

# THE CORPORATION OF THE TOWNSHIP OF MALAHIDE

## BY-LAW NO. 17-51

Being a By-law to regulate the Use of Off-Road Vehicles in the Township of Malahide.

**WHEREAS** the *Highway Traffic Act*, R.S.O. 1990, Chapter H.8, as amended, section 191.8(1), provides that no person shall drive an off-road vehicle on a highway except in accordance with the Highway Traffic Act regulations and any applicable Municipal By-law;

**AND WHEREAS** the *Highway Traffic Act*, R.S.O. 1990, Chapter H.8, as amended, section 191.8(3) provides that the Council of a municipality may pass a by-law permitting the operation of off-road vehicles on any highway within the municipality that is under the jurisdiction of the municipality, or on any part or parts of such highway and during specified months or hours;

**AND WHEREAS** members of the community have requested that the operation of off-road vehicles be permitted on certain highways within the Township of Malahide which connect various parts of trail routes used by recreational off-road vehicle users;

**AND WHEREAS** the Council of The Corporation of the Township of Malahide deems it advisable to permit the operation of off-road vehicles on specified highways under the jurisdiction of the Township of Malahide as described in this by-law;

**NOW THEREFORE** the Council of the Corporation of The Township of Malahide **HEREBY ENACTS AS FOLLOWS:**

1. **SHORT TITLE**

This By-law may be referred to as the "Off-Road Vehicles By-law".

2. **DEFINITIONS**

In this By-law,

- 2.1 "Approved Trail Route" means a trail or system of trails maintained by a Recognized Agency for use by Off-road Vehicles, and excludes a highway or a portion thereof.
- 2.2 "Designated Highway" means a highway, or a part of a highway, set out in Schedule "A" to this By-law.

- 2.3 "Director" means the Director of Physical Services for The Corporation of the Township of Malahide.
- 2.4 "Off-road Vehicle" means any of:
- (a) An all-terrain vehicle, as defined in O. Reg. 316/03;
  - (b) A multi-purpose off-highway utility vehicle, as defined in O. Reg. 316/03; or,
  - (c) A recreational off-highway vehicle, as defined in O. Reg. 316/03.
- 2.5 "O. Reg. 316/03" means Ontario Regulation 316/03, Operation of Off-Road Vehicles on Highways made under the Highway Traffic Act, R.S.O. 1990, Chapter H8, as amended, or any successor legislation or regulation.
- 2.6 "Operate" means to have care and control of an Off-road Vehicle.
- 2.7 "Peace officer" means either a police officer or a municipal law enforcement officer appointed by Council of the Corporation of The Township of Malahide.
- 2.8 "Recognized Agency" means a corporation, organization, association, users' group or individual which has entered into a written agreement with the Township in accordance with section 4 of this By-law.
- 2.9 "Township" means either the Corporation of The Township of Malahide, or the geographic Township of Malahide, as context dictates.

### **3. AUTHORITY**

Any Peace Officer may enforce any provision of this By-law and may perform any action authorized by this By-law, other than a power specifically delegated to the Director.

### **4. RECOGNIZED AGENCIES**

The Mayor and Clerk is authorized to enter into a written agreement on the terms set out in Schedule "B" hereto with any corporation, organization, association, users' group or individual who wishes to operate, maintain or use a trail system for Off-road Vehicle use in the Township and who meets the Director's reasonable requirements.

### **5. SIGNS**

The Township shall erect and maintain signs clearly indicating the beginning and end of every Designated Highway.

6. **USE OF HIGHWAYS**

- (a) No person shall operate an Off-road Vehicle on any highway within the Township other than a Designated Highway.
- (b) No person shall operate an Off-road Vehicle on any highway within the Township unless they are a member in good standing with a Recognized Agency and have signed a waiver of liability in the form of Schedule "C" to this By-law.
- (c) Off-road Vehicles may be operated on Designated Highways, provided that every operator and passenger complies with every applicable provision of this By-law, the *Highway Traffic Act*, the *Off-Road Vehicles Act*, and O. Reg. 316/03, at all times.
- (d) No person shall operate an Off-road Vehicle on a highway within the Township between the time one half-hour before sunset and the time one half-hour after sunrise the following day.
- (e) No person shall operate an Off-road Vehicle on a highway within the Township after the thirtieth (30<sup>th</sup>) day of November and before the fifteenth (15<sup>th</sup>) day of April of the following year, inclusive.
- (f) The Director is authorized to vary or extend the season where an Off-road Vehicle is prohibited from being operated on a highway if such variation or extension is, in the opinion of the Director, necessary for the protection of highways within the Township.
- (g) If the Director extends the season where an Off-road Vehicle is prohibited from being operated on a highway, then he or she shall post a Notice to this effect on the Township's website and shall alert every Recognized Agency of same via email or any other convenient method of notification.
- (h) When a Notice has been posted by the Director in accordance with subsection 6(f), no person shall operate an Off-road Vehicle within the Township between the dates specified in the Notice.
- (i) No person shall operate an Off-road Vehicle upon a sidewalk, walkway, walking trail, boulevard, bicycle lane, or any other area designed primarily for use by pedestrians or non-motorized vehicles.

7. **OFF-ROAD USE**

- (a) No person shall operate an Off-road Vehicle on any municipal property in the Township, other than a Designated Highway.
- (b) No person shall operate an Off-road Vehicle upon any private property in the Township unless:

- i. The person is an owner or occupant of the property;
  - ii. The person has written permission from the owner; or
  - iii. The person is a member in good standing of a Recognized Agency and is on an Approved Trail Route.
- (c) No Off-road Vehicle shall be driven at a rate of speed greater than 50 kilometers per hour on any trail or highway in the Township.

**8. GENERAL**

- (a) An operator of an Off-road Vehicle shall not sound any bell, horn or other signalling device so as to make an unreasonable noise, and the driver of any Off-road Vehicle shall not permit any unreasonable amount of smoke to escape from the Off-road Vehicle, nor shall the driver at any time cause or permit the Off-road Vehicle to make any unnecessary noise.
- (b) No person shall operate an Off-road Vehicle in such a manner as to cause damage to public or private property.
- (c) No person shall operate an Off-road Vehicle in such a manner as to create a nuisance by the method or frequency of operation.

**9. OFFENCES AND PENALTY**

- (a) No person shall hinder, obstruct, or interfere with a Peace Officer or other duly appointed person in the lawful execution of his or her duties under this By-law.
- (b) No person shall fail to stop when directed to do so by a Peace Officer.
- (c) No person shall fail to identify himself or herself when directed to do so by a Peace Officer.
- (d) Any person who contravenes any provision of this By-law is guilty of an offence and is subject to a penalty as provided for in the *Provincial Offences Act*, RSO 1990, c. P.33.

**10. SCHEDULES**

Schedules "A", "B", and "C", attached hereto, are hereby incorporated and form part of this By-law.

**11. TERM OF BY-LAW**

- (a) This By-law shall come into force and effect upon the final passing thereof.

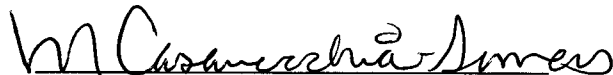
(b) This By-law is being passed for a period of two (2) years or such shorter period as the Council may decide for the purpose of evaluating the effects of and determining whether it is advisable to continue the operation of Off-road Vehicles on specified highways within the Township.

(c) This By-law shall cease to be in force upon the second anniversary of the final passing thereof.

**READ a FIRST and SECOND** time this 15<sup>th</sup> day of June, 2017.

**READ a THIRD** time and **FINALLY PASSED** this 15<sup>th</sup> day of June, 2017.

  
\_\_\_\_\_  
Mayor, D. Mennill

  
\_\_\_\_\_  
Clerk, M. Casavecchia-Somers

# SCHEDULE "A"

## Designated Highways

HIGHWAY	FROM	TO
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**SCHEDULE "B"**

Form of Recognized Agency Agreement

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**BETWEEN:**

THE CORPORATION OF THE TOWNSHIP OF MALAHIDE  
(hereinafter referred to as the "Township")

OF THE FIRST PART

- and -

[INSERT]

(hereinafter referred to as the "Agency")

OF THE SECOND PART

**WHEREAS** the Agency has established a series of trail routes for use by off-road vehicles in the Township of Malahide;

**AND WHEREAS** the Agency represents and warrants that it has the permission of all owners of the land over which the trail route runs;

**AND WHEREAS** the Township has passed By-law No \_\_\_\_\_-2017 (the By-law), which permits the use of off-road vehicles upon certain highways within the Township, subject to terms and conditions as set out in the By-law;

**AND WHEREAS** the Agency acknowledges that operation of off-road vehicles on highways is an inherently dangerous activity and that its members bear their own risk if they choose to ride on the highway;

**AND WHEREAS** the Township and the Agency wish to enter into an agreement to ensure that the use of off-road vehicles within the Township is orderly and lawful;

**NOW THEREFORE** this Agreement witnesseth that in consideration of the permission granted by the Township to the Agency, the sum of TWO DOLLARS (\$2.00) of lawful money of Canada now paid by the Agency to the Township, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree and covenant as follows:

1. The Township and the Agency agree that the above recitals are true.

**DEFINITIONS:**

2. All words used in this Agreement shall have identical meanings here as in the By-law.

### **TOWNSHIP'S RESPONSIBILITIES:**

3. The Township shall permit the Agency to operate a system of trail routes for off-road vehicle use within the Township.

### **AGENCY'S RESPONSIBILITIES:**

4. The Agency shall:
  - a) Require all its members to sign a waiver of liability in the form of Schedule "C" to the By-law prior to operating an off-road vehicle on a highway;
  - b) Provide its membership with training regarding the applicable laws and regulations, including the *Off-Road Vehicles Act*, the *Highway Traffic Act*, O. Reg. 316/03, and the By-law;
  - c) Refuse or revoke the trail pass of any person who:
    - i. Is not properly licenced and insured; or,
    - ii. Violates the provisions of any applicable law or regulation, including the By-law, while operating on a highway; and,
  - d) Promptly reimburse the Township for any and all costs incurred by the Township as a result of this Agreement, including any increased maintenance costs as a result of the operation of off-road vehicles upon the Designated Highways when provided with a detailed invoice for such costs by the Township;
5. In the event that the Director issues a Notice in accordance with section 6(f) of the By-law, the Agency, in addition to posting the Notice on its website, shall forthwith disseminate the Notice to its membership.

### **INSURANCE:**

6. The Agency shall arrange for, obtain, and maintain, at its expense, insurance in accordance with the following:
  - a) The policy or policies will include comprehensive general liability coverage subject to limits of not less than five million dollars (\$5,000,000) per occurrence for personal injury, including death, and damage to property, including loss of use thereof and such policy or policies shall name the Township as an additional insured;



- b) The insurance policy or policies shall be in full force and effect for the Term of this Agreement;
  - c) A Certificate of Insurance evidencing the insurance coverage required shall be provided by the Agency to the Township prior to the Township signing the Agreement and thereafter promptly on the insurance renewal date; and,
  - d) The insurance premium for the insurance required herein shall be prepaid for a period of not less than one (1) year.
7. In the event that the Agency fails to provide a certificate of insurance when required or upon request by the Township, pay premiums or otherwise keep such policy or policies of insurance in force, the Township may pay premiums or take out such additional policies as it considers necessary and all sums paid for this purpose shall be at the expense of the Agency.

#### **INDEMNIFICATION:**

8. The Agency agrees to indemnify and save harmless the Township against any and all liability, damages (of any nature and kind) and costs (including legal costs) and any other loss to person or property that result from the activities or use of property contemplated by this Agreement by either the Agency or any of its members, save and except for any loss attributable to the actions or negligence of the Township.

#### **TERM AND TERMINATION:**

9. Subject to earlier termination and other conditions as provided for in this Agreement, this Agreement shall be effective on the date it is signed by both parties and shall continue for a period of two (2) years (the "Term").
10. The Township may terminate this Agreement on sixty (60) days' written notice for any reason whatsoever. In the case of emergency, this Agreement may be terminated forthwith by the Township.
11. In the event that the Agency no longer operates any trail route within the Township, the Agency may give the Township notice in writing and such notice shall include the date upon which the Agency will no longer operate any trail routes within the Township. This Agreement shall terminate on the date provided by the Agency in the said notice subject to the Township being satisfied that the Agency has ceased to operate any trail route.

**GENERAL:**

- 12. This Agreement is not transferrable or assignable by the Agency to any third party without the Township's prior written consent, which consent may be unreasonably withheld.
- 13. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
- 14. The Agency acknowledges:
  - a) That it has had an adequate opportunity to read and consider this Agreement and to obtain such legal and other advice as it considers advisable;
  - b) That it understands this Agreement and the consequences of signing same; and,
  - c) That it is signing this Agreement voluntarily, without coercion and without reliance on any representation, express or implied, by the Township.

**IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be duly executed as of the date first written above.

SIGNED, SEALED and DELIVERED )  
 )

**[NAME OF AGENCY]**

in the presence of )

per: \_\_\_\_\_  
[insert]

\_\_\_\_\_  
Witness )

*I have authority to bind the Corporation.*

**The Corporation of the Township of Malahide**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
CAO/Clerk

We have authority to bind the Corporation.

**SCHEDULE "C"**

Form of Waiver

I, \_\_\_\_\_, hereby acknowledge that highways in the Township of Malahide are not designed or maintained for use by off-road vehicles and the Corporation of the Township of Malahide does not warrant that highways are safe or suitable for the operation of off-road vehicles. I further acknowledge that riding an off-road vehicle on a highway is an inherently dangerous activity and that I do so at my own risk.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature