

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison WI 53707-7921

Tony Evers, Governor
Preston Cole, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



03/31/2022

Town of Lyndon
Sheboygan County

Town of Lyndon
W6081 County Road N
Plymouth, WI 53073

Subject: *Lake Ellen – Town of Lyndon*
Boating Ordinance Review

Dear Town of Lyndon Officials:

Thank you for submitting a revised and updated version of the Town of Lyndon/Lake Ellen Boating Ordinances.

Wisconsin Statute 30.77(3)(d) requires that local regulations pertaining to the equipment, use or operation of boats on inland lakes shall be subject to advisory review and shall be submitted to the Department at least 60 days prior to final action. The purpose of the ordinance advisory review is to evaluate the proposed ordinance and identify any inconsistencies within chapter 30.77. The review also serves to provide consideration for all citizens potentially impacted by the proposed ordinance and to give an opinion or suggest changes to the ordinance to insure the public's right to recreate on Wisconsin's waterways are not significantly or unnecessarily impacted.

In the attached Condition Report you have met the standard identified in ss 30.77 (3)(a) by providing justification for the increased local regulation on several boating activities on the waters of Lake Ellen. The Condition Report has served to identify both a Public Safety and a Natural Resource concern on the waters of Lake Ellen

Upon review of the attached ordinance, we find it to be consistent with Wisconsin Statutes and adopted Department rules. As outlined in s. 30.77(4), Wis. Stats., no ordinance is valid until it is prominently posted at all access points within your jurisdiction and until a signed copy is received by this office including proof of publication.

The posting requirements of NR 5.15, Wis. Adm. Code are below:

Posting requirements. The posting requirements for local authorities under s. 30.77 (4), Stats., shall be a sign with a minimum of 3 inch lettering stating "Local Ordinance" posted at each public landing. The sign shall list, in letters with a minimum height of one inch, a summary, synopsis, or outline of those regulations more restrictive than state law, or shall contain a map made of a durable material showing those areas with local restrictions, or both, including but not limited to speed limits, water ski hours and personal watercraft restrictions, if any.

Please contact me at (262)903-9399, should you have any questions regarding this review.

Sincerely,

Jason Roberts

Recreational Boating Program
WI - DNR Law Enforcement

Town of Lyndon, Sheboygan County, Wisconsin

**AN ORDINANCE REPEALING AND RECREATING
CHAPTER 8 OF THE TOWN OF LYNDON MUNICIPAL CODE
REGARDING BOATING REGULATIONS**

WHEREAS, there exists entirely within the boundaries of the Town of Lyndon an inland lake known as Lake Ellen, which is entirely within the jurisdiction of the Town of Lyndon; and

WHEREAS, in the interest of public health, safety, or welfare, including the public's interest in preserving the state's natural resources, the Town of Lyndon has the authority to enact ordinances applicable to waters within its jurisdiction if the ordinances are not contrary to or inconsistent with Chapter 30, Wis. Stats., and they relate to the equipment, use, or operation of boats or to any activity regulated by ss. 30.60 to 30.71, Wis. Stats.; and

WHEREAS, the Town of Lyndon submitted a draft of this ordinance to the Wisconsin Department of Natural Resources for its advisory review at least 60 days prior to passage, pursuant to s. 30.77(3)(d), Wis. Stats.; and

WHEREAS, the Town Board, after taking into consideration public comments and any suggested changes of the DNR, determines that adopting the following boating regulations would promote the public health, safety and welfare, including the public's interest in preserving the state's natural resources;

NOW, THEREFORE, the Board of Supervisors of the Town of Lyndon, Sheboygan County, Wisconsin, does hereby ordain as follows:

Section 1. Repealing and Recreating Code. Chapter 8 ("Boating Regulations") of the Town of Lyndon Municipal Code (and any conflicting or inconsistent ordinances or regulations) is repealed in its entirety and recreated to read as set forth on the attachment.

Section 2. Severability. Should any portion of this Ordinance or the affected Code Sections be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder shall not be affected.

Section 3. Effective Date. Upon adoption, this Ordinance shall take effect the day after publication or posting.

Enacted: June 8, 2022

TOWN OF LYNDON

By: 

David Roll, Town Chair

CLERK'S CERTIFICATE OF ENACTMENT

I hereby certify that the foregoing Ordinance was duly enacted by the Town of Lyndon Board of Supervisors on the date indicated above.

Dated: June 8, 2022


Rhonda J. Klatt, Clerk/Treasurer

Published/Posted on June 13, 2022 by RJK

R:\CLIENT\08328\00001\00191658.DOC

**TOWN OF LYNDON
CODE OF ORDINANCES**

CHAPTER 8: BOATING REGULATIONS

8.01 Applicability and Enforcement. The provisions of this Chapter apply to the waters of Lake Ellen and shall be enforced by the Town's contracted law enforcement (currently the Village of Cascade Police Department).

8.02 Intent. The intent of this Chapter is to provide safe and healthful conditions for the enjoyment of aquatic recreation consistent with the public rights and interests and the capability of the water resources.

8.03 State Boating and Safety Laws Adopted. State boating laws as found in ss. 30.50 to 30.71, Wis. Stats., (as may be amended) are adopted herein by reference.

8.04 Penalties. Wisconsin state boating penalties as found in s 30.80, Wis. Stats., and deposits established in the Uniform Deposit and Bail Schedule established by the Wisconsin Judicial Conferences, are hereby adopted by reference except that all references to fines amended to forfeitures and all references to imprisonment are deleted.

8.05 Definitions.

(1) "Waterski" means a boat towing a person using water skis, aquaplane, innertube or similar device.

(2) "High Water" is a water level at or exceeding the definition currently set by the Town of Lyndon Sanitary District No. 1.

(3) "Transition speed" is the speed at which a boat is operating at greater than slow -- no wake speed, but not fast enough so that the boat is planing.

8.06 Slow-No-Wake Operation Required. No person shall operate a motorboat at a speed of greater than slow-no-wake during the following periods:

(1) Daily. Between the hours of 6:00 PM and 10:00 AM daily.

(2) Sundays. Between the hours of 12:00 noon and 3:00 PM on Sundays.

(3) High Water. When the water level exceeds the high water bench mark located at the public boat landing on Ellen View Road. The slow-no-wake high water restriction will be posted with signage and flags at the kiosk which is the public access point at Ellen View Road.

8.07 Water Skiing, Fast Boating, Towing. The traffic pattern for fast boating (over 10 mph), water skiing and towing on Lake Ellen shall be counterclockwise and shall be conducted in the

center of the lake, within the confines of the buoys.

8.08 Personal Watercraft. No person shall operate a personal watercraft faster than slow-no-wake speed.

8.09 Enhanced Wakes – Prohibited Equipment and Prohibited Operation.

(1) No person may use or employ water sacks, ballast tanks, submersible wings or any other device which causes a boat to operate in a bow-high manner, or which increases or enhances a boat's wake.

(2) No person may operate a boat in an artificially bow-high manner in order to increase or enhance the boat's wake. Such prohibited operation shall include wake enhancement by use of ballast, mechanical hydrofoils, uneven loading or operation at transition speed (the speed at which the boat is operating at greater than slow-no-wake speed, but not fast enough so that the boat is planing).

8.10 Posting Requirements. The Town Board of the Town of Lyndon shall place and maintain a synopsis of this ordinance at all public access points within the jurisdiction of the Town pursuant to the requirements on NR 5.15, Wis. Adm. Code.

[Include standard Severability, Effective Date and Repeal of Conflicting Provisions in the adopting ordinance.]

Condition report regarding enhance wakes on Lake Ellen as provided by the Lake Ellen Association

Enhanced wakes result from boats capable of taking on thousands of pounds of lake water or other ballast for the purpose of increasing their weight. The boats then operate in a bow high, stern low manner, creating large wakes so people can surf behind the boats without being tethered to them. The weight can also be accomplished by taking on ballast such as rocks placed in the back of boats, moving people to the back of the boat and use of a mechanical hydrofoil which is a flap that diverts water to make a bigger wake. We are seeking to ban only the enhanced wakes, not any type of boat. The reasons to ban enhanced wakes (not the boats capable of enhanced wakes) on Lake Ellen fall into two categories: maintaining the health of Lake Ellen and the safety of those using Lake Ellen.

Maintaining the health of Lake Ellen

The DNR again this summer stated that Lake Ellen is exceptionally healthy.² The most recent official DNR survey of the lake took place in 2019 and was followed by an informal survey on August 24, 2021. In 2019 water, fish and plants were sampled at 266 data points mapped on the lake which provided the data to determine Lake Ellen is very healthy. Its health is in part due to proactive efforts by the Lake Ellen Association (LEA) such as staffing the public landing with a boat inspector to educate boaters on the importance of not transporting water, plants or animals from lake to lake. This person is trained in aquatic invasive species (AIS) and is paid in part by a DNR grant and the balance is paid by LEA. LEA has built and/or purchased nine fish cribs recently to provide habitat for fish. Both the DNR and LEA stocked a total of 1224 fish in Lake Ellen in 2020. We hand-pull invasive weeds such as Curly Leaf Pondweed and Eurasian Milfoil. We use a secchi disk every eight days when the satellite passes over in the summer to measure the water clarity. This is reported to the DNR. In addition, we take water samples and water temperature at 3 foot intervals during the summer months. We apply chemicals to these samples and submit the data to the DNR, primarily to measure dissolved oxygen in the lake which is another measure of the lake's health. In both 2020 and 2021 we have dislodged and removed cattail bogs to improve water flow through the lake.

The lake's health will be in jeopardy if enhanced wakes are not banned on Lake Ellen.

The lake benefits the community as a whole

While this can be difficult to measure, our boat inspector communicated directly with 320 boaters entering or leaving Lake Ellen between the May fishing season opener and Labor Day, 2021.³ He worked 16 hours/week during this time period, primarily on weekends. When considering his time, one can quickly ascertain that Lake Ellen provides enjoyment and recreation to a much broader population. That population includes those who use kayaks, stand up paddle boards, canoes, sailboats, windsurfing board and other small water craft, those who swim in the lake and those who waterski and tube. At our August LEA meeting, we polled those present and the overwhelming majority were in favor of banning enhanced wakes. It was suggested that we follow up with an email survey which was sent to our members and those who have expressed an interest in Lake Ellen. The outcome was 32 in favor of the ban and two against the ban. The lake users 'and the community's safety and enjoyment will be in jeopardy if enhanced wakes are not banned on Lake Ellen.

The ways in which enhanced wakes negatively affect are:

- Propwash from propellers on boats operating in a bow-high 40 manner reaches down 16', stirring up sediment which releases phosphorus & nutrients, leading to algae blooms⁴
- Propwash stirs up the water, increasing the temperature at lower levels, changing the balance and ecosystem of the lake⁴
- Propwash can scour the lake floor and uproot plants which are needed for fish habitat⁴
- Propwash can scour the lake floor and dislodge AIS plants, allowing them to re-root and spread⁴
- Disturbed sediment decreases the water's clarity, making it difficult for juvenile fish (small stocked fingerlings and naturally reproduced fish) to feed, swim and escape predators¹
- Disturbed sediment makes it difficult for light to reach the lake floor decreasing plant growth which is needed for fish habitat¹
- A wake surfing boat can turn over the bottom of a 200-acre lake in just 22 hours of boating time.¹
- Enhanced wakes are dangerous to swimmers, children playing along the shore, small craft users, water skiers and tubers
- Enhanced wakes result in shoreline erosion, disturbing the shoreline ecosystems and costing property owners in repairs

- Studies differ in how far boats need to be from shore to not erode shorelines. The boating industry has stated 200' and a university study stated 1000' is necessary to avoid most erosion⁴
- At this time, boat makers have not yet developed a means to completely empty the bladders of all water, resulting in microscopic AIS plants and animals such as zebra mussels to be transported from lake to lake⁴

We seek to follow the same logic used by our neighboring lakes in banning enhanced wakes. Common sense tells us that boaters may target Lake Ellen for enhanced wake sports if we aren't proactive and ban the large wakes now before they become common place, harming the lake and its users. Lake Ellen is a small lake, unable to handle such large wakes. The lake's acreage at least 200' from shore and at least 16' deep is colored on the accompanying map. We are asking to follow the logic in this document and that used by our neighboring lakes to create this ordinance for the good of the lake, its users and the community at large.

Thank you for your consideration.

¹ <https://starjournalnow.com/2021/08/20/living-on-the-lake-august-issue-new-threat-to-northwoods-lakes/>

² email from Heidi Bunk, Lakes Biologist, Wisconsin Department of Natural Resources

³ data entered into DNR website <https://dnrx.wisconsin.gov/swims/myLakeAISProjects.html?hideback=Y>

⁴ <https://www.sierraclub.org/minnesota/blog/2021/03/wake-boats-land-10000-lakes>

