

**ORDINANCE  
OF  
THE BOONE COUNTY FISCAL COURT**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING CHAPTER 93 OF THE BOONE COUNTY CODE OF ORDINANCES TO ADD REGULATIONS AND PENALTIES PERTAINING TO THE USE OF AN ALL TERRAIN VEHICLE, DIRT BIKE OR MOTORCYCLE OFF ROAD IN A MANNER WHICH CONSTITUTES A PUBLIC NUISANCE.**

**WHEREAS**, the General Assembly has enacted legislation providing regulations for the operation of all terrain vehicles, dirt bikes and/or motorcycles on highways and the shoulders thereof, but there are no statutory provisions that address the potential nuisances that can arise when such motor vehicles are used off-road near highly populated residential properties; and

**WHEREAS**, the Boone County Fiscal Court recognizes that Boone County is blessed with great diversity in land usage within its borders, including both highly populated residential areas and rural farmland; and

**WHEREAS**, the Boone County Fiscal Court recognizes that there are many utilitarian uses for all terrain vehicles, dirt bikes and/or motorcycles as well as other farming equipment in many rural areas of Boone County; and

**WHEREAS**, the Boone County Fiscal Court has been made aware of instances where the off-road use of all terrain vehicles, dirt bikes and/or motorcycles near highly populated residential properties has created a public nuisance due to excessive noise and the spread of dust; and

**WHEREAS**, the Boone County Fiscal Court now desires to establish regulations and penalties for off-road use of all terrain vehicles, dirt bikes and/or motorcycles near highly populated residential properties only to the extent it is determined that a public nuisance exists.

**NOW THEREFORE BE IT ORDAINED BY THE BOONE COUNTY FISCAL COURT AS FOLLOWS:**

**SECTION I** - - That Chapter 93 of the Code of Ordinances is hereby amended to read as follows:

Section

93.30 Definitions

- 93.31 Prohibitions
- 93.32 Duty of Complaining Party
- 93.33 Violations
- 93.34 Enforcement
- 93.35 Nonviolations

### **§ 93.30 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ALL TERRAIN VEHICLES.*** The words “all terrain vehicle(s)” shall have the same meaning provided under KRS 189.010, which is any motor vehicle used for recreational off-road use.

***DIRT BIKE.*** The words “dirt bike(s)” shall have the same meaning provided under KRS 189.010, which is any motorcycle registered and manufactured for recreational off-road use only.

***EXCESSIVE NOISE.*** Noise generated from the off-road use of all terrain vehicles, dirt bikes and/or motorcycles that is determined by local law enforcement to be a public nuisance on at least two or more separate occasions.

***HIGHLY POPULATED RESIDENTIAL PROPERTIES.*** Any properties devoted primarily to residential use consisting of at least ten (10) adjoining parcels on which there exists at least one (1) residence per acre.

***MOTORCYCLE.*** The word “motorcycle(s)” shall have the same meaning provided under KRS 189.285, which is any motor driven vehicles having a seat or saddle for the operator and designed to travel on not more than three wheels.

### **§ 93.31 PROHIBITIONS.**

It shall be unlawful for any person, firm or corporation to engage in the off-road use of all terrain vehicles, dirt bikes and/or motorcycles on property abutting highly populated residential properties which creates a public nuisance due to excessive noise or the spread of dust.

### **§ 93.32 DUTY OF COMPLAINING PARTY**

Any person who believes to be aggrieved by a public nuisance associated with the off-road use of all terrain vehicles, dirt bikes and/or motorcycles must first contact or attempt to contact the property owner on whose property the public nuisance is arising to attempt to resolve the matter.

**§ 93.33 VIOLATIONS.**

If the contact or attempted contact with offending property owner as prescribed under § 93.32 does not alleviate the public nuisance, the complaining party shall contact local law enforcement. Local law enforcement shall then determine whether a public nuisance exists based on its own observations.

**§ 93.34 ENFORCEMENT.**

If local law enforcement determines that a public nuisance exists due to excessive noise or dust, the offender shall be given a warning of violation. Any subsequent violation by the same offender shall warrant a citation for a misdemeanor violation. Each separate violation following the initial warning shall constitute a separate misdemeanor offense. See § 93.99 for Penalties.

**§ 93.35 NONVIOLATIONS.**

No provisions contained in Chapter 93 of the Boone County Code of Ordinances shall regulate or prohibit the use of all terrain vehicles, dirt bikes and/or motorcycles on the highways or roads located in the county. Nor shall any provision contained in Chapter 93 regulate the utilitarian use of all terrain vehicles, dirt bikes and/or motorcycles and no public nuisance shall be determined to arise from said utilitarian use.

**SECTION II - - SEVERABILITY**

The provisions of this Ordinance are severable. The invalidity of any provision of this Ordinance shall not affect the validity of any other provision contained herein; such other provisions shall remain in full force and effect to the extent they remain valid in the absence of those provisions determined to be invalid.

**SECTION III - - PUBLICATION**

That this Ordinance shall take effect and be in full force when passed, published and recorded according to law.

Introduced and given First Reading on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Adopted by the Fiscal Court of Boone County after Second Reading at a regular meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, and on the same occasion signed in open session by the County Judge/Executive as evidence of his approval attested by the County Fiscal Court Clerk and declared to be in full force and effect.

---

BOONE COUNTY JUDGE/EXECUTIVE  
GARY W. MOORE

ATTEST:

---

FISCAL COURT CLERK

---

ROBERT D. NEACE  
BOONE COUNTY ATTORNEY


---

DATE PUBLISHED

August 8, 2007

# MEMORANDUM

To: Judge Moore and Fiscal Court Commissioners

From: Tim Williams   
Assistant County Administrator

Re: Proposed Off Road Vehicle/All Terrain Vehicle Nuisance Ordinance

---

If you recall, last May the Fiscal Court was presented with a petition from the residents of Spring Garden Estates (Rose Petal Drive) regarding excessive noise and dust created by the use of All Terrain/Off Road Vehicles on an adjacent property along Pleasant Valley Road. Despite resident contact with the land owner and Sheriff's Deputies, the problem had not abated and the residents signed a petition for the Fiscal Court to institute restrictions on use of ORV/ATV's in Boone County.

Following the meeting and reports in the newspaper, the County received numerous phone calls from residents in other parts of the County also expressing concern about the nuisances from ORV/ATV's. The calls covered the full geographic range of the County from north to south and suburban to rural. In order to fully explore the issue and ensure that all points of view were considered, the County formed a special ad-hoc committee of residents, farm interests, property rights advocates, and ORV/ATV enthusiasts to discuss the issues and make recommendations to the Fiscal Court.

Following a meeting of the committee and spirited discussion, a determination was made that the complaints/issues regarding ORV/ATV usage were valid and that some sort of regulation was warranted within specific circumstances. Further, the committee decided that the best approach was one in which the disturbances were classified as nuisances and not one in which prescriptive regulations were adopted (i.e. – hours of use, speed limits, property buffers, etc).

The County Attorney took this information and has drafted the proposed Ordinance. Within the ordinance you will find the following notable provisions:

93.30 Definitions Defines a highly populated area as any area within the county in which at least 10 homes on lots of one acre or less exists.

Defines excessive noise as that determined by a local law enforcement officer to be a public nuisance.

93.32 Duty of Complaining Party A person complaining of the nuisance is first required to contact the offending property owner.

93.33 Violations If the local law enforcement official determines that a public nuisance exists the offender will be given a warning citation. If any subsequent responses to the violation occur, the law enforcement official may issue a misdemeanor citation to the offending party.

The draft Ordinance has been discussed with the committee members, Sheriff's Department, and our District Judges.

With this approach, we believe the County is being proactive in addressing the issues arising from the inattentive use of ORV/ATV's while respecting the rights of owners. Residents will now have a mechanism in which to address the nuisance under extreme circumstances such as those reported on Rose Petal Drive.

If you have any questions or would like additional information on our meeting or my research on the issue, please don't hesitate to contact me.

Thanks!

copy: Jeff Earlywine, County Administrator  
Bob Neace, County Attorney