



MAYOR & COUNCIL COMMUNICATION

DATE: February 24, 2015
REGULAR
ITEM #: 19

AGENDA ITEM: Proposed Ordinance Amending 97.21 Watercraft and Water Surface Regulations

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

THROUGH: Mayor Mike 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
- DiscussionMayor & City Council
- Action on Motion Mayor Facilitates

SUMMARY AND ACTION REQUESTED: To approve amendments to City Ordinances regulating watercraft regulations (ss 97.21 (2)), to lower the no wake level on Olson Lake and Lake Demontreville from a negotiated 929.7 to the recognized MNDNR Ordinary High Water level of 929.3.

FISCAL IMPACT TO CITY: TBD. Cost of study to determine the ecological / economic impacts that provide a “credible reason” for reducing the negotiated no wake level of 929.7 to the MNDNR OHW of 929.3

BACKGROUND INFORMATION: In 2013, the City of Lake Elmo amended its City Ordinances regulating water craft and water surface regulations and submitted the changes to the MNDNR, which approved the ordinance on July 3, 2014. (See Attached Ordinance)

STAFF REPORT:

In 2007, the VBWD constructed Project 1007, that placed a weir drain in Olson Lake that drain to a series of ponds and pipes to alleviate high water levels and prevent ecological / economic impact. Prior to 2007, the MNDNR Ordinary High Water Level for this lake system was 930.0. After the weir was constructed, the Ordinary High Water level was reset at 929.3. The Ordinary High Water Level is generally considered the level where terrestrial plants meet the aquatic plant level on a lake shore (see attached diagram). In a

plurality of lakes researched over the last three years that have some form of no wake restriction, there is no standard or formulaic way to establish a no wake level, but admittedly many lakes default to the OHW for uniformity purpose.

In conversations with MNDNR staff there seems to be little objection to using the OHW as a no wake trigger.

During the summer of 2011, the Olson/Demontreville lake complex experienced high waters that caused the City Council to construct an emergency no wake level of 929.7 using a simple formula of halving the pre-2007 OHW and the post-2007 OHW. The issue was fraught with emotion due to the expediency in which the issue was handled. In the winter of 2012, staff worked with the MNDNR to craft an ordinance that would meet with all party's approval to establish a negotiated no wake level of 929.7 on Olsen Lake and Lake Demontreville. 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 no wake level of 929.7.

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 – with the item germane to this discussion being:

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;

The City Council adopted these changes in July 2012, but the issue has been continually fraught with anxiety 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, 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.

In May 2013, a lengthy public hearing was held on the changes where a 5-0 vote was taken by the City Council to change the ordinance.

City Staff prepared the ordinance with corroborating data and submitted the ordinance for MNDNR review. After several modifications to comply with MNDNR regulations were made, the MNDNR (July 2, 2013 – see attached) approved the ordinance (see attached) for implementation. During this time a no wake restriction was placed on Olsen Lake & Lake Demontreville for one week in the spirit of the understanding between the negotiating no wake level.

In the Spring / Summer 2014, due to large spring rains and the drainage of Long Lake, Olson Lake and Lake Demontreville exceeded the negotiated no wake level of 929.7 for a two different time periods that totaled 31 days with City staff checking the water level almost every day from May 1st to July 14th. (See attached Olson / Tri Lakes Level Data). Staff observed during this review period that the weir begins to strenuously drain the lake and pump into an adjoining pond at the MNDNR OHW of 929.3.

On February 12, 2015, at a Council Member’s request, the City Administrator inquired of Mr. Stan Linnell, MNDNR Boating and Water Safety Manager, about what would be needed to reduce the no wake level on Olson Lake and Lake Demontreville from the negotiated 929.7 to the MNDNR OHW level of 929.3. Mr. Linnell noted that the MDNR would ideally need to see “data of ecological / environmental impact” before they would consider a change and that data should come in a form of a study. The City Administrator has inquired with two water resource consulting firms on the “what and how” the gathering of this data would entail and what the cost might be. As of the writing of this memo, no cost information has been received at this time. On February 19, 2015, Mr. Linnell, noted (after conversations with members of the City Council, VBWD, and citizen advocates) that while ideally a study would be preferable, the MNDNR would need to minimally see a “credible, documented reason” to reduce the level. (See Linnell Email 2-19-2015). **Per the MNDNR, a formal public hearing is requested to provide public comment on the proposed change in elevation. The soonest a public hearing could be held is March 17, 2015.**

ORDINANCE CONSTRUCTION

If the Council pleases, the ordinance would change to read as followed:

(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 929.3 feet above sea level (MSL), the Ordinary High Water Level (OHWL) as defined by M.S. 103G.005 and set by the MN Department of Natural Resources. This restriction will remain in effect until the water level drops below 929.3 feet the OHWL as set by the MN Department of Natural Resources, and remains there for 3 consecutive days.

KEY ISSUES

During the course of the analysis, three main issues rise to the top of consideration:

1. The weir constructed by the Valley Branch Water Shed District in 2007 begins to aggressively drain the lake at the MNDNR OHW of 929.3 (observable by staff over the last two summers);
2. The City has not experienced a full normal season of boat use since the enactment of the 2013 ordinance change – with 2014 high water levels being compounded by a plugged drain pipe upstream at Long Lake;
3. It appears the MNDNR may request additional ecological / economic data that shows positive impact of lowering the no wake from 929.7 to 929.3. This data has been categorized as “a credible, reason” to make the change. Other than third party information on 2014 damage the City does not have a way to provide that “reason” at this time.

RECOMMENDATION: Based upon the background information, a review of key issues, discussion with MNDNR staff, discussion with lake shore owners, staff does not have a recommendation at this time without more information (a normal season of operation and study of the water level effect on terrestrial plants/shore erosion) on the impacts of the level change.

However, if the Council wishes to change the level to the MNDNR OHW to create a formulaic approach to no wake enforcement, the motion would read:

“Move to call for a public hearing on March 17, 2015, to receive public comment on whether to amend 97.21 of the City Code regulating watercraft and water surface regulations to technically change the no wake level on Olson Lake and Lake Demontreville from the negotiated level of 929.7 to the MNDNR OHW of 929.3 with all other ordinance language staying intact.”

ATTACHMENTS:

**Current Ordinance
MNDNR Approval
Lake Level Report
OHW Technical Drawing
Linnell Email of 2-17-2015**