



STAFF REPORT

DATE: August 18, 2020

REGULAR

AGENDA ITEM: Water Surface Use Ordinance Amendments

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

The City Council discussed changes to the water surface use ordinance found in Chapter 97 of City Code at their July 9, 2019 work session and approved changes at their August 20, 2019 meeting. The city is required to get DNR approval of any changes to the water surface use ordinance prior to final adoption.

ISSUE BEFORE COUNCIL:

Should the Council amend the water surface use ordinance in Chapter 97 of City Code?

PROPOSAL DETAILS/ANALYSIS:

The DNR reviewed the ordinance changes submitted last fall as approved by the Council. They asked for two changes after receiving feedback from the Washington County Sheriff's Office. The first change is in 97.21 (c) to remove the reference to the personal watercraft statute. Since the rules are already in statute there is no reason to repeat them in the city ordinance. The second change is in 97.23 and simply changes "Department" to "Office." With these changes and the additional information about the operation of the weir structure to regulate water levels, the DNR has given its approval of the ordinance changes.

FISCAL IMPACT:

We expect to see less staff time spent on checking the gages with the adoption of this ordinance. This year the city was contacted twice about high water concerns on Lake Demontreville and Olson and both times it was under the trigger level. So even with an ordinance in place, nothing would have changed in the management of the lake even in what we all continue to hear as some of the wettest years on record.

OPTIONS:

- 1) Approve Ordinance No 08-228
- 2) Amend and then Approve Ordinance No 08-228 (this will require additional DNR review and approval)
- 3) Do not make any changes to City Code 97.21-97.25

RECOMMENDATION:

"Motion to approve ordinance no 08-228."

ATTACHMENTS:

- Ordinance No 08-228 (redlined)
- Ordinance No 08-228 (clean)
- DNR Approval Letter 8-3-20

**CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA**

ORDINANCE NO. 08-228

**AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES
PERTAINING TO WATER SURFACE USE**

Section 1. The City Council of the City of Lake Elmo hereby amends City Code 97.20-97.25 by deleting the strike through language as shown:

§ 97.20 PURPOSE.

The purpose of §§ 97.20*et seq.* is to establish the rules governing the use of the lake surfaces within the city. It is the intent of §§ 97.20*et seq.* to promote the health, safety, welfare, and well-being of all, and to define the standards of behavior expected for all water users.

(1997 Code, § 1380.01) (Am. Ord. 08-074, passed 9-17-2013)

§ 97.21 WATERCRAFT AND WATER SURFACE USE REGULATIONS.

The following regulations shall apply to the use of watercraft on lakes entirely within the city limits, to the use of a lake entirely within the city limits, and to the use of ice surfaces on lakes entirely within the city limits.

~~(A) *Dumping.* No person shall dump or throw garbage, paper, bottles, cans, refuse, or debris into any lake or on the shore of any lake or in any public area around any lake in the city.~~

~~—(B)—*Hours of operation.*~~

~~—(1)—*Normal conditions.* No person shall operate any motorboat at a speed greater than a slow, no-wake speed as defined by M.S. § 86B.005 in the following manner:~~

~~(1a) Lake Elmo - between sunset and noon the following day, 7 days a week.~~

~~(1b) Olson Lake, Lake Demontreville and Lake Jane - between sunset and sunrise, Monday through Friday; and between sunset and 9:00 a.m. on weekends and holidays.~~

~~(c) All other lakes within the jurisdictional boundaries of the City of Lake Elmo—between sunset and noon, 7 days a week.~~

~~—(2)—*High water conditions.* No person shall operate any motorboat at greater than a slow, no-wake speed as defined by M.S. § 86B.005 whenever the lake level of Lakes Olson and Demontreville is above 929.7 feet above sea level (MSL). This restriction will remain in effect until the water level drops below 929.7 feet, and remains there for 3 consecutive days. No person shall operate any motorboat at greater than slow, no-wake speed as defined by M.S. § 86B.005 whenever the lake level of Lake Jane is above 924.0 feet above sea level (MSL). This restriction shall remain in effect until the water level drops below 924.0 and remains there for 3 consecutive days.~~

~~(BE)~~ *Operating regulations.* No person shall operate any watercraft in violation of the provisions of this code, or in violation of the provisions of M.S. Chapter 86B or Minnesota Boat and Water Safety Rules (6110.0100-6110.2300) which statutes and rules are hereby adopted and incorporated herein.

~~—(D) *Buoys.* No person shall place a buoy or structure on a lake overnight unless the buoy is specifically authorized by the Washington County Sheriff. No buoy or structure, other than shallow water marking or channel buoys shall be left overnight or placed contrary to MN Water Safety Rules 6110.1800.~~

~~(CE)~~ *Operation.* All motorboats, operating in excess of a slow, no-wake speed shall operate in a counter clockwise direction on all City of Lake Elmo lakes 7 days a week. ~~Personal watercraft use is governed by M.S. § 86B.313~~^[KH1].

~~—(F) *Non public lake access.* No person, except riparian owners, shall launch a watercraft or gain access to or egress from a lake other than at a designated public access point except in the case of any emergency or except with the written permission of the riparian lot owner. A person who has written permission to launch a watercraft from a riparian lot shall park their vehicle(s) and trailer(s) on the lot of the riparian owner. Riparian lot owners who grant permission to use their property as a launch site shall otherwise comply with all of the land use regulations of the city.~~

~~—(G) *Public launching areas.* Except as noted in division (F) no person shall launch a watercraft or gain access to or egress from a lake except from a public right of way or other public park area in those locations specifically designated and posted for the purpose.~~

~~—(H) *Non motorized carry on access.* A person may access any public waters through public land with a hand-carried non-motorized watercraft in accordance with M.S. § 86B.201, Subd. 3.~~

~~—(I) *Safe operating distance.*~~

~~—(1) No person shall operate or permit the operation of a personal watercraft per M.S. § 86B.313, in excess of slow, no-wake speed, within 150 feet of a shoreline.~~

~~—(2) Launching or landing a personal watercraft or towing a person on skis or other devices must be done by using the most direct route to or from open water.~~

~~—(J) *Non-motorized watercraft.* A non-motorized watercraft has the right-of-way over motor-powered watercraft except when it is the overtaking watercraft. Motor-powered watercraft should always keep clear and pass astern on non-motorized watercraft (Minn. Rule 6110.1200, Sub. 1, D). (1997 Code, § 1380.03)~~

~~(DK)~~ *Permanent “slow - no wake” areas.* The channels and narrows between Lake Olson and Lake Demontreville are hereby designated as permanent “slow - no wake” areas and appropriate signs or buoys meeting the specifications found in Minn. Rules 6110.1500 shall be posted.

~~§ 97.22 WINTER LAKE USE REGULATIONS.~~

~~—(A) *Dumping.* No person shall dump or throw garbage, paper, bottles, cans, refuse, or debris into the ice of a lake or into any lake or on the shore of any lake or in any public area around any lake in the city.~~

~~—(B) *Clean up.* Ice house owners are responsible for clean-up of trash within 25 feet of the house.~~

~~—(C) *Emergency access.* No person shall gain access to or egress from the ice of a lake other than at a designated public access point except in the case of emergencies or except with the written permission of~~

~~a riparian lot owner. Persons who have written permission to access or egress the lake from a riparian lot shall park their vehicles and trailers on the lot of the riparian owner. Riparian lot owners who grant permission to use their riparian property for access to or egress from a lake shall otherwise comply with all land use regulations of the city.~~

~~—(D) *Ice fishing holes.* No person shall leave holes in the lake larger than 1 foot in diameter unless the holes are visibly marked for day and night.~~

~~—(E) *Size of ice fishing house.* No person shall place an ice house larger than what is allowed by Minnesota State Statutes and is regulated by the fish and game authority.~~

~~—(F) *Fires.* No person shall have an open fire on the ice surface of a lake.~~

§ 97.223 PROHIBITED STRUCTURES USES AND USES STRUCTURES.

~~—(A) *Lake activities.* Motorboat races are prohibited. Fishing tournaments, ski jumps, slalom courses, or other competition or exhibition events are allowed only as specifically authorized by state statutes and rules, the Washington County Sheriff Department. The City Clerk shall acknowledge by signature all lake activities authorized prior to any authorized event or installation of ski jumps or slalom courses **for the purpose of public information dissemination.**~~

~~—(B) *Fee for lake use.* Unless specifically authorized by the Council, and unless consistent with the city's zoning regulations, no riparian lot owner shall offer the use of their property for a fee or other consideration:~~

~~—(1) As ingress or egress to a lake;~~

~~—(2) For watercraft rental;~~

~~—(3) For swimming, skiing, or watercraft lessons, unless provided by a non-profit or water safety agency for the purpose of basic instructions;~~

~~—(4) For a watercraft launch site; and/or~~

~~—(5) For any ancillary water or ice related use.~~

§ 97.234 ENFORCEMENT.

(A) *Local enforcement.* Pursuant to M.S. §§ 378.32, 459.20, the City of Lake Elmo assigns by service agreement the enforcement of §§ [97.20](#) through [97.23](#) of the City Code to the Washington County Sheriff's ~~Department Office~~^[KH2].

(B) *Penalties.* Penalties for non-compliance shall be governed by § [10.99](#) of the City Code and prosecuted by the City of Lake Elmo Attorney.

(C) *Exemptions.* Government agencies engaged in resource management, emergency services or enforcement activities are exempt from the provisions of [Chapter 97](#) when acting in the performance of their assigned duties.

§ 97.25 REVIEW.

~~The Lake Elmo City Council, upon request, shall review the effect of surface water use ordinances on the quality of life, water quality (including clarity), and lake use safety prior to "ice-out" or the beginning~~

~~of normal lake use season. The Lake Elmo City Council shall consult with MnDNR, University of Minnesota Extension, and the Washington County Sheriff's Department as a part of this review.~~

SECTION 2. Effective Date. This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

SECTION 3. Adoption Date. This Ordinance 08-XXX was adopted on this ____th day of _____, 2020, by a vote of __ Ayes and __ Nays.

LAKE ELMO CITY COUNCIL

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

This Ordinance 08-228 was published on the ____ day of _____, 2020.

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(B) *Operating regulations.* No person shall operate any watercraft in violation of the provisions of this code, or in violation of the provisions of M.S. Chapter 86B or Minnesota Boat and Water Safety Rules (6110.0100-6110.2300) which statutes and rules are hereby adopted and incorporated herein.

(C) *Operation.* All motorboats, operating in excess of a slow, no-wake speed shall operate in a counter clockwise direction on all City of Lake Elmo lakes 7 days a week.

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LAKE ELMO CITY COUNCIL

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

This Ordinance 08-228 was published on the ____ day of _____, 2020.



Minnesota Department of Natural Resources
Division of Enforcement
500 Lafayette Road
Saint Paul, MN 55155

August 3, 2020

Kristina Handt
City Administrator
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042

The Department of Natural Resources (DNR) has reviewed the materials submitted from the City of Lake Elmo regarding proposed changes to water surface use for lakes with the City.

Upon review, the DNR has approved your proposed ordinance as submitted, which includes the removal of high water triggers for lakes Olson, Demontreville and Jane. If future conditions require restrictions, State law allows for temporary restrictions to be placed on a lake for up to 30 days without DNR approval.

Once the City has taken final action to remove these restrictions, send a signed copy of the new ordinance to LT Adam Block at adam.block@state.mn.us. Upon receiving the new ordinance, we will update our database on our website.

Sincerely,

COL Rodmen Smith
Enforcement Division, Division Director

CC: CAPT Jason Peterson – DNR Region 3 Enforcement Manager
LT Lisa Kruse – DNR Enforcement Supervisor
Jennficer Sorensen – DNR Area Hydrologist
Kyle Schenck – Washington County Sheriff Department
WSUM File

