



CITY of NOVI CITY COUNCIL

Agenda Item 2
July 22, 2013

SUBJECT: Approval of Parks and Recreation Ordinance Text Amendment 13-113.04, an ordinance to amend Chapter 25, "Parks and Recreation," of the City of Novi Code to update language pertaining to the operation of vehicles and lakes, beaches, and watercourses. **SECOND READING**

SUBMITTING DEPARTMENT: Parks Recreation and Cultural Services *JSM*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

With the upcoming opening of Pavilion Shore Park, the PRCS Department will need to address potential issues that will be unique to this park due to the nature of its location and the amount of shoreline along Walled Lake. While the park was designed to allow residents the ability to enjoy open space along the lake's edge, it was not designed to support swimming or boating traffic and facilities. Regulations for use of City parks are found in Chapter 25 of the City Code, so the attached draft ordinance amendment expands on and clarifies those existing regulations with the new park in mind.

The changes are generally:

- prohibition on parking of trailers (e.g., for boats)
- clarification of existing parking limitations
- prohibition on docking or mooring any kind of watercraft on city-owned docks, piers, or other structures, or on bottomland adjacent to park shoreline
- limitation on launching non-motorized watercraft (canoes, kayaks)

The rules set forth in the ordinance remain applicable to all parks, not just Pavilion Shore Park. New regulations will be communicated to public with signage at park.

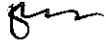
RECOMMENDED ACTION: Approval of Parks and Recreation Ordinance Text Amendment 13-113.04, an ordinance to amend Chapter 25, "Parks and Recreation," of the City of Novi Code to update language pertaining to the operation of vehicles and lakes, beaches, and watercourses. **SECOND READING**

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Wrobel				

MEMORANDUM

TO: Victor Cardenas, Assistant City Manager

FROM: Thomas R. Schultz, Esq. 

RE: Council Comments on First Reading of Parks Changes for Pavilion Shore Park

DATE: July 11, 2013

Mayor and Council:

Enclosed is the follow-up from Monday's meeting regarding the changes to the ordinances to prohibit mooring by Pavilion Shore Park. Additionally, the Sheriff's Marine patrol can enforce City ordinances.

Victor

Two questions came up at City Council regarding the proposed changes to the parks and recreation ordinance dealing primarily with parking and boat docking/mooring. One was whether the "exemption" to Section 25-62 for "City personnel engaged in official business" should apply to the prohibition on driving any vehicle in excess of 15 m.p.h. In order to clarify that, we moved the exemption to the end of the listed prohibited activities, and indicated that the exemption applies only to subsections (2) through (7), and thus not the speeding prohibition.

The other asked about the legal basis for the prohibition on anchoring boats within 100 feet of the City's shoreline. The limitation invokes two concepts. The first is ownership of the riparian bottomlands and the right of the public to use the surface water above the bottomlands, and the second is the City's general police powers authority. As a general proposition, bottomlands adjacent to riparian shoreline are owned by the riparian owner, but, where the lake is navigable, the public has a right to use the surface water above the bottomlands. Under *Hall v Wantz*, 336 Mich 112; 57 NW2d 462 (1953), the right of the public does include the right to anchor boats *temporarily*, in order to make reasonable use of the water itself. However, the right is not absolute and must be reasonably used. Other than a few cases that cite generally to the *Hall* case (*Dyball v Lennox*, 260 Mich 698; 680 NW2d 522 [2004]; *Thies v Howland*, 424 Mich 282; 380 NW2d 463 [1986]), there are no appellate cases that discuss how long "temporarily" is and whether a riparian owner can limit such temporary use.

That brings into play the fact that the riparian owner here is the City, which has police powers authority that a typical riparian owner does not. Under cases such as *Square Lake Hills Condo Association v Bloomfield Township*, 437 Mich 310; 471 NW2d 321 (1991) and *Miller v Fabius Township Board*, 366 Mich 250; 114 Nw2d 205 (1962), the Michigan Supreme Court has made clear that a local government does have police power authority to enact restrictions on the use of surface water on lakes within their jurisdiction. Any such regulation would need to be reasonable and reasonably related to some governmental purpose.

With that in mind, we have suggested a minor change in the ordinance. The 100-foot provision in the initial draft was not intended to be absolute. The primary concern is that people might moor on the bottomland adjacent to a dock or pier (and thus get around the prohibition on actually tying up or attaching to that City-owned structure), or drop anchor right adjacent to the shoreline and then simply walk ashore. We have changed the language to clarify that "no person shall moor or anchor any watercraft on the bottomland adjacent to any City-owned dock or pier,"

July 11, 2013
Memo to V. Cardenas
Page 2

but have reduced the prohibition on anchoring in "open water" to 50 feet. This would allow reasonable use of the City shoreline for expected purposes without interference from boats coming from the open water, and would likely be sufficient to discourage mooring and wading ashore.

The question was asked whether the City intends to sign the park to notify boaters of the limitations. It is my understanding that the PRSC Department will propose some signage and other notification methods in the future.

Finally, a question was raised whether the prohibition on leaving a vehicle parked within a park after the occupant or passenger has left the park would affect the trail bikers, who may start their bike route in a park but may leave the park during the ride. Our interpretation of the language that that would still be considered an active use of the park and not a violation of the ordinance. We did not, therefore, make any changes to the language as drafted.

We look forward to discussing this further at the next Council meeting. If there are any additional comments before then, we would be happy to hear those as well.

TRS:jah
Attachment

cc: Maryanne Cornelius, City Clerk
Jason Mangum, Director of Parks, Recreation and Cultural Services
Clay Pearson, City Manager
David Molloy, Director of Public Safety

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 13- 113.04

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, CHAPTER 25, PARKS AND RECREATION, ARTICLE IV, PARKS AND RECREATION PROTECTION, DIVISION 1, GENERALLY, IN ORDER TO ADD NEW REGULATIONS RELATING TO THE PARKING OF VEHICLES AND USE OF THE LAKESHORE AND PUBLIC DOCKS/PIERS.

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 25, Parks and Recreation, Article IV, Parks and Recreation Protection, Division 1, Generally, of the City of Novi Code of Ordinances, is amended to read as follows:

Sec. 25-62. Operation and parking of vehicles.

It shall be unlawful ~~within a park~~ for any person ~~to do any of the following with a~~
City park:

- (1) Drive any vehicle in excess of fifteen (15) miles per hour; or
- (2) ~~Drive any vehicle on any area except the park roads or parking areas designated as open to public travel or such areas as may on occasion be specifically designated by signs as temporary driving areas. This subsection shall not apply to police, fire or other emergency vehicles, or to department of parks and recreation maintenance vehicles while on official business;~~
- (3~~2~~) Park a vehicle anywhere except ~~on~~ in a designated parking area; or
- (3) Park a vehicle when the operator or a passenger is not making active use of the park, or allow a vehicle to remain within a park when the operator or passenger has left the park;
- (4) ~~Leave a vehicle standing or parked in established parking areas or elsewhere in the park and recreation areas during hours when the park and recreation area is closed; or~~
- (5) Park any type of trailer at any time, except for the purpose of conducting official City business; or
- (5~~6~~) Ride a bicycle without reasonable regard to the safety of others.
- (7) Drive any vehicle on any area except the park roads or parking areas designated as open to public travel or such areas as may on occasion be specifically designated by signs as temporary driving areas.

- (8) If any vehicle or trailer is parked or left standing in violation of the rules set forth in this subsection, the city may immediately remove such vehicle or trailer and impound the same, and thereafter process such vehicle or trailer in accordance with applicable provisions of law or ordinance.
- (9) Subsections (2) through (7) shall not apply to City personnel engaged in official business.

PART II.

Sec. 25-65. Use of lakes, beaches, watercourses generally.

It shall be unlawful for any person, except for City personnel engaged in official business, to violate any of the following rules applicable to lakes, beaches and watercourses:

- (1) No person shall swim, bathe, wade or scuba dive from any city-owned beach or shoreline except at such times and places, and in such a manner, as may be posted at such beach or shoreline.
- (2) Glass containers and pets are prohibited on any city-owned beach.
- (3) City-owned beaches shall be open beginning Memorial Day through Labor Day between the hours of 10:00 a.m. to 8:00 p.m., or as otherwise posted.
- (4) Boats Watercraft of any kind are prohibited from entering into a designated swim area or beach area, unless operated by department of parks and recreation personnel on official business.
- (5) No person shall dock, moor, tie-up, tether, or otherwise attach any watercraft to any city-owned dock or pier, or to any feature along the shoreline of a park.
- (6) No person shall moor or anchor any watercraft on the bottomland adjacent to any city-owned dock or pier, or within 50 feet of the shoreline of a park.
- (7) No person shall launch any motorized watercraft from any city-owned dock, pier, or shoreline. Non-motorized watercraft such as canoes, kayaks, and stand up paddle boards, may be launched from the shoreline of a park not designated a swim or beach area.
- (58) No person shall skate, sled, snowshoe, ski, walk or otherwise enter upon any ice from a city-owned beach or shoreline, except at such times and from such places as may be posted and pursuant to such conditions as may be posted.

PART III.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART IV.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART V.

Effective Date: Publication. The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

Made, Passed and Adopted by the Novi City Council this ____ day of _____, 2013.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the ____ day of _____, 2013.

Maryanne Cornelius, City Clerk

Adopted:
Published:
Effective: