

Date of Request: 1/11/2023

## Presque Isle Town Board Request to Ordinance Committee

By unanimous or majority vote the town board has requested :

(Check all that apply)

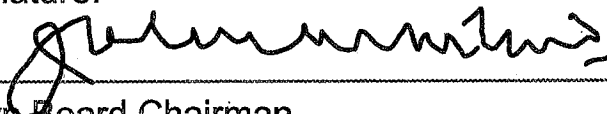
- Research and feedback
- Draft an ordinance
- Finalize and format final ordinance draft for presentation to board
- Draft modifications of existing ordinance:

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### Special instructions:

1. Disregard the previous draft hazardous wake ordinance 507, as there are inherent flaws in that draft ordinance that will not allow the intent of the Town Board directions to you to protect our shoreline and natural habitat.
2. Any person that is a riparian owner in Presque Isle or a Presque Isle resident, may use their boats without constraint of having to go to the Presque Isle Boat Wash as long as they exclusively use their boats in PI waters. Any person bringing a boat from outside of Presque Isle waters with intent to operate in PI must certify that the ballast tanks and bilges and live wells are empty and clean, and further to take their boats through the PI boat wash.
3. Craft an ordinance that allows wake boarding, wake surfing activities to begin 250' from shore
4. Limit the depth of wake boarding and wake surfing activities to allow them to operate in 17' of water or more.
5. Adopt current regulations of the DNR with our modifications for local conditions regarding speed of operations and distance required from other operators of vessels, and/ or swimmers, divers, wake boarding, wake surfing and water-skiing activities from other watercraft or persons in the water.
6. Adopt fine schedule for the above.

Signature:



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Town Board Chairman

Signature:

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Town Clerk

## Notes for PI Ordinance Committee

### Analysis of Draft Ordinance 507

1) **What is a hazardous wake?** The definition of hazardous wakes in the proposed Ordinance is inconsistent with usage of the term in Wisconsin Statute and with common English meaning.

- The proposed Ordinance requires “intentional” magnifying of the wake’s height as part of the definition of a hazardous wake. By contrast, in the Wisconsin statute, “intent to magnify” does not need to be shown. A wake or wash is hazardous if it causes hazard or harm to people or property – intent to magnify is not a necessary element.

Any PI Ordinance should be objective and clear so that sports enthusiasts have a “safe harbor” to practice their sport. An objective and clear ordinance would minimize community disagreements over interpretation and enforcement. Including the element of intent would introduce unnecessary uncertainty.

- The proposed Ordinance requires the subsequent generation of “rogue waves” as part of the definition of a hazardous wake. Again, the Wisconsin statute simply refers to wakes and washes that cause hazard or harm to people or property. The generation of a “rogue wave” is not required to make a wake or wash hazardous.
- In dictionary and common usage, rogue waves are naturally occurring gigantic ocean waves that are “huge, abnormal waves that occur unexpectedly. The waves are large compared to the state of the sea and pose a great danger to even the largest ships as they appear without warning with a great force...The waves are also referred to as monster waves, freak waves, extreme waves, or episodic waves.” (<https://www.worldatlas.com/articles/what-is-a-rogue-wave.html> ) Some wakes produced by boats may be hazardous, but these wakes are not rogue waves.

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Background resources:

PROPOSED ORDINANCE (emphasis added):

507.2(1). Hazardous wake. A hazardous wake is a boat wake that is **intentionally magnified** through the use of ballast, design features or operational procedures to amplify the wake’s height and **consequently generate rogue waves.**

WISCONSIN STATUTE:

#### **Ch. 30.68 Prohibited Operation**

##### **(4) CREATING HAZARDOUS WAKE OR WASH.**

(a) No person shall operate a motorboat so as to approach or pass another boat in such a manner as to create a hazardous wake or wash.

(b) An operator of a motorboat is liable for any damage caused to the person or property of another by the wake or wash from such motorboat unless the negligence of such other person was the primary cause of the damage.

Jan 18, 2023

2) **Unintended Consequences – Prohibiting Tubing and Waterskiing.** Commonly enjoyed water sports such as tubing and waterskiing often entail operating the boat in a way that the hull plows for some period of time longer than would be necessary to reach planing speed. For example, in tubing operators use a slower speed with a larger wake to create a bouncy experience for the riders. In waterskiing, a teaching method is to drag the skier at a medium speed which creates a larger wake. Also in waterskiing, depending on the strength and size of the skier and other factors, the ride may entail operating the boat at a slower speed that increases the wake height.

Below is the operative language in the proposed Ordinance. Read the highlighted words to parse the language and understand how it would prohibit tubing and waterskiing. NOTICE HOW THE HIGHLIGHTED LANGUAGE IS REPETITIVE, AND YET SLIGHTLY DIFFERENT AND NOT CLEAR/ PRECISE – WHICH BEGS THE QUESTION WHY? Additional comments [bracketed in red].

507.3 Local Ordinance. **THE OPERATION OF A BOAT IN A MANNER THAT INTENTIONALLY MAGNIFIES ITS WAKE FOR RECREATIONAL PURPOSES SUCH AS WAKE BOARDING, WAKE SURFING OR WAKE JUMPING IS PROHIBITED ON ANY LAKE OR RIVER WITHIN THE TOWNSHIP BOUNDARIES.** [NOTE: IF THE OPERATOR OF THE BOAT INTENDED TO PUT THE THROTTLE AT MEDIUM DURING WATERSKIING OR TUBING, THAT MEETS THE LEGAL DEFINITION OF INTENT. THE CONSEQUENCES OF ADJUSTING THE THROTTLE (LARGER WAKES) ARE DE FACTO INTENDED AS WELL.] [NOTE THE DRAFTING CURIOSITY THAT THIS PROHIBITION DOES NOT USE THE DEFINED TERM OF HAZARDOUS WAKE FROM SEC 507.2(1).]

507.3(1). **It is unlawful for any person to use any equipment that is installed or added to a boat or to operate a boat in a manner that intentionally creates hazardous wakes and rogue waves.** [This prohibits operation of any boat in an in-between speed, for example to drain water. Or to pull someone in a tube or on a ski. Again, a person doesn't need to intend to create hazardous wakes to violate this proposed ordinance. It's not a winning argument to say one was intending to drain the boat, and not to create hazardous wakes. If the person intended to adjust the throttle for medium speed, the natural consequences of that intentional action are also considered intentional. Confusion over the meaning of intent is another reason to eliminate the concept, and to make a clear and objective ordinance.]

507.3(2). Ballast tanks or other ballast modifications which increase the displacement of a boat or vessel so as to create a hazardous wake and rogue waves may not be deployed on any watercraft.

507.3(3). External vanes or devices intended to increase the wake of a boat may not be deployed or operated.

507.3(4) **Watercraft operators shall not produce hazardous wakes by regulating the throttle level of the motors propelling the boat at speeds which result in the hull plowing through water to magnify a wake and thus generate rogue waves.** [This obviously would give people reason to call the constable when their neighbors are tubing or waterskiing. Why doesn't the Ordinance say that tubing, waterskiing, riding a disc, etc. are permitted – subject to the Wis. Statutes on hazardous wakes, negligent operation, and careful & prudent operation. These statutes (summarized on separate page) can be adopted by the Town as Ordinances. ]

## NOTES for ORDINANCE COMMITTEE

### Safety & Hazardous Wake or Wash – Already Covered by State Statute which can also be adopted as Town Ordinances:

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#### **30.68 Prohibited operation.**

(2) **NEGLIGENT OPERATION.** No person may operate or use any boat, or manipulate any water skis, aquaplane or similar device upon the waters of this state in a careless, negligent or reckless manner so as to endanger that person's life, property or person or the life, property or person of another.

#### (4) **CREATING HAZARDOUS WAKE OR WASH.**

(a) No person shall operate a motorboat so as to approach or pass another boat in such a manner as to create a hazardous wake or wash.

(b) An operator of a motorboat is liable for any damage caused to the person or property of another by the wake or wash from such motorboat unless the negligence of such other person was the primary cause of the damage.

#### **Wisconsin Statute Ch. 30.69(2)**

(2) **CAREFUL AND PRUDENT OPERATION.** A person operating a motorboat having in tow a person on water skis, aquaplane or similar device shall operate such boat in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person

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### Wisconsin Statute – How Towns may regulate boating

#### **30.77 Local regulation of boating.**

(1) **LOCAL REGULATION PROHIBITED; EXCEPTIONS.** Sections 30.50 to 30.71 shall be uniform in operation throughout the state. No municipality, public inland lake protection and rehabilitation district or town sanitary district may:

(a) Enact any ordinance or local regulation requiring local numbering, registration or licensing of boats or any ordinance or local regulation charging fees for inspection, except as provided in sub.

(3) (e); or

(b) Except as provided in subs. (2) and (3), enact any ordinance or local regulation that in any manner excludes any boat from the free use of the waters of this state or that pertains to the use, operation or equipment of boats or which governs any activity regulated by ss. 30.50 to 30.71.

**(2) ORDINANCES CONFORMING TO STATE LAW.** Any municipality may enact ordinances which are in strict conformity with ss. 30.50 to 30.71 or rules of the department promulgated under those sections.

**(3) ORDINANCES.**

(a) Except as provided in par. (ab), any town, village, or city may, in the interest of public health, safety, or welfare, including the public's interest in preserving the state's natural resources, enact ordinances applicable on any waters of this state within its jurisdiction if the ordinances are not contrary to or inconsistent with this chapter and if the ordinances relate to the equipment, use, or operation of boats or to any activity regulated by ss. 30.60 to 30.71.

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(cr) The types of ordinances that may be enacted under par. (a), (ab), (am), or (b) include the following:

1. Restrictions on speed.
2. Restrictions on certain types of boating activities on all, or in specified parts, of the lake, river or stream.
3. Restrictions on certain types of boating activities during specified hours of the day or specified days of the week.
4. Restrictions on the operation of a motorboat towing a person on water skis without an observer, as provided in s. 30.69 (1) (a) 1.

30.77(3)(d) (d) Ordinances pertaining to the equipment, use or operation of boats on inland lakes shall be subject to advisory review by the department as provided under this paragraph. Proposed ordinances subject to review under this paragraph shall be submitted by the local town, village or city clerk or by the public inland lake protection and rehabilitation district or town sanitary district to the department at least 60 days prior to final action thereon by the town, village, city or district governing body. Advisory reports regarding town, village, city, lake district or town sanitary district ordinances that regulate the equipment, use or operation of boats on inland lakes shall be based on consideration of the effect of the ordinance on the state from the standpoint of uniformity and enforcement and the effect of the ordinance on an affected town, village, city, lake district or town sanitary district in view of pertinent local conditions. Advisory reports shall state in what regard such ordinances are considered consistent or inconsistent with this chapter as to public health, safety or welfare, including the public's interest in preserving the state's natural resources, and shall be accompanied by suggested changes, if any. No later than 20 days after receipt by the department of proposed ordinances, the department shall advise the town, village, city, lake district or town sanitary district in writing as to the results of its advisory review under this paragraph. The department shall address the results sent to a town, village or city to its clerk.

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