

**LAKE MINNETONKA CONSERVATION DISTRICT
STATE OF MINNESOTA**

ORDINANCE NO. 239

**AN ORDINANCE AMENDING THE LAKE MINNETONKA CONSERVATION
DISTRICT CODE OF ORDINANCES REGARDING DEICING**

THE BOARD OF DIRECTORS OF THE LAKE MINNETONKA CONSERVATION
DISTRICT ORDAINS:

Article I. Deicing Equipment License. Article 6, Chapter 5, Section 6-5.09 of the LMCD Code is hereby amended as follows:

6-5.09. Deicing Equipment License. An applicant for a deicing equipment license shall be submitted, processed, and acted on in accordance with this Section.

Subd. 1. Application. An application for a deicing equipment license shall, in addition to the information required in Section 6-1.03, contain the following information:

- (a) A general description of the deicing equipment, its location, and general purpose; and
- (b) Identify the proposed authorized ~~deicing~~ fence area.

Subd. 2. Issuing Authority.

- (a) Generally. The Board determines whether to issue a deicing equipment license. A public hearing is not required, but the Board may elect to hold a public hearing regarding the requested license.
- (b) Municipal License. Where a person has been issued a license to install and operate deicing equipment by a municipality, and satisfactory proof thereof is presented to the Executive Director, the application shall so state. The Executive Director shall thereupon issue a license and attach whatever additional conditions the Executive Director deems necessary to ensure compliance with this Section and Article 10, Chapter 3.

Subd. 3. Review Criteria. When considering an application, the Board shall consider, together with any other factors it determines are relevant, the following:

- (a) The proximity of public access points;
- (b) The size and configuration of adjacent and nearby properties;
- (c) The use of the surface of the Lake in the vicinity of the deicing equipment by the general public and other riparian owners;
- (d) The proximity of channels;

- (e) The effect on the public and adjacent riparian owners of any failure to confine deicing to the authorized deicing fence area; and
- (f) The past history of deicing operations by the applicant.

Subd. 4. Authorized Deicing Fence Area. All licenses issued under this Section shall identify the authorized deicing fence area, which must be within the extended side site lines of the site as adjusted by variance or other Board approvals, and less than 100 feet beyond the end of the dock structure at the site. If the approved dock structure is within 10 feet of, or extends over, the site's extended property line and the site is not operating according to a site plan previously approved by the Executive Director, the boundary of the authorized fence area shall be no greater than is needed to deice the dock structure and maintain sound ice at the fence line. If sound ice cannot be maintained at the fence line, the licensee shall be required to install a floating baffle within two feet of the dock structure. All deicing and safety materials and equipment must be located entirely within the authorized fence area. The issuing authority may establish a smaller authorized deicing fence area than requested if it deems such adjustment reasonable or prudent in the interest of public safety or protection of reasonable access to, and use of, the Lake by the public and other riparian owners. An authorized deicing fence area larger than the dimensions established in this subdivision may only be allowed through the issuance of a variance in accordance with Section 6-5.01.

Subd. 5. Limitations Minimum Standards and Requirements. In addition to any conditions imposed by the Board at the time of issuing a deicing equipment license, all such licenses issued under this Section are subject to the following conditions:

- (a) ~~The area to be deiced~~ open water resulting from deicing shall be no greater than is necessary to prevent damage to the installation dock structure and shall ~~not extend nor affect areas beyond~~ be controlled so there is no open water within 10 feet of the perimeter fence and sound ice is maintain at the limits of the authorized deicing fence area;
- (b) ~~The area to be deiced shall be enclosed by a snow fence or approved alternative four feet in height and a minimum of six reflectorized "Thin Ice" signs and at least one sign for every 50 feet. The signs must be in a form approved by the Executive Director~~ The authorized fence area shall be enclosed on all four sides by a snow fence, or an alternative approved by the Executive Director, four feet in height, with at least 2 x 4 wooden posts anchored vertically into the ice at least every 12 feet. Fence fabric shall be mounted to the posts with metal wire ties. There shall be a minimum of six reflectorized "Thin Ice" signs, each containing at least eight inches of reflectorized surface that is visible from 50 feet, around the perimeter of the authorized fence area, with at least one sign every 50 feet;
- (c) Deicing shall only occur within the fenced area;
- (d) If open water or weakened ice occurs within 10 feet of the fence line or outside of the authorized deicing fence area, or if water is pumped by deicing equipment onto the surface of the ice outside of the authorized deicing fence area, all deicing equipment shall be turned off until sound ice is reestablished outside at the boundary of the authorized deicing fence area, and During the reestablishment of

sound ice, all open water or weakened ice is shall be enclosed by the fence required by this subdivision;

- (e) The licensee ~~will~~ shall maintain fencing and signs around all open water or weakened ice at all times. Fencing installed temporarily outside of the authorized ~~deicing fence~~ area shall be removed when sound ice is reestablished outside of the authorized fence area;
- (f) ~~The installation including the perimeter fence and the entire fenced area will~~ shall be adequately lighted from one-half hour before sunset to one-half hour after sunrise to protect the public. Use of a photocell switch to control the lighting is allowed if it provides for lighting during approximately the same period;
- (g) The ~~applicant~~ licensee shall maintain liability insurance covering claims for death, injury or damage to property arising out of the operation of the deicing equipment. Such insurance shall be in the amount of at least \$1,500,000 for persons and \$50,000 for property. In the case of insurance for commercial facilities, the insurance shall name the LMCD as additional insured and shall provide that the insurance will not be amended or canceled without first giving 30 days' written notice to the LMCD;
- (h) ~~The applicant will, by the installation of adequate screening, signing, or other means, effectively prevent the feeding and congregation of waterfowl and other animals and the creation of conditions constituting health hazards or public nuisances within the authorized deicing area;~~
- (+)(h) The installation ~~will~~ shall be supervised ~~at all times daily~~ and the ~~applicant~~ licensee ~~will~~ shall provide the LMCD with a primary telephone number and a 24 hour emergency telephone number;
- (+)(i) The installation shall include an easily identifiable on-off switch located near the deicing unit on the dock and the licensee shall notify the LMCD of its location;
- (i) During the entire period of deicing, the licensee shall maintain all fencing, posts, warning signs, lighting, and other materials and equipment required by this Section in a good condition, properly functioning, and as otherwise may be required to accomplish their intended purposes;
- (k) The ~~applicant~~ licensee shall consent to permitting officers and agents of the LMCD to shut off or remove the equipment if deicing extends beyond the authorized ~~deicing fence~~ area or if water is pumped by deicing equipment onto the surface of the ice outside of the authorized ~~deicing fence~~ area. Deicing activities shall not resume at the site unless authorized in writing by the Executive Director; and
- (l) The license shall terminate on the date indicated in the license, but in no event shall it extend beyond ~~April 20th~~ three days after the Minnesota Department of Natural Resources requires fish houses to be off the ice in any year.

Subd. 6. Additional Conditions. Notwithstanding anything to the contrary in this Code, if the LMCD determines a licensee is not fully complying with the requirements of this Section, the

Executive Director may place additional conditions on the license. The Executive Director shall provide the licensee written notice of the additional conditions and may require the licensee to comply with a performance plan to bring the site back into compliance. One of the additional conditions the Executive Director may impose is to require the use of a floating baffle to contain the open water area. If a floating baffle is required, it shall be installed in a fixed position, perpendicular to the shoreline, extending to the bottom of the Lake, all mechanical equipment shall be installed within the boundaries of the floating baffle, and the deicing equipment at the outer edges of the floating baffle shall be turned toward the deicing area. Nothing in this subdivision shall limit the authority of the LMCD to suspend or revoke a deicing equipment license.

Subd. 67. License Renewals. Deicing equipment licenses shall be renewed annually in accordance with this Subdivision.

- (a) Submission Deadline. An application for a renewal of a deicing equipment license shall be submitted no later than October 1st of the year of the beginning of the winter season during which the applicant wishes to operate the deicing equipment. The Executive Director shall not accept a renewal application received after October 1st unless it is accompanied by the required late fee.
- (b) Issuing Authority. For docks that were issued a deicing license for the winters of 2002/2003, 2003/2004, or 2004/2005, any renewal licenses requiring an enlargement of a proposed authorized deicing fence area or license for deicing enlarged or reconfigured docks may be granted only by the Board. In other cases, the Executive Director may issue renewal licenses administratively without action by the Board, provided there were no violations or alleged violations during the term of the prior seasonal license and a full deposit refund was given for the prior seasonal license. The Executive Director may issue new licenses without action by the Board upon determining that the applicant agrees through the application process to comply fully with the requirements of this Section and Article 10, Chapter 3. In the case of all other applications, and in cases in which the Executive Director declines or fails to issue a license for any reason, the application shall be referred to the Board.
- (c) Conditions. Additional or modified conditions may be imposed upon the renewal of a deicing equipment license. If the applicant objects to any additional or modified conditions placed on the license by the Executive Director, the Executive Director shall refer the license to the Board for review and a final decision.

Article II. License Exceptions. Article 10, Chapter 3, Section 10-3.05 of the LMCD Code is hereby amended as follows:

10-3.05. Licensing Exceptions.

Subd. 1. Use After March 1st. ~~No license shall be required for installation and operation of deicing equipment during that part of the winter season occurring after March 1st, provided warning signs with the message "Thin Ice", of a size and type approved by the Executive Director, are installed and maintained at least each 50 feet along the affected shoreline. Anyone initiating the operation of deicing equipment between March 1st and March 15th under this exception shall, prior to such operations, entirely enclose the area to be deiced with snow fence that is at least four feet in height and place at least six reflectorized "Thin Ice" signs on the fence with a minimum of~~

one sign for every 50 feet.

Subd. 1. Deicing after Fish House Removal. A deicing license is not required for the installation and operation of deicing equipment starting three days after the Minnesota Department of Natural Resources requires fish houses to be off the ice. Anyone initiating deicing on or after that date, but before March 15th, shall be required to install and maintain fencing along their shoreline with warning signs at least every 50 feet. The fencing and warning signs shall be consistent with the standards established in Section 6-5.09. Licensees may remove their perimeter fence three days after the Minnesota Department of Natural Resources requires fish houses to be off the ice, but must continue to maintain the fencing and warning signs along their shoreline. All shoreline fencing and warning signs may be removed once ice is out for the season.

~~Subd. 2. Permanent Dams. Permanent dams which are licensed by the Department of Natural Resources and operated by a municipality or political subdivision of the state shall not be required to secure a special license under this Section providing the following conditions are met:~~

- ~~(a) — A snow fence four feet in height shall be provided which encloses all open water or dangerously thin ice in the vicinity of the dam;~~
- ~~(b) — A minimum of six reflectorized warning signs shall be provided at intervals not exceeding 75 feet; and~~
- ~~(c) — Appropriate steps shall be taken, either by obtaining insurance or otherwise to hold the LMCD and its officers and employees harmless from any damage or injury arising out of the operation of the dam.~~

Subd. 2. Gray's Bay Dam. A deicing equipment license is not required for deicing operations conducted by the Minnehaha Creek Watershed District at the Gray's Bay Dam.

Article III. Hazards. Article 10, Chapter 3, Section 10-3.07 of the LMCD Code is hereby amended as follows:

10-3.07. Hazard. It is unlawful for any person to install, operate, maintain, or use deicing equipment on the Lake, with or without a license therefor, which constitutes a hazard to the safety of persons on the Lake. The officers and agents of the LMCD may shut off or remove any deicing equipment causing excessive open water or any other condition that constitutes a safety hazard to persons on the Lake. For purposes of this Section, any failure by a licensee to comply with the minimum standards and requirements in Section 6-5.09, Subdivision 5, the conditions placed on a deicing equipment license, any additional conditions imposed by the Executive Director, or failure to comply with any other requirement in Section 6-5.09 regarding deicing operations, shall constitute a hazard to the safety of persons on the Lake and is a violation of this Code. deicing equipment shall be deemed to constitute such hazard whenever any of the following circumstances exist without being specifically authorized in a current or valid license for the facility:

- (a) Except as provided in paragraph (d) of this Section, the entire area of open water or weakened ice is not enclosed by a semi opaque fence which is at least four feet in height;

- (b) ~~The entire fence, the area enclosed by the fence and the area deiced is not lighted from one-half hour before sunset to one-half hour after sunrise;~~
- (c) ~~The entire fenced area is not marked by reflectorized warning signs at least every 50 feet around the perimeter of the fence; or~~
- (d) ~~During the periods prior to the generally accepted total Lake freezeover in the fall and following the beginning of the final thaw in the spring, the shoreline along the area deiced is not fenced with a semi opaque fence which is at least four feet in height and marked by reflectorized warning signs visible from 50 feet and installed every 50 feet along the shoreline.~~

Article IV. Definitions. Article 1, Chapter 3, Section 1-3.01 of the LMCD Code is hereby amended by adding the following definition and renumbering the subdivisions in the section as needed:


Subd. 33. Floating Baffle. "Floating baffle" means a flexible, impermeable curtain extending down from floats in the water and weighted at the bottom, which is used to encircle and contain the open water resulting from deicing operations. This device is sometimes referred to as a turbidity curtain.

Article V. Incorporation of Amendments. The LMCD Attorney is authorized to incorporate these amendments into the LMCD Code and is authorized to make such corrective changes as may be needed to correct formatting, maintain internal consistency, renumber sections, and as may otherwise be needed to implement the changes intended by this ordinance.

Article VI. Declaration. This enactment is adopted by a majority vote of all the members of the Board, has the effect of an ordinance, and is in effect on the first day of publication after adoption.

Adopted this 26th day of August 2020.

BY THE BOARD OF DIRECTORS


Gregg Thomas, Chair

ATTEST:


Dan Baasen, Secretary

Date of Publication: 10-8-20, 2020.

Effective Date: 10-8-20, 2020.

New material is double-underlined and deleted material is ~~stricken~~.