



**HO-CHUNK NATION CODE (HCC)
TITLE 7 – CULTURAL AND NATURAL RESOURCES CODE
SECTION 3 – ALL-TERRAIN VEHICLE USAGE ORDINANCE**

ENACTED BY LEGISLATURE: AUGUST 2, 2005

CITE AS: 7 HCC § 3

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1. Authority.

a. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

c. Article V, Section 2(l) of the Constitution grants the Legislature the power to enact laws to manage, lease, permit, or otherwise deal with the Nation's lands, interests in lands or other assets.

d. Article V, Section 2(o) of the Constitution grants the Legislature the power to enact laws to regulate and zone any lands within the jurisdiction of the Ho-Chunk Nation.

- e. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.
- f. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.
- g. Article V, Section 2(w) of the Constitution grants the Legislature the power to enact laws to regulate hunting, fishing, trapping, recreation and all other related activities on lands within the Nation's jurisdiction.
- h. Article VII, Section 5(a) of the Constitution grants the Trial Court original jurisdiction over all cases and controversies, both criminal and civil, in law or equity arising under the Constitution, laws, customs, and traditions of the Ho-Chunk Nation.
- i. The Ho-Chunk Traditional Court is empowered to resolve matters, provide leadership and make recommendations on issues unique to Tribal customs and traditions.
- j. Wisconsin Statute, Section 23.33, governs the registration, operation, and use of all-terrain vehicles in Wisconsin and provides for the enforcement of those regulations.
- k. Ho-Chunk *Public Nuisance Act* (3 HCC § 2) regulates substantial and unreasonable interference with the use or enjoyment of real property owned by the Ho-Chunk Nation.

2. Findings.

- a. The use of all-terrain vehicles (ATVs) is increasing and that public access to private lands is not always attainable.
- b. The operation of ATVs on Ho-Chunk lands requires the consent of the Ho-Chunk Nation or the individual Ho-Chunk land owner.
- c. The failure to post Ho-Chunk land against the use of ATVs does not imply consent by the Nation for ATV use.
- d. The use and operation of ATVs on Nation lands, unless regulated, poses a serious threat and risk to the:
 - (1) environmental, cultural and traditional resources of the Nation;
 - (2) safety and health of the people of the Ho-Chunk Nation; and
 - (3) use and quiet enjoyment of property owned by the Ho-Chunk Nation.

3. Purpose. This Ordinance regulates the use of all-terrain vehicles on Ho-Chunk Nation lands. The Ho-Chunk Nation Legislature has given due consideration to the

recreational and economic value to connect trail opportunities and weighted against possible dangers, public health, liability aspects, terrain involved, traffic density and history of automobile traffic.

4. Role of Traditional Court. Based on the importance of adhering to the traditions of the Ho-Chunk Nation, this Ordinance shall provide that violators (minors and parents/guardians and other ATV operators) of this Ordinance shall be referred to the Traditional Court to be advised with respect to Ho-Chunk Nation traditions regarding damaging personal and Ho-Chunk Nation properties, endangering their life and the lives of others by disregarding the safety intent of this Ordinance, and the destruction of sacred sites. In addition to the penalties stated in this Ordinance, the Traditional Court may impose a sanction worthy of placing cultural and traditional ethical responsibility on the violator(s) based on Ho-Chunk culture and traditions.

5. Declaration of Policy.

a. Unless specifically stated otherwise herein, the rules and regulations governing the use and operation of ATVs on Ho-Chunk lands will be in accordance with Wisconsin Statute, Section 23.33. The essential provisions of state law relating to the use and operation of ATVs on Ho-Chunk lands are restated for the information and the observance by ATV operators.

b. No person may operate an all-terrain vehicle on Ho-Chunk Nation lands without the consent of the Nation or private landowner.

6. Definitions. As used in this Ordinance, the following shall have the meaning provided here.

a. "All-Terrain Vehicle" or "ATV) means an engine-driven device which has a net weight of 700 pounds or less, which has a width of 48 inches or less, which is equipped with a seat designed to be straddled by the operator and which is designed to travel on 3 or more low-pressure tires. A low-pressure tire is a tire, which has a minimum width of 6 inches, which is designed to be mounted on a rim with a maximum diameter of 12 inches, and which is designed to be inflated with an operating pressure not to exceed 6 pounds per square inch as recommended by the manufacturer.

b. "All-Terrain Vehicle Route" means a highway or sidewalk designated for use by all-terrain vehicle operators by the governmental agency having jurisdiction.

c. "All-Terrain Vehicle Trail" means a marked corridor on public property or on private lands subject to public easement or lease, designated for use by all-terrain vehicle operators by the governmental agency having jurisdiction, but excluding roadways of highways except those roadways that are seasonally not maintained for motor vehicle traffic.

d. "Department of Natural Resources" or "DNR" means the State of Wisconsin Department of Natural Resources.

e. "Highway" means all public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purpose of vehicular traffic.

f. "Operate" means the exercise of physical control over the speed or direction of an all-terrain vehicle or the physical manipulation or activation of any of the controls of an all-terrain vehicle necessary to put in motion. Operate includes the operation of an all-terrain vehicle.

g. "Operator" means a person who operates an all-terrain vehicle, who is responsible for the operation of an all-terrain vehicle, or who is supervising the operation of an all-terrain vehicle.

h. "Owner" means a person who has lawful possession of an all-terrain vehicle by virtue or legal title or equitable interest in the all-terrain vehicle that entitles the person to possession of the all-terrain vehicle.

i. "Public Nuisance" means conduct that interferes with comfortable enjoyment of life, health, safety, and property by the entire community or neighborhood or any considerable number of persons.

j. "Roadway" means that portion of a highway between the regularly established curb lines or that portion which is improved, designed or ordinarily used for vehicular travel excluding the berm or shoulder.

k. "Small All-Terrain Vehicle" means an all-terrain vehicle that has 4 wheels and that has either an engine certified by the manufacture at not more than 90 cubic centimeters or an equivalent power unit.

l. "Used Exclusively on Private Property" means use of an all-terrain vehicle by the owner of the all-terrain vehicle or a member of his or her immediate family only on land owned or leased by the all-terrain vehicle owner or a member of his or her immediate family.

7. Rules of Operation. No person may operate an all-terrain vehicle:

a. On lands owned or under the control of the Ho-Chunk Nation; except, where their use is authorized by posted notice or permit. Failure to post on Ho-Chunk Nation lands does not imply consent for all-terrain vehicle use.

b. On the private property of another without the consent of the owner or lessee. Failure to post private property does not imply consent for all-terrain vehicle use.

- c. In any careless way so as to endanger the person or property of another.
- d. With any firearm in his or her possession unless it is unloaded and enclosed in a carrying case, or any bow unless it is unstrung or enclosed in a carrying case.
- e. To drive or pursue any animal except as a part of normal farming operations involving the driving of livestock.
- f. When within 150 feet of a dwelling at a speed exceeding 10 miles per hour.
- g. On or across a cemetery, burial ground, campground, park, school property or church property without consent of the owner.
- h. At a rate of speed that is unreasonable or improper under the circumstances. The operator of an all-terrain vehicle shall slow his or her vehicle to a speed not to exceed 10 miles per hour and yield the right-of-way when traveling within 100 feet of a person who is not on an all-terrain vehicle, snowmobile or a motorcycle.
- i. In a manner which violates operation rules or restrictions promulgated by the Ho-Chunk Nation Department of Heritage Preservation and approved by the Legislature.

8. Routes and Trails. The Department of Heritage Preservation has the following authority:

- a. to establish ATV route and trail ingress/egress points on Nation lands;
- b. to establish and post restrictions that limit or prohibit the operation of ATVs under certain circumstances or periods of the year; and
- c. to establish ATV routes and trails across Nation lands as necessary.

9. Operation by Youthful Operators Restricted.

- a. It is illegal for anyone under the age of 12 years of age to operate an all-terrain vehicle.
- b. All operators of ATVs who ride on public riding areas (trails, frozen waters, routes, permitted county and/or forest lands, Ho-Chunk Nation lands, etc.) who are at least age 12 and who were born on or after January 1, 1988, must have completed a safety certification course. These ATV operators must carry their safety certification card and they must display it to law enforcement officers when requested. There is at least one class per county per year or scheduled classes are posted on the Wisconsin Department of Natural Resources web site www.dnr.state.wi.us.

c. Anyone 11 years of age or older is eligible to take the class and receive a safety education completion certificate. The certificate does not become valid until the child reaches 12 years of age.

d. Persons under 18 years of age may not operate or be a passenger on a ATV without wearing protective headgear/helmet with the chin strap properly fastened (motorcycle type, Snell or DOT approved) when operating on public riding areas.

10. Owner Permitting Operation. No owner or other person having charge or control of an all-terrain vehicle may authorize or permit any person to operate the all-terrain vehicle if the person is prohibited from operating an all-terrain vehicle under this Ordinance, if the person is incapable to operating an all-terrain vehicle because of a physical or mental disability, or if the person is under the influence of fermented malt beverages, intoxicating liquor, controlled or uncontrolled substances.

11. ATV Operating Requirements.

a. Equipment Requirements.

(1) Any all-terrain vehicle operated during hours of darkness or operated during daylight hours on any highway right-of-way is required to display a lighted headlamp and tail lamp.

(2) The headlamp on an all-terrain vehicle is required to display a white light of sufficient illuminating power to reveal any person, vehicle or substantial object at a distance of at least 200 feet ahead of the all-terrain vehicle.

(3) The tail lamp on the all-terrain vehicle is required to display a red light plainly visible during darkness from a distance of 500 feet to the rear.

(4) Every all-terrain vehicle is required to be equipped with at least one brake operated either by hand or by foot.

(5) Every all-terrain vehicle is required to be equipped with a functioning muffler to prevent excessive or unusual noise and with a functioning spark arrester approved by the U.S. Forest Service.

b. Use of Headgear. No person may operate or be a passenger on an all-terrain vehicle without wearing protective headgear and with the chin strap properly fastened, unless one of the following applies:

(1) The person is at least 18 years of age.

(2) The person is traveling for the purposes of hunting or fishing and is at least 12 years of age.

(3) The all-terrain vehicle is being operated for an agricultural purpose.

(4) The all-terrain vehicle is being operated by a person on land under the management and control of the person's immediate family.

c. Passengers. No passenger of any age is permitted on an ATV unless the manufacturer specifies that a passenger is allowed.

12. Operation On or Near Highways.

a. No person may operate an all-terrain vehicle on a highway (including the entire right-of-way) except in the following situations:

(1) To cross a roadway. The crossing of a roadway is authorized only if the crossing is done in the most direct manner practical, if the crossing is made at a place where no obstruction prevents a quick and safe crossing and if the operator stops the all-terrain vehicle prior to the crossing and yields the right-of-way to other vehicles and pedestrians using the roadway.

(2) On any roadway which is seasonally not maintained for motor vehicle traffic. Operation of an all-terrain vehicle on this type of roadway is authorized only during the seasons when no maintenance occurs and only if the roadway is not officially closed to all-terrain vehicle traffic.

(3) To cross a bridge, culvert or railroad right-of-way unless the roadway is officially closed to all-terrain vehicle traffic. The crossing is authorized only if the crossing is done in the most direct manner practical, if the crossing is made at a place where no obstruction prevents a quick and a safe crossing and if the operator stops the all-terrain vehicle prior to the crossing and yields the right-of-way to other vehicles and pedestrians using the roadway.

(4) On roadways which are designated as all-terrain vehicle routes. Operation on a roadway that is an all-terrain vehicle route is authorized only for the extreme right side of the roadway except that left turns may be made from any part of the roadway that is safe given prevailing conditions.

(5) On roadways if the all-terrain vehicle is an implement of conservation management, if the all-terrain vehicle is used exclusively for agricultural purposes and if the all-terrain vehicle is registered for private agricultural use. Operation of an all-terrain vehicle, which is an implement of conservation management on a roadway, is authorized only on the extreme right side of the roadway except that left runs may be made from any part of the roadway, which is safe given prevailing conditions.

b. A person may operate an all-terrain vehicle adjacent to a roadway (on an all-terrain vehicle route or trail) if the person operates the all-terrain vehicle in the following manner:

(1) At a distance of 10 or more feet from the roadway along U.S. numbered highways and state and county highways. Travel on the median of a divided highway is prohibited except to cross.

(2) Outside of the roadway along town highways.

(3) During daylight hours travel may be in either direction regardless of the flow of motor vehicle traffic.

(4) At night travel shall conform to the direction of traffic in the nearest lane.

(5) Not in excess of the speed limits of the adjacent roadway.

13. Operation of an ATV While Intoxicated.

a. No person may operate an all-terrain vehicle while under the influence of an intoxicant to a degree, which renders him, or her incapable to safe operation or while the person has a blood alcohol concentration of 0.08 or more.

b. Preliminary Breath Screening Test. A person shall provide a sample of his or her breath for a preliminary breath screening test if a law enforcement officer has probable cause to believe that the person is violating or has violated the intoxicated all-terrain vehicle law and if, prior to arrest, the law enforcement officer requested the person to provide this sample.

c. Implied Consent. Any person who engages in the operation of an all-terrain vehicle upon the public highways of the Ho-Chunk Nation is deemed to have given consent to provide one or more samples of his or her breath or urine.

d. Refusal. No person may refuse a lawful request to provide one or more samples of his or her breath or urine as authorized by law.

e. Applicability of the Intoxicated Operation of an All-Terrain Vehicle. In addition to being applicable upon highways, the intoxicated all-terrain vehicle law is applicable upon all premises held out to the public for use of their all-terrain vehicle, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.

14. Duty to Report Accidents. If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain vehicle involved in the accident shall give notice of the accident to a conservation warden or local law enforcement officer as soon as possible and shall file a written report of the accident with the Department of Natural Resources on the appropriate form within 10 days after the accident.

15. Enforcement and Penalties.

a. Enforcement.

(1) Any law enforcement officer including, any officer of the state traffic patrol, state patrol inspector, conservation warden, county sheriff, or municipal peace officer may enforce the laws governing all-terrain vehicle use.

(2) No person operating an all-terrain vehicle may refuse to stop after being requested or signaled to do so by a law enforcement officer.

(3) Enforcement provisions may be included in the Nation's County/Tribal Law Enforcement Agreements.

b. Penalties.

(1) Any person who violates any provision of this Ordinance, except the intoxicated operation or refusal law, shall forfeit not more than \$250 fine; and for property damage shall reimburse the Nation an amount estimated by the Department of Housing or the Department of Heritage Preservation.

(2) Intoxication Violations. Penalties related to the intoxicated operation or refusal law are (i) first offense, person shall be fined not less than \$150 or more than \$300; (ii) second offense, person shall be fined not less than \$300 or more than \$1,000; and (iii) third offense, person shall be fined not less than \$600 or more than \$2,000.

16. Registration of All-Terrain Vehicles.

a. Registration Requirement.

(1) No person may operate and no owner may give permission for the operation of an all-terrain vehicle on Ho-Chunk land unless the all-terrain vehicle is registered with the Department of Natural Resources or is exempt from registration.

(2) An all-terrain vehicle is exempt from registration if it is:

(a) Owned by the United States, another state or a political subdivision thereof, but the exterior of the all-terrain vehicle shall display in a visible manner the name of the owner.

(b) Covered by a valid registration in another state, province or country if there is some identification of registration displayed on the all-terrain vehicle and it has not been in this state for more than 15 consecutive days.

(c) Used exclusively for racing on a raceway facility.

(d) Owned by a political subdivision of the state and used for enforcement or emergency purposes.

b. Applications, Issuance, Renewals, Fees.

(1) The registration period will be for two years beginning July 1 and shall expire on June 30 two years thereafter. Failure to receive a renewal application does not relieve the owner of the obligation to renew the all-terrain vehicle registration. If a registration certificate or registration decal is lost or destroyed, the owner may apply to the Department of Natural Resources for a duplicate, and a fee of \$5 shall be paid to the Department of Natural Resources.

(2) Upon transfer of ownership of an all-terrain vehicle for which a registration certificate has been issued, the seller shall deliver the assigned certificate to the purchaser at the time of sale.

(3) The purchaser shall complete an application for transfer on a form provided by the Department of Natural Resources and mail or deliver it to the Department within 10 days after the date of purchase. A fee of \$5 shall be paid for transfer of a registration certificate.

(4) If an all-terrain vehicle is junked, the owner shall return the registration certificate to the Department of Natural Resources marked “junked.”

(5) An all-terrain vehicle used exclusively for agricultural purposes or used exclusively on private property may be registered for private use. The fee for the issuance or renewal of a private use registration shall be valid from the date of issuance until ownership of the all-terrain vehicle is transferred.

(6) Any all-terrain vehicle may be registered for public use. The fee for the issuance or renewal of a registration certificate for public use is \$12.

c. Registration Decals. Registration decals shall be permanently affixed to the all-terrain vehicle by the decal’s own adhesive on both sides of the vehicle in a position forward of the operator that is clearly visible. The owner of an all-terrain vehicle shall maintain the registration decals in a legible condition at all times. The decals shall be permanently attached and displayed on the all-terrain vehicle before any person operates the vehicle, or possess a validated registration receipt available from department offices listed in the Appendices.

d. Change of Address. Whenever the owner of a registered all-terrain vehicle changes his or her address, the owner shall, within 15 days thereafter, notify the Department of Natural Resources in writing of the new address and of the registration numbers awarded to him or her. At the same time he or she shall endorse the new address on the registration certificates.

17. Liability of Landowners. Landowners or private property owners who have not given their permission for ATV use will not be held liable for any all-terrain injuries of the operator or passenger unless:

a. The injury is caused by a malicious act of the private property owner or landowner.

b. The injury occurs on property owned by a private property owner to a social guest who has been expressly and individually invited by the private property owner for the specific occasion during which the injury occurs, if the injury occurs on any of the following:

(1) Platted land.

(2) Residential property.

(3) Property within 300 feet of a building or structure on land that is classified as mercantile or manufacturing.

c. The injury is sustained by an employee of a private property owner acting within the scope of his or her duties.

18. Jurisdiction and Abatement.

a. Whenever it appears that a person has violated, or is violating, or is threatening to violate any provision of this Ordinance, the Attorney General may file an action in the Ho-Chunk Nation Trial Court to enforce this Ordinance.

b. If a violation(s) of this Ordinance meets the definition of a public nuisance, a Tribal Member may maintain an action in the Ho-Chunk Nation Trial Court to abate the violation(s) and recover damages under the provisions of the *Public Nuisance Act* (3 HCC § 2).

Legislative History:

2/18/05	Department of Planning submits Proposed Bill for an All-Terrain Vehicle Code.
5/17/05	Legislature places Draft All-Terrain Vehicle Usage Act (8 HCC § 9) out for 45-Day Public Review.
7/8/05	45-Day Public Review period ends without comments. Final Draft Bill changed to 7 HCC § 3.
8/2/05	Legislature enacts the All-Terrain Vehicle Usage Ordinance as 7 HCC § 3 by Legislative Resolution 8/2/05B.