

ORDINANCE NO. 2018-03

**AN ORDINANCE TO REPEAL AND RE-CREATE ORDINANCE NUMBERS 2009-05
AND 2017-2 TO REGULATE WHARFS, PIERS AND MOORING FACILITIES AND
ESTABLISH A PIER HEAD LINE FOR LAUDERDALE LAKES**

WHEREAS, the Town of LaGrange and the Town of Sugar Creek have jurisdiction over Lauderdale Lakes, as they constitute 100 percent of the towns, villages and cities having shoreline of the Lauderdale Lakes chain of lakes, including Green Lake, Middle Lake, Mill Lake, and Don Jean Bay; and

WHEREAS, this ordinance is adopted pursuant to Wisconsin Statutes Sections 30.772(3); and

WHEREAS, pursuant to Wisconsin Statutes Section 30.772(3)(a), the Town Clerk has submitted this ordinance to the Department of Natural Resources for review at least 60 days prior to the Town of LaGrange taking final action in the matter; and

WHEREAS, the placement of structures in and on Lauderdale Lakes may materially impact the health, safety and welfare of the public, environmental concerns relating to clean water, and aquatic habitat for fish and plant life, and recreational opportunities for all;

WHEREAS, the Town Board of the Town of LaGrange, Walworth County, Wisconsin, hereby finds that the following regulations are necessary and appropriate in the interests of public health, safety or welfare, including the public's interest in preserving the State's natural resources.

NOW, THEREFORE, the Town Board of the Town of LaGrange, Walworth County, Wisconsin, **DO HEREBY ORDAIN AS FOLLOWS:**

Towns of La Grange and Sugar Creek Ordinances 2009-05 entitled, "An Ordinance to Regulate Wharfs, Piers and Mooring Facilities and Establish a Pierhead Line for Lauderdale Lakes; and 2017-02 entitled, "An Ordinance to Repeal and Re-Create Section IV of Ordinance No. 2009-05 Entitled an Ordinance to Regulate Wharves, Piers and Mooring Facilities and Establish a Pierhead Line for Lauderdale Lakes, with Regard to Variance Procedures," are hereby repealed and re-created as follows:

SECTION I: DEFINITIONS

- A. The definitions set forth in Section 30.01, Wis. Stats., as amended from time to time, are adopted by reference.
- B. Mooring facility - means any allotted space, place or contrivance to which a single water craft is attached, secured or berthed, including, but not limited to, a mooring buoy, pier slip or shore station, wet boat house, boat shelter, boat lift or boat hoist. By way of example, a pier of sufficient size to moor two (2) boats counts as two (2) mooring facilities.
- C. Pier head line - means the distance into the water from the ordinary high water mark, as defined in NR 320.03(4), Wisconsin Administrative Code, in which area piers maybe allowed.
- D. Raft - is any properly anchored structure which floats on the water by means of inflation, barrels, logs, or similar means, and is designed for swimming and related activities and is not used for transportation.
- E. Wharf – is a structure built over the water that is parallel and adjacent to the shoreline and must be floating or placed on piles or posts.

SECTION II: PERMIT REQUIRED

No property owner, tenant, agent, business or person may do any of the following:

- construct;
- place;
- extend;
- enlarge;
- replace, except seasonal replacement; or
- Any complying or non-complying pier or wharf legally existing in place as of April 17, 2012 may be maintained and repaired so long as the pier or wharf is not expanded or enlarged in any way and remains in the footprint of the current pier or wharf. Repairs to the decking or handrails of a pier or wharf may be made to any pier or wharf without a permit. Repairs or replacement of any vertical supports of a pier or wharf constitutes replacement and a permit is required.

SECTION III: APPLICATION FOR PERMIT

Any person, firm, corporation or association desiring to erect, construct, place, extend, enlarge or replace or repair to an extent defined in Section II any wharf, pier or mooring facility on or about the bed of Lauderdale Lakes along or beyond the shoreline as it exists or as it may have been determined and established by ordinance shall be required, regardless of other permits obtained, make and file a written application in the office of the Building Inspector of the Town of LaGrange or Town of Sugar Creek. The application shall contain the following information:

- A. Describe the real estate, existing mooring facilities, and wharfs, and piers, and describe proposed mooring facilities, wharfs, and piers or extension thereof in detail;
- B. The structures' location in regard to the shoreline and pier head line;
- C. Distances to all property lines of the abutting riparian lands;
- D. Details of the dimensions and kinds of materials, together with drawings;
- E. Any additional details and specifications that the Town Board may request;
- F. The name, addresses of legal residence of riparian property, and signature of the riparian proprietor of the shoreline or easement holder who otherwise meets the criteria in Sec. 30.131, Stats., on whose behalf the application is made, and the name and post office address of the applicant, if different;
- G. A fee in the amount established from time to time by the respective Town Board; and
- H. In the case of repair or replacement of a legally nonconforming pier, the year the pier, wharf or mooring facility was originally placed in the water and the number of mooring facilities in existence as of April 17, 2012.

SECTION IV: STANDARDS AND PROCEDURE FOR GRANTING PERMITS

There shall be two (2) procedures for obtaining a permit. All applicants shall submit an application to the Building Inspector which shall include photographs of the current shoreline showing all mooring facilities and drawings of the proposed construction and or modification of all the mooring facilities.

A. Procedure 1:

The Building Inspector is authorized to issue permits to riparian owners or easement holders which meet the following standards:

- 1. Meets the criteria in Sec. 30.131, Stats., for piers, wharfs, mooring facilities and shore stations.
- 2. Not longer than the established pier head line, (35ft);

3. No pier wider than 5 feet measured at its point of greatest width, except the pier or wharf may exceed 5 feet width for a triangle at an angle of an L or T shaped pier or wharf, no greater than 3 feet on any side of the triangle attached to the pier or wharf;
 4. Constructed so as to allow the free movement of water underneath all parts of the structure extending beyond the natural shore;
 5. Constructed in such manner as will not cause the formation of land on the lake bed;
 6. No more than one mooring facility for each twenty-two (22) feet, of shoreline owned by the riparian owner. Those riparian owners with less than 22 feet of shoreline frontage are permitted one mooring facility, provided the mooring facility complies with other portions of this ordinance.
 7. No riparian owner shall have more than five (5) mooring facilities per lot regardless of the length of the riparian owner's shoreline;
 8. Placed in a location not inconsistent with the pier planner used by the Department of Natural Resources, as amended from time to time;
 9. No pier or wharf shall be located closer than eight (8) feet to an abutting riparian zone and any pier, wharf, mooring facility or moored water craft must be placed in the "riparian zone"; and
 10. No new nor enhancement of established piers, wharfs, mooring facilities, moorings, mooring buoys and mooring anchors shall be permitted in any environmentally sensitive area as delineated by the Department of Natural Resources.
- B. The Building Inspector shall review the application and forward the application, together with an investigation and report, to the Town Board of LaGrange or Sugar Creek for all applications for piers, wharfs, mooring facilities, moorings, mooring buoys and mooring anchors which do not meet the standards established in Subsection A Procedure 1 of this ordinance. Any application which does not meet the standards shall be forwarded to the Town Board which may grant or deny the permit pursuant to Subsection C Procedure 2.

C. Procedure 2:

At a Town Board meeting, the Town Board may, after considering the application and all evidence presented, and hearing all parties desiring to be heard, grant a permit to riparian owners for piers, wharfs, mooring facilities, moorings, mooring buoys and mooring anchors meeting the following standards and considering the following factors:

1. The location, design and construction will not detrimentally impact the health, safety and welfare of the public which consideration shall include water quality, aquatic habitat and other environmental concerns, including factors considered by the DNR, and of the owners of the abutting riparian property. No new nor enhancement of established piers, wharfs, mooring facilities, moorings, mooring buoys and mooring anchors shall be permitted in DNR defined environmentally sensitive areas.
2. The location, design and construction will not interfere with public rights in the waters or with the rights of neighboring riparian proprietors or occupants;
3. Constructed so as to allow the free movement of water underneath all parts of the structure extending beyond the natural shore;
4. Constructed in such manner as will not cause the formation of land on the lake bed;
5. No more than one mooring facility for each twenty-two (22) feet of shoreline owned by the riparian owner. Those riparian owners with less than 22 feet of shoreline frontage are permitted one mooring facility, provided the mooring facility complies with other portions of this ordinance. However, this is not a guarantee that a permit will be granted.
6. No riparian owner shall have more than five (5) mooring facilities per lot regardless of the length of the riparian owner's shoreline.
7. Placed in a location not inconsistent with the pier planner used by the Department of Natural Resources, as amended from time to time;
8. No pier or wharf shall be located closer than eight (8) feet to an abutting riparian zone and any pier, wharf, mooring facility or moored water craft must be placed entirely in the "riparian zone"; and
9. Additional Requirements for Mooring Buoys and Anchors:
 - a. No permit for placement of a mooring buoy or anchor shall be granted by the Town Board beyond 60 feet from the ordinary high water mark;
 - b. Mooring buoys shall extend eighteen (18) inches above the waterline, be white in color with a blue band clearly visible above the waterline, and be spherical or ovate in shape;
 - c. The painter or line between a mooring buoy and any watercraft attached to it shall not exceed ten (10) feet in length; and
 - d. Section 30.772(3)(d) 1 through 4, Stats., are adopted by reference as though fully set forth herein and as amended from time to time.

10. For replacement or repair for which a permit is required for legally nonconforming piers, wharfs or mooring facilities, the Town Board shall grant permits authorizing structures for the number of mooring facilities in existence as of April 17, 2102 or grant permits to the extent reasonably possible, or grant permits consistent with the other standards in this ordinance.
- D. All permits granted shall state the location and size of the allowed mooring facility, as well as the number of permitted watercraft.
 - E. The Town Board of the town in which the pier is located may grant variances from the terms of Subsection C Procedure 2 of this Ordinance, which may be considered as follows.
 1. Petition for a variance under this subsection may be may be made only by the riparian owner. Such petition shall be filed with the Town Clerk of the town where the property is located.
 2. The Town Board may by resolution establish reasonable filing fees for variance petitions. Such filing fees shall be paid at the time of filing of the petition with the Town Clerk.
 3. A public hearing shall be held on each petition within a reasonable time following receipt of a complete application.
 4. Notice of hearing shall be given by Class 2 notice, under Ch. 985, Wis. Stats., the last insertion to be at least one week prior to the date set for the hearing. In addition, written notice shall be given at the same time to the Department of Natural Resources, the petitioner, the Town Clerks of the Town of Sugar Creek and the Town of LaGrange, the owners of each parcel of land adjoining the petitioner's riparian land in question and any applicable statutorily created lake district. At the hearing, any person may appear in person, by agent, or by attorney.
 5. Following the hearing, the Town Board may authorize such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. In making its determination the Town Board shall consider whether the proposed variance would detrimentally impact the health, safety and welfare of the public which consideration shall include water quality, aquatic habitat and other environmental concerns. The following standards also apply:
 - a. The hardship or difficulty must be peculiar to the parcel in question, due to unique property features, and not something that affects other parcels similarly.

- b. Loss of profit or financial hardship and/or additional expense incurred to comply with the ordinance is not in and of itself sufficient grounds for a variance.
 - c. Self-imposed hardship is not grounds for a variance.
 - d. The hardship cannot be one that would have existed in the absence of the ordinance.
 - e. The public interest must be protected.
 - f. No variance can be granted that would conflict with a deed restriction that was required by the Town or Walworth County, whether noted in a plat, certified survey map, or separately recorded.
6. If the variance is granted, the Town Board may impose such requirements and conditions with respect to locations, construction, maintenance and operation, in addition to any which may be stipulated in this chapter or are deemed by the Town Board to be reasonable and appropriate for the protection of adjacent properties and the public interest and welfare.
 7. The decision on any variance petition shall be in writing and shall be made within a reasonable time after completion of the hearing thereon.
 8. The holder of any variance granted under this subsection shall record it in the office of the Walworth County Register of Deeds and provide proof of recording to the Town Clerk, and the variance runs with the land.
 9. This subsection shall not be interpreted to authorize variance from applicable preemptive requirements of State or federal laws, codes, regulations or other lawful orders.

SECTION V: MAINTENANCE

All wharfs, piers, and mooring facilities extending beyond the natural shore shall be so maintained as to prevent any part or parts thereof from floating or sinking into and obstructing the waters or impeding free navigation of Lauderdale Lakes.

SECTION VI: PREEXISTING PIERS, WHARFS AND MOORING FACILITIES

- A. A pier or wharf that was placed on the bed of navigable water before April 17, 2012, is grandfathered by the State of Wisconsin.
- B. Any complying or non-complying pier or wharf legally existing in place as of April 17, 2012 may be maintained and repaired so long as the pier or wharf is not expanded or enlarged in any way and remains in the footprint of the current pier or wharf. Repairs to the decking or handrails of a pier or wharf may be made to any pier or

wharf without a permit. Repairs or replacement of any vertical supports of a pier or wharf constitutes replacement and a permit is required.

SECTION VII: PIERHEAD LINE REGULATED

- A. Policy. The Towns of LaGrange and Sugar Creek, pursuant to Chapter 30 of the Wisconsin Statutes, are empowered to regulate wharfs and piers and to establish a pier head line. It is in the interest of the Towns of LaGrange and Sugar Creek to preserve and protect the property within the Town of LaGrange and Sugar Creek at the same time as preserving and protecting public rights in navigable waters and non-uniformity with respect to wharfs and piers in Lauderdale Lakes can be detrimental to these interests. It is in the interest of the Towns of LaGrange and Sugar Creek and the public to establish uniform requirements for the establishment of piers and wharfs on Lauderdale Lakes, Walworth County, Wisconsin. To that end, a pier head line should be established.
- B. Establishment of Pier head Line. There is established, in the Towns of LaGrange and Sugar Creek on Lauderdale Lakes, a pier head line. Such pier head line is established at a distance of thirty-five (35) feet channel ward from the ordinary high water mark of the shore. No pier or wharf shall be so placed or so constructed such that it extends a distance greater than the established pier head line channel ward from the ordinary high water mark of the shore from which such pier or wharf is constructed, unless the permit from the Town Board as required by Section IV.C. has been obtained. No pier or wharf may exist more than thirty-five (35) feet from the ordinary high water mark of the shore, except as hereinafter set forth. "Ordinary high water mark" is defined by NR 320.03(4), Wisconsin Administrative Code. Where the bank or shore, at any particular place, is of such a character that it is impossible or difficult to ascertain where the point of ordinary high water mark is, recourse may be had to other places on the shore of the lake to determine whether a given stage of water is above or below the ordinary high water mark.
- C. Prohibition and Exceptions. Any wharf or pier extending into navigable water beyond the limit set forth herein constitutes an unlawful obstruction of navigable water unless a permit for such wharf or pier has been obtained by the Town Board and pursuant to Section 30.12(2) of the Wisconsin Statutes, or is otherwise accepted.

SECTION VIII: RAFTS

- A. Size Limitation. No person may use a raft or water trampoline greater than 200 square feet in surface area on Lauderdale Lakes.
- B. Reflectors. All rafts floating on Lauderdale Lakes shall have reflectors affixed to the outside perimeter.
- C. In all cases, the raft or water trampoline must be confined to the riparian zone of interest and may not interfere with public rights in the waterway.

SECTION IX: REMEDIES AND PENALTIES

- A. All actions to recover forfeitures and penalty assessments under this ordinance are civil actions in the name of the Town of LaGrange or Town of Sugar Creek and shall be heard in Circuit Court for Walworth County.
- B. Any person (riparian owner and / or contractor) violating any provisions of this ordinance relating to mooring facilities shall forfeit not less than \$10 nor more than \$200 for each day that a violation takes place or continues, plus costs and assessments. The cash deposit amount shall be \$100 plus costs and assessments per day for each day that a violation takes place or continues.
- C. Any permit issued which is contrary to any law or ordinance or rule, or regulation of the Department of Natural Resources, or with which the applicant has not complied, shall be void and of no effect.
- D. In the event a mooring facility for which a permit has been granted shall not be erected, constructed, placed, extended or maintained in accordance with the plans, specifications, details and drawings submitted, or not maintained in a safe condition, or in the event such mooring facility shall not be constructed within one (1) year from date permit was granted, or that it be used in a manner detrimental to the general public, or interfere with the rights of the neighboring riparian owners, then, in such event, the board may cancel and revoke the permit provided it shall first hold a meeting after fixing a time and place of hearing and shall cause a written notice thereof to be issued and delivered or mailed to the holder of such permit, and also to the owners of the neighboring abutting riparian lands, not less than five (5) days before the time fixed for hearing.
- E. Every pier, wharf or mooring facility constructed, placed or extended, enlarged or replaced in violation of this ordinance is declared to be a public nuisance, and the construction thereof may be enjoined and the maintenance thereof may be abated by action at the suit of the Town.
- F. The Building Inspector(s) of the Towns of LaGrange and Sugar Creek are authorized to issue citations for violations of this ordinance.

SECTION X: SEVERABILITY

The several sections of this Ordinance are declared to be severable. If any section or provision thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such declaration shall apply only to the specific section(s) or portion(s) thereof directly specified in said declaration, and shall not affect the validity of any other provisions, sections, or portions of the Ordinance, which shall remain in full force and effect. Any other Ordinances whose terms are in conflict with the provisions of this Ordinance are hereby repealed as to those terms that conflict.

SECTION XI: REPEAL OF CONFLICTING ORDINANCE

All ordinances and parts of ordinances in conflict with this ordinance heretofore enacted by the Towns of LaGrange and Sugar Creek, Walworth County, Wisconsin, are hereby repealed.

SECTION XII: EFFECTIVE DATE

This ordinance shall take effect immediately upon the Town of Sugar Creek adopting an identical ordinance, following passage and posting or publication as provided by law.

Adopted by the Town Board of the Town of LaGrange on this 10 day of September, 2018.

Approved:

Frank Taylor

Frank Taylor, Town Chairman

Mark Bromley

Mark Bromley, Supervisor

Don Sukala

Don Sukala, Supervisor

Marcia Sahag

Marcia Sahag, Supervisor

John Anderson

John Anderson, Supervisor

ATTEST:

Crystal Hoffmann

Crystal L. Hoffmann, Town Clerk, LaGrange

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