



MAYOR & COUNCIL COMMUNICATION

DATE: January 6, 2014

**ITEM #15:
ADVISORY / NO SWOT**

AGENDA ITEM: Year End Review of the Surface Water Use Ordinance

SUBMITTED BY: Dean Zuleger, Administrator

THROUGH: MNDNR Commissioner

REVIEWED BY: Dean Zuleger, City Administrator, Washington County Sheriff's Department and MNDNR (Enacted on September 25, 2014 per publication)

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation.....City Administrator
- Questions from Council to Staff Mayor Facilitates
- Public Comment (10 Minutes) Mayor Facilitates

SUMMARY AND ACTION REQUEST: Year-end review of the newly enacted Chapter 97 regulating hours of use for wake creating activity on Olson Lake, Lake DeMontrevelle and Lake Jane. **No action requested.**

BACKGROUND INFORMATION: In the Spring of 2013, the City Council of Lake Elmo passed a set of amendments to Chapter 97 of the Water Surface Use that expanded use times and placed protections for riparian landowners when lake levels exceeded certain ordinary high water marks. Per State Law, these amendments had to be reviewed by the MN Department of Natural Resources for compatibility to state law. In addition, a number of riparian landowners petitioned the MNDNR to have an environmental assessment completed on the proposed amendments. MNDNR staff ruled that an environmental assessment was not necessary and began their review of the ordinance which included a comprehensive investigation on the effects of the ordinance on the lakes in the area of congestion, enforcement, environmental impact, and compatibility with state laws. During this same time the Tri-Lakes area experienced a high water event that allowed the City staff to practically apply the ordinance and protect shorelines. This event, supplemented by a two week lake use study, was submitted to the MNDNR staff for their consideration. In addition, City Council members and City Staff continued to monitor the lake use via personal observation, video surveillance, and video recording via cell phone. The Washington County

Sheriff's Department reported no major issues in the early AM with no citations, although there were incidents of wake creation by resident lakeshore owners during the wake prohibition period in late June & early July. Every effort was made to also notify lake users of the sound sensitive nature of the Jesuit Retreat Center and to date there has been no formal complaint made by the Catholic complex about disruptive activity.

MNDNR RECOMMENDATION: After a very thorough review (4 months), the MNDNR staff in conjunction with the City made two minor changes to the ordinances both affecting high water mark. MNDNR, with Lake Elmo affirmation, changed the language of the ordinance to read that once ordinary high water marks are exceeded a no wake rule can be applied immediately as opposed to a five day waiting period proposed. Similarly, the MNDNR reduced the waiting mark to 3 days – a reasonable period to mitigate any weather event that may occur.

The MNDNR concurred with Lake Elmo that the expansion of use time was not at odds with state law and should pose no problem for the lakes. Staff / Council surveillance of the lakes this summer seem to prove this point definitively.

STAFF CONCLUSION: With the revision to Chapter 97 going into effect on September 25, 2013, it is difficult to determine the overall impact of use changes at this time. In the spirit of the law, Washington County Sheriff's Department monitored use for disorderly behavior and found the Tri-Lakes to be relatively compliant. Surveillance of the lakes show that a majority of outside use (those not living on the lake) comes in the form of bass fishermen -- who are respectful in their practices.

The application of the ordinary high water mark wake prohibition in July proved to be fairly benign in its contention and allowed the City to hone its notification techniques via Facebook, e-blasts, and Code Red.

In addition, the data showed the "sharing of the lake" argument for no change had limitations. Simply put, as the act of water skiing or tubing (wake creating) requires someone to be exposed to the water and the elements while other passive activity doesn't, this past summer's weather (initially very cold and eventually, wet to the point of preventing wakes at all times) absolutely favored the more passive use. In other words, previous to the change, practically speaking, wake creating uses were incumbent upon BOTH the time of day AND reasonable weather, whereas pontoons, kayaks and paddleboards were (and still are) limited by neither. Staff will also seek data on the turbidity impact of the potentially increased wake activity.