

**RESOLUTION NO. 179 -2011, ADOPTING LOCAL LAW
NO. 33 -2011, A LOCAL LAW TO REGULATE THE OFF-ROAD
USE OF FOUR WHEEL DRIVE VEHICLES AND
MOTORCYCLES**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on December 21, 2010, a proposed local law entitled, "**A LOCAL LAW TO REGULATE THE OFF-ROAD USE OF FOUR WHEEL DRIVE VEHICLES AND MOTORCYCLES;**" now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 33 -2011, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO REGULATE THE OFF-ROAD USE OF FOUR
WHEEL DRIVE VEHICLES AND MOTORCYCLES**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that Suffolk County has an extraordinary amount of public property that has been preserved for park and environmental uses by the State, County and local governments.

This Legislature also finds and determines that, in the 1990s, all-terrain vehicles became a common hobby in Suffolk County, with many people taking these vehicles off-road through public and private property.

This Legislature further finds and determines that in the late 1990s and early part of this decade, Suffolk County passed laws regulating the use of all-terrain vehicles on public and private property in an effort to protect these lands.

This Legislature finds that protected areas of the Pine Barrens have recently sustained damaged from four wheel drive passenger vehicles and motorcycles driving off-road throughout the area.

This Legislature determines that these vehicles disturb soil, uncover underground power lines, and otherwise damage environmentally sensitive properties.

This Legislature also finds that Suffolk County should regulate the off-road use of four wheel drive vehicles and motorcycles to protect the public safety, environment, and general welfare of the County and its residents.

Therefore, the purpose of this law is to regulate the use of four wheel drive vehicles and motorcycles off public highways, prohibiting their use on public property and requiring written consent of private property owners prior to operating such vehicles off-road.

Section 2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

“CRIME” shall mean a third conviction for a violation of this law after having been twice convicted of such violations within the previous five years.

“FOUR WHEEL DRIVE VEHICLE” shall mean any motor vehicle, as defined in § 125 of the New York State Vehicle and Traffic Law, which has four wheel or all wheel driving technology and is designed to be used both on and off public highways. This term shall not include any tractors, farm equipment or any vehicles used for law enforcement, fire, emergency or military purposes.

“MOTORCYCLE” shall mean any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground. This term shall not include tractors.

“OPERATE” shall mean to ride in, use or control the operation of a four wheel drive vehicle.

“OPERATOR” shall mean any person who operates or is in physical control of a four wheel drive vehicle.

“PERSON” shall mean a natural individual. This term shall not include a police officer, peace officer or member of the United States Armed Forces acting within the scope of his or her public employment or duties.

“PUBLIC HIGHWAY” shall mean any highway, road, alley, street, avenue, public place, public driveway or any other public way.

“SELL” shall mean to sell, exchange, give or dispose of to another, or to offer to agree to do the same for good and valuable consideration.

Section 3. Limitations on use.

- A. Public property. No person shall operate a four wheel drive vehicle or motorcycle off a public highway on public property in the County of Suffolk. This restriction shall not apply to persons who have a valid permit from the appropriate jurisdiction to engage in off-road driving.
- B. Private property. No person shall operate a four wheel drive vehicle or motorcycle off a public highway on private property in the County of Suffolk unless he or she has first obtained the express written consent of the property owner to operate the vehicle on the property. There shall be a rebuttable presumption that the operator of a four wheel drive vehicle or motorcycle off a public highway on private property in Suffolk County lacks the consent to operate the vehicle if the operator cannot produce written consent from the property owner.

Section 4. Penalties.

- A. A violation of Section 3(A) or (B) of this law shall be a criminal violation, the first conviction for which shall be punishable by a fine no less than two hundred fifty dollars (\$250.00) nor greater than five hundred dollars (\$500.00). A second conviction within five years of an initial violation shall be punishable by a fine not less than seven hundred fifty dollars (\$750.00) nor greater than one thousand five hundred dollars (\$1,500.00).
- B. Any third or subsequent violations of this law within a five year period shall constitute an unclassified misdemeanor and shall be punishable by a fine of up to five thousand dollars (\$5,000) and/or up to one year's imprisonment.
- C. The parent or legal guardian, other than a state or legal social services department foster parent having custody, of any unemancipated person under the age of 18 years found guilty of a violation of this law shall be responsible for the payment of the fine imposed by a court of competent jurisdiction for such violation. In no event shall it be a defense that the parent or legal guardian has exercised due diligent supervision over the activities of the person under the age of 18 years.
- D. The parent or legal guardian, other than a state or legal social services department foster parent having custody, of any unemancipated person under the age of 18 found guilty of a violation of this law shall be responsible for restitution for any damage caused to real property or improvements located thereon owned and/or operated by the County of Suffolk. In no event shall it be a defense that the parent or legal guardian has exercised due diligent supervision over the activities of the person under the age of 18 years.

Section 5. Impoundment, redemption, and forfeiture.

- A. Impoundment, redemption. In addition to the penalties set forth in Section 4 of this law, a police officer or peace officer may immediately impound a four wheel drive vehicle or motorcycle operated in violation of Section 4(A) of this law. Such impounded vehicle shall be stored by the pertinent police department or enforcement agency pending identification of the owner as registered with the New York State Department of Motor Vehicles. Such titled owner shall be sent notice of such impoundment at the address on file with the New York State Department of Motor Vehicles by certified mail within five days after the impoundment. The law enforcement agency shall not be responsible for any damages arising out of the provision of an erroneous name or address of such owner. The owner of the vehicle utilized in violation of this law may redeem the same upon satisfactory proof of ownership and payment of a redemption fee of five hundred dollars (\$500.00). Such impounded vehicle may only be released to the owner of the vehicle or to his or her agent as evidenced by a written, notarized agent agreement or duly executed power of attorney.
- B. Any four wheel drive vehicle or motorcycle operated in violation of Section 4(B) of this law shall be subject to seizure by any peace officer or police officer acting pursuant to his or her special duties, upon probable cause to believe that a crime, as defined in Section 4(B), has been committed, and may be forfeited as hereafter provided. If the ATV is not forfeited, the owner may redeem the vehicle only upon payment of all costs incurred for towing, storage and maintenance. Failure to commence a forfeiture action

within 120 days after the seizure shall result in the immediate return of the ATV to its lawful owner as of the time of the seizure.

1. A civil action shall be commenced by the County Attorney, or his or her designee, against a criminal defendant to forfeit a seized four wheel drive vehicle or motorcycle if it can be demonstrated that the vehicle was seized in connection with the violation of this law by an individual who has been twice convicted of violating this law within the previous five-years, except that no vehicle shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than the owner while the subject property was unlawfully in the possession of a person other than the owner.
2. A civil action may also be commenced against a non-criminal defendant to forfeit a four wheel drive vehicle or motorcycle used in the violation of this law subject to the same exceptions contained in Subsections A and B of this section.
3. All actions commenced under this law shall be governed by the procedures enumerated in Article 13-A of the New York Civil Practice Laws and Rules, where not specifically outlined herein.
4. The seizing agency shall send notification of the seizure to all titled owners, registrants and lien holders on file with the Department of Motor Vehicles by certified mail, return receipt requested, within five business days after the seizure. Such notification shall inform the recipient that there will be a hearing promptly scheduled before a neutral Magistrate to determine whether probable cause existed for the seizure, whether the County is likely to succeed on the merits of the forfeiture action, and whether retention is necessary to preserve the vehicle from destruction or sale during the pendency of the forfeiture proceeding.
5. When an administrative preliminary hearing is held, the administrative hearing officer shall review the documents supporting the seizure and any other relevant documents and take any testimony to determine whether there is probable cause to believe that the property was used, was attempted to be used, or was intended to be used in the violation of this law. If probable cause is established by the claimant, the hearing officer shall authorize the seizure and continued retention of the property by the seizing agency pending a judicial determination of the ancillary civil forfeiture action. The administrative hearing officer shall render a ruling within five business days after such hearing, with a copy of such ruling to be provided to all parties.
6. No four wheel drive vehicle or motorcycle shall be forfeited under this law to the extent of the interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder. The owner or lienholder must have taken all prudent steps to prevent the illegal use of his or her property. Willful disregard by the owner or lienholder of the acts giving rise to the forfeiture shall not constitute a defense to such forfeiture.

7. Any action to forfeit a seized four wheel drive vehicle or motorcycle under this law shall be commenced within 120 days after the seizure, and said action shall be civil, remedial in nature, and shall not be deemed to be a penalty or criminal forfeiture for any purpose. An action under this law shall not be deemed a criminal proceeding of any type. The action shall be commenced in the manner prescribed by the New York Civil Practice Laws and Rules. Potential claimants to the seized asset shall be served with a summons and notice or summons and verified complaint. No four wheel drive vehicle or motorcycle shall be forfeited without service of notice upon potential claimants to the seized vehicle and the opportunity for a hearing given prior to such forfeiture.
8. In order to establish its case in any action commenced under this law, the County shall demonstrate, by clear and convincing evidence, that the four wheel drive vehicle or motorcycle in question is subject to forfeiture at the time of commission of the crime which precipitated the seizure or the commencement of an action for the seizure of the property without regard to the final determination of any criminal action brought against the individual for such crime. The owner or lienholder of the vehicle shall then have the burden of providing a lack of knowledge or lack of consent on behalf of said owner or lienholder sufficient to constitute a defense to such forfeiture.
9. All four wheel drive vehicles and motorcycles seized pursuant to this law shall be subject to reasonable and customary towing and daily storage fees. Such fees shall be payable to the seizing agent prior to the release of said property.

Section 6. Disposition of forfeited four wheel drive vehicles.

- A. Whenever four wheel drive vehicles or motorcycles are forfeited under this law, the County Attorney, or his or her respective designee, may:
 1. Transfer the vehicle to any County agency, department or other political subdivision which demonstrates a need for the vehicle so that the vehicle may be put into official use by that agency, department or other political subdivision.
 2. Sell any forfeited vehicle which is not required to be destroyed by the law and which is not harmful to the public.
 3. Transfer the vehicle to any County-funded agency or organization demonstrating need for the vehicle so that the vehicle may be put into use by the funded agency or organization in the regular course of business of that funded agency or organization. Any such transfer of forfeited vehicles under this subsection may result in an in-kind deduction from those funds paid by the County to the specific agency or organization.
- B. Any funds generated by the sale of forfeited four wheel drive vehicles or motorcycles, minus the necessary expenses incurred in connection with the maintenance, storage and sale of the vehicles prior to disposition and the satisfaction of any valid liens on said vehicles, shall be distributed as follows:

1. Twenty percent to the Office of the County Attorney to offset costs and expenses incurred in the investigation, preparation, and litigation of the forfeiture action, including that proportion of the salaries of the attorneys, clerical staff, and investigative personnel devoted thereto;
2. Ten percent to the Sheriff's Department to offset costs and expenses incurred in the service of process of the civil forfeiture actions, including that proportion of the salaries of the personnel devoted thereto;
3. Thirty percent shall be deposited into an asset forfeiture fund in a separate, non-lapsing law enforcement purposes subaccount of the seizing law enforcement agency; and
4. Forty percent shall be deposited into an asset forfeiture fund in a separate, non-lapsing law enforcement purposes subaccount of the Suffolk County Parks Department.

Section 7. Discretionary action.

- A. Nothing contained in this law shall require the County Attorney, or his or her respective designee, to commence a forfeiture action when, in his or her discretion, it is in the interests of justice not to commence such an action.
- B. Nothing contained in this law shall require a court to order forfeiture when it determines, in its discretion, that it is in the interests of justice not to do so.
- C. Any property so impounded after seizure shall remain in the custody of the seizing law enforcement agency, except pursuant to a certificate which orders the release of the property in the interest of justice or a showing of legal impediment and subject to the post-seizure retention hearing authorized under Section 5(B) of this law. In order to obtain such a certificate, a party alleging a legal interest in the property seized may commence a special proceeding, in the court in which the forfeiture action may be commenced, requesting the issue of such a certificate on notice to Suffolk County or by filing an appropriate motion after Suffolk County has commenced an action to forfeit the property. In either event, it shall be the obligation of Suffolk County to provide notice of the proceeding to any other parties known to Suffolk County at the time of the proceeding to have a legal interest in the property. The court shall render a ruling in such special proceeding or motion within five business days after such filing or hearing, whichever event occurs last.

Section 8. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

Section 9. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or

unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 10. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 11. Effective Date.

This law shall take effect immediately upon filing in the Office of the Secretary of State.

DATED: March 22, 2011

EFFECTIVE PURSUANT TO SECTION 2-15(D) OF THE SUFFOLK COUNTY CHARTER,
RETURNED BY THE COUNTY EXECUTIVE UNSIGNED APRIL 22, 2011

After a public hearing duly held on April 5, 2011
Filed with the Secretary of State on September 13, 2011

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY



This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on

March 22, 2011

and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

Tim Laube

Clerk of the Legislature

Intro. Res.

2011-10

Res. No.

179

March 22, 2011

Motion:

Romaine, Schneiderman, Browning, Muratore,
Eddington, Montano, Cilmi, Lindsay, Vioria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Co-Sponsors:

Romaine, Schneiderman, Browning, Muratore,
Eddington, Montano, Cilmi, Lindsay, Vioria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Second:

Romaine, Schneiderman, Browning, Muratore,
Eddington, Montano, Cilmi, Lindsay, Vioria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE	/				
2	Jay H. SCHNEIDERMAN		/			
3	Kate M. BROWNING	/				
4	Thomas MURATORE		/			
7	Jack EDDINGTON	/				
9	Ricardo MONTANO		/			
10	Thomas CILMI		/			
11	Thomas F. BARRAGA	/				
12	John M. KENNEDY, JR.	/				
13	Lynne C. NOWICK	/				
14	Wayne R. HORSLEY	/				
15	DuWayne GREGORY	/				
16	Steven H. STERN	/				
17	Lou D'AMARO	/				
18	Jon COOPER				/	
5	Vivian VILORIA-FISHER, D.P.O.	/				
8	William J. LINDSAY, P.O.	/				
Totals		12	4	-	1	-

MOTION	
<input checked="" type="checkbox"/> Approve	
Table: _____	
<input type="checkbox"/> Send To Committee	
<input type="checkbox"/> Table Subject To Call	
<input type="checkbox"/> Lay On The Table	
<input type="checkbox"/> Discharge	
<input type="checkbox"/> Take Out of Order	
<input type="checkbox"/> Reconsider	
<input type="checkbox"/> Waive Rule _____	
<input type="checkbox"/> Override Veto	
<input type="checkbox"/> Close	
<input type="checkbox"/> Recess	
APPROVED <input checked="" type="checkbox"/> FAILED _____	
No Motion _____ No Second _____	

RESOLUTION DECLARED
<input checked="" type="checkbox"/> ADOPTED
<input type="checkbox"/> NOT ADOPTED

Tim Laube

Tim Laube, Clerk of the Legislature

Roll Call Voice Vote _____