



MAYOR & COUNCIL COMMUNICATION

DATE: 04/16/2013
REGULAR
ITEM #: 12
MOTION

AGENDA ITEM: Ordinance No.08-074 Amending 97.21 Watercraft and Water Surface Regulations, 97.22 Winter Lake Use Regulations and 97.23 Prohibited Structures and Uses

SUBMITTED BY: Dean Zuleger, City Administrator at the request of Council Member Park & Council Member Bloyer

THROUGH: Mayor Michael Pearson

REVIEWED BY: Dean Zuleger, City Administrator

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation.....City Administrator
- Questions from Council to Staff..... Mayor Facilitates
- Public Comment Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion..... Mayor & City Council
- Action on Motion..... Mayor Facilitates

SUMMARY AND ACTION REQUESTED:

To approve amendments to City Ordinances regulating watercraft regulations (ss 97.21), winter lake use regulations (ss 97.22) and prohibited structures and uses (ss 97.23). The amendments (attached) strive to expand the use of Lake Elmo lakes (Lake Elmo, Olson Lake, Lake Demontreville, Lake Jane) within current baseline MNDNR lake rules that apply to over 11,835 lakes across the State. **Language that will not be changed include the establishment of an Ordinary High Water mark (OHW) that will prohibit wake creating activities if exceeded on Olson Lake and Lake Demontreville and the maintenance of a no wake, buoy marked channel between Olson Lake and Lake Demontreville.**

BACKGROUND INFORMATION:

As a follow-up to ordinance changes approved in July 2012, (2) members of the City Council have requested further modifications that would eliminate wake creating time restrictions on all

lakes, counter-clockwise travel on lakes when creating wakes, and certain other local lake use regulations **that are more restrictive than MNDNR standards currently applied on over 11,835 lakes in the State of Minnesota.**

STAFF REPORT:

During the summer of 2011 & winter of 2012, staff worked with the MNDNR to craft an ordinance that would meet with all party's approval. Specifically, MNDNR did not want to specify a specific elevation level for no wake imposition on Lake Olson and Lake Demontreville and they wished to make the City Code consistent with MN Statute 86 – governing motorized water craft operation. After several months of MNDNR review and text changes, staff brought a draft ordinance to the City Council for their review on June 5, 2012. At this time several lake shore residents expressed their dislike for the draft as they felt that the statutory norming that took place defeated the intent and purpose of the ordinance. It was agreed that the City Administrator and members of the Tri-Lakes association would meet with MNDNR officials to discuss specific concerns about lake elevation levels and a provision of state statutes that creates a slow, no wake speed for personal watercraft within 150 feet of shoreline.

A delegation from Lake Elmo consisting of Mayor Dean Johnston, Administrator Dean Zuleger, Tri-Lakes President Justin Bloyer and Lake Olson Association President Roger Johnson met with MNDNR's Kim Elverum, Boat & Water Safety Coordinator, to broker a compromise and clarify whether MN Statute 86 had preemption over local ordinances. At this meeting, it was agreed that if MNDNR technical staff agreed to the specific lake level definition of 929.7, the ordinance passed in July 2011 could stand permanently. The City Administrator spoke with MDNR technical staff (Schodeen) who had no objections to a pre-determined ordinary high water mark of 929.7 (MSL).

In the meeting with Elverum, it was noted that the MN Statute 86B.313 ("the 150' rule") is specifically directed at personal water craft – jet skis, water bikes, et al – and not traditional motorboats. This statute did preempt local ordinances for safety purposes.

Appropriate changes were made to the ordinance and were reviewed by Mr. Roger Johnson, Mr. Justin Bloyer and Mayor Dean Johnson for approval prior to final drafting.

In July of 2012, the City of Lake Elmo and affected land owners residing on the shores of Lake Olson, Lake Demontreville and Lake Jane crafted an amendment to current city code that would regulate the use of three lakes in the area known as the Tri-Lake area of the City of Lake Elmo. After considerable debate, the parties reached a consensus on three main areas:

1. A slow, no wake speed condition be set if the lake level of 929.7 feet above sea level is exceeded for five consecutive days for Lake Olson and Lake Demontreville;
2. Motorboat operation that causes wake may be allowed on Lake Jane between 9:00 AM and sunset;
3. Motorboat races, tournaments et al are allowed only as specifically authorized by State Statutes and Rules, the Washington County Sheriff, and City Council. Notice shall be provided to the City Council.

The City Council adopted these changes in July 2012, but the issue has been fraught with anxiety and high emotion as lakeshore owners wrestle with the important issues regarding, what is essentially, their backyard. Efforts over the years to determine the appropriate wake related use (especially time restrictions) have resulted in neighborhood surveys, long deliberations by the respective homeowner's associations, a degree of personal invective, and exploration of additional changes that include but are not limited to eliminating wake on the lakes altogether.

In the March of 2013, two City Council Members requested that the City's current lake use ordinances be modified yet again to create an expansion of use allowed under MNDNR statutes for the purpose of more hours for wake creation a better ability to enforce proper use, and to allow additional time for lakeshore owners to use their "backyard" before the lakes are congested via use by the general public. The request came late at the March 5th City Council Meeting.

Since the request and at the time of this writing, City staff has received 27 (out of 290 affected property owners) phone calls, emails, letters and personal visits from lakeshore owners regarding the issue. 17 responses were from Olson Lake / Lake Demontreville owners - **where 10 responses were against any change and 8 responses were for the change.** In addition, the Olson Lake and Lake Demontreville Homeowner's Association took a formal Board of Directors vote at their April 11, 2013 spring meeting that resulted in a **7-5 vote to not change the current ordinance.** The largest land owner (albeit not a property tax payer) the Jesuit Retreat / Carmelite Monastery has also sent 2 pieces of correspondence stating their opposition to the current proposed changes mainly due to privacy / trespass concerns related to the solitary nature of their operations. A 2011 survey of these two lakes revealed that 70% of lake owners fundamentally support a noon time restriction – although the validity of the survey has been routinely questioned. The results of this survey may be presented at the Council Meeting.

5 responses were from Lake Jane land owners where the 9 AM change has been in effect for one use season. 4 were in favor of the proposed ordinance and 1 was opposed out of a concern for the loon population on the lake. **3 responses came from Lake Elmo, all in favor of the changes.** One response came from a non-Lake Elmo resident (Stillwater fisherman).

The total tally for the proposed change (via response to City Hall) was 15 for the change and 11 against the change with 90% from Olson Lake and Lake Demontreville.

An informational flyer, website / Facebook posting were distributed to all affected landowners on April 10th, 2013 that may produce more response that will be presented at the April 16th City Council meeting. The flyer used a word, "alignment", that is highly interpretive and may have led some to believe that the current ordinance is not approved by the MNDNR. A more appropriate way to explain the change would be that the ordinance would be expanding lake use in alignment with the general guidelines of the MNDNR. This word will be clarified at the meeting.

KEY ISSUES:

During the course of the preliminary public comment on the proposed amendment five policy key issues have been identified:

1. Increased wake creating public access to the lakes will make it difficult for lake shore owners to enjoy peace and quiet, especially on the weekends;
2. Current wake restrictions make it difficult for lake shore owners to safely use the lake for their own activities due to the compressed usage time and competition from the general public for lake use;
3. Longer periods of unrestricted, wake creating, lake usage will increase the probability of the introduction of invasive species to Lake Elmo lakes;
4. The two varied time restrictions of wake creation create an enforceability problem from Washington County law enforcement;
5. Increased wake may compound shore land erosion problems.

In addition, a few ancillary issues have been identified that include property trespass, boat ramp access/ abuse and operating while intoxicated. The specifics of these issues will be discussed with Washington County Sheriff's Department.

From an economic / property value standpoint several land owners have expressed concern that the time restrictions will make it difficult for them to sell their homes – this has been confirmed by a discussion with two realtors who specialize in lake home sales in the metro areas. The point was amplified by two Olson Lake residents who expressed disappointment in the fact that they did not know of the restrictions when purchasing their homes and would not have done so, if they had known the restrictions.

RELATIONSHIPS:

There is one point of commonality in the ongoing lake use debate and that is the basic fact that lake shore property owners are weary of the ongoing discussion which causes division and anxiety. Parties on both side of the debate have expressed some regret that issue has been brought up again and simply desire peace in their neighborhoods.

RECOMMENDATION:

Based upon the background information, a review of key issues, discussion with past & present MNDNR staff, discussion with lake shore owners, and a policy of property use equity, the staff recommends that the City of Lake Elmo City Council:

Motion: Approve Ordinance 08-074, to amend 97.21 of the City Code regulating watercraft and water surface regulations. 97.22 winter lake use regulations and 97.23 (L) prohibited structures and uses as presented.

ATTACHMENTS: Ordinance 08-074