

AN ORDINANCE PROHIBITING THE OPERATION OF ALL-TERRAIN VEHICLES (ATV'S) UPON ALL PUBLIC STREETS, ALLEYS, SIDEWALKS, PARKING LOTS, AND ANY OTHER GOVERNMENTALLY OWNED, LEASED, OR OTHERWISE CONTROLLED PROPERTY, WITHIN THE CORPORATE LIMITS OF LUMBERPORT; AND MAKING SUCH PROHIBITED OPERATION OF ATV'S A CRIMINAL OFFENSE AND PROVIDING SPECIFIC PENALTIES THEREFOR

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (1) of the West Virginia Code, as amended, municipal corporations have plenary power and authority to keep and maintain public streets, avenues, roads, alleys, and sidewalks free from obstruction; and,

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (4) of the West Virginia Code, as amended, municipal corporations have plenary power and authority to regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality; and,

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, paragraph (13) of the West Virginia Code, as amended, municipal corporations have plenary power and authority to prevent injury or annoyance to the public or individuals from anything dangerous, offensive, or unwholesome; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (57) of the West Virginia Code, as amended, municipal corporations have plenary power and authority to provide penalties for the offenses and violations of law set forth in Chapter 8, Article 12, Section 5 of the West Virginia Code, as amended; and,

WHEREAS, numerous incidents have been observed by or otherwise reported to municipal authorities, and particularly the Town of Lumberport Police Department, involving the operation of all-terrain vehicle (ATV's) upon the public streets, alleys, sidewalks, parking lots, and other public owned, leased or controlled property; and

WHEREAS, these incidents frequently have posed concerns for the safety and well-being of (1) individuals operating ATV's, (2) individuals operating other permitted and licensed vehicles, and/or (3) pedestrians; and,

WHEREAS, the Council of the Town of Lumberport has determined that in order to best protect the safety, health and general well-being of all those individuals described within (1), (2) and (3) of the immediately foregoing paragraph, i.e., individuals operating ATV's, individuals operating other permitted and licensed vehicles, and pedestrians; that the operation of ATV's upon the streets, alleys, sidewalks, parking lots and other governmentally owned, leased or otherwise controlled property situated within the corporate limits of Lumberport should be banned and prohibited altogether, and further that such activity should be criminalized with the imposition of progressive fines against those individuals operating ATV's in prohibited areas.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE TOWN OF LUMBERPORT, AS FOLLOWS:

FIRST: (A) The riding, operation and other use of ATV's within or upon the streets, alleys, sidewalks, parking lots and other governmentally owned, leased or controlled property situated within the corporate limits of Lumberport is prohibited, except as authorized pursuant to Article "SECOND" hereof.

(B) Any violation of Article "FIRST", paragraph "A" hereof, constitutes the commission of a misdemeanor criminal offense, and the Council hereby specifically authorizes, empowers and directs all officers of the Town of Lumberport's Police Department, or any officer of any other police agency exercising proper jurisdiction within the corporate limits of the Town of Lumberport, to issue a citation and charge any person whomsoever violates the ATV ban or prohibition hereof, with jurisdiction of the matter belonging to the Municipal Court of the Town of Lumberport.

(C) Any person adjudged guilty and convicted of any first offense established hereunder by the Municipal Court, shall be subject to fine of not less than Twenty-Five Dollars (\$25.00), nor more than One Hundred Dollars (\$100.00), plus all Court costs.

(D) Any person adjudged guilty and convicted of any second or subsequent offenses established hereunder in the Municipal Court, shall be subject to a fine of not less than One Hundred Dollars (\$100.00), nor more than Five Hundred Dollars (\$500.00), plus all Court costs.

SECOND: (A) Notwithstanding any other provisions of this Ordinance, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate or otherwise use an ATV upon any private property located within the corporate limits of the Town of Lumberport.

(B) Notwithstanding any other provisions of this Ordinance, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate or otherwise use an ATV upon the designated parade route, when such person is a duly registered and recognized participant in the annually conducted Lumberport Fair, or such other activities sponsoring parades recognized and approved by the Council of the Town of Lumberport, provided that such ATV riding, operation or other such use occurs in conjunction with said fair or other recognized and approved activity.

(C) Notwithstanding any other provision of this Ordinance, it shall not be an offense for any person who is licensed to operate a motor vehicle within the State of West Virginia, to ride, operate or otherwise use an ATV upon property otherwise restricted from such use, when such person is a participant in a duly organized exhibition or competition, authorized by the Council of the Town of Lumberport through the issuance of a permit by the Town Council. Application for any permit to conduct any such duly organized exhibition or competition must be made with the Council of the Town of Lumberport not less than thirty (30) days prior to the proposed date for conducting the exhibition or competition.

THIRD: Nothing contained within this Ordinance is intended, nor shall be construed so as to create or form the basis for any civil or administrative liability whatsoever on the part of the Town of Lumberport, or any of its officers, officials, employees or agents, for any injury or damage resulting to any person whomsoever as a consequence of any action or inaction on the part of the Town of Lumberport as related in any manner to the enforcement or non-enforcement of this Ordinance by the Town's officers, officials, employees or agents.

FOURTH: The parent or other guardian of any person not having attained the age of eighteen (18) years shall not authorize or knowingly permit any such minor to violate any

provision hereof. Any such authorization or knowingly permitting any such minor to violate the provisions of this Ordinance shall constitute a criminal violation hereof, and shall subject such parent or other guardian, along with any minor violating the provisions hereof, to those same criminal sanctions as set for in Article "SECOND".

FIFTH: The provisions of this Ordinance are severable and in the event that any provision or part hereof shall be held invalid for any reason by any Court exercising competent jurisdiction, then such invalidity shall not be deemed to affect or impair any other provisions or parts of this Ordinance not specifically held to be invalid. It is hereby declared to be the intent of the Town Council that this Ordinance would have been adopted if any such invalid provision or part hereof had not been included herein.

PASSED ON FIRST READING

DATE: 9/10/01

ADOPTED ON SECOND READING
after a public hearing held immediately
prior to regular meeting of Council,
which public hearing was given by
publication

DATE: 10-1-01

George A. Hagan
MAYOR

William A. Keenan
CITY RECORDER