

ORDINANCE TO AMEND THE SPEED RESTRICTIONS ON LOWER PHANTOM LAKE

WHEREAS, Lower Phantom Lake is located partially within the jurisdiction of the Town of Mukwonago and partially within the jurisdiction of the Village of Mukwonago; and

WHEREAS, more than 60% of the footage of the shoreline of Lower Phantom Lake is within the boundaries of the Town of Mukwonago, and therefore the Town of Mukwonago is authorized to regulate the equipment, use and operation of boats on Lower Phantom Lake, pursuant to Section 30.77(3)(ac)(2), Wisconsin Statutes; and

WHEREAS, Town of Mukwonago Ordinance No. 92-4 entitled Boating Code, establishes numerous rules and regulations applicable to boating regulations in the Town of Mukwonago; and

WHEREAS, Officer Dennis Nork of the Town of Mukwonago Police Department indicates that bigger and faster boats are coming onto the lakes in the Town of Mukwonago. He indicates he has measured speeds as high as 75 miles per hour on Lower Phantom Lake. Increased boat traffic on the lake leads to congestion at times, and within the past year several incidents occurred where a speeding boat almost hit a skier; and

WHEREAS, Officer Nork recommends that speed limit regulations be adopted for Lower Phantom Lake; and

WHEREAS, the Phantom Lake Association has advised that they are in favor of this amendment to impose speed limits on Lower Phantom Lake; and

WHEREAS, upon receipt of the Town of Mukwonago Police Officer Nork's recommendation in this regard, this matter was referred to the Town Board of the Town of Mukwonago who directed the Town Attorney to prepare the necessary amendments and to send the proposed amendments to the State of Wisconsin Department of Natural Resources for advisory review as described in Wisconsin Statute Section 30.77(3)(d), and 60 days have passed since the date the matter was referred to the Department of Natural Resources; and

WHEREAS, the Town Chair has received correspondence from the State of Wisconsin Department of Natural Resources dated February 5, 2004, regarding the proposed amendment. Julie Fitzgerald of the DNR has recommended that the speed limit be reduced to 40 miles per hour rather than 50 miles per hour as originally proposed and has also recommended that the ordinance modify the previously existing 10 mile per hour limitation-to slow no wake limitation, and these recommendations of the DNR have been incorporated within this ordinance; and

WHEREAS, the Recreational Safety Warden, John Plenke, has advised that more than 60% of the frontage of the shoreline of Lower Phantom Lake is within the boundaries of the Town of Mukwonago and as a result this amendment should be adopted solely by the Town rather than be joint ordinance of the Town and the Village of Mukwonago as was originally proposed; and

WHEREAS, notice of public hearing was published as a Class 1 Notice in one or more newspapers likely to give notice of the public hearing in the Town of Mukwonago and the Village of Mukwonago at least thirty (30) days before the date of the public hearing; and a copy of the notice was also provided to the State of Wisconsin Department of Natural Resources and to the Village of Mukwonago and to the Phantom Lake Association at least thirty (30) days before the date of the public hearing, as required by Wisconsin Statutes Section 30.77(3)(aw)(2), and thirty (30) days following all such notice a public hearing was held in this matter before the Town of Mukwonago Town Board on as required by Wisconsin Statute Section 30.77(3)(aw)(1); and

WHEREAS, at least thirty (30) days have passed from the date of such public hearing, as required by Wisconsin Statutes Section 30.77(3)(aw)(1); and

WHEREAS, by establishing speed limits on Lower Phantom Lake, the Town of Mukwonago will best be able to protect the health, safety and welfare of the users of the lake, particularly taking into account the type, size, shape and depth of this lake, the amount type and speed of the boating traffic on this lake, and the degree to which the boat traffic affects other recreational uses and the public's health, safety and welfare, including the public's interest in preserving the State's natural resources.

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

SECTION 1 : BOATING CODE.

The Boating Code for Lower Phantom Lake in the Town of Mukwonago, Ordinance No. 92-4, Section 2.16 entitled "Specific Rules for Lower Phantom Lake", subsection D entitled "Speed" is hereby repealed and recreated as follows:

D. 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 S-N-W (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.

SECTION 2: INTENT.

The intent of this ordinance 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. This ordinance amends only the specific section of the Boating Code described in Section 1, above, and all provisions of such Boating Code not amended hereby shall continue in full force and effect.

SECTION 3: SEVERABILITY.

The 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 ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 4: EFFECTIVE DATE.

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

Dated this 27 day of May, 2004

Published and/or posted this 28 day of May, 2004