

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF LOST CREEK FOR THE REGULATION OF ALL TERRAIN VEHICLES, UTILITY VEHICLES AND OTHER MOTORIZED RECREATIONAL APPARATUS WITHIN THE CORPORATE LIMITS OF THE TOWN OF LOST CREEK UPON ANY PUBLIC STREET, ALLEY WAY, AND SIDEWALK, PARKING LOT, OR RIGHT OF WAY AND UPON ALL OTHER REAL PROPERTY WHICH IS PUBLICLY OWNED, LEASED OR CONTROLLED; TO MAKE THE OPERATION OF SUCH APPARATUS A CRIMINAL OFFENSE IN CERTAIN INSTANCES; TO PROVIDE PENALTIES THEREFORE; AND TO PROVIDE EXCEPTIONS;

WHEREAS, pursuant to the provisions of West Virginia Code 17F-1-3 the Town of Lost Creek is authorized and empowered to regulate in any manner or prohibit, by lawfully enacted ordinance the operation of all-terrain vehicles, or utility vehicles upon any street, road or avenue within the Town corporate limits.

WHEREAS, pursuant to the provisions of West Virginia Code 8-12-5 (1)-(2)-(4) the Town of Lost Creek is authorized and empowered to keep, maintain, and regulate the use of public streets, roads, alleys, right of ways, sidewalks, crosswalks and public places and to keep same free of obstructions.

WHEREAS, pursuant to the provisions of West Virginia Code 8-12-5 (13) the Town of Lost Creek is authorized and empowered to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome.

WHEREAS, pursuant to the provisions of West Virginia Code 8-12-5 (58) the Town of Lost Creek is authorized and empowered to provide criminal penalties for the violation of any regulations adopted under authority of West Virginia Code 8-12-5.

WHEREAS, numerous incidents have been observed by, or otherwise reported to municipal authorities involving all-terrain vehicles, utility vehicles and off-street motorized dirt bikes and tricycles, golf carts, go-carts, snowmobiles and other such motorized recreational apparatus being operated upon the public streets, alleys, right of ways, sidewalks, crosswalks and in certain public places.

WHEREAS, numerous incidents have been generally reported in the media which reveal the dangerous nature of such all-terrain vehicles, utility vehicles and off street motorized dirt bikes and tricycles, golf carts, go-carts, snowmobiles and other such motorized recreational apparatus when operated upon the public streets, roads, alleys, right of ways, sidewalks and crosswalks, and in particular where general registered motor vehicle traffic and pedestrian traffic are present.

WHEREAS, these incidents have caused concerns for the safety, health and well-being of the citizens of the Town of Lost Creek.

WHEREAS, the Council for the Town of Lost Creek deems it necessary and proper and in the best interest of its citizens to regulate the use of all-terrain vehicles, utility vehicles and other motorized recreational apparatus upon public streets, roads, alleys, right of ways, sidewalks and crosswalks; to prohibit the operation or use of all-terrain vehicles and utility vehicles upon all other real property which

is publicly owned, leased or controlled within the corporate limits and to prohibit the operation of any other such motorized recreational apparatus upon the public streets, roads, alleys, right of ways, sidewalks and crosswalks and upon all other real property which is owned, leased or controlled within the corporate limits.

NOW, THEREFORE, THE TOWN OF LOST CREEK HEREBY ORDAINS THAT:

Section 1. **PURPOSE:** The Town of Lost Creek has determined that in order to protect the safety, health and welfare of its citizens, that it must regulate and in certain instances prohibit the use and operation of all-terrain vehicles, utility vehicles and other related recreational vehicles upon any street, road, avenue, alley, way, sidewalk, parking lot or right of way within the Town's corporate limits and upon all other real property which is publicly owned, leased or controlled.

Section 2. **DEFINITION:** For the purpose of this ordinance the words and phrases identified herein shall have the following meanings:

- a. **ALL TERRAIN VEHICLE (ATV), UTILITY VEHICLES (UTV)** means any motor vehicle designed for off highway use and designed for operator use only with no passengers having a seat or saddle designed to be straddled by the operator, and handlebars or steering wheel for steering control as defined in West Virginia Code 17A-1-1 (ii) or the same type of off-highway motor vehicle, or golf cart, designed and equipped with a "buddy seat" for purposes of carrying a single passenger in addition to the operator of said vehicle.
- b. **OTHER MOTORIZED RECREATION APPARATUS** means go-cart, unregistered off road motorized dirt bikes, whether two or three wheeled, snowmobile as defined by West Virginia Code 17A-1-1 (mm); or other related vehicles or motorized apparatus used for the principal purpose of recreation other than all-terrain vehicle, utility vehicles as hereinbefore defined and which motorized apparatus is not for the general transportation of persons or goods.

Section 3. **PROHIBITION** No person shall operate, ride upon or use any motorized recreational apparatus or ATV or UTV for transportation or recreational purpose, within or upon the public streets, roads, alleys, ways, sidewalks and crosswalks or upon any other real property, which is publicly owned, leased or controlled, within corporate limits of the Town of Lost Creek, except as herein permitted.

No person shall knowingly permit another person to operate, ride upon or use any motorized recreational apparatus or ATV or UTV for transportation or recreational purposes, within or upon the public streets, roads, alleys, ways, sidewalks and crosswalks or upon any other real property, which is publicly owned, leased or controlled, within the corporate limits of the Town of Lost Creek, except as herein permitted.

A parent, custodian or guardian of a minor under the age of eighteen (18) commits an offense hereunder if said parent, custodian or guardian knowingly permits or by insufficient control allows said minor to operate, or use an ATV, UTV or any other motorized recreational apparatus for transportation or recreational purposes, within or upon the public streets, roads, alleys, ways, sidewalks and crosswalks

or upon any other real property, which is publicly owned, leased or controlled, within the corporate limits of the Town of Lost Creek. The term "knowingly" includes knowledge that the parent, custodian or guardian should reasonably be expected to have concern with the whereabouts of said minor in his or her custody. This requirement is intended to hold a neglectful or careless parent, custodian or guardian up to a reasonable community standard of parental responsibility through an objective test. It shall, therefore, be no defense that the parent or guardian was completely indifferent to the activities or conduct of such minor.

Section 4. **ALLOWABLE USE:** An all-terrain vehicle (ATV) or utility vehicle (UTV) shall be permitted within or upon the public streets, roads, alleys, ways and crosswalks within the corporate limits of the Town of Lost Creek between the hours of 6:00 a.m. and 10:00 p.m., Eastern standard time, provided that:

- a. The ATV or UTV is equipped with taillights and headlights in proper working order and that the same are illuminated at all times while on the public streets.
- b. The ATV or UTV is equipped with brake lights in working order.
- c. The owner of the ATV or UTV shall be financially responsible and shall maintain liability insurance on the ATV or UTV in the minimum amount set forth in West Virginia Code 17D-4-2. Further, the owner shall provide proof of insurance quarterly to the Town, specifically on or before March 31, May 31, August 31 and December 31 of a calendar year. Failure to provide proof of insurance quarterly will result in the automatic revocation and voidance of a permit.
- d. The operator of said ATV or UTV must hold a valid general operator's license, pursuant to West Virginia Code 17B-2-1, and an ATV/UTV permit issued by the Town of Lost Creek at a cost of fifty dollars (\$50.00) annually to be paid by the owner/owners of said recreational vehicle. Such permit must be displayed on the front of the ATV or UTV.
- e. Any operator or passenger, must wear size appropriate protective helmet and eyewear that meets the current performance specifications established by the American Standard Institute standard, z-90.1, and United States Department of Transportation federal motor vehicle safety standard no.218 or Snell safety standards for protective headgear for vehicle users. Excluding the operation of a golf cart.
- f. Any ATV or UTV carrying a passenger, other than the operator of the ATV or UTV, must be properly designed and equipped with a "buddy seat" if the manufacturing standards for said ATV allow and intend for a passenger, in addition to the operator, to ride upon said ATV or UTV. However, in no event shall more than two persons be seated or saddled upon an ATV or UTV while being operated on public roads.

- g. No person under the age of eighteen (18) may operate an all-terrain vehicle without a valid general operator's license and a certificate of completion of a vehicle rider awareness course as offered or approved by the Commissioner of the West Virginia Motor Vehicles. The provisions of this section do not apply to the operation of an all-terrain vehicle on any private or public recreational trail or area or affiliated trail or area operated by a person or entity which has in place a safety program.
- h. An ATV or UTV carrying a passenger under the age of eighteen must be operated by an individual eighteen years of age or older.
- i. All vehicles covered in this ordinance shall be operated no faster than 10 miles per hour inside the corporate limits of the Town of Lost Creek.

Section 5: **APPLICABILITY OF RULES OF OPERATION**: In addition to the regulations set forth in section 4 of this Ordinance, every person operating an ATV or UTV upon the public streets, roads, alleys, ways, sidewalks and crosswalks within the corporate limits of the Town of Lost Creek shall be subject to all duties applicable to the driver of a vehicle by the provisions of Chapter 17C of the WV State Code which by their nature can have no application.

Section 6. **PENALTY**: (a) Any violation of the regulations set forth in this Ordinance shall constitute the commission of a misdemeanor offense, and the Police Department for the Town of Lost Creek, or any other law enforcement of any other policing agency exercising proper jurisdiction within the corporate limits of the Town of Lost Creek, is hereby authorized and empowered to issue a citation and to charge any persons who violates the regulations contained in this Ordinance, jurisdiction thereof being in the Municipal Court for the Town of Lost Creek.

(b) Except as provided in the provisions of subsection (c) of this and in addition to any other legal remedy for violation of civil or criminal provisions, any person who violates the provisions of this Ordinance or who owns or has control over an all-terrain vehicle, utility vehicle or other motorized recreational apparatus 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 not more than One Hundred Dollars.

(c) Any parent, legal guardian or person who has actual responsibility for a child under eighteen (18) years of age who knows or should have known the child is operating or is a passenger on an all-terrain vehicle or utility vehicle as required by the provisions of this Ordinance is guilty of a misdemeanor and shall, upon conviction, be subject to the following penalties:

1. For a first offense, a fine of not less than one hundred dollars (\$100.00) not more than five hundred dollars (\$500.00).

2. For a second offense, a fine not less than two hundred dollars (200.00) not more than five hundred dollars (\$500.00).
3. For a third and subsequent offense, a fine of not less than five hundred dollars (500.00) and revocation of permit for one (1) year.
4. Serious offenses, i.e. reckless driving or DUI, while operating an ATV or UTV in town, is grounds for an automatic revocation of ATV/UTV permit for not less than two (2) years up to five (5) years.

Section 7: **ADMINISTRATIVE LIABILITIES/DISCLAIMER:** Nothing contained within this Ordinance is intended nor shall it be construed, so as to create or form the basis for any civil or administrative liability whatsoever on the part of the Town of Lost Creek, 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 Lost Creek as related in any manner to the enforcement or non-enforcement of this Ordinance by the Town's officers, officials, agents or employees.

Section 8: **SEVERABILITY:** The provisions of this Ordinance are severable, and in the event that any or part of it be held invalid for any reason by any court exercising competent jurisdiction, then such validity shall not be deemed to affect or impair any of the 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 provisions or part thereof had not been included herein.

Section 8: **CERTIFICATION:**

This Ordinance shall be effective 10-1, 2024, following the second and final reading, passage and adoption by the Council of the Town of Lost Creek.

Passed First Reading September 3, 2024

Notice Published October 1, 2024

Passed Second Reading October 1, 2024

Mayor

Attest:

Kachyn Goldsmith
Town Clerk & Recorder

[Signature]

Council

Ronald L.L.

Rondal Lake

Date: 10/1/24

Sharon Smith

Sharon Smith

Date 10/1/24

Joanie Oliverio

Joanie Oliverio

Date: 10/1/24

Jerry Hebb

Jerry Hebb

Date: 10-1-24

Greg Foster

Greg Foster

Date: 10/1/24