

ORDINANCE NO. 92-5

An ordinance to repeal and recreate the BOATING CODE in the TOWN OF MUKWONAGO

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

SECTION 1: An ordinance to regulate the use or operation of boats, the water traffic and the water sports upon or under all waters except for Lower Phantom Lake lying within the Town of Mukwonago and to restrict or prohibit the use or operation of all motorized vehicles on the surfaces of the frozen waters lying within the Town of Mukwonago and to declare and impose penalties and enforce the same for any violation of such ordinance. All prior ordinances, including but not limited to ordinance Nos. 97, 82-1 and 88-2 are hereby repealed and recreated to read as follows:

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 the anglers, canoeists, sailboaters, sailboarders, boaters, campers, picnickers, and waterskiers 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.

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. (Parrots 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.

CHAPTER 2 BOATING CODE

2.01 APPLICABILITY

The provisions of this ordinance shall apply to the waters of 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 of Mukwonago. The provisions of this ordinance shall be enforced by the officers of the Water Safety Patrol Unit and police of the jurisdiction of the Town of Mukwonago.

2.02 STATE BOATING AND WATER SAFETY LAWS ADOPTED

Except as otherwise specifically provided in this ordinance, the current and future statutory provisions describing and defining regulations with respect to water traffic, boats, boating, and related water activities in CHAPTERS 30.29, 30.50 up to and including 30.71, 30.81, 23.33(3)(h) and 350.10(9) of the WISCONSIN STATUTES, exclusive of any provisions therein relating to the penalties to be imposed or the punishment for violation of said statutes, are hereby adopted and by reference made a part of this ordinance 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 ordinance. Any future additions, amendments, revisions, or modifications of the statutes incorporated herein are intended to be made part of this ordinance in order to secure uniform state-wide regulation of the waterways of the state.

2.03 DEFINITIONS

- A. BOAT: or vessel means 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.
- B. DESIGNATED ANCHORAGES: an area of water established and marked as an anchorage by lawful authority.
- C. MOTORBOAT: means any boat equipped with propulsion machinery whether in use or not.
- D. MOTOR VEHICLE: shall be construed to mean 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, mini-bike, go-cart, trail bike, all-terrain vehicle, motor-cycle, mo-ped, jeep, motor truck, or snowmobile.
- E. OPERATE: or use when used in reference to a motorboat or vessel means to navigate or employ.
- F. OPERATE: or use when used in reference to a motor vehicle means to drive or be in actual physical control of a motor vehicle.
- G. PUBLIC ACCESS: any access to the water by means of public property.
- H. SHORE ZONE: all surface water within 100 feet of any shore.
- I. SLOW-NO-WAKE: means that speed at which a boat moves as slowly as possible while still maintaining steerage control.
- J. SWIMMING ZONE: an authorized area marked by regulatory markers to designate a swimming area.
- K. WATERSKIING: the use of waterskis, surfboard, innertube, or any similar device while being towed.

2.04 GENERAL RULES FOR ALL WATERS

A. RACING PROHIBITED

No person shall operate a motorboat in a race of speed contest with any other motorboat except as provided in properly regulated races, regattas, sporting events, and exhibitions authorized by the Town Board.

B. SWIMMING REGULATIONS

1. SWIMMING FROM BOAT. 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.

C. WATER SKIING

All skiing shall be done in a counter-clockwise pattern.

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, or solid or liquid waste into the waters or upon the frozen surface.

E. ICEBOUND WATERS

1. SPEED OF VEHICLES. 15 mph 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 so as to endanger his life, property, or person, or the life, property, or person of another.
3. LIABILITY OF LOCAL GOVERNMENT. All traffic on the ice-bound inland waters shall be at the risk of the traveler.
4. OPERATION OF SNOWMOBILES AND ALL TERRAIN VEHICLES. See Sec. 350.10(9) and Sec. 23.33(3)(h) Stats.

F. OPERATION OF MOTOR VEHICLES IN WATER PROHIBITED

Any operation of motor vehicles in navigable waters is prohibited except as provided for in Sec. 30.29(3) Stats.

G. AQUA-PLANES AND PARA-SAILING

Aqua-planing and Para-sailing are not allowed at any time.

2.06 SPECIFIC RULES FOR UPPER PHANTOM LAKE

A. CHANNEL WAYS

The Town Board does designate the following channel ways to be "Slow-No-Wake" areas:

1. 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 south-westerly direction as marked by buoys.

B. WATERSKIING

The Town Board does prohibit waterskiing or towing a waterskier during the following hours:

1. No waterskiing any day before 10:00 A.M.
2. No waterskiing after 7:00P.M. on Monday, Tuesday, Wednesday, Thursday, or Friday.
3. No waterskiing after 4:00P.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 speed 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.

2.07 Specific Rules For Spring Lake

A. Speed Restrictions

No person shall operate a motorboat at a speed in excess of slow-no-wake except between the hours of 11:00 A.M. and 2:00 P.M.

B. Waterskiing

The Town Board does designate that no person shall be permitted to waterski and no person shall be permitted to operate a boat while towing another person on waterskis, surfboard, or any similar device between the hours of 2:00 P.M. and 11:00 A.M.

2.08 SPECIFIC RULES FOR WILLOW SPRING LAKE

A. Motor Vehicles 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 Section 30.635, Wisconsin Statutes, no person shall operate a motorboat at a speed in excess of slow-no-wake.

2.09 PENALTY

A. STATE BOATING AND WATER SAFETY LAWS AND ALL OTHER VIOLATIONS SET FORTH IN SECTION 2.02 OF THIS ORDINANCE

Any forfeiture for violation of the State Statutes adopted by reference in Section 2.02 of this ordinance shall conform to the forfeiture permitted to be imposed for violation of such statutes as set forth in the Uniform Wisconsin Deposit and 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 SECTION 2.04 AND 2.05, 2.06 2.07, AND 2.08 OF THIS ORDINANCE

1. GENERAL PROVISIONS. Any person over 16 years of age or older violating the provisions of this ordinance shall be subject to a forfeiture of not more than \$500.00 plus court costs and penalty assessment for the first offense. Failure to pay any forfeiture hereunder shall subject the violator to imprisonment in the County Jail until full payment is made but not to exceed 90 days.

Any persons 14 or 15 years of age shall be subject to a forfeiture of not less than \$10.00 nor more than \$25.00 plus court costs and penalty assessment per each offense or referred to the proper authorities as provided in Chapter 48, Wisconsin Statutes. Failure to pay any forfeiture hereunder shall subject the violator to the provisions of Section 48.17(2), Wisconsin Statutes.

Any person under the age of 14 shall be referred to the proper authorities as provided in Chapter 48, Wisconsin Statutes.

2. DEPOSIT SCHEDULE

2.02 Applicable sections of Uniform Wisconsin Deposit and Bail Schedule for Conservation, Boating, Snowmobile, and ATV Violations.

2.04(A) \$50.00 plus court cost's and penalty assessment

2.04(B)(1) \$50.00 plus court costs and penalty assessment

2.04(B)(2) \$50.00 plus court costs and penalty assessment

2.04(B)(3) \$50.00 plus court costs and penalty assessment,

- 2.04 (C) \$50.00 plus court costs and penalty assessment.
- 2.04 (D) \$50.00 plus court costs and penalty assessment. (except metal and glass)
- 2.04 (D) \$100.00 plus court costs and penalty assessment. (metal and glass only)
- 2.04 (E) \$50.00 plus court costs and penalty assessment.
- 2.04(F) \$50.00 plus court costs and penalty assessment.
- 2.05 \$50.00 plus court costs and penalty assessment.
- 2.06(B) \$50.00 plus court costs and penalty assessment.
- 2.06(O) \$50.00 plus court costs and penalty assessment.
- 2.07(A) \$50.00 plus court costs and penalty assessment.
- 2.07(B) \$50.00 plus court costs and penalty assessment.
- 2.08(A) \$50.00 plus court costs and penalty assessment.
- 2.08(B) \$50.00 plus court costs and penalty assessment.
- 2.08(C) \$50.00 plus court costs and penalty assessment.

3. DEPOSIT FOR REPEAT OFFENSES

Any person found guilty of violating this ordinance or any part thereof who was previously convicted of the same section within the last year shall forfeit twice the deposit delineated above plus court costs and penalty assessment.

4. NON-SCHEDULED DEPOSIT

If a deposit schedule has not been established for a specific violation, the arresting officer shall require the alleged offender to deposit not less than the maximum forfeiture permitted hereunder.

2.10 ENFORCEMENT

A. ENFORCEMENT PROCEDURE

The statutory provisions of sections 66.115, 66.119, 66.12, 30.29, 30.50 to 30.71, and Chapter 199, Wisconsin Statutes, are adopted and by reference made a part of this ordinance as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required of prohibited by this ordinance. Any future amendments, revisions, or modifications of the statutes incorporated herein are intended to be made part of this ordinance in order to secure uniform state-wide regulation and enforcement of boating ordinance violations. Further, the Town of Mukwonago specifically elects to use the citation method of enforcement.

B. DEPOSITS

1. SCHEDULE OF DEPOSITS

The schedule of cash deposits shall be as set forth in Section 2.09 of this ordinance. Also included in the cash deposit will be a current penalty assessment fee and the current court costs if applicable.

2. DEPOSITORY

Deposits should be made in cash, money order, or certified check to the clerk of Circuit Court of Waukesha County, who shall issue a receipt therefore as required by Wisconsin Statute. If the deposit is mailed, the signed statement required by Wisconsin Statute shall be mailed with the deposit.

C. ISSUANCE OF CITATIONS

All sections of this ordinance shall be enforced by a Town police officer or lake patrol officer.

D. NONEXCLUSIVITY

1. OTHER ORDINANCES

Adoption of this ordinance does not preclude the Town Board from adopting any other Ordinance or providing for the enforcement of any other law or ordinance relating to the same or other matter.

2. OTHER REMEDIES

The issuance of a citation hereunder shall not preclude the Town Board or any authorized office from proceedings under any other Ordinance of Law or by any other enforcement method to enforce any ordinance, regulation, or order.

SECTION 2: The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a decision of a court of competent jurisdiction to be invalid, unlawful, or non-enforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision and not affect the validity of all other provisions, sections, or portions thereof of the ordinance, which shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions or this ordinance are hereby repealed as to those terms that conflict. **SECTION 3:** This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Passed and adopted this 13th day of July, 1992.
Published or posted on the 22nd day of July, 1992.