

STATE OF WISCONSIN TOWN OF MUKWONAGO WAUKESHA COUNTY

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 78 OF THE
MUNICIPAL CODE OF THE
TOWN OF MUKWONAGO CODE BY REPEALING AND RECREATING SECTION 78.9(3)(c)
ENTITLED MAXIMUM SPEED RESTRICTIONS ON LOWER PHANTOM LAKE

Whereas, the Town of Mukwonago has within its corporate boundaries a beautiful spring fed lake known as Lower Phantom Lake; and

Whereas, Lower Phantom Lake is a 433 acre impoundment created and controlled by a mill dam on the Mukwonago River; and

Whereas, Lower Phantom Lake consists largely of marsh land; and

Whereas, Lower Phantom Lake is heavily used, mainly by the angler and wildlife enthusiast, and its greatest attribute is as a fishery; and

Whereas, the Phantom Lakes Management District was given the power to protect and monitor the ecosystem, and it is their conclusion that there should be laws that govern the use of the lake.

WHEREAS, on July 11, 1988, July 13, 1992, October 21, 2005, April 27, 2009 and April 21, 2012 the Town Board adopted ordinances regulating the use of Lower Phantom Lake and Upper Phantom lake respectively; and

NOW, THEREFORE, THE Town Board of the Town of Mukwonago, Waukesha County, Wisconsin, DO ORDAIN AS FOLLOWS:

SECTION 1: Chapter 78 entitled Waterways, section 78.09 entitled "Specific Rules for Lower Phantom Lake", Subsection 78.9(c) entitled "Speed", subsection Section 78-9(c)(1) entitled "Maximum Speed Restrictions" of the Municipal Code of the Town of Mukwonago is hereby repealed and recreated to read as follows:

78.9(c) Speed

- (1) Maximum speed restriction. A speed limit of 40 miles per hour is established on the waters of Lower Phantom Lake. No person shall operate a boat faster than the established speed limit unless pre-approval from the Town of Mukwonago Board has been received and only in conjunction with authorization received under section 78.7(a).**

SECTION 2: SEVERABILITY

Several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinance whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 3: EFFECTIVE DATE

This Ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Dated this ____ day of _____, 2012.

TOWN OF MUKWONAGO

ATTEST:

David Dubey, Town Chairman

Kathy Karalewitz, Clerk

Published or posted this ____ day of _____, 2012.

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Chapter 78

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WATERWAYS*

***Editors note--**The introductory language of Ordinance No. 88-4 adopted July 11, 1988 regarding Lower Phantom Lake, and Ordinance No. 92-5, adopted July 13, 1992, regarding Upper Phantom Lake, Spring Lake and Willow Spring Lake, and codified in this chapter, provided as follows:

LOWER PHANTOM LAKE

Whereas, the Town of Mukwonago has within its corporate boundaries a beautiful spring fed lake known as Lower Phantom Lake; and

Whereas, Lower Phantom Lake is a 433 acre impoundment created and controlled by a mill dam on the Mukwonago River; and

Whereas, Lower Phantom Lake consists largely of marsh land; and

Whereas, Lower Phantom Lake is heavily used, mainly by the angler and wildlife enthusiast, and its greatest attribute is as a fishery; and

Whereas, the Phantom Lakes Management District was given the power to protect and monitor the ecosystem, and it is their conclusion that there should be laws that govern the use of the lake.

Therefore, the Town of Mukwonago, in the best interest of the public health, safety, and welfare, deems it necessary that special regulations be adopted to protect life, property, and environmental quality of Lower Phantom Lake.

UPPER PHANTOM LAKE

Whereas, the Town of Mukwonago has within its corporate boundaries a beautiful spring fed lake known as Upper Phantom Lake; and

Whereas, Upper Phantom Lake is surrounded by year round homes whose occupants enjoy the aesthetic beauty and serenity provided by the view; and

Whereas, Upper Phantom Lake is heavily used by anglers, canoers, sail boaters, sail boarders, boaters, campers, picnickers, and water skiers to such an extent that the watershed suffers from over-use; and

Whereas, the Phantom Lakes Management District was given the power to protect and monitor the ecosystem, and it is their conclusion that there should be laws that govern the use of the lake.

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Therefore, the Town of Mukwonago, in the best interest of the public health, safety, and welfare, deems it necessary that special regulations be adopted to protect life, property, and environmental quality of Upper Phantom Lake.

SPRING LAKE

Whereas, the Town of Mukwonago has within its corporate boundaries a beautiful spring fed lake known as Spring Lake; and

Whereas, Spring Lake is a shallow body of water abundant with aquatic vegetation and supporting fish life; and

Whereas, Spring Lake is heavily used, mainly by the angler and wildlife enthusiast, and its greatest attribute is as a fishery; and

Whereas, the Department of Natural Resources has stated that large portions of Spring Lake are not suited for motor powered boats; and

Whereas, Spring Lake's water quality is suited for swimming: the gradual slope of the basin with a gravel and sandy bottom enhances the swimming potential. Due to the shallowness of Spring Lake at the shoreline, swimmers must travel a substantial distance from the shoreline in order to be able to swim; and

Whereas, the marsh frontage contiguous with the open water of Spring Lake is a prime pheasant and muskrat habitat; and

Whereas, wildlife observation opportunities are ideal as the aesthetic features are rated highly by the department of natural resources.

Therefore, the Town of Mukwonago, in the best interest of the public health, safety, and welfare deems it necessary that special regulations be adopted to protect life, property, and environmental quality of Spring Lake.

WILLOW SPRING LAKE

Whereas, the Town of Mukwonago has within its corporate boundaries a beautiful spring fed lake known as Willow Spring Lake; and

Whereas, Willow Spring Lake is an impoundment of approximately 43 acres situated in an environmentally sensitive area; and

Whereas, the majority of lands adjacent to Willow Spring Lake have Houghton muck soils which exhibit a high erosion potential and wakes created by outboard motors could accelerate the erosion problem; and

Whereas, the most prevalent macrophyte in Willow Spring Lake is myriophyllum sp. (Parrot's Feather). This plant reproduces through fragmentation. Any broken pieces of this plant will sprout and start a new plant. Operation of motor boats through these weed beds will increase weed growth in Willow Spring Lake decreasing the quality of the lake for sailing, swimming, and other open-water activities; and

Whereas, the wetlands surrounding Willow Spring Lake have been classified by the Waukesha County Naturalist, and the survey indicated that the environmental quality of the wetlands around Willow Spring Lake were of exceptional quality and included observations of plant and animal species which would be disturbed by operation of outboard motors. Observation of ospreys, great blue herons, rookeries of little green herons, and pied-billed grebes indicate the importance of maintaining Willow Spring Lake in as natural a state as possible, including minimizing wildlife disturbance by outboard motors; and

Whereas, Willow Spring Lake ice conditions are treacherous throughout the winter as numerous springs, Spring Creek, and the Spring Creek outlet modify ice conditions resulting in weakened ice cover and hazardous conditions for vehicular travel.

Therefore, the Town of Mukwonago, in the best interest of the public health, safety, and welfare, deems it necessary that special regulations be adopted to protect life, property, and environmental quality of Willow Spring Lake.

Cross references--Buildings and building regulations, ch. 14; land division and development, ch. 34; parks and recreation, ch. 46; streets, highways and other public places, ch. 62; zoning, ch. 82.

Sec. 78-1. Intent.

Sec. 78-2. Applicability.

Sec. 78-3. State boating and water safety laws adopted.

Sec. 78-4. Definitions.

Sec. 78-5. Enforcement.

Sec. 78-6. Penalty.

Sec. 78-7. General rules for all waters.

Sec. 78-8. Aquaplanes and parasailing.

Sec. 78-9. Specific rules—For Lower Phantom Lake.

Sec. 78-10. Same—For Upper Phantom Lake.

Sec. 78-11. Same—For Spring Lake.

Sec. 78-12. Same—For Willow Spring Lake.

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Sec. 78-1. Intent.

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

(Ord. No. 92-4, § 1(2.11), 6-8-1992)

Sec. 78-2. Applicability.

The provisions of this chapter shall apply to the waters of Lower Phantom Lake, Spring Lake, Willow Spring Lake, Upper Phantom Lake, Rainbow Spring Lakes, Mukwonago County Park Lakes, the Fox River, the Mukwonago River, Spring Creek, and Jericho Creek within the jurisdiction of the town. The provisions of this chapter shall be enforced by the officers of the water safety patrol unit and police of the jurisdiction of the town.

(Ord. No. 92-4, § 1(2.12), 6-8-1992; Ord. No. 92-5, § 1(2.01), 7-13-1992)

Sec. 78-3. State boating and water safety laws adopted.

Except as otherwise specifically provided in this chapter, the current and future statutory provisions describing and defining regulations with respect to water traffic, boats, boating and related water activities in Wis. Stats. §§ 30.29, 30.50--30.71, 30.81, 23.33(3)(h) and 350.10(1)(i), exclusive of any provisions therein relating to the penalties to be imposed or the punishment for violation of such statutes, are adopted and by reference made a part of this section as if fully set forth herein. Any act required to be performed or prohibited by any current or future statute incorporated herein by reference is required or prohibited by this section. Any future additions, amendments, revisions, or modifications of the statutes incorporated herein are intended to be made part of this section in order to secure uniform statewide regulation of the waterways of the state.

(Ord. No. 92-5, § 1(2.02), 7-13-1992)

Sec. 78-4. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Boat and vessel mean every description of watercraft other than a seaplane on the water, used or capable of being used as a means of transportation on water including sailboards and inflatables.

Designated anchorages means an area of water established and marked as an anchorage by lawful authority.

Motorboat means any boat equipped with propulsion machinery whether in use or not.

Motor vehicle means any kind of device or thing designed or utilized for propulsion or movement using a motor, whether internal combustion design or not, and includes all vehicles which are of any type or kind in any way self-propelled, but is not limited to any automobile, minibike, go-cart, trail bike, all-terrain vehicle, motorcycle, moped, jeep, motor truck or snowmobile.

Operate and use mean:

- (1) When used in reference to a motorboat or vessel, to navigate or employ.
- (2) When used in reference to a motor vehicle, to drive or be in actual physical control of a motor vehicle.

Public access means any access to the water by means of public property.

Shore zone means all surface water within 100 feet of any shore.

Slow-no-wake means that speed at which a boat moves as slowly as possible while still maintaining steering control.

Swimming zone means an authorized area marked by regulatory markers to designate a swimming area.

Waterskiing means the use of waterskis, aquaplane, surfboards, innertubes or any similar device while being towed.

(Ord. No. 92-4, § 1(2.14), 6-8-1992; Ord. No. 92-5, § 1(2.03), 7-13-1992)

Cross References: Definitions generally, § 1-2.

Sec. 78-5. Enforcement.

(a) *Enforcement procedure.* The statutory provisions of Wis. Stats. §§ 66.0109, 66.0113, 66.0114, 30.29, 30.50--30.71 and ch. 799, are adopted and by reference made a part of this section as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this section. Any future amendments, revisions, or modifications of the statutes incorporated herein are intended to be made part of this section in order to secure uniform statewide regulation and enforcement of boating ordinance violations. Further, the town specifically elects to use the citation method of enforcement.

(b) *Issuance of citations.* All sections of this chapter shall be enforced by a town police officer, lake patrol officer, or by the town board or the town board's duly appointed representatives.

(Ord. No. 92-5, § 1(2.10), 7-13-1992)

Sec. 78-6. Penalty.

(a) *State boating and water safety laws and all other violations as set forth in section 78-3.* Any forfeiture for violation of the statutes adopted by reference in section 78-3 shall conform to the forfeiture permitted to be imposed for violation of such statutes as set forth in the Uniform Wisconsin Deposit and Bail Schedule for Conservation, Boating, Snowmobile, and ATV Violations, including any variations or increases for subsequent offenses, which schedule is adopted by reference.

(b) *Local boating laws as set forth in sections 78-7 through 78-12.* Any person over the age of 16 years violating the provisions of this chapter shall be subject to section 1-8.

(Ord. No. 92-5, § 1(2.09), 7-13-1992)

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Sec. 78-7. General rules for all waters.

(a) *Racing prohibited.* No person shall operate a motorboat in a racing speed contest with any other motorboat except as provided in properly regulated races, regattas, sporting events and exhibitions authorized by the town board.

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(b) *Swimming regulations.*

(1) *Swimming from boats.* No person shall swim from any unmanned boat unless such boat is anchored.

(2) *Distance from shore or raft.* Unless in a designated swimming zone no person shall swim more than 150 feet from shore or more than 50 feet from a diving raft unless accompanied by a boat for the protection of the swimmer and as an aid to other boats in determining the location of the swimmer, and such swimmer shall not be more than 50 feet from the accompanying boat.

(3) *Hours limited.* No person shall swim more than 150 feet from the shoreline between sunset and sunrise.

(4) *Swimming zones.* The town board may, by resolution, designate swimming areas and cause such areas to be appropriately marked.

Editors note--The introductory language of Ordinance No. 97-1, adopted July 9, 1997, and codified in subsection (b)(5) of this section, provided as follows:

Whereas, the Town of Mukwonago has within its corporate boundaries a waterway (hereinafter "channel") that connects Upper and Lower Phantom Lake; and

Whereas, said channel is heavily used by anglers, canoeists, and boaters; and

Whereas, said channel is approximately 150 feet in length, and only about 40 feet

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in width; and

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Whereas, people who swim in said channel are at risk of injury from passing watercraft, and they obstruct and create a hazard for said watercraft; and

Whereas, the Town of Mukwonago, in the best interest of the public health, safety, and welfare, deems it necessary that special regulations be adopted regarding the use of said channel,

Now, therefore, the Town Board of the Town of Mukwonago, Waukesha County, State of Wisconsin, DO ORDAIN AS FOLLOWS:

(5) *Swimming, wading, or otherwise loitering in a channel between Upper Phantom Lake and Lower Phantom Lake.* No person shall swim, wade, or otherwise loiter in any way, in the channel between Upper Phantom Lake and Lower Phantom Lake, at any time except as expressly authorized in writing by the Town of Mukwonago Chief of Police. No parent shall allow or fail to prevent their minor child from, swimming, wading or otherwise loitering in any way in the channel between Upper Phantom Lake and Lower Phantom Lake, at any time.

(c) *Waterskiing.* All skiing shall be done in a counter-clockwise pattern. The town board may designate specific drop-off and pick-up areas.

(d) *Littering prohibited.* No person shall deposit, place or throw from any boat, raft, pier, platform, motorized vehicle or similar structure or from or on the adjoining shoreline any cans, papers, bottles, debris, refuse, garbage, solid or liquid waste into the waters or upon the frozen surface.

(e) *Icebound waters.* The following provisions shall apply to icebound waters:

(1) *Speed of vehicles.* The speed of vehicles shall be 15 miles per hour for all vehicles licensed for highway travel.

(2) *Negligent operation.* No person may operate or use a motor vehicle upon the icebound waters in a careless, negligent or reckless manner to endanger his life, property, or person or the life, property or person of another.

(3) *Liability of local government.* All traffic on the icebound inland waters shall be at the risk of the traveler.

(4) *Operation of snowmobiles and all terrain vehicles.* See Wis. Stats. §§ 350.10(1)(i) and 23.33(3)(h).

(f) *Operation of motor vehicles in water prohibited.* Any operation of motor

vehicles in navigable waters is prohibited except as provided in Wis. Stats. § 30.29(3). (Ord. No. 92-5, § 1(2.04), 7-13-1992; Ord. No. 97-1, § 1(2.04(B)(5), 7-9-1997; Ord. No. 2005-5, § 1, 10-19-2005)

Sec. 78-8. Aquaplanes and parasailing.

Aquaplaning and parasailing are not allowed at any time. (Ord. No. 92-5, § 1(2.05), 7-13-1992)

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Sec. 78-9. Specific rules for Lower Phantom Lake.

(a) *Channel ways.* The town board designates the following channel ways to be slow-no-wake areas: The portion of the channel that specifically lies between the two points of land which connect Lower and Upper Phantom Lakes and which extends 100 feet into the lower lake in a northeasterly direction as marked by buoys.

(b) *Water skiing.* The town board prohibits water skiing or towing during the following hours:

- (1) No waterskiing any day before 10:00 a.m.
- (2) No waterskiing after 7:00 P.m. on Monday, Tuesday, Wednesday, Thursday or Friday.
- (3) No waterskiing after 4:00 p.m. on Saturday, Sunday or holidays.

(c) *Speed.*

- (1) *Maximum speed restriction.* A speed limit of 40 miles per hour is established on the waters of Lower Phantom Lake. No person shall operate a boat faster than the established speed limit.
- (2) *Additional restrictions for certain hours.* No person shall operate a boat in excess of slow-no-wake between the hours of 7:00 p.m. and sunset on Monday, Tuesday, Wednesday, Thursday or Friday, and between the hours of 4:00 p.m. and sunset on Saturday, Sunday and holidays. (Ord. No. 92-4, § 1(2.16), 6-8-1992; Ord. No. 2004-6, § 1, 5-27-2004).
- (3) *High Water.* No person shall operate a boat in excess of slow-no-wake when the lake level is higher than 4" as indicated on the gauge at the dam on the Mukwonago River which impounds and creates the Lower Phantom Lake. This slow-no-wake ordinance will be posted at all public access points when in effect. (Ord. 2009-5, § 1, 4/27/09)

REVISED 4/27/09

Sec. 78-10. Same—For Upper Phantom Lake.

(a) *Channel ways.* The town board designates the following channel ways to be slow-no-wake areas: The portion of the channel that specifically lies between the two points of land which connect Lower and Upper Phantom Lakes and which extends 150 feet into the upper lake in a southwesterly direction as marked by buoys.

(b) *Waterskiing.* The town board prohibits waterskiing or towing a water-skier during the following hours:

- (1) No waterskiing any day before 10:00 a.m.
- (2) No waterskiing after 7:00 p.m. on Monday, Tuesday, Wednesday, Thursday or Friday.
- (3) No waterskiing after 4:00 p.m. on Saturday, Sunday or holidays.

(c) *Speed.*

- (1) *Maximum speed restriction.* A speed limit of 40 miles per hour is established on the waters of Upper Phantom Lake. No person shall operate a boat faster than the established speed limit.
- (2) *Additional restrictions for certain hours.* No person shall operate a boat in excess of slow-no-wake between the hours of 7:00 p.m. and sunset on Monday, Tuesday, Wednesday, Thursday or Friday, and between the hours of 4:00 p.m. and sunset on Saturday, Sunday and holidays. (Ord. No. 92-5, § 1(2.06), 7-13-1992; Ord. No. 2004-7, § 1, 5-27-2004)
- (3) *High Water.* No person shall operate a boat in excess of slow-no-wake when the lake level is higher than 4" as indicated on the gauge at the dam on the Mukwonago River which impounds and creates the Lower Phantom Lake. This slow-no-wake ordinance will be posted at all public access points when in effect. (Ord. 2009-4 § 1, 4/27/09)

Sec. 78-11. Same--For Spring Lake.

(a) *Speed restrictions.* No person shall operate a motorboat at a speed in excess of slow-no-wake. (Ord. 2009-8 § 1, 9/16/2009)

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REVISED 2/02/2010

Sec. 78-12. Same--For Willow Spring Lake.

(a) *Motor vehicle prohibited on icebound waters.* No person shall operate or use a motor vehicle upon the icebound waters of Willow Spring Lake.

(b) *Motorboats and/or motor vehicles propelled by an internal combustion engine prohibited.* No person shall operate a motorboat and/or a motor vehicle propelled by an internal combustion engine on the waters of Willow Spring Lake.

(c) *Speed restrictions.* Pursuant to Wis. Stats. § 30.635, no person shall operate a motorboat at a speed in excess of slow-no-wake.
(Ord. No. 92-5, § 1(2.08), 7-13-1992)

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