

THE DISTRICT MUNICIPALITY OF MUSKOKA

BY-LAW NO. 2007-33

Being a by-law to provide for permission for limited use of All Terrain Vehicles on certain Muskoka Roads on a conditional basis

WHEREAS pursuant to section 191.8 (1) of the Highway Traffic Act, R.S.O. 1990, c. H.8, as amended, no person shall drive an off road vehicle on a highway except in accordance with the Highway Traffic Act regulations and any applicable municipal by-laws:

AND WHEREAS pursuant to section 191.8 (3) of the Highway Traffic Act, the council of a municipality may pass by-laws permitting certain off road vehicles on highways under the jurisdiction of the municipality and prescribing speed limits for such vehicles;

AND WHEREAS the operation of off road vehicles on highways is a privilege and not a right;

AND WHEREAS pursuant to section 11 (3) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, the Council of The District Municipality of Muskoka may pass by-laws with respect to Muskoka District Roads including parking and traffic on such highways;

AND WHEREAS pursuant to section 8 (3) of the Municipal Act, 2001, a by-law passed under section 11 of the Municipal Act, 2001, may regulate the matter and, as part of any regulations respecting the matter, require persons to do things respecting the matter;

AND WHEREAS pursuant to section 14 of the Municipal Act, 2001, municipal by-laws are without effect only to the extent of conflict with federal or provincial legislation;

AND WHEREAS requests have been received to permit off road vehicles on certain Muskoka Roads within the boundary of the Township of Georgian Bay;

AND WHEREAS it has been determined to grant the request on a limited and conditional basis;

THEREFORE, pursuant to section 11 (3) of the Municipal Act, 2001 and section 191.8 (3) of the Highway Traffic Act, the Council of The District Municipality of Muskoka, ENACTS AS FOLLOWS:

(a) Definitions

1. (1) In this by-law,

(a) "all terrain vehicle" means an off road vehicle that:

- (i) has four wheels, the tires of all of which are in contact with the ground; and
- (ii) has steering handlebars; and
- (iii) has a seat designed to be straddled by the driver; and
- (iv) is designed to carry a driver only and no passengers; and
- (v) has not been modified in any way from its manufactured design either by the addition of passenger seats, or otherwise or the removal of equipment such as mufflers; and
- (vi) is being operated, driven or used as designed by the manufacturer.

(b) "Muskoka Road" means any and all public highways that are under the jurisdiction of The District Municipality of Muskoka.

(c) "off road vehicle" means an off road vehicle as defined by the Highway Traffic Act and/or the regulations thereto and includes an all terrain vehicle as defined in section 1 (1)(a).

(2) Compliance with all of the criteria in section (1) (a) is mandatory. Any vehicle not meeting all the criteria in section (1) (a) does not qualify as an all terrain vehicle under this by-law.

(b) Limited and Conditional Privilege

2. No person shall operate an all terrain vehicle on a Muskoka Road except in accordance with, and subject to, the conditional and limited permission granted in sections 3 and 4 in this by-law.
3. A limited and revocable conditional permission shall be and is hereby granted to persons to operate all terrain vehicles as defined in section 1 (1)(a) of this by-law on Muskoka Roads No. 5, 11, 12, 32, 33, 34 and 48, if the conditions set out in section 4 are met, at any time from one half hour after sunrise to one half hour before sunset.
4. The following conditions must be met both prior to and during the operation of an all terrain vehicle for the permission in section 3 to be valid:
 - (i) the all terrain vehicle must qualify as an all terrain vehicle as defined in section 1 (1)(a) of this by-law;
 - (ii) all of the terms and conditions of this by-law must be complied with at all times, including acceptance of the waiver in section 11 of this by-law; and
 - (iii) all of the provisions of O. Reg. 316/03, as amended from time to time, and any other legislation governing the use of all terrain vehicles must be complied with at all times.
5. The permission in section 3 is limited to the portions of the Muskoka Roads listed in section 3, including the road allowances associated therewith, where Muskoka has full and complete jurisdiction. Without limiting the foregoing, the permission in section 3 herein does not apply to overpasses or underpasses over or under King's Highway 400.
6. Without limiting the generality of section 4, persons purporting to operate all terrain vehicles under the permission in section 3 are required to have adequate insurance at all times. In the event that such insurance is inadequate in terms of deductibles, terminated or limited coverage or otherwise, any and all losses and costs Muskoka may incur as a result of such inadequate insurance coverage are a debt due Muskoka which the person shall pay on demand forthwith.
7. In the event that the drawing of a trailer by an all terrain vehicle on highways is permitted by the Highway Traffic Act, including any regulations thereto, the following requirements shall apply:
 - (a) any and all provisions of the Highway Traffic Act and regulations thereto applicable to trailers generally, shall apply to trailers drawn by all terrain vehicles; and
 - (b) the following special provisions shall apply:
 - (i) no driver of an all terrain vehicle to which a trailer is attached shall operate the all terrain vehicle/trailer combination on a Muskoka Road if the trailer is occupied by any person; and
 - (ii) the maximum width of the trailer shall be equal to the lesser of the width of the all terrain vehicle which is drawing the trailer or 1.35 metres; and
 - (iii) every trailer shall be equipped with mudguards, fenders or other devices adequate to reduce effectively the water spray or splash of water unless adequate protection is afforded by the body of the trailer; and

- (iv) - the trailer shall not obstruct the view of any rear and/or brake lighting required by section 13 of O. Reg. 316/03 unless equivalent lighting is affixed to the rear of the trailer and clearly visible to approaching traffic.

(c) Enforcement

- 8. Members of Ontario Provincial Police and the Township of Georgian Bay By-law Enforcement Officers shall be and are hereby authorized and empowered to enforce this by-law.
- 9. In any court proceeding of any kind whatsoever, in which the presence of an all terrain vehicle on a Muskoka Road is in issue, the provisions of this by-law are not a defence unless the person claiming the benefits of this by-law establishes that he was in fact in compliance with the requirements herein at the time the defence is put forward. Any person who is unable or unwilling to provide such evidence shall be deemed to be trespassing on the Muskoka Road.

(d) Warranty and Indemnity

- 10. In recognition that the permission granted in section 3 is a privilege, every person purporting to exercise the permission shall be deemed to have agreed to all of the terms and conditions in this by-law.
- 11. Each person exercising the permission granted in section 3 acknowledges and accepts that Muskoka does not, in any way, shape or form, warrant, represent or undertake that the public highways to which the permission applies are suitable for or maintained to permit use by all terrain vehicles. Each such person shall not, at any time, under any circumstances, claim or attempt to claim, at any time, in any proceedings whatsoever that the public highway was not suitable for all terrain vehicle use or not maintained properly.
- 12. Where Muskoka incurs any loss, costs or damages as a result of any person exercising the permission in section 3, each such person shall, upon request, reimburse Muskoka for all such loss, costs and damages. In addition to any remedies otherwise available at law, section 3 shall not apply to any person who has failed to comply with this section.

(e) Offences

- 13. Except as expressly permitted by a Provincial or Federal Act or Regulation, every person operating, riding on or being a passenger on an off road vehicle on a Muskoka Road is guilty of an offence and, on conviction, is liable to a fine not exceeding \$2,000.00.
- 14. Section 13 does not apply if a person can establish that he was the driver of and operating an all terrain vehicle in accordance with sections 3 and 4 of this by-law.

(f) General

- 15. This by-law comes into force and takes effect on the date it receives third reading.
- 16. In the event that any of the provisions hereof are found by a Court of competent jurisdiction to be without effect under section 14 of the Municipal Act, 2001, such provisions shall be deemed to be severed and the remainder of this by-law shall remain in full force and effect.
- 17. Without limiting the powers of Muskoka District Council to amend, alter or revoke this by-law at any time, it is hereby recognized that this by-law may be revoked at any time.
- 18. The Commissioner of Engineering and Public Works shall be and is hereby authorized, directed and empowered to obtain, install and maintain such signage as may be necessary to implement the terms of this by-law.

19. By-law 2005-27 shall be and is hereby repealed. Despite the repeal of by-law 2005-27, sections 6, 9, 10, 11 and 12 of by-law 2005-27 shall apply to any and all incidents, events or occurrences arising during the period that by-law 2005-27 was in force.

READ A FIRST TIME: April 16, 2007
READ A SECOND TIME: April 16, 2007

THE DISTRICT MUNICIPALITY OF MUSKOKA
Per:



Chair



Clerk

READ A THIRD TIME
AND FINALLY PASSED: April 16, 2007

THE DISTRICT MUNICIPALITY OF MUSKOKA
Per:



Chair



Clerk