



LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

Gregory S. Nybeck, EXECUTIVE DIRECTOR

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TO: Board of Directors

FROM: Emily Herman, Administrative Assistant/Code Enforcement

SUBJECT: 2014 LMCD Proactive Code Enforcement Program Report

Background

In 2006, the Lake Minnetonka Conservation District (LMCD) developed and implemented a Proactive Code Enforcement Program to assure watercraft storage compliance at residential sites on Lake Minnetonka (Code Section 2.02). To complete this program, staff surveys the Lake's shoreline to identify and re-inspect sites storing: 1) five or more restricted watercraft that do not have an approved multiple dock license or 2) three or four larger, restricted watercraft that do not comply with the 1:50' General Rule.

Documentation Process

A site is identified by a GIS waypoint (known as the site number in all correspondence), as well as documentation of the watercraft storage (make, model, registration number if visible, pictures, etc.) Once documented, staff assesses compliance by the site's estimated shoreline and working with the Minnesota Department of Natural Resources on the registration and/or ownership of the watercraft.

Communication Process

Sites identified for the communication process are provided an initial letter that is educational in nature; providing for their ability to assess their watercraft storage options and, if need be, voluntarily come into compliance by the next boating season and beyond. If a site is documented a second time, the follow-up letter is more stern in nature; requesting continued voluntary compliance to avoid possible legal consequences (with re-inspection scheduled that boating season). From this point forward, all other inspections of non-compliance are scheduled to be defined (Code Section 2.02, Subd. 8, "Definition of Moored or Docked"), whereby staff documents the watercraft storage three days within a 14 day period prior to turning the matter over to the LMCD's prosecuting attorney.

2014 Enforcement Priorities

At the April 9, 2014 Board meeting, the following enforcement priorities for the 2014 boating season were approved: 1) resolve violations that require specific communication (more complicated storage matters with historical background), 2) document new violations, 3) continue to re-inspect and define sites (working with prosecuting attorney when warranted), and 4) maintain communication with respective Board members.

2014 Code Enforcement Findings

The following findings for the 2014 boating season are outlined below (not including 75 sites that were documented and found, after assessment, to be in compliance):

Category	5-Boat Violation	3-4 Boat Violation
New Violations	6	10
Repeat Violations	2	14
Shared Dock Violation	0	0
Formal Complaints	0	1*
Prosecuting Complaints	3	7

* Unable to obtain compliance; filed Complaint same year (signed Agreement to Suspend Prosecution for one year and paid prosecution costs).

Prosecuting Matters

The LMCD Board of Directors has appointed prosecuting attorney Steve Tallen of Tallen and Baertschi since 1986's. Therefore, Mr. Tallen has been consistently settling the Complaints filed (since 2009) relative to this program. Settlements typically consist of: 1) a jury trial (rare), 2) agreement to suspend prosecution, 3) a plea of guilty (the latter two agreeing to not having any new or same violations for one year and paying prosecution costs or court fines), or dismissal. The LMCD receives 100% of prosecution costs and 80% of Court fines (typically \$800 and \$300, respectively), paid by the defendant. The following highlights Complaints filed in 2013 and 2014:

2013 Boating Season

Ten Complaints were filed for the 2013 boating season. The following outlines their outcome:

- Sites storing five or more restricted watercraft (6):
 - One pled guilty and paid prosecution costs;
 - One case dismissed by Judge based on vague ordinance pertaining to non-working motor of one of the watercraft (Concluding Comments); and
 - Four signed an Agreement to Suspend Prosecution (based on no new or same violations for one year) and paid prosecution costs.

- Sites storing four or less watercraft (4):
 - Two pled guilty: 1) 10 days Stay of Imposition for one year with fines and 2) Stay of Imposition for one year with probation and reduction to petty misdemeanor (this case settled both a 2012 and 2013 Complaint at the same time, in which the 2012 Complaint was dismissed based on 2013 Disposition; remained in compliance in 2014).

- One signed an Agreement to Suspend Prosecution; based on no new or same violations for one year; and
- One dismissed after providing proof of watercraft purchase after the fact.

2014 Boating Season

Ten Complaints are currently being processed for the 2014 boating season (seven storing four or less).

Concluding Comments

Proactive Code Enforcement Ordinance Amendments: This year provided for the Board's approval of one ordinance amendment that further defined an unrestricted watercraft (to exclude restricted watercraft 16 feet or less with a non-working motor, i.e., PWC).

Staff will be working with legal counsel in the drafting of an ordinance amendment that further defines "persons who live in the one residential structure..." This matter is being considered for watercraft operators that look to be falsifying their registrations by simply changing the address of record.

Formal Complaints: Staff processed one formal Complaint this year. Matters such as this are handled within the same boating season (or initially addressed if at the end of the boating season) and typically resolved via on-going communication with the site owner. This year provided for my first formal watercraft storage complaint that was prosecuted (with active communication from June 25th through August 21st).

Formal complaints relative to side setbacks are considered by the abutting property owners only (with staff confirming the compliance of both owners prior to proceeding). However, formal complaints relative to watercraft storage are considered by any riparian owner. Staff will continue to proceed in that manner unless the Board directs otherwise.

Clustered Watercraft Storage within Inlets: There are many inlet sites on the Lake that maintain clustered watercraft storage. Each season staff addresses one area, in which time is offered to research the owner of each site, the amount of shoreline offered and, if possible, confirmation of who owns the watercraft and which lot is maintaining that density.

Consistency of Enforcement: The LMCD recognizes that all Lake Minnetonka stakeholders deserve the utmost respect as all of us are needed to work as a team in maintaining the Lake and its resources. In completing an enforcement program that affects the stakeholders (whether a site is actually documented or they see staff observing their watercraft within their defined dock use area), it is important to know that this program offers very consistent enforcement procedures that were established by

the Board. To this end, all stakeholders are considered equal and preference is not offered for one over the other.

2015 Spring Update

Staff will present the 2015 program goals prior to the start of the boating season. This presentation will include an update on the statistics offered above.