

“DRAFT”

BEFORE THE COUNTY COMMISSION OF BERKELEY COUNTY, WEST VIRGINIA

RE: ALL-TERRAIN VEHICLES ORDINANCE

Pursuant to Chapter 17F, Article 1, Section 3, *Code of West Virginia*, the Commission Orders the following, by majority vote:

1. All-terrain vehicle Or ATV shall mean any motor vehicle, fifty-two inches or less in width, having an unladen weight of eight hundred pounds or less, traveling on three or more low pressure tires with a seat designed to be straddled by the rider, designed for or capable of travel over unimproved terrain.

2. Berkeley County, having heretofore adopted a comprehensive plan under which the county operates, which plan contemplates that it will be updated through subsequent amendments thereto, hereby ORDERS that no all-terrain vehicle may be operated in Berkeley County on any road, street or avenue, or on any property owned by the County of Berkeley, including any of its parks, except Interstate highways and streets, roads and avenues situate inside incorporated municipalities, the governing bodies of which have affirmatively provided for operation of such vehicles within the corporate limits thereof; Provided, however, that nothing in this Ordinance shall be construed to preclude or limit the use or operation of all-terrain vehicles for lawful non-recreational commercial purposes, including, but not limited to, farm use, oil and gas operations, timbering, surveying and public utilities access and, nothing herein shall be construed to supersede or contravene the provisions of any agreement between the state of West Virginia and any private or governmental entity entered into prior to the effective date of this Ordinance, or any lawfully promulgated legislative rule, including any emergency legislative rule, regulating the operation of all-terrain vehicles. Nor shall this Ordinance be so construed to preclude the lawful use of all-terrain vehicles by law enforcement officers in the conduct of their duties on any road, street or avenue within the borders of Berkeley County.

2A. In addition, this Ordinance shall specifically include all roads, streets and avenues situate in any sub-division which petitions this Commission to include such roads, streets and avenues in the jurisdictional coverage of this Ordinance and which

petition is granted by Order of this Commission. All such subdivisions shall be identified by having their names and general locations placed, by Order, on Attachment A. hereto.

3. No all-terrain vehicle may be operated anywhere in this county with a passenger under the age of eighteen, unless the operator has at a minimum a level two intermediate driver's license or its equivalent or is eighteen years of age or older; unless the riders of such vehicles who are under the age of eighteen years of age are wearing size appropriate protective helmets that meet the current performance specifications established by the American national standards institute standard, z90.1. the United States department of transportation federal motor vehicle safety standard no. 218 or Snell safety standards for protective headgear for vehicle users. Nor may any all-terrain vehicle be operated anywhere in this county without a manufacturer-installed or equivalent spark arrester and a manufacturer-installed or equivalent muffler in proper working order and properly connected to the vehicle's exhaust system, unless operating in compliance with the provisions of West Virginia Code § 17F-1-2 ;

4. In addition to any other legal remedy for violation of the provisions of this Ordinance, any person who violates the provisions herein or who owns or has control over an all-terrain vehicle and knowingly permits it to be used in violation of the provisions of this Ordinance is guilty of a misdemeanor and, upon conviction thereof, shall be fined, for a first offense, not more than one hundred dollars and ten (10) hours of community service; for a second offense, not more than five hundred dollars and twenty (20) hours of community service; and, for a third offense, not more than one thousand dollars and one hundred (100) hours of community service.

Any ATV used in violation of this Ordinance shall become subject to confiscation by the Sheriff of Berkeley County and to forfeiture to the County of Berkeley. Proof that said ATV was stolen from the owner at the time of such violation shall be an absolute defense to the confiscation of the ATV. The Sheriff of Berkeley County is hereby authorized to confiscate any ATV used in violation of this Ordinance, and to hold same as evidence in such proceeding, pending disposition of the underlying charges and disposition of any civil forfeiture proceeding. In no event shall any confiscated ATV be held for longer than a period of six (6) months unless there shall be then pending related criminal charges under this Ordinance, or a related civil forfeiture proceeding, or both.

This Ordinance shall be effective on the 1st day of July, 2004.

Amended this _____ day of _____, 2010.

Ronald K. Collins, President

William L. Stubblefield, Commissioner

Anthony J. Peturcci, Commissioner

atvord

ATTACHMENT A

The following sub-divisions have petitioned the County Commission to include their roads, streets and avenues within the jurisdictional coverage of this Ordinance and this Commission has, by its respective Orders, granted such petitions, thus, entitling such sub-divisions to the protections provided by the Ordinance and enforcement of such protections by the appropriate law enforcement agencies:

1. Crestfield and/or Whitacres Sub-Divisions, located off Route 11 at Bee Street in Pikeside.
2. Summer Hill Sub-Division, located at Route 11 South and Paynes Ford Road.

TO BE UPDATED