

TITLE 16
OFF-ROAD RECREATION VEHICLES

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16.01 OFF-ROAD RECREATIONAL VEHICLES

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TITLE 16
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16.01 OFF-ROAD RECREATION VEHICLES

16.01.010 Title

This Code shall be known and cited as the Nisqually Indian Tribe “Off-Road Recreation Vehicle Code” or also known as the “ORV Code”.

HISTORICAL AND STATUTORY NOTES

Section 16.01 adopted by Tribal Council Resolution 86-2006, September 11, 2006.

16.01.020 Definitions

The following terms shall have the meanings described below for the purpose of this Code:

- (a) "ATV": A 2-,3- or 4-wheeled vehicle designed for off-road use that has low-pressure tires, has a seat designed to be straddled by the rider, and is powered by a gasoline engine or using some other fuel.
- (b) "Dealer": Any person engaged in the sale, lease, or rental of ORVs as a regular business.
- (c) "Highway or street": The entire width between the boundary lines of every publicly maintained roadway, if any part thereof is open for use by the public for purpose of vehicular travel.
- (d) "Operate": To ride in or on and be in actual physical control of the operation of an ORV.
- (e) "Operator": Any person who operates or is in actual physical control of an ORV.
- (f) "ORV": A motor-driven off-road recreational 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. ORV includes, but is not limited to, a multi-track or multi-wheel vehicle, an ATV, a motorcycle, scooter or related 2-wheel, 3-wheel, or 4-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. ORV does not include a registered snowmobile, a farm vehicle being used for fanning, a vehicle used for military, fire, emergency, or law enforcement purposes, a

vehicle owned and operated by a utility company or an oil or gas company when performing maintenance on its facilities or on property over which it has an easement, a construction or logging vehicle used in performance of its common function, or a registered aircraft.

- (g) “Owner”: Any of the following:
 - (i) A person who holds the legal title to an ORV;
 - (ii) A vendee or lessee of an ORV that is the subject of an agreement for conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee.
 - (iii) A person renting an ORV or having the exclusive use of an ORV for more than 30 days.
- (h) “Right of Way”: That portion of a highway or street less the roadway.
- (i) “Roadway”: That portion of a highway or street improved, designated, or ordinarily used for vehicular travel. If a highway or street includes 2 or more separate roadways, the term roadway refers to any such roadway separately, but not to all such roadways collectively.
- (j) “Shoulder”: That portion of a highway or street on either side of the roadway that is normally cleaned or cleared for the safety and convenience of vehicular traffic.
- (k) “Tribal Police Officer” or “Tribal Officer”: Law enforcement officer who is employed by the Nisqually Indian Tribe, including Fisheries and Wildlife Enforcement officers.
- (l) “Tribe”:
 - (i) “The Tribe”: The Nisqually Indian Tribe.
 - (ii) “A Tribe”: Any federally recognized Tribe.

16.01.030 Civil Infraction

Any offense within this ORV Code that does not include imprisonment as a possible penalty is deemed to be a civil infraction. As such, the standard of proof is by a preponderance of the evidence at any hearing or trial on a civil infraction offense.

16.01.040 Nisqually Tribal Court; Judge

The Nisqually Tribal Court shall have jurisdiction over any hearing or trial involving an alleged violation of this Code.

16.01.050 Penalties Not Otherwise Prescribed

(Repealed)

HISTORICAL AND STATUTORY NOTES

This section repealed by Resolution 52-2010, dated May 18, 2010.

16.01.060 Regulation of Off-Road Recreation Vehicle Operations; Prohibitions Generally

A person shall not operate an ORV upon a public highway, street, roadway, or private or public parking lot within the jurisdiction of the Nisqually Indian Tribe not specifically designated for the use of ORVs except under the following conditions and circumstances;

- (a) An ORV may be operated on the right-of-way of a public highway, roadway, or street if it is operated at the extreme right of the open portion of the right-of-way and with the flow of traffic on the highway. ORVs operated on the right-of-way of a public highway, roadway, or street, as herein provided, shall travel single file and shall not be operated abreast except when overtaking and passing another ORV;
- (b) An ORV may be operated across a public highway, roadway, or street, at right angles to the highway, roadway, or street, for the purpose of getting from one area to another when proceeding across the public highway, roadway, or street, and shall yield the right-of-way to all oncoming traffic;
- (c) A tribal police officer may authorize use of an ORV on a public highway, roadway, or street when an emergency occurs and conventional motor vehicles cannot be used for transportation due to emergencies or other extreme highway conditions.

16.01.070 Operation of Off-Road Recreation Vehicles; Prohibited Areas

- (a) Property of others. A person shall not operate an ORV upon land that is leased, owned, or under the control of someone else, unless they have obtained written consent from property owners.
- (b) Mapped and Posted Areas. A person shall not operate an ORV in any area that has been posted as being “closed to off-road recreation vehicles” or posted as “no trespassing.”
- (c) Frozen Surface of Public Waters. A person shall not operate an ORV on the frozen surface of public waters within one hundred (100) feet of a person, or within one hundred (100) feet of a fishing shanty or shelter except at the minimum speed required to maintain forward movement of the ORV, or on an area which has been cleared of snow for skating purposes.

- (d) Forestry. A person shall not operate an ORV in a forest nursery, planting area, or public lands mapped or posted or reasonably identifiable as an area of forest reproduction when growing stock may be damaged.
- (e) Tribally Designated Preserves. A person shall not operate an ORV on a tribally designated preserve, except on roads, trails, or areas specifically designated for ORVs. A tribally designated preserve includes, but not limited to, land posted or utilized as a wetland preserve, wildlife preserve, agricultural preserve, or well-head protection areas.
- (f) Cemeteries. A person shall not operate an ORV on or across a cemetery or burial ground.
- (g) Waterbodies. A person shall not enter, park or otherwise operate an ORV in any stream or river or in any streambed or river bed where water may flow.
- (h) Penalty. A person violating this Section shall be sentenced to a one hundred fifty (\$150) dollar fine. In addition, the person may be liable for restitution for damages he or she caused to any property.

HISTORICAL AND STATUTORY NOTES

Subsection (h) of section 16.01.070 amended by Resolution 52-2010, dated May 18, 2010.

16.01.080 Operation by Minors/Incompetents

- (a) A parent or legal guardian shall not permit his or her child who is less than 12 years of age to operate an ORV except when there is direct visual supervision of an adult and the ORV is being operated on land leased or under the control of a parent or legal guardian or on the land of others where written consent or permission was obtained.
- (b) A person who is at least 12 years of age may operate an ORV if the following conditions exist:
 - (i) The person has in his or her immediate possession an ORV permit issued by the Tribe, the State of Washington, or that was issued to the person under the authority of a law of another tribe, or state; and
 - (ii) The person has permission of a parent or guardian.

The requirement for a valid ORV permit shall be held in abeyance until midnight, December 31, 2007. The abeyance of the need for an ORV permit shall in no way affect the applicability of this ordinance.

- (c) A person who is operating an ORV pursuant to subsection (b)(i) shall present the ORV permit to any tribal officer upon request.

- (d) A person who is less than 12 years of age shall not cross a highway, roadway, or street. An operator who is at least 12 years of age, but less than 18 years of age, may operate an ORV on the right-of-way of a public highway, roadway, or street (not including State Route 510) pursuant to Section 16.01.060(a) or may cross a highway, roadway, or street pursuant to Section 16.01.060(b) only if he or she has a valid ORV permit in his or her immediate possession and is under the direct visual supervision of an adult.
- (e) A person who is less than 16 years of age shall not operate an ORV with a passenger except on land leased or under the control of a parent or legal guardian or on the land of others where written consent or permission was obtained.
- (f) The owner or person in charge of an ORV shall not permit the ORV to be operated contrary to this Section.
- (g) A parent or guardian of a minor shall not permit a minor to operate an ORV contrary to this Section.
- (h) The owner or person in charge of an ORV shall not knowingly permit the vehicle to be operated by a person who is incompetent to operate the vehicle because of a mental or physical disability.

16.01.090 Operation Under the Influence of Intoxicating Liquor or Controlled Substances; Reckless Driving; Careless or Negligent Driving; Open Intoxicants; Prohibitions

The Nisqually Indian Tribe's Criminal and Civil Traffic Codes shall apply to off-road recreation vehicles, whether an ORV is operated on a highway, roadway, trail or any other area accessible to an ORV.

16.01.100 Off-Road Recreation Vehicle Operation During Nighttime; Light and Time Restrictions

A person shall not operate an ORV under any of the following conditions and circumstances:

- (a) All vehicles subject to this ordinance shall have a working headlight and that headlight shall be lit and operating during all times of operation of the ORV;
- (b) During the hours from one-half hour after sunset to one-half hour before sunrise without displaying a lighted taillight, and a brake light, brighter than the taillight, visible when the brake is activated to the rear of the vehicle;

- (c) Within one hundred feet of a residential dwelling between twelve o'clock midnight and seven a.m. at a speed no greater than 10 miles per hour, or otherwise during the aforementioned time period in any manner that disturbs the peace. This Section shall not apply to a person operating an ORV on the right-of-way of a public highway, roadway or street as provided for in Section 16.01.060(a) or on a designated ORV route or trail.

16.01.110 Registration

ORVs must be properly registered with the Tribe or State of Washington as required by law and have a valid license permanently attached and visibly displayed in accordance with Washington State or Tribal law.

16.01.120 Speed

A person shall not operate an ORV at a rate of speed greater than is reasonable and proper, having due regard for conditions then existing, or in excess of an auto speed limit, if so posted. The speed limit for ORVs operating off-road shall be 20 miles per hour, including on all trails on the reservation.

16.01.130 Report of Accident

The Nisqually Tribal Code Sections 10.21.01 and 10.21.02 shall be applicable to a person operating an ORV as it relates to stopping at the scene of an accident; the duties of reporting an accident; and giving information and aid.

16.01.140 Equipment Required

- (a) Brakes and Throttle System. A person shall not operate an ORV unless equipped with a braking system that may be operated by hand or foot, capable of producing deceleration at 14 feet per second on level ground at a speed of 20 miles per hour; and a throttle so designed that when the pressure used to advance the throttle is removed, the engine will immediately and automatically return to idle.
- (b) Muffler. A person shall not operate an ORV unless the vehicle is equipped with a spark arrester type United States forest service approved muffler, in good working order and in constant operation. Exhaust noise emission shall not exceed 86 dB(A) or 82 dB(A) on a vehicle manufactured after January 1, 1986, when the vehicle is under full throttle, traveling in second gear, and measured 50 feet at right angles from the vehicle path with a sound level meter which meets the requirement of ANSI S1.4

1983, using procedure and ancillary equipment therein described; or 99 dB(A) or 94dB(A) on a vehicle manufactured after January 1, 1986, or that level comparable to the current sound level as provided for by the United States environmental protection agency when tested according to the provisions of the current SAE J1287, June 86, test procedure for exhaust levels of stationary motorcycles, using sound level meters and ancillary equipment therein described. A vehicle subject to this part, manufactured or assembled after December 31, 1972 and used, sold, or offered for sale in this State, shall conform to the noise emission levels established by the United States environmental protection agency under the Noise Control Act of 1972, Public Law 92-574, 86 Stat. 1234.

- (c) Crash Helmet. The operator of an ORV shall wear a crash helmet on his her head, which has been approved by the United States Department of Transportation.
- (d) Goggles, Face Shield or Windshield. A person operating or riding on an ORV shall use shatterproof goggles, a face shield or windshield to protect the eyes.

16.01.150 Riding with Passenger

- (a) Public Highway, Roadway, Street, or Right-of-way of same or Public Parking Lot. The operator of an ORV shall be allowed to carry only one passenger, riding directly behind the driver, but will not be allowed to carry a passenger in a sleigh, trailer, or other device attached to the ORV when the ORV is being operated on the right-of-way of a public highway, roadway, or street as provided for in Section 16.01.060(a), on a public highway, roadway or street as provided for in Section 16.01.060(b), or in a public parking lot. The operator of the ORV must be at least 16 years of age in order to carry a passenger and the passenger must not interfere with the safe operation of the ORV.
- (b) Other Areas. The operator of an ORV shall be allowed to carry only one passenger, riding directly behind the driver, but will not be allowed to carry a passenger in a sleigh, trailer, or other device attached to the ORV when the ORV is being operated on a designated ORV route or trail or other area not described in Section 16.01.060(a) above. The operator of the ORV must be at least 16 years of age in order to carry a passenger and the passenger must not interfere with the safe operation of the ORV.

16.01.160 Yielding to Pedestrians and Motor Vehicles

An ORV permitted to operate on highways, roadways, alleys, or public parking lots shall observe all speed limits and traffic regulations or devices, and shall yield the right-of-way to pedestrians and vehicular traffic.

16.01.170 Responsibility of Owner for Operation in Violation of This Code

No person shall knowingly authorize or permit an ORV owned by such person or under such person's control to be driven by any person in violation of any Section of this Code. If an owner allows unauthorized use of her/his vehicle, she/he shall be subject to the same penalties as the violator.

16.01.180 Effective Date - Repealed

HISTORICAL AND STATUTORY NOTES

1. This section was effectively repealed by the Tribal Council on June 26, 2007 when the ordinance was made permanent by Tribal Council motion.
2. This section was amended by Tribal Council Resolution 118-2006, on November 28, 2006.