

An ordinance relating to the use of off road vehicles, and providing for penalties for the violation of its provisions.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Section Title and Pleading.

This ordinance shall be known as the City of Troutdale Off Road Vehicle Ordinance, May be so pleaded, shall be referred to herein as "this ordinance", and shall apply to the incorporated areas of the City of Troutdale.

Section 2. Definitions.

A. For the purpose of this ordinance, unless the context requires otherwise, the following terms are defined as follows:

1. Nonroad Area: Any area that is not a road, or a road which is closed to off road vehicles and posted as such; except that areas commonly held open to vehicular use, such as parking lots and race tracks, shall not be considered nonroad areas.

2. Off Road Vehicle: Every self-propelled motor vehicle designed or capable of traversing on or over natural terrain, including but not limited to snowmobiles, minibikes, motorcycles, four-wheel drive trucks, pickups, all terrain vehicles, jeeps, half tracks and helicopters.

2(a). The definition of off road vehicles does not include, unless used for purposes prohibited by this ordinance, implements of husbandry; nor does it include military, fire, emergency or law enforcement vehicles used for legal purposes.

3. Road: Every public way, thoroughfare, road, street or easement within the city used or intended to be used by the general public for vehicular travel.

4. City Police: Any peace officer of the City of Troutdale or peace officer of any other jurisdiction authorized to perform their duties within the City of Troutdale.

Section 3. Policy.

The Common Council of the City of Troutdale has determined that the unregulated use of off road vehicles is a nuisance to the people of the City of

Troutdale and causes damage to and deterioration of the environment, detrimental to the health, safety and welfare of the people.

Section 4. Operation of OFF Road Vehicles.

A. It shall be unlawful for any person to operate an off road vehicle on any non-road area which the operator does not own, unless;

1. The operator possesses written permission from the owner, contract purchaser or lessee of the non-road area; or

2. The operator possesses written evidence of membership in a club or association to which the owner, contract purchaser or lessee of the non-road area has given written permission and a copy of which has been filed with the City Administrator; or

3. The owner, contract purchaser or lessee of the non-road area has designated the non-road area as open for recreational purposes in accordance with ORS 105.655 to 105.680 by filing such consent and other information necessary to identify the area, with the City Administrator; or

4. The owner, contract purchaser or lessee has designated the non-road area as being open to off road vehicle use by posting notice thereof which describes the boundaries of the non-road area designated as open and which designates the hours during which the area is to be open.

B. It shall be unlawful for any person to:

1. Falsify the written permission required by subsection A.1. of this section;

2. Falsify the evidence of club or association membership or the written permission required by subsection A.2. of this section;

3. Falsify the filing or consent required by subsection A.3. of this section;

4. Post the notice or remove the posted notice required by subsection A.4. of this Section without the consent of the owner, contract purchaser or lessee.

Section 5. Seizure.

A. The City Police may arrest the person operating an off road vehicle when the person is found in the act or operating an off road vehicle in violation of

this ordinance; except, however, the City Police may issue a citation in accordance with ORS 133.070 in lieu of exercising custody of the operator.

1. The City Police may seize any off road vehicle incident to arrest or citation of the operator if he has reasonable grounds to believe that the vehicle was operated with willful or reckless disregard or with the likelihood that the operation would cause substantial damage to the off road area or that substantial damage has been caused by that operation.

2. The City Police shall retain possession of the vehicle, if seized, and, in any event, proceed at once against the person arrested in the appropriate court.

B. If the person arrested is the legal owner of a seized vehicle, it shall be returned to the owner upon execution of a good and valid bond, or cash deposit, with sureties acceptable to the City Administrator or his designee in a sum equal to the average value of the vehicle as determined by the City Administrator or his designee, which bond or cash deposit shall be conditioned upon the return of the vehicle to the City Police upon disposition of the judgment of the court.

1. If the person arrested is convicted of a violation of this ordinance, and he is the owner of the off road vehicle, the vehicle shall be subject to disposition as provided in Section 6.

C. If the person arrested is not the legal owner of a seized vehicle, the City Police shall make all reasonable efforts to identify the name and address of the owner. If the City Police is able to determine the name and address of the owner, he shall notify the owner by registered or certified mail of the seizure and inform him of his rights under Section D.

D. Any person notified under subsection C of this Section, or any owner of the vehicle, or any other person asserting a claim of lawful possession of a seized vehicle, may, prior to trial, move the court for return of the vehicle or obtain possession of the vehicle by posting bond or cash in accordance with subsection B of this Section.

1. The Court shall, upon receipt of motion for return of vehicle, hold a hearing to determine if the owner, or other person asserting a lawful claim to the vehicle, had any knowledge that the vehicle would be used in violation of this ordinance.

2. If the court determines by clear and convincing evidence that the movant had knowledge that the person arrested would use the vehicle in violation of this ordinance, the vehicle shall not be returned to the movant except in accordance with subsection B of this Section and the vehicle shall be subject to forfeiture, as specified in Section 6.

E. If the person arrested is not convicted of a violation of this ordinance, and if the City Police is in possession of the vehicle, it shall immediately be returned to the owner.

Section 6. Disposition of Vehicle.

A. The Court, upon conviction of the person arrested, may order a return of a seized vehicle to the owner after payment of all expenses, or it may upon motion made by the ^{city/}district attorney, order forfeiture and sale of the vehicle at public auction by the City Police.

1. In determining whether to order a forfeiture and sale of the vehicle, the Court shall consider the amount of damage caused by the use of the vehicle, and the willfulness of the violation.

B. If the Court orders a forfeiture and sale of the vehicle, the City Police, after deducting \$50.00 for administrative expenses plus all other expenses incurred, shall pay, to the extent of the remaining proceeds, all liens of record, ratably and according to their priorities. Any balance remaining shall be paid into the general funds of the City.

C. If no person claims the vehicle, the City Police shall advertise the sale of the vehicle and the description thereof not fewer than three (3) times in a newspaper of general circulation in the County of Multnomah, said publication appearing for the first time not fewer than 14 days before the proposed sale and the last time not more than 7 days before the proposed sale. Proceeds from the sale of the property, after deducting the expenses and cost, shall be paid into the general fund of the City of Troutdale. Unsold property may be destroyed.

Section 7. Penalties.

A. Any person convicted of a violation of this ordinance shall be punished by a term of not more than thirty (30) days in jail or by a fine of not more than \$500.00, or both, or by imposition of a requirement of public service work

of a kind and for a duration, not to exceed one year, as it determines appropriate.

The Court may, in any event, order restitution for damages.

Section 8. Conformance With Law.

This ordinance shall not be a substitute for or eliminate the necessity of conformity with any and all state laws, rules and regulations, and other ordinances which are now or may be in the future be in effect which relate to the activities herein regulated.

Section 9. Separability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not effect the validity of the remaining portions of this ordinance.

PASSED by the City Council of the City of Troutdale, this 9th day of September, 1975.

Yeas 6

Nays 0

Signed by the Mayor this 10th day of September, 1975.

R. M. Sturge
MAYOR

ATTEST:

Betty J. Bergstrom
CITY RECORDER