

TO ALL COUNCILMEMBERS:

Substitute Version

For

October 22, 2019

PLANNING COMMITTEE DISCUSSION

1. AB2019-479 Discussion of proposed ordinance amending Whatcom County Code Chapters 11.16 and 11.20 to protect Lake Samish shoreline properties and Lake Samish water recreation

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SUBSTITUTE ORDINANCE

*DISTRIBUTED: October 22, 2019
TIME: 11:00 a.m.*

ORDINANCE NO. _____

AMENDING WHATCOM COUNTY CODE CHAPTERS 11.16 AND 11.20 TO PROTECT LAKE SAMISH SHORELINE PROPERTIES AND LAKE SAMISH WATER RECREATION

WHEREAS, a relatively new class of recreational boats carrying large amounts of water for ballast (weight) are designed to displace maximum amounts of lake water around and behind the boats; and

WHEREAS, these vessels are operating on Lake Samish, and wakes from these boats have been observed travelling to shores of Lake Samish with force sufficient to damage private property; and

WHEREAS, property owners around Lake Samish desire a balance between damage to personal property and the need for ongoing water recreation; and

WHEREAS, Lake Samish property owners, boaters, and recreational users have come together to understand the concerns of each group and identify a compromise which would be mutually agreeable to all parties; and

WHEREAS, these parties have developed an alternative solution supported by an overwhelming majority; and

WHEREAS, the Whatcom County Code currently recognizes the need to protect public health, safety, and property with regulations on the speed of vessels on Lake Whatcom, and with regulations on the manner and distance that vessels operate from the shore of Lake Whatcom; and

WHEREAS, the Whatcom County Council values the opinions of our community, the time and effort invested by community members to discuss and find a mutually agreeable solution, and the flexibility and willingness of all parties to agree to such a compromise; and

NOW BE IT ORDAINED by the Whatcom County Council that Whatcom County Code Chapters 11.16 and 11.20 shall be amended as outlined in Exhibit A to this ordinance.

APPROVED this _____ day of _____, 2019.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Dana Brown Davis, Clerk of the Council

Rud Browne, Council Chair

APPROVED AS TO FORM:

**WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON**

Civil Deputy Prosecutor

Jack Louws, County Executive

() Approved () Denied

Date Signed: _____

EXHIBIT A

CHAPTER 11.16 OPERATION AND SPEED REGULATIONS

Sections:

11.16.010 Operation – Overloading prohibited.

11.16.020 Operation – Right-of-way rules.

11.16.030 Speed regulations.

11.16.010 Operation – Overloading prohibited.

It is unlawful for any vessel to be loaded with passengers or cargo which exceed the safe-carrying capacity of the vessel where the safe-carrying capacity of the vessel is specified by the manufacturer. Such limitation shall be considered the maximum safe load, and in no event shall a vessel be loaded beyond a capacity which is reasonable and prudent under given atmospheric conditions and other actual and potential hazards affecting operation. (Ord. 90-83 (part)).

11.16.020 Operation – Right-of-way rules.

The operation rules as between vessels are provided as follows:

- A. When two vessels are approaching each other head on, or so nearly so as to involve the risks of collision, each boat shall bear to the right and pass the other boat on its left side.
- B. One vessel may overtake another on either side but shall grant the right-of-way to the overtaken boat.
- C. When two vessels are approaching each other obliquely or at right angles, the boat approaching on the right side has the right-of-way.
- D. A vessel underway must yield the right-of-way to a craft not underway.
- E. A motor-powered vessel underway must yield the right-of-way to a sailboat, rowboat, canoe, or other vessel not propelled by a motor.
- F. A seaplane underway shall yield the right-of-way to all other vessels.
- G. A swimmer including a person on a flotation device, or a fallen skier, has the right-of-way over any craft.
- H. No vessel shall approach within 50 feet of a diver's flag indicating the presence of a person operating under water.
- I. All vessels shall reduce speed and, if necessary, stop and, in any event, yield the right-of-way upon the approach of an emergency vessel. (Ord. 90-83 (part)).

11.16.030 Speed regulations.

A. Speed Limits. No vessel shall exceed the following speeds, except as provided in Chapter [11.36](#) WCC:

1. Within 100 feet of a swimmer, six miles per hour;
2. Within 150 feet from docks, floats, or the shoreline on every lake except Lake Whatcom **and Lake Samish** where the distance shall be 300 feet from docks, floats, or the shoreline (except when necessary for a safe take off as defined in ~~WCC 11.20.010(C)~~), six miles per hour;

Yellow highlight: Changes adopted by Council in June 2019

Turquoise highlight: New proposed changes

3. Within 100 feet of any vessel not propelled by a motor, six miles per hour;
4. One-half hour after sunset to one-half hour before sunrise, eight miles per hour;
5. During daylight hours in unrestricted areas, 40 miles per hour;
6. Within 300 feet of any public boat launch, six miles per hour;
7. Within South Bay Lake Whatcom south of a line approximately as defined as extending from 48° 40' 48" N, 122° 18' 49" W to 48° 40' 43" N, 122° 18' 36", shall be designated as a "no-wake" zone.

8. Within Lake Samish the area between county bridge No. 107 (bridge located south of, and adjacent to, Lake Samish Park) and the North-South line of 122° 24' 00" West shall be designated as a "no-wake" zone;

9. Within 300 feet of docks, floats, or the shoreline of Lake Whatcom (except when necessary for a safe take off as defined in WCC 11.20.010(C)), six miles per hour;

10. Within 300 feet of docks, floats, or the shoreline of Lake Samish, for all vessels utilized to displace water for the purpose of surfing, wakesurfing, or wakeboarding or similar activities that produce wakes for surfing, or 150 feet from docks, floats, or the shoreline for all other vessels (except when necessary for a safe take off as defined in WCC 11.20.010(C)), six miles per hour;

B. Due Care and Caution Required. Compliance with the speed regulations contained herein shall not relieve the operator of any vessel from the further exercise of due care and caution as circumstances shall require. (Ord. 2004-036 § 1; Ord. 2002-027; Ord. 90-83 (part)).

CHAPTER 11.20

WATER SKIING, SWIMMING AND SKIN DIVING REGULATIONS

Sections:

11.20.010 Water skiing.

11.20.020 Swimming.

11.20.025 Floatation devices on the South Fork of the Nooksack River.

11.20.030 Skin diving.

11.20.010 Water skiing.

A. Age Requirements. No vessel which has in tow or is otherwise assisting a person on water skis, aquaplane, surfboard, innertube or similar contrivances, shall be operated unless such vessel is occupied by at least two persons, one at least the age of 16 years, and one of at least eight years of age who shall be observer or ski-tender in addition to the operator; provided that this prohibition shall not apply to vessels used in duly authorized ski tournaments.

B. Intoxication Prohibited. No person shall ride or manipulate any water skis, aquaplane, surfboard, innertube or similar contrivance while in tow, or being assisted by a vessel, when such person is under the influence of intoxicating liquor or drugs to a degree which renders said person incapable of safely riding or manipulating such a contrivance.

C. Distance from Shoreline. Except on safe takeoffs and safe landing, vessels and persons under tow on water skis, aquaplane, surfboard, innertube or a similar contrivance, and vessels being utilized to displace water for the purpose of surfing or wakesurfing or similar activities that produce wakes for surfing must keep 150 feet or more from the dock, float, or shoreline with the exception of Lake Whatcom which shall remain at except for Lake Whatcom and Lake Samish where the distance shall be 300 feet from the shore, dock or float, and Lake Samish where the distance shall be 300 feet from the shore, dock or float for vessels being utilized to displace water for the purpose of surfing or wakesurfing or similar activities that produce wakes for surfing and 150 feet for all other vessels. A takeoff will not be considered "safe" unless the person(s) under tow are heading away from the shore and the takeoff can be accomplished without any risk to swimmers or vessels. The person(s) under tow, but not the vessel, may come within 150 feet of the shoreline when in the process of landing, provided that the return to the shore must be at any angle of 45 degrees or more to the shoreline.

D. Other Vessels. No vessel shall follow behind a skier closer than 300 feet, not cross the towing boat bow by less than 200 feet, nor alongside a skier closer than 100 feet.

E. Personal Flotation Devices Required. Any person on water skis, aquaplane, surfboard, innertube or similar contrivance shall wear about his body a type I, II, or III personal flotation device as defined and required by the U.S. Coast Guard.

F. Conduct. Any person on water skis, aquaplanes, surfboards, innertubes, or similar contrivances shall conduct himself upon the same in a careful and prudent manner, and shall remain at all times a reasonable and prudent distance from other persons and from the property of others, and shall not come within 100 feet of a swimmer or any other vessel.

G. Hours. No vessel shall have in tow or shall otherwise assist a person on water skis, aquaplane, surfboard, innertube or a similar contrivance from one-half hour after sunset to one-half hour before sunrise; provided, that this subsection shall not apply to vessels engaged in duly authorized water ski competitions or expositions.

H. Pattern. All boats towing skiers shall go in a counterclockwise pattern.

I. Public Boat Launches. No drop-off or take-off of skier or having a person in tow within 300 feet of public boat launch.

J. Skier Down Flags. When your skier is in the water the observer must display a red or orange "skier down" flag. This flag must be 12 inches square and mounted on a two-foot pole. (Ord. 90-83 (part)).

11.20.020 Swimming.

No person shall swim or operate a paddleboard, innertube, rubber raft or similar unlicensed device except in restricted swimming areas or within a distance of 150 feet from the shore, unless the swimmer is accompanied by a vessel. (Ord. 90-83 (part)).

11.20.025 Floatation devices on the South Fork of the Nooksack River.

No person shall operate a paddleboard, innertube, inflatable floatation device, foam floatation device, limb-propelled floatation device, or rubber raft intended for limb use on the section of the South Fork of the Nooksack River between Edfro Creek and the Acme Bridge between the dates of June 1st and October 31st. The provisions of this section shall not apply to:

- A. Devices engaged principally in commercial operations constituting an act of interstate or foreign commerce or bona fide scientific research;
- B. Use for emergency purposes when there is reasonable belief that such use is necessary to protect or preserve persons, animals or property;
- C. Use by law enforcement agencies to enforce the above provisions;
- D. Department of Natural Resources-designated and Whatcom County-designated swimming/boating areas on the South Fork of the Nooksack River. (Ord. 2005-089 Exh. A).

11.20.030 Skin diving.

- A. No person shall operate (swim, float or walk) under water with the aid of any artificial device such as snorkel or self-contained underwater breathing apparatus (scuba) beyond 100 feet from the shoreline unless closely accompanied by a boat displaying a diver's flag or unless marked by a diver's flag above the water surface and above the operator's position in the water.
- B. The underwater operator shall keep within a 50-foot horizontal radius of the diver's flag at all times.
- C. No person shall display any diver's flag except during the period a person is operating under water within the vicinity of the diver's flag.
- D. Separate diver's flags shall be displayed for each person so operating under water.
- E. No person shall operate under water, except with a permit issued at the discretion of the sheriff's department, within a 300-foot horizontal radius of any boat ramp or landing wharf of any boat marina, nor shall such person operate within a 100-foot horizontal radius of any platform normally used for diving. (Ord. 90-83 (part)).