



## MAYOR & COUNCIL COMMUNICATION

DATE: 5/07/2013  
**REGULAR**  
ITEM: 17

**AGENDA ITEM:** Perfecting Amendments to 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 Mayor Mike Pearson

**THROUGH:** Mayor Michael Pearson

**REVIEWED BY:** Dean Zuleger, City Administrator,  
Washington County Sheriff's Department and MNDNR

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### **SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item ..... City Administrator
- Report/Presentation.....City Administrator
- Questions from Council to Staff ..... Mayor Facilitates
- Public Comment (20 Minutes) ..... Mayor Facilitates
- Call for Motion ..... Mayor & City Council
- Discussion ..... Mayor & City Council
- Action on Motion..... Mayor Facilitates

**SUMMARY AND ACTION REQUESTED:** To approve perfecting 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) adopted by the City Council on April 16<sup>th</sup>, 2013. The amendments (attached and highlighted in gray) seek to bring current ordinances into compliance with regular practices of the Washington County Sheriff's Department and the MN Department of Natural Resources for the use of Lake Elmo lakes (Lake Elmo, Olson Lake, Lake Demontreville, Lake Jane).

**BACKGROUND INFORMATION:** As a follow-up to ordinance changes approved on April 16, 2013, Mayor Mike Pearson and Council requested that meetings be held with the Washington County Sheriff's Department and the MNDNR Water and Boat Safety staff to address concerns brought up during the public comment period on April 16, 2013. A meeting was held with the Washington County Sheriff's Water Patrol Division with Commander Jerry Cusick to review the

ordinance passed on April 16, 2013, Sheriff Hutton was also in attendance. The following information was obtained during this meeting;

- There is no major water safety / lake use violation history on the Tri-Lakes at this time – this includes reports of disturbance at the Catholic Complex;
- The Sheriff's Department prefers ordinances that are uniform but will enforce the City policy as long as lakes are properly signed as to use expectations;
- Tri-Lakes are patrolled by a mobile patrol with enforcement not starting until noon (unless called);
- Lake Elmo will have a full time patrol this summer;
- Buoy placement is enforced using MN Boat and Safety Rules 6110.1800 and that should be clearly stated in our ordinance;
- The Sheriff's Department concurs with restoring the counter-clockwise provisions on all lakes.

On April 30, 2013, the City met with the MNDNR staff (Elverum, Linnel) to discuss the currently adopted ordinance prior to sending it officially to the Water and Boat Safety staff for approval. The following information was obtained during this meeting:

- The City has the primary authority to set surface water use regulations with MDNR review;
- The review would use the basic tenants of safety, equality & fairness of use, and public sentiment as review criteria;
- MNDNR ordinance review includes field personnel review familiar with the lakes; (ie Shodeen);
- Current ordinance meets basic tenants of MNDNR policy with exception of a clear enforcement clause and penalties for violation;
- There is nothing in the rule / statute that mandate a uniform time need to be established within a community, recognizing that lakes have different use patterns and personalities. It was suggested that perhaps Lake Elmo would want to engage in a lake use study and the MNDNR has personnel and methods to help;
- Interim ordinances can be created by simply including an end date or review date in the ordinance;
- The MNDNR does not establish NO WAKE policy, that is left up to the City;
- An environmental lake designation has nothing to do with use, rather shore land development;
- MNDNR direction on use safety distance largely revolves around the 150' personal watercraft rule;
- MNDNR generally favors counter-clockwise motion for better starboard vision and safety;
- MDNR has studies on wakes impact on water quality, invasive species, etc. that can be accessed by the website. The best studies recently on the impact of wake on a lake have been conducted by the WIDNR.

Molly Shodeen, Hydrologist for the MNDNR, notes she was involved in a hands-on study on wake creation's affect shore land erosion on the St. Croix that revealed that wave creation created by boats is of a higher velocity than wind and would impact erosion accordingly. Currently, Ms. Shodeen is aiding the City staff on a literature study on the effects of motorboat turbidity on water quality/clarity.

MNDNR did note that the lake Elmo ordinance was an anomaly of sorts as it looked to relax rules allowing more use of the lake as opposed to the normal "reduce use" ordinances it sees from other jurisdictions. To that end, they tacitly support more boating in the State of Minnesota.

In addition to the meetings with articulated government agencies, citizen advocacy continues by the way of petitions, emails, and phone calls expressing opinions. These contacts center on one primary issue: the wake creating hour expansion in the Tri-Lakes. The arguments in this area largely revolve around quality of life (noise) and conflict between non-wake creating water users and wake creating water users. *(NOTE: Public input was 70% for no change, and 30% for change prior to the April 16, 2013 City Council meeting and public sentiment ran 9 to 1 for no change during comment period held during the meeting).*

A secondary argument for restoring the time back to noon, seven days a week is the location of the Jesuit Retreat Center and Carmelite compound on eastern shore of Lake Demontreville. City staff has taken many calls from non-lake owner Lake Elmo residents on the importance of this facility to the community and how City policy should reflect their needs.

Council should expect a petition from the Tri-Lakes (similar to the petition presented by Lake Elmo lakeshore owners) asking to revert the wake creating time back to noon seven days per week.

### **KEY POLICY ISSUES**

As a result of the completed due diligence after the April 16<sup>th</sup>, 2013 City Council Meeting, there are four main issues that need to be considered before forwarding the City's Lake Use Ordinance onto to the MNDNR for review. They are:

1. With no major enforcement or water safety issue history on the Tri-Lakes, is a change to sunrise / 9 AM necessary, or would one uniform time of 9 AM be a reasonable policy (that would also give consideration to the Catholic Complex) to address quality of life / use conflict issues?;
2. Will increased wake creation create accelerate erosion and create water quality issues on the Tri-Lakes?
3. Strong enforcement policy needs to be created with suitable penalties for violations including disorderly conduct.
4. Should the Council include a sunset date or review clause in the ordinance to measure the effects of the use policy after a traditional boating season?

## **RECOMMENDATION:**

Based on the aforementioned information, the staff believes that following:

1. The current ordinance is efficacious as there are no major enforcement or water safety issues on Lake Elmo lakes;
2. The City of Lake Elmo, not the MNDNR, has the jurisdiction over local lake use regulations – this includes the establishment of a no wake lake;
3. Tri-Lakes landowners seem to be in favor of no change or a compromise of time on the currently adopted ordinance;
4. While not needed, uniform times on lakes make it easier for the public to understand use expectations and for enforcement to be less confusing;
5. Studies conducted across the nation seem to indicate that motorboat wake on shallow lakes have an accelerated effect on shore land erosion due to wave velocity;
6. The current (April 16<sup>th</sup> adopted) ordinance meets with Washington County Sheriff's Department satisfaction and is within the defined design standard of MNDNR;

**With these basic facts in mind, staff recommends the following:**

1. The City Council adopted formal enforcement and penalty language to strengthen the current ordinance;
2. A uniform, seven days a week time be created on the Tri-Lakes for ease of enforcement and to clearly delineate lake use expectations (ref. ss 97.21 (B) (1) (b);
3. An annual review will be included in the ordinance that allows the City of Lake Elmo, MNDNR and Washington County Sheriff's Department the ability to examine the previous season's lake use effect on quality of life, water quality, and shore land erosion.