

ORDINANCE NO. 18-040

AN ORDINANCE TO AMEND CHAPTER 37 OF THE CITY CODE REGARDING OFF-HIGHWAY VEHICLES

**Rev. 1
#4559**

Sponsor:

**Council
Member
Williams**

WHEREAS, it is in the interest of City of Wilmington residents that City Council and the Administration endeavor to ensure and protect the safety of all who live, work and play in Delaware's largest City; an

WHEREAS, as in many cities across the country, law enforcement officers in Wilmington frequently encounter individuals operating all-terrain vehicles, dirt bikes and other off-highway vehicles in an illegal and unsafe manner – with such activities leading to arrest, injury and death in recent years; and

WHEREAS, Title 21 of the Delaware State Code sets forth regulations for the operation of such off-highway vehicles, and officers of the Wilmington Police Department enforce these provisions; and

WHEREAS, City Council wishes to adopt the State's definition of off-highway vehicles and to prevent the use of mobilized off-highway vehicles within city limits.

THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. Chapter 37 of the City Code is hereby amended by adding the underlined language as follows:

Sec. 37-8. Off-Highway Vehicles.

- (a) Definition. In addition to the definitions set forth in section 37-1 of this chapter, for purposes of this section, Off-highway vehicle or OHV means a motor driven off-road vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland or other natural terrain. It includes, but is not limited to, a multi-wheel drive or low pressure tire vehicle, a motorcycle or related 2-wheel vehicle, an amphibious machine, a ground effect air-cushion vehicle or other means of transportation deriving motive power from a source other than muscle or wind, including dirt bikes and all-terrain vehicles. OHV does not include a farm vehicle being used for farming, a vehicle used for military, fire, emergency or law-enforcement purposes, a construction or logging vehicle used in performance of its common function, electric personal assistive mobility device or a

registered aircraft. However, nothing in this section shall be construed to include snowmobiles.

(b) Use and Possession.

(1) Driving or riding vehicle.

- i. Pursuant to 21 Del. C. § 6814(a), no person may drive or ride any OHV on any public street, sidewalk, or right-of-way that is located in the city or, wherever located, that is owned or regulated by the city.
- ii. Pursuant to 21 Del. C. § 6821(a), no person may drive or ride an OHV on public or private property without express permission of the owner of the property.

(2) Possessing unregistered vehicle. No person may own, control, possess, or have custody of any OHV that is not registered with the State pursuant to 21 Del. C. § 6801.

(3) Possessing mobilized vehicle. No person may own, control, possess, or have custody of any OHV in the City, while the OHV is not being used in accordance with state law, unless the vehicle is securely locked or otherwise immobilized by a wheel clamp or other object, device, method, or mechanism, whether attached to the vehicle or not, that:

- i. prevents the vehicle from being freely moved; and
- ii. cannot be removed or deactivated without the assistance of the vehicle's owner.

(c) Penalties.

(1) Civil Penalty. Any person who violates any provision of this section is subject to a civil fine of two thousand dollars (\$2,000) in addition to any other penalty issued pursuant to this chapter.

- i. Any owner to whom a penalty is issued may, within forty-eight (48) hours of being fined, agree to forfeit the vehicle in lieu of contesting the violation and in lieu of any other fines or penalties.
- ii. It should be considered a mitigating factor during judicial proceedings if an individual charged under this Section, and who has contested such charge, can provide proof that, after the time of a violation, the vehicle in question has since been properly registered and an appropriate immobilization device and transportation mechanism have been secured in order to ensure future compliance with this Section.

(2) Confiscate. In addition to any civil fines a police officer may issue pursuant to this section, whenever a police officer has probable cause to believe that an OHV is being used in violation of this section and either the OHV is not registered or the OHV does not bear a valid registration decal pursuant to state law, the officer may confiscate the OHV, whereupon the Police Department shall comply with the provisions of this chapter.

SECTION 2. This Ordinance shall become effective immediately upon its date of passage by the City Council and approval by the Mayor. Within the first 30 calendar days of this Ordinance being effective, the Wilmington Police Department shall issue written warnings to individuals found to be in violation of Sections b(2) and b(3) of this Section.

First Reading..... July 2, 2018

Second Reading.... July 2, 2018

Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2018.

Mayor

SYNOPSIS: This Ordinance amends Chapter 37 of the City Code to add a definition of Off-Highway Vehicles, adopting the language included in Title 21 of the Delaware State Code pertaining to such motor-driven vehicles. This Ordinance forbids the operation of off-highway vehicles within Wilmington. This Ordinance also requires that off-highway vehicles possessed or stored within Wilmington be locked or otherwise immobilized when not being used in accordance with state law. The intent of this Ordinance is to prevent OHVs from being operated on the streets of Wilmington in violation of State law and from further jeopardizing public safety.

FISCAL IMPACT STATEMENT: This Ordinance has no anticipated fiscal impact, as the conduct further regulated in this legislation is already prohibited under State law, and the Wilmington Police Department has historically enforced State provisions related to off-highway vehicles.

POLICY STATEMENT: This Ordinance has been influenced by repeated violations of State law related to the operation of off-highway vehicles in Wilmington, as well as reported property damage, personal injury and even death related to the reckless and illegal operation of these motor vehicles. This legislation has been shaped in large part by mirroring provisions in place in other cities, notable Philadelphia, PA and Baltimore, MD. This legislation is aligned with City Council’s adopted Strategic Planning Process, specifically the priorities around public safety and working towards a “Safe and Secure Wilmington.”