in conformity with the provisions of this chapter and any rules and regulations promulgated hereunder.

Section 2. Authority.

This chapter is enacted pursuant to the Municipal Home Rule Law. This chapter shall supersede any special law to the extent it is inconsistent with the same and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law or any other applicable statute. This chapter shall supersede any inconsistent Town local law.

Section 3. Definitions.

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

ATV: Any all-terrain vehicle that is motor-propelled or contains a motor or engine to assist the operation of said vehicle, and which vehicles are commonly referred to as "dirt bikes," "minibikes," "trail bikes," "motorized sport bikes," "Go-Karts," "all-terrain vehicles," "trikes," "quads," "dune buggies," "snowmobiles converted to grass sleds (operated on surfaces other than snow)" and "golf carts," or similar name or names, which motorized vehicles, by their nature and design or by law, are not intended to be used and operated along paved public roads and highways but are instead intended to be operated off road in dirt, sand or grass, up and down hills, along trails and in similar type off road areas. "ATV" does not include lawn tractors, lawn mowers, farm machinery, snowmobiles (when operated on snow upon designated trails) and battery-operated vehicles.

PRIVATE PROPERTY: All land and buildings in the Town of North Collins not included in the definition of "public property" provided herein.

PUBLIC PROPERTY: Lands and buildings, including but not limited to lands held in fee ownership, easement ownership or lease, and including but not limited to parks owned or leased by the Town of North Collins, any school, the County of Erie, the State of New York or any other governmental entity.

Section 4. Prohibited Acts.

It shall be unlawful to operate an ATV in the following locations and/or manner:

- A. Upon public property at any time without express written consent or permit issued by the government agency owning or controlling said property. Any such consent or permit must be filed with the Town Clerk.
- B. Upon private property, other than that private property owned by the immediate family of the operator, without the written consent of all of the owners of such private property.
- C. In violation of the requirements and regulations of the Department of Motor Vehicles of the State of New York. Should the Department of Motor Vehicles require registration or licensing of said vehicle, it shall be unlawful to operate said vehicle without proper registration, licensing and insurance.
- D. In a careless, reckless or negligent manner so as to endanger the safety of any person, including the operator, or the property of any person.

- E. In a manner that interferes with the use and enjoyment of adjoining property owners by reason of resulting noise, dust, or other condition arising from the operation of such vehicle.
- F. In a manner which causes or otherwise results in the propulsion of sand, dirt, dust, rocks, gravel or other similar materials beyond a property boundary line.
- G. Upon public or private property in such a way as to harass, worry or disturb farm animals, domestic livestock or wildlife or to destroy or damage crops or farm produce.
- H. Without an operable muffler to reduce the sound emitted from the vehicle to a noise level of 75 decibels or below at a property or street boundary line.
- I. On or near any public roadway so as to cause operators of other motor vehicles to take evasive action to avoid danger of collision with an ATV.
- J. Which is not in proper operating condition, meaning that all of the original operating equipment specified by the original manufacturer or replacement equipment equal to the specifications of the original manufacturer's equipment must be installed.
- K. Upon any private street or right-of-way within the Town of North Collins without the written permission of all owners of the private street or right-of-way and all persons having a lawful right to use the private street or right-of-way for access to such person's residence.
- L. While under the influence of alcohol or drugs as defined in the State Vehicle and Traffic Law.
- M. Within 500 feet of any residence, except the residence of the operator's immediate family or with the consent of the owner of said residence.
- N. Upon any property that is posted with signs prohibiting trespassing or ATV use.

Section 5. Responsibility of Parent or Guardian.

- A. It shall be unlawful for the parent, guardian or any person having the care, custody or control of any child under the age of 16 years, to knowingly permit such child to operate an ATV in violation of this chapter.
- B. Whenever any child under the age of 16 years is alleged to have violated this chapter, his parent, guardian or any other person having the care, custody or control of the child shall

be notified by the Town Code Enforcement Officer or a Police Officer having jurisdiction within the Town of North Collins.

Section 6. Enforcement.

- A. This chapter shall be enforced by the Town Code Enforcement Officer and/or any Police Agency with jurisdiction in the Town of North Collins. Said officers shall have the right and authority to issue an appearance ticket or simplified ticket pursuant to law.
- B. A declaration signed by an owner of private property stating that operation of ATVs on the property is not permitted or that such operation is a trespass, shall be prima facie evidence of a violation of this chapter by any person operating an ATV on such private property.

Section 7. Penalties for Offenses.

A violation of this chapter shall be a violation. Upon conviction of such violation, the

- A. offender shall be subject to a fine not to exceed \$500 for a first offense and \$750 for a second offense and each subsequent offense committed within a twelve-month period measured from the date of the first offense. Each violation of any provision of this chapter shall be deemed a separate and distinct offense. A person may be charged with more than one offense and shall be subject to imposition of a fine for each such offense.
- B. Aggravated offense. In addition to any other charges that may arise under State or local law, it shall be an aggravated offense if the use of an ATV in violation of this chapter results in injury to any person, injury to private property and/or damage to crops or nursery stock and/or otherwise involves damage to agricultural business stock. The person found to have committed an aggravated offense shall be subject to doubling of the fines set forth in this chapter.
- C. Repeated Offenses & Impoundment Provisions.
 - 1) The Town Code Enforcement Officer and/or a police officer may impound any ATV, upon notice to the owner and operator if:
 - a. The operator or owner of the ATV has been convicted of a violation of this chapter on two (2) or more prior occasions and wilfully continues to violate this chapter notwithstanding said prior convictions.
 - b. The identity of the owner or operator is unknown to the officer and may not be ascertained by the officer at the location of an offense or accident involving the ATV and the ATV remains at the scene;

- 2) After an ATV is impounded, the owner may appeal such impoundment to a Town Justice. Upon appeal, the owner shall be given a due process hearing before such appeal officer no more than five days after impoundment.
- 3) The period of impoundment for the ATV shall be for such period of time as is necessary for police purposes, which shall include use of the vehicle for identification as evidence in any court action. Any person wishing to have an ATV released from impoundment must make motion before the appropriate court, and said ATV shall be released only upon court order. Upon receipt of said court order, the ATV shall be released by the Code Enforcement Officer and/or Police Agency having custody upon payment of an impoundment fee of \$500, which sum shall be payable to the Town Clerk, and any towing fee. The impoundment fee may be amended from time to time by resolution of the Town Board.
- 4) The Code Enforcement Officer and/or Police Agency may release the ATV in the absence of a court order if it deems that it has no further need of the vehicle for evidentiary purposes or identification, subject to payment of fees for storage, transport and impoundment.

Section 8. Exclusions.

This chapter shall not apply to the operation of ATVs in the regular course of a lawful business or to the operation of ATVs under circumstances regulated by any agency of the State of New York or to any ATV operated by a public official or public employee in his official capacity for a public purpose, including emergency service, police protection, fire protection and public works activity. This law shall not apply to the operation of any ATV used for agricultural production as defined in Agriculture & Markets Law §301(4).

Section 9. Rules & Regulations.

The North Collins Town Board is authorized to adopt rules and regulations, by resolution, to further implement the provisions of this chapter.

(Final adoption by local legislative body only)

I hereby certify that the above local law designated as Local Law No. _____ of 2018 of the Town of North Collins was duly passed by the Town Board on _____, 2018, in accordance with the applicable provisions of law.

(Seal)

Lynn DiVincenzo
Town Clerk

Date: _____, 2018