



STAFF REPORT

DATE: July 9, 2019

DISCUSSION

AGENDA ITEM: No Wake Ordinance

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

The City's current regulations regarding no wake zones can be found in Chapter 97 of city code and were last updated in 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:

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

(b) 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. (emphasis added)

(C) *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.

(E) *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.

(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)

(K) *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.

(Am. Ord. 97-150, passed 3-1-2005; Am. Ord. 08-014, passed 5-19-2009; Am. Ord. 08-050, passed 7-19-2011; Am. Ord. 08-50, passed 11-1-2011; Am. Ord. 2012-58, passed 7-17-2012; Am. Ord. 08-074, passed 9-17-2013) Penalty, see § [10.99](#)

ISSUE BEFORE COUNCIL:

Should the Council hold a public hearing to make any changes to the ordinance?

PROPOSAL DETAILS/ANALYSIS:

As staff mentioned at a previous Council meeting, it is taking a significant amount of staff time to run out and check the lake gauges at Olson/Demontreville and Jane when we receive inquiries from the public. Despite the fact that we have seen some of the highest levels of precipitation this year, a no wake was instituted only once on Olson/Demontreville. This was in April. Staff also learned that the gate that drains Lake Olson to Deer Pond was plugged with debris at the time. The Valley Branch Watershed District did go out and remove the debris and ever since, the lake has not been at 929.7 (the no wake trigger). Given that we have seen such high levels of precipitation and yet the lakes were only over the high water trigger once, staff would question if the ordinance is necessary. It seems with proper management by the VBWD, such as the replacement of the stop logs and the clearing of the gate, the lakes are able to remain below the trigger level. Another possible reason for the lakes remaining below the trigger level this year is that they have outlets and the rain fell over longer periods of time.

Staff contacted the DNR about the process for making changes, including removal of the no wake ordinance, and was provided with the attached Water Surface Use Packet. Before any changes could be enacted, the Council would need to hold a public hearing on proposed changes, complete the packet info and submit to the DNR for approval.

FISCAL IMPACT:

There would be some costs in advertising for a public hearing and staff time completing the water surface use packet information. This cost may be minimized if the lake data from the previous application to the DNR is obtained.

Long term demands on staff time would be reduced if we weren't charged with checking the water levels (sometimes weekly or more) every time a resident felt the water level was high.

Council still has the option under law to enact a 30 day no wake order in the instances that the lakes may be higher than the levels noted in the ordinance in order to minimize potential damage to property.

OPTIONS:

- 1) Direct Staff to Prepare an Ordinance Amendment and Advertise for a Public Hearing
- 2) Do not make any changes to City Code 97.21

RECOMMENDATION:

Staff would recommend holding a hearing to delete section 97.21 (B)(2).

ATTACHMENTS:

- Water Surface Use Packet

Water Surface Use Rules And Statutes



**Minnesota Department
of Natural Resources
500 Lafayette Road
St. Paul, MN
55155-4047**

Dear Water Surface Use Manager:

Each year the Minnesota Department of Natural Resources (DNR) receives numerous inquiries regarding water surface use management. This packet contains general information concerning the rules and statutes that may govern the water surface of lakes and rivers in Minnesota.

Water surfaces are managed through numerous statutes and rules. Minnesota Rules parts 6110.3000-.3800, Water Surface Use Management (WSUM) Rules describe the goals of the rules, require an assessment of the water surface use conditions, and establish water surface management standards or parameters, which may be included in an ordinance. For more specific information, a copy of the statutes and rules are enclosed. Also, see the note on "Enforcement" in the sample ordinance that is enclosed.

Governmental units formulating, amending or deleting controls for water surface use must submit the following information to the DNR for review prior to adopting a proposed WSUM ordinance:

- **A water surface worksheet with a map of the water body, highlighting the affected areas.**
- **A statement explaining the necessity for the ordinance and the solution to the problem this ordinance will offer.**
- **A copy of the proposed ordinance (sample wording is included).**
- **An account of the public hearing held concerning the proposed controls, including an account of the statements of each person who testified.**

Generally, if more than one governmental unit has jurisdiction over the particular body of water, they all must have an ordinance with identical restrictions and have a signed joint powers agreement. All of the affected governmental units must submit the required information to the DNR for approval. Enclosed is an example of a WSUM ordinance that was approved by the DNR. If for some reason the DNR denies the proposed ordinance, then the denial will be sent in the form of a letter, which will explain the reasons for denial. The governmental unit may amend the proposed ordinance in accordance with the denial letter and resubmit the proposed ordinance for a second review by the DNR.

The DNR will notify the governmental unit in writing of approval or denial within 120 days after receiving all of the above information. The governmental unit adopting an ordinance must provide for notification of the ordinance to the public, which involves placing signs at public watercraft launch sites outlining essential elements of the ordinance.

For further information about water surface use management, call me at (651) 259-5057 or e-mail me at: adam.block@state.mn.us

Sincerely,

Lt. Adam Block
State Boating Law Administrator

Enclosures

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MINNESOTA WATER SURFACE USE RULES

WATER SURFACE USE MANAGEMENT

6110.3000 POLICY.

It is the policy of this state to promote full use and enjoyment of waters of the state, to promote safety for persons and property in connection with such use, and to promote uniformity of laws relating to such use.

Statutory Authority: *MS s 361.25*

6110.3100 SCOPE.

As part of implementing that policy, Minnesota Statutes, sections 86B.205, subdivisions 2 to 5; 103G.605; 103G.621; and 459.20 authorize counties, cities, and towns to regulate by ordinance the use of surface waters by watercraft, upon approval of any such ordinance by the commissioner. Minnesota Statutes, section 86B.205, subdivision 9, paragraph (a), authorizes the commissioner to regulate such use by rule, upon request of a county, city, or town, and after the rule is approved by the majority of the counties affected. Parts 6110.3000 to 6110.4200, however, shall not apply to units of government other than counties, cities, and towns, or to counties, cities, or towns adopting ordinances identical to and on the same body of water as a lake conservation district ordinance.

Statutory Authority: *MS s 361.25; 86B.211*

6110.3200 GOAL OF WATER SURFACE USE MANAGEMENT.

The goal of water surface use management shall be to enhance the recreational use, safety, and enjoyment of the water surface of Minnesota and to preserve these water resources in a way that reflects the state's paramount concern for the protection of its natural resources. In pursuit of that goal, an ordinance or rule shall:

where practical and feasible, accommodate all compatible recreational uses;

1. minimize adverse impact on natural resources;
2. minimize conflicts between users in a way that provides for maximum use, safety, and enjoyment; and
3. conform to the standards set in part 6110.3700.

Statutory Authority: *MS s 361.25*

6110.3300 STATUTORY AUTHORITY.

Parts 6110.3000 to 6110.4200 are required by Minnesota Statutes, section 86B.211. They provide procedures for the development and approval of rules and ordinances for resolving water surface use conflict by regulating:

1. type and size of watercraft;
2. type and horsepower of motors;
3. speed of watercraft;
4. time of use;
5. area of use; and

6. the conduct of other activities on the water body where necessary to secure the safety of the public and the most general public use.

Statutory Authority: *MS s [361.25](#); [86B.211](#)*

6110.3400 JURISDICTION OF COMMISSIONER.

The commissioner shall exercise the commissioner's discretion under Minnesota Statutes, section [86B.205](#), subdivision 9, to regulate a water body when so requested by a county, city, or town only when the water body:

- A. is traversed by a state or international boundary; or
- B. is within the jurisdiction of two or more counties which cannot agree on the content of ordinances; and
- C. regulation is necessary to achieve the goals in part [6110.3200](#).

In all other cases, water surface use regulation shall be by county, city, or town ordinance as specified in Minnesota Statutes, sections [86B.205](#), subdivisions 2 to 5; [103G.605](#); [103G.621](#); and [459.20](#). If a body of water is located within the jurisdiction of two or more cities or towns which cannot agree on the content of ordinances, any such city or town may petition the county in which they are located to adopt an ordinance.

Statutory Authority: *MS s [361.25](#); [86B.211](#)*

6110.3500 EXISTING ORDINANCES AND RULES.

All existing ordinances and rules adopted on or after January 1, 1975, affecting water surface use shall be brought into compliance with parts [6110.3000](#) to [6110.4200](#) within a reasonable time period after promulgation of these parts.

Statutory Authority: *MS s [361.25](#)*

6110.3600 ASSESSMENT OF CONDITIONS.

Subpart 1. **Factors to consider.** The commissioner of any governmental unit formulating, amending, or deleting controls for surface waters shall acquire and consider the following information, noting factors that are not relevant:

Physical characteristics:

1. size: normal surface acreage, if available, or the basin acreage listed in the Division of Waters Bulletin No. 25, An Inventory of Minnesota Lakes;
2. crowding potential: expressed as a ratio of water surface area to length of shoreline;
3. bottom topography and water depth;
4. shore soils and bottom sediments;
5. aquatic flora and fauna;
6. water circulation: for lakes, the existence and locations of strong currents, inlets, and large water level fluctuations; for rivers and streams, velocity and water level fluctuations;
7. natural and artificial obstructions or hazards to navigation, including but not limited to points, bars, rocks, stumps, weed beds, docks, piers, dams, diving platforms, and buoys; and
8. regional relationship: the locations and the level of recreational use of other water bodies in the area.

- A. Existing development:

1. Private: to include number, location, and occupancy characteristics of permanent homes, seasonal homes, apartments, planned unit developments, resorts, marinas, campgrounds, and other residential, commercial, and industrial uses.
 2. Public: to include type, location, size, facilities, and parking capacity of parks, beaches, and watercraft launching facilities.
- B. Ownership of shoreland: to include the location and managing governmental unit of shoreline in federal, state, county, or city ownership as well as private, semipublic, or corporate lands.
 - C. Public regulations and management: to include federal, state, or local regulations and management plans and activities having direct effects on watercraft use of surface waters.
 - D. History of accidents which have occurred on the surface waters.
 - E. Watercraft use: to include information obtained in the morning, afternoon, and evening on at least one weekday and one weekend day, concerning the number and types of watercraft in each of the following categories: kept or used by riparians, rented by or gaining access through resorts or marinas, using each public watercraft launching facility, in use on the waterbody.
 - F. Conflict perception and control preferences: to include opinions gained by surveys or through public meetings or hearings of riparians, transients, local residents, and the public at large.

Subp. 2. Written statement. Any governmental unit formulating, amending, or deleting controls for surface waters shall submit to the commissioner the following:

- A. the information requested in subpart 1, portrayed on a map to the extent reasonable;
- B. a statement evaluating whether the information reveals significant conflicts and explaining why the particular controls proposed were selected;
- C. the proposed ordinance; and
- D. a description of public hearings held concerning the proposed controls, including an account of the statement of each person testifying.

Subp. 3. Commissioner review and approval. The commissioner shall require the ordinance proposer to provide additional information of the kind described in subpart 1 when needed in order to make an informed decision. The commissioner shall approve the ordinance if it conforms with these rules.

Statutory Authority: *MS s* [361.25](#)

6110.3700 WATER SURFACE MANAGEMENT STANDARDS.

Subpart 1. Purpose. To promote uniformity of ordinances or rules on the use of watercraft on surface waters of this state, to encourage compliance and to ease enforcement, the commissioner and any government unit formulating such ordinances or rules shall follow these standards. When formulating an ordinance or rule, it is not required that all the standards listed below be incorporated into every ordinance or rule. Rather, the commissioner or governmental unit shall select from the standards listed below such standard(s) as are needed to regulate the surface use of waters.

Subp. 2. Watercraft type and size. Controls may be formulated concerning the type and/or size of watercraft permissible for use on surface water body(ies) or portions thereof.

Subp. 3. Motor type and size. Controls, if any, concerning the maximum total horsepower of motor(s) powering watercraft on surface waters shall utilize one or more of the following horsepower cutoffs or motor types: 25 hp; 10 hp; electric motors; no motors.

Subp. 4. Direction of travel. Directional controls, if used, shall mandate watercraft to follow a counterclockwise path of travel.

Subp. 5. Speed limits. Controls, if any, concerning the maximum speeds allowable for

watercraft on surface waters shall utilize one or more of the following miles-per-hour cutoffs:

1. "Slow-No Wake" means operation of a watercraft at the slowest possible speed necessary to maintain steerage and in no case greater than five mph.
2. 15 mph.
3. 40 mph.

Subp. 6. **Effective time.** Controls must use one or more of the following time periods.

1. sunrise to sunset or sunset to sunrise the following day;
2. 9:00 a.m. to 6:00 p.m. or 6:00 p.m. to 9:00 a.m. the following day;
3. noon to 6:00 p.m. or 6:00 p.m. to noon the following day;
4. all 24 hours of the day.

Controls must be in effect during one of the following calendar divisions: all year; Memorial Day weekend through Labor Day weekend; on all weekends and legal holidays occurring within Memorial Day weekend through Labor Day weekend.

Controls governing the use of watercraft may be adopted which are placed into effect based upon specific water elevations.

Subp. 7. **Area zoning.** Controls shall clearly specify which portion of the water body is affected by such controls.

Area controls may be formulated concerning any of the subject matter covered in the water surface management standards in subparts 2 to 9.

Controls concerning a "Slow-No Wake" shall be established for the entire water body or portion thereof according to the following criteria: within 100 feet or 150 feet from the shore; or where watercraft speed or wake constitutes a hazard to persons, property, or the natural resources; or where it has been determined that such control(s) would enhance the recreational use and enjoyment of the majority of users.

Subp. 8. **Conduct of other activities on a body of water.** Controls formulated by a governmental unit which restricts other activities (such as swimming or scuba diving) shall conform to part [6110.3200](#).

Subp. 9. **Emergencies.** In situations of local emergency, temporary special controls may be enacted by a county, city, or town for a period not more than 30 days without the commissioner's approval. The commissioner shall be notified, however, as soon as practicable during this 30-day period.

Subp. 10. **Additional evidence.** A government unit may submit additional evidence if it feels that variance from the afore-stated standards is necessary to best address a particular problem. The commissioner will review such evidence and shall grant a variance if there are circumstances peculiar to the body or bodies of water in question of such magnitude as to overshadow the goal of uniformity.

Statutory Authority: *MS s* [14.388](#); [361.25](#)

[6110.3800](#) ADMINISTRATIVE PROVISIONS.

Subpart 1. **Enforcement and penalties.** Any government unit adopting ordinances pursuant to Minnesota Statutes, sections [86B.205](#), subdivisions 2 to 5; [103G.605](#); [103G.621](#); and [459.20](#) shall provide for their enforcement and prescribe penalties for noncompliance. Rules established pursuant to Minnesota Statutes, section [86B.201](#), subdivisions 1 and 2, or [86B.205](#), subdivisions 1 and 9, shall be enforced by conservation officers of the Department of

Natural Resources and the sheriff of each county.

Rules or ordinances shall contain a provision exempting authorized resource management, emergency, and enforcement personnel when acting in the performance of their assigned duties. They may also provide for temporary exemptions from controls through the use of permits issued by the unit of government adopting the ordinance or rule.

Subp. 2. Commissioner's approval for proposed ordinances. Any governmental unit formulating ordinances or desiring amendments and deletions to existing ordinances shall submit the written statement required by these rules with the proposed ordinance to the commissioner pursuant to Minnesota Statutes, section [86B.205](#), subdivisions 2 to 5, for approval or disapproval. Determination of approval or disapproval shall be based upon the written statement and the compatibility of the ordinance with these rules. If the proposed ordinance is disapproved by the commissioner and a satisfactory compromise cannot be established, the governmental unit may initiate a contested case hearing to settle the matter.

The commissioner shall notify the governmental unit in writing of approval or disapproval of proposed ordinances within 120 days after receiving them pursuant to Minnesota Statutes, section [86B.205](#), subdivisions 2 to 5. Failure to so notify shall be considered approval.

Subp. 3. Public notice. Any governmental unit adopting ordinances shall provide for adequate notification of the public, which shall include placement of a sign at each public watercraft launching facility outlining essential elements of such ordinances, as well as the placement of necessary buoys and signs. All such signs and buoys shall meet requirements specified in Minnesota Statutes, chapter 86B, and parts [6110.1500](#) to [6110.1900](#).

The commissioner shall publish and update at the commissioner's discretion a listing of watercraft use rules and ordinances on surface waters of the state for distribution to the public.

Statutory Authority: *MS s* [361.25](#); [86B.211](#)

RELEVANT WATER SURFACE USE STATUTES

REGULATION OF SURFACE WATER USE

86B.201 STATE LAW AND LOCAL ORDINANCE AUTHORITY.

Subdivision 1. Application of state law.

The provisions of this chapter and of other applicable laws of this state shall govern the operation, equipment, numbering, and all other related matters for a watercraft operated on the waters of this state, or the time when an activity regulated by this chapter may take place.

Subd. 2. Local authority to adopt ordinance.

(a) This chapter does not limit the authority of a political subdivision of this state to adopt regulations that are not inconsistent with this chapter and the rules of the commissioner relating to the use of waters of this state that are wholly or partly within the territorial boundaries of a county or entirely within the boundaries of a city.

(b) A city of the first class of over 200,000 or the park board of the city may forbid the use of motorboats or boats with attached motors on its lakes.

Subd. 3. Nonmotorized carry-on access.

A person may access any public waters through public land with a hand-carried nonmotorized watercraft.

History: 1990 c 391 art 9 s 9; 1997 c 226 s 11

86B.205 WATER SURFACE USE ORDINANCE.

Subdivision 1. Assistance.

The commissioner shall develop and publish guidelines to assist counties adopting water surface use ordinances for waters within their jurisdiction.

Subd. 2. Surface use ordinances.

(a) A county board may, by ordinance, regulate the surface use of bodies of water located entirely or partially within the county and not located entirely within the boundary of a single city or lake conservation district established by law.

(b) If a body of water is located within more than one county, a surface use ordinance is not effective until adopted by the county boards of all the counties where the body of water lies under section 471.59 or placed into effect by order of the commissioner under subdivision 9.

(c) With the authorization of an affected city or lake conservation district, a county board may assume and exercise the powers in subdivisions 2 to 5 with respect to bodies of water lying entirely within that city or lake conservation district. The regulation by the county of the surface use of a portion of a body of water located within the boundary of a city must be consistent with any city regulation existing on May 25, 1973, of the surface use of that portion of the body of water. After January 1, 1975, the ordinance must be consistent with the provisions of this chapter and rules of the commissioner under this chapter.

Subd. 3. Prior ordinances invalid without approval.

A surface use zoning ordinance adopted under subdivisions 2 to 5 by a local governmental unit after May 25, 1973, is invalid unless it is approved by the commissioner.

Subd. 4. Approval of ordinances.

A proposed surface use zoning ordinance must be submitted to the commissioner for review and approval before adoption. The commissioner must approve or disapprove the proposed ordinance within 120 days after receiving it. If the commissioner disapproves the proposed ordinance, the commissioner must return it to the local governmental unit with a written statement of the reasons for disapproval.

Subd. 5. County regulatory authority.

A county board may:

(1) regulate and police public beaches, public docks, and other public facilities for access to a body of water, except:

(i) regulations are subject to subdivision 6;

(ii) a county board may not regulate state accesses; and

(iii) a municipality may by ordinance preempt the county from exercising power under this subdivision within its jurisdiction;

(2) regulate the construction, configuration, size, location, and maintenance of commercial marinas and their related facilities including parking areas and sanitary facilities in a manner consistent with other state law and the rules of the commissioner of natural resources, the Pollution Control Agency, and the commissioner of health, and with the applicable municipal

building codes and zoning ordinances where the marinas are located;

(3) regulate the construction, installation, and maintenance of permanent and temporary docks and moorings in a manner consistent with state and federal law, permits required under chapter 103G, and sections [86B.111](#) and [86B.115](#);

(4) except as provided in subdivision 6, regulate the type and size of watercraft allowed to use the body of water and set access fees;

(5) subject to subdivision 6, limit the types and horsepower of motors used on the body of water;

(6) limit the use of the body of water at various times and the use of various parts of the body of water;

(7) regulate the speed of watercraft on the body of water and the conduct of other activities on the body of water to secure the safety of the public and the most general public use; and

(8) contract with other law enforcement agencies to police the body of water and its shore.

Subd. 6. Public access restrictions.

The county board must allow the same types and sizes of watercraft and horsepower of motors to access and enter the lake or water body as are generally allowed to be operated on the lake or water body. Special use exceptions that are not dependent on lakeshore or property ownership may be granted by permit.

Subd. 7. County acquisition of public access.

A county board may acquire by purchase, gift, or devise land for public access to a lake or stream and may improve the land as a park or playground if the land is less than ten acres and is contiguous to the meander line of a navigable lake or stream wholly or partly within the county and not entirely within the corporate limits of a city.

Subd. 8. Advisory assistance.

The county board may invite any municipal council or town board or the soil and water conservation district board of supervisors or watershed district board of managers to designate a representative to advise and consult with the county board on water use regulation and improvement.

Subd. 9. Watercraft use rules for local waters.

(a) On request of a county, city, or town, the commissioner may, after determining it to be in the public interest, establish rules relating to the use of watercraft on waters of this state that border upon or are within, in whole or in part, the territorial boundaries of the governmental unit.

(b) The rules shall be established in the manner provided by sections [14.02](#) to [14.62](#), but may not be submitted to the attorney general nor filed with the secretary of state until first approved by resolutions of the county boards of a majority of the counties affected by the proposed rules.

(c) The rules may restrict:

(1) the type and size of watercraft and size of motor that may use the waters affected by the rule;

(2) the areas of water that may be used by watercraft;

(3) the speed of watercraft;

- (4) the times permitted for use of watercraft; or
- (5) the minimum distance between watercraft.

(d) When establishing rules, the commissioner shall consider the physical characteristics of the waters affected, their historical uses, shoreland uses and classification, and other features unique to the waters affected by the rules.

(e) The commissioner shall inform the users of the waters of the rules affecting them at least two weeks before the effective date of the rules by distributing copies of the rules and by posting of the public accesses of the waters. The failure of the commissioner to comply with this paragraph does not affect the validity of the rules or a conviction for violation of the rules.

(f) The cost of publishing rules and of marking and posting waters under this subdivision shall be paid by the counties affected by the rules, as apportioned by the commissioner.

(g) Regulations or ordinances relating to the use of waters of this state enacted by a local governmental unit before January 1, 1972, shall continue in effect until repealed by the local governmental unit or superseded by a rule of the commissioner adopted under this subdivision.

History: 1990 c 391 art 9 s 10

86B.211 WATER SAFETY RULES.

The commissioner shall adopt rules that relate to:

- (1) the application for, form, and numbering of watercraft licenses;
- (2) the size, form, reflectorized material, and display of watercraft license numbers, which must comply with the requirements of the federal watercraft numbering system;
- (3) placement and regulation of docks, piers, buoys, mooring or marking devices, and other structures in the waters of this state;
- (4) rules of the road for watercraft navigation;
- (5) standards for equipment used in the towing of persons on water skis, aquaplanes, surfboards, saucers, and other devices;
- (6) standards for lights, signals, fire extinguishers, bilge ventilation, and lifesaving equipment;
- (7) standards of safe load and power capacity;
- (8) accounting, procedural, and reporting requirements for county sheriff;
- (9) designation of swimming or bathing areas;
- (10) standards of safety for watercraft offered for rent, lease, or hire;
- (11) the use of surface waters of this state by watercraft as provided and in accordance with section 86B.205, subdivision 9, paragraphs (c) and (d), including:
 - (i) standards and criteria for resolving conflicts in the use of water surfaces by watercraft;
 - (ii) procedures for dealing with problems involving more than one local governmental unit;
 - (iii) procedures for local enforcement; and
 - (iv) procedures for enforcing the restrictions in section 86B.205, subdivision 9, paragraph (c); and
- (12) other rules determined by the commissioner to be necessary to implement the provisions of this chapter.

History: 1990 c 391 art 9 s 11; 1991 c 259 s 10

LAKE IMPROVEMENT DISTRICTS

103B.551 BOARD OF DIRECTORS.

Subdivision 1. Membership.

After a lake improvement district is established, the county board, joint county authority, or commissioner that established the district shall appoint persons to serve as an initial board of directors for the district. Subsequent board members must be elected by persons owning property in the district at the annual meeting of the district. The number, qualifications, terms of office, and method of election, removal, and filling of vacancies of directors shall be as provided in the order creating the board of directors. The initial and all subsequent boards of directors must include persons owning property within the district, and a majority of the directors must be residents of the district.

Subd. 2. Compensation.

The directors shall serve with compensation as determined by the property owners at the annual meeting and may be reimbursed for their actual expenses necessarily incurred in the performance of their duties in the manner provided for county employees.

Subd. 3. Powers.

County boards, joint county authorities, statutory and home rule cities, and towns may, by order, delegate the powers in this section to the board of directors of a district to be exercised within the district. Programs and services undertaken must be consistent with the statewide water and related land resources plan prepared by the commissioner of natural resources and with regional water and related land resources plans. A body of water may not be improved by using authority granted under this section unless the public has access to some portion of the shoreline. County boards, joint county authorities, statutory and home rule cities, and towns may delegate their authority to a district board of directors to:

- (1) acquire by gift or purchase an existing dam or control works that affects the level of waters in the district;
- (2) construct and operate water control structures that are approved by the commissioner of natural resources under section [103G.245](#);
- (3) undertake projects to change the course current or cross section of public waters that are approved by the commissioner of natural resources under section [103G.245](#);
- (4) acquire property, equipment, or other facilities, by gift or purchase to improve navigation;
- (5) contract with a board of managers of a watershed district within the lake improvement district or the board of supervisors of a soil and water conservation district within the district for improvements under chapters 103C and 103D;
- (6) undertake research to determine the condition and development of the body of water and the water entering it and to transmit the results of the studies to the Pollution Control Agency and other interested authorities;
- (7) develop and implement a comprehensive plan to eliminate water pollution;
- (8) conduct a program of water improvement and conservation;
- (9) construct a water, sewer, or water and sewer system in the manner provided by section [444.075](#) or other applicable laws;
- (10) receive financial assistance from and participate in projects or enter into contracts

with federal and state agencies for the study and treatment of pollution problems and related demonstration programs;

(11) make cooperative agreements with the United States or state government or other counties or cities to effectuate water and related land resource programs;

(12) maintain public beaches, public docks, and other public facilities for access to the body of water;

(13) provide and finance a government service of the county or statutory or home rule city that is not provided throughout the county or, if the government service is provided, the service is at an increased level within the district; and

(14) regulate water surface use as provided in sections [86B.205](#), [103G.605](#), and [103G.621](#).

History: [1990 c 391 art 2 s 40](#); [1996 c 385 art 2 s 7](#); [2000 c 396 s 3](#)

PARK DISTRICTS

398.08 GENERAL POWERS.

Park districts shall have all the rights, powers, privileges, and immunities of a municipal corporation at common law and they shall be subject to the duties of a municipal corporation at common law. Except as otherwise limited in this chapter they shall have perpetual succession, may sue and be sued, may use a corporate seal, may acquire by lease, purchase, gift, condemnation, or otherwise such real and personal property as the purposes of the board may require and may hold, manage, control, sell, convey, lease or otherwise dispose of such property or its interests therein. The board shall have full authority to exercise all the powers of the district, to make all necessary or desirable contracts, to procure public liability and other insurance protection as may be necessary or desirable, to hire and employ help and assistance as its needs require, to exercise the power of eminent domain, to enact ordinances, and to declare that the violation thereof shall be a penal offense and to prescribe the penalties thereof, not to exceed a fine of \$100, or imprisonment in a statutory city or county jail for a period of not more than 90 days, or both, and in either case the cost of prosecution may be added to the penalties imposed. The board shall have full power and authority to acquire and establish parks and to operate, maintain, protect, improve and preserve a park system and to conduct a recreational program in its parks.

History: [1955 c 806 s 8](#); [1973 c 123 art 5 s 7](#)

398.09 SPECIFIC POWERS. (Subd. (a) only).

Park district boards in addition to the foregoing general powers shall have these specific powers:

(a) The power to regulate by ordinance the use of the waters of any lake lying wholly within a park established under this chapter and the use of any lake shore which is within a park established under this chapter and the waterfront immediately abutting such lake shore for not to exceed 300 feet therefrom, by all persons, including persons boating, swimming, fishing, skating, or otherwise, in, upon, or about said lake, lake shore, and abutting waterfront, subject to regulation by the state of Minnesota.

See MN Stats. for remainder of section

History: [1955 c 806 s 9](#); [1957 c 160 s 1](#); [1973 c 123 art 5 s 7](#); [1984 c 654 art 2 s 127](#); [1986 c](#)

444; 2001 c 44 s 4

CITIES AND TOWNS

459.20 AUTHORITY OVER PUBLIC WATERS.

The governing body of any home rule charter or statutory city or town in the state has, with respect to any body of water situated wholly within its boundaries, all the powers to improve and regulate the use of such body of water subject to section 86B.205, subdivision 6, as are conferred on county boards by sections 86B.205 and 103F.801, and to establish and administer lake improvement districts under sections 103B.501 to 103B.581. With respect to any body of water situated wholly within the contiguous boundaries of two or more home rule charter or statutory cities or towns or any combination thereof, the city councils and town boards may, under the provisions of section 471.59, jointly exercise such powers to improve and regulate the use of the body of water subject to section 103F.751, as are conferred on county boards by sections 86B.205 and 103F.801, and to establish and administer lake improvement districts as provided under sections 103B.501 to 103B.581, provided that no home rule charter or statutory city or town may establish and administer a lake improvement district or exercise any of the powers granted in this section if a lake improvement district covering the same territory has been created by a county board under sections 103B.501 to 103B.581. References in sections 86B.205, 103B.501 to 103B.581, and 103F.801 to the county board shall be construed to refer to the governing body of a home rule charter or statutory city or the board of supervisors of a town.

History: 1973 c 123 art 5 s 7; 1973 c 702 s 24; 1975 c 311 s 1; 1978 c 726 s 17; 1986 c 439 s 5; 1986 c 443 s 16,17; 1990 c 391 art 8 s 46

471.59 JOINT EXERCISE OF POWERS. (Subd. 1 only).

Subdivision 1. Agreement.

Two or more governmental units, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised. The agreement may provide for the exercise of such powers by one or more of the participating governmental units on behalf of the other participating units. The term "governmental unit" as used in this section includes every city, county, town, school district, independent nonprofit firefighting corporation, other political subdivision of this or another state, another state, federally recognized Indian tribe, the University of Minnesota, the Minnesota Historical Society, nonprofit hospitals licensed under sections 144.50 to 144.56, rehabilitation facilities and extended employment providers that are certified by the commissioner of employment and economic development, day and supported employment services licensed under chapter 245D, and any agency of the state of Minnesota or the United States, and includes any instrumentality of a governmental unit. For the purpose of this section, an instrumentality

of a governmental unit means an instrumentality having independent policy-making and appropriating authority.

See MN Stats. for remainder of section

History:

1943 c 557; 1949 c 448 s 1-3; 1961 c 662 s 1,2; 1965 c 744 s 1-3; 1973 c 123 art 5 s 7; 1973 c 541 s 1; 1975 c 134 s 1,2; 1980 c 532 s 2; 1982 c 507 s 27; 1983 c 342 art 8 s 15; 1984 c 495 s 1; 1986 c 465 art 2 s 15; 1990 c 572 s 14; 1991 c 44 s 3; 1996 c 412 art 3 s 35; 1996 c 464 art 1 s 1; 1996 c 471 art 3 s 39; 1997 c 203 art 5 s 24; 1998 c 397 art 11 s 3; 1999 c 214 art 2 s 17; 2001 c 7 s 78; 1Sp2003 c 14 art 7 s 83; art 11 s 11; 2005 c 9 s 2; 2006 c 232 s 3; 2007 c 43 s 1; 2009 c 59 art 4 s 6; art 5 s 14; 2010 c 193 s 1; 2010 c 347 art 1 s 26; 2013 c 108 art 9 s 12

WATER SURFACE USE WORKSHEET

APPLICANTS FOR WATER SURFACE USE ORDINANCES ARE REQUIRED BY MINN. RULE **6110.3600** TO SUPPLY THE FOLLOWING INFORMATION REGARDING THE WATER BODY TO BE REGULATED. YOU MAY USE THIS FORM OR SEPARATE SHEETS TO PROVIDE THE NECESSARY INFORMATION. **(PLEASE NOTE ANY INFORMATION THAT IS NOT RELEVANT.)**

1. Physical Characteristics

- a. Size - normal surface acreage, if available, or the basin acreage listed on the DNR Web Page or in the Division of Waters Bulletin No. 25 "An Inventory of Minnesota Lakes."

surface acres (or)

basin average

- b. Crowding potential - expressed as a ratio of water surface area to length of shoreline.

surface acres:

miles of shoreline

- c. Bottom topography and water depth (deepest & average) (available from DNR regional or area fisheries headquarters).

- d. Shore soils and bottom sediments (available from DNR regional or area fisheries headquarters).

- e. Aquatic flora and fauna (available from DNR regional or area fisheries headquarters).

f. Water Circulation

For Lakes: the existence and locations of strong currents, inlets, and large water level fluctuations.

For Rivers and Streams: velocity and water level fluctuations.

- g. Natural and artificial obstructions or hazards to navigation, including but not limited to points, bars, rocks, stumps, weed beds, docks, piers, dams, diving platforms, and buoys. 14

- h. Regional relationship – the locations and the level of recreational use of other water bodies in the area.

2. Existing development.

- a. Private – to include number, location, and occupancy characteristics of permanent homes, seasonal homes, apartments, planned unit developments, resorts, marinas, campgrounds, and other residential, commercial, and industrial uses.

- b. Public – to include type, location, size, facilities, and parking capacity of parks, beaches, and watercraft launching facilities.

3. Ownership of shoreland - to include the location and managing governmental unit of shoreline in federal, state, county, or city ownership as well as private semi-public or corporate lands.

4. Public regulations and management – to include federal, state or local regulations and management plans and activities having direct effects on watercraft use of surface waters.

5. History of accidents which have occurred on the surface waters (available from sheriff's office).

6. Watercraft use – to include information obtained in the morning, afternoon and evening on at least one weekday and one weekend day, concerning the number of types of watercraft in each of the following categories:

- a. Kept or used by riparians.

- b. Rented by or gaining access through resorts or marinas.
 - c. Using each public watercraft launching facility.
 - d. In use on the waterbody.
7. Conflict perception and control preferences – to include opinions, gained by surveys or through public meetings or hearings of riparians, transients, local residents, and the public at large.

IN ADDITION TO THE ABOVE, APPLICANTS ARE ALSO REQUIRED TO PROVIDE:

1. *The information requested in Minn. Rule **6110.3600**, portrayed on a map to the extent reasonable.*
2. *A statement evaluating whether the information reveals significant conflicts and explaining why the particular controls proposed were selected.*
3. *The proposed ordinance.*
4. *A description of public hearings held concerning the proposed controls, including an account of the statement of each person testifying.*

NAME (TYPE OR PRINT) _____

SIGNATURE _____

TITLE OF PERSON
COMPLETING FORM _____

PHONE / E-MAIL _____

Water Surface Use Ordinance Checklist

Water Surface Use Ordinance Checklist

Required Documents	Check if complete
Letter of Intent	
Proposed Ordinance	
Worksheet	
Map	
Public Notice	
Public Feedback	
Joint Agreement (if applicable)	
Signed Ordinance (when approval process is complete)	

Return completed documents to:

Adam Block
Minnesota Department of Natural Resources

State Boating Law Administrator
500 Lafayette Road
St. Paul, Minnesota 55155-4047

Or email to: Adam Block at adam.block@state.mn.us

SAMPLE WATER SURFACE USE ORDINANCE

STATE OF MINNESOTA
COUNTY OF _____
(CITY OR TOWN OF _____)
ORDINANCE NO. _____

AN ORDINANCE REGULATING THE SURFACE USE OF (specify body of water).

Be it ordained and enacted by the (County Board of Commissioners, City Council or Town Board), State of Minnesota, that these amendments following, by this act, hereby replace and nullify those like numbered clauses now existing and a part of (County, City or Town) Ordinance No. _____, or are newly enacted sections which, upon their enactment, become a part of (County, City or Town) Ordinance No. _____.

Section 1: PURPOSE, INTENT AND APPLICATION: As authorized by Minnesota Statutes 86B.201, 86B.205, and 459.20, AND Minnesota Rules 6110.3000 - 6110.3800 as now in effect and as hereafter amended, this Ordinance is enacted for the purpose and with the intent to control and regulate the use of the waters of _____ in (County, City or Town), Minnesota, said bodies of water being located entirely within the boundaries of (County, City or Town), to promote its fullest use and enjoyment by the public in general and the citizens of (County, City or Town) in particular, to insure safety for persons and property in connection with the use of said waters; to harmonize and integrate the varying uses of said waters; and to promote the general health, safety and welfare of the citizens of (County, City or Town), Minnesota.

Section 2: DEFINITIONS: Terms used in this ordinance related to boating are defined in M.S. § 86B.005.

Section 3: SURFACE ZONING OF (specify body of water) BY RESTRICTING SPEEDS DURING CERTAIN HOURS *(items given are samples only to assist in drafting an ordinance – alternate restrictions may also be appropriate):*

- (a) During the hours of 9:00 a.m. and 6:00 p.m. on each and every day of the week, watercraft shall be subject to a 40 MPH speed limit.
- (b) During the hours of 6:00 p.m. and 9:00 a.m. on the following day, on each and every day of the week, no watercraft shall be operated in excess of fifteen (15) miles per hour.
- (c) Slow-no wake speed 24 hours per day when the lake level on Lake _____ exceeds _____ feet as measured at the gauge located at _____. Such restrictions shall become effective upon publication in a local daily newspaper as a news item or on a specified date, whichever is later. All public watercraft accesses shall be posted prior to and during the time restrictions are in place. In addition, notice of said restrictions shall also be posted at the _____

(Courthouse / City Hall).

When high water levels have subsided and have remained below an elevation of _____ feet above mean sea level for three (3) consecutive days, said restrictions shall be promptly removed.

Section 4: ENFORCEMENT*: The Primary responsibility for enforcement of this ordinance shall rest with the _____. This, however, shall not preclude enforcement by other licensed peace officers.

*NOTE: If the local unit of government that is doing the ordinance does not have any law enforcement capability, you must contact the sheriff's department prior to starting any work on the ordinance to make sure they are willing and able to be the primary agency to enforce any restrictions. If you are a city that has a police department, they need to be included as a primary enforcement agency, as well. State agencies, including the DNR, are generally not available for the primary enforcement of local ordinances.

Section 5: EXEMPTIONS: All authorized Resource Management, Emergency and Enforcement Personnel, while acting in the performance of their assigned duties are exempt from the foregoing restrictions.

Section 6: NOTIFICATION: It shall be the responsibility of the (County, City or Town) to provide for adequate notification of the public, which shall include placement of a sign at each public watercraft access outlining essential elements of the ordinance, as well as the placement of necessary buoys and signs.

Section 7: PENALTIES: Any person who shall violate any of the provisions of this Ordinance shall be guilty of a _____.

Section 8: EFFECTIVE DATE: This Ordinance shall be in effect from and after the date of its passage and publication.

Passed by the (County Board of Commissioners, City Council or Town Board) on this _____ day of _____, 20____.

Sample Joint Powers Agreement

AGREEMENT made this ____ day of _____ (Month and year) between the City of _____ (City, Township or County and State) and _____ (City, Township or County and State) pursuant to Minnesota Statute Section 471.59.

I. GENERAL PURPOSE. The general purpose of this agreement is to regulate the speed and wake of watercraft utilizing that portion of the _____ (Body of Water and location) all for the safety and general welfare of the public utilizing said waters.

II. METHODS. The Cities of _____ and _____ may hereafter adopt such ordinances and regulations as they deem fit to implement the general purposes referred to herein. Any such ordinances adopted by the Cities shall be identical in nature so as to provide uniformity in enforcement and regulation.

III. ENFORCEMENT

Subd. A. The City of _____ shall be solely responsible for notifying the public by official notification, posting and buoying all areas to be regulated as described herein.

Subd. B. The City and all appropriate law enforcement agencies are authorized and entitled to enforce the provisions of any regulations or ordinances adopted pursuant to this agreement.

IV. TERMINATION. Either party may terminate this agreement by giving ____ days of notice to the other party of its intention to do so. Furthermore, this Agreement shall automatically terminate if the ordinances adopted pursuant to this agreement are modified to such a degree that they are substantially different in their terms or in the event State Law supercedes local authority to regulate the activities referred to herein.

In witness whereof, the parties have signed this Agreement the day and year first above written.

(City, Township or County) of _____

By _____
Its Mayor

(City, Township or County) of _____

By _____
(Title)

(Title)