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January 23, 2015

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Carter P. Smith
Executive Director

Mr. Michael McDonald
Deputy City Manager
City of Austin
P.O. Box 1088
Austin, Texas 78767

Re: Petition for Rulemaking – Modification of Buoy Standards

Dear Mr. McDonald:

The Texas Parks and Wildlife Department (TPWD) has received your petition for rulemaking requesting the modification of regulations governing buoy standards.

In accordance with TPWD's rules for responding to petitions for rulemaking, your petition and staff's recommendation are being forwarded to each Texas Parks and Wildlife Commissioner. *See*, 31 Tex.Admin.Code §51.3. A copy of that correspondence is attached.

Thank you for your interest in the TPWD and your concern for water safety. If you have any questions or comments, please do not hesitate to contact me at (512) 389-8558 or by e-mail at ann.bright@tpwd.texas.gov.

Sincerely,

Ann Bright
General Counsel

AB:dh

Enclosure

cc: Mr. Robert Macdonald



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Commissioners

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Carter P. Smith
Executive Director

Date: January 22, 2015

To: Texas Parks and Wildlife Commissioners

From: Carter Smith
Executive Director

Subject: Petition for Rulemaking: Modification of Buoy Standards

On December 11, 2014, the Texas Parks and Wildlife Department (TPWD) received a petition for rulemaking (attached) from the City of Austin (City). The City requests rulemaking to amend TPWD water safety rules to waive certain water safety requirements for Lake Austin. The TPWD staff recommendation (attached) is to deny the petition as unnecessary.

TPWD rules provide that the petition will be considered denied unless within 50 days after TPWD's receipt of the petition for rulemaking, a Commissioner requests that this petition be placed on the agenda for a future Commission meeting. Therefore, if you wish to have this matter considered in a Commission meeting, please inform me no later than *Friday, January 30, 2015*. Otherwise, the petition will be considered denied.

If you have any concerns, questions, or comments, please do not hesitate to contact me.

Sincerely,

Carter Smith
Executive Director

CS:dh

STAFF RECOMMENDATION
Petition of the City of Austin Regarding Lake Austin Buoy Standards

Background

On December 11, 2014, Texas Parks and Wildlife Department (TPWD) received a petition for rulemaking (petition) from the City of Austin (the City), dated December 8, 2014. The petition was submitted by the Austin Deputy City Manager pursuant to Resolution No. 20141106-65 (the Resolution) enacted by the Austin City Council on November 6, 2014. The Resolution states,

The City Manager is directed to petition the Texas Parks and Wildlife Department for an amendment to Title 31 of the Texas Administrative Code. Section 55.303, which requires that governing boards post and maintain buoys in areas designated as no-wake zones, specifically waiving these requirements on Lake Austin and allowing the City the authority to place buoys, pilings, and other notices as the City deems necessary to protect public health and safety.

The Deputy City Manager specifically requested that TPWD rules be amended as follows:

Chapter 55, Law Enforcement; Subchapter G Boat Speed Limit and Buoy Standards
§55.303. General Rules

The following rules shall govern the speed limits of moving vessels on all public waters of this state.

- (1) Governing boards may establish regulated areas under procedures and rules set out in Parks and Wildlife Code, §31.092, when these rules are determined to be necessary for public safety.

(A) Regulated areas shall be designated and posted as "Slow, No Wake" areas.

(B) Numerical speed limits, such as miles per hour, shall not be used on public waters.

(C) Boat speeds outside of regulated areas shall be governed by the Parks and Wildlife Code, §31.095(a).

(D) The governing board shall post and maintain regulated areas with buoys or pilings consistent with the uniform state waterway buoy marking system authorized by these rules.

- (2) Regulations governing water events and regattas administered by the United States Coast Guard are exempt from these rules to the extent of conflict.

(3) Regulations governing a "Slow, No Wake" area on Lake Austin are exempt from the requirements of Subsection (1)(D) if the governing board adopts an ordinance requiring a form of notice other than buoys or pilings that the governing board deems appropriate.

or

(3) Regulations governing a "Slow, No Wake" area on Lake Austin are exempt from the requirements of Subsection (1)(D) if the governing board adopts an ordinance that requires the posting and maintenance of signs at all public boat ramps that provide access to the lake, along with buoys or pilings at the areas which the governing body determines have the highest public safety risk.

As explained in more detail below, TPWD staff recommends that the petition be denied as unnecessary.

Authority Regarding Water Safety

In Texas, water safety requirements for public water are primarily established by the Texas Legislation in Chapter 31 of the Parks and Wildlife Code (also referred to as the "Water Safety Act"). The Water Safety Act states, "In the interest of uniformity, it is the policy of the State of Texas that the basic authority for the enactment of boating regulations is reserved to the state." TEX. PARKS & WILD. CODE §31.091.

TPWD has been delegated authority by the Texas Legislature to "provide for a standardized buoy-marking program for the inland water of the state" and to "provide for the standardization of speed limits for moving vessels." TEX. PARKS & WILD. CODE §31.142, 31.095(b).

The Water Safety Act also grants authority to local governmental bodies to enact certain types of ordinances to the extent necessary for public safety. Specifically, the Water Safety Act states,

The governing body of an incorporated city or town, with respect to public water within its corporate limits and all lakes owned by it, may designate by ordinance certain areas as bathing, fishing, swimming, or otherwise restricted areas and may make rules and regulations relating to the operation and equipment of boats which it deems necessary for the public safety. The rules and regulations shall be consistent with the provisions of this chapter [31, Water Safety].

TEX. PARKS & WILD. CODE §31.092(a). The Water Safety Act goes on to state,

No person may operate a boat within a water area that has been clearly marked, by buoys or some other distinguishing device, as a bathing fishing, swimming, or otherwise restricted area by . . . a political subdivision of the state. . . .

TEX. PARKS & WILD. CODE §31.102. In addition, "[n]o political subdivision or state agency may impose a speed limit not in conformity with the [Parks and Wildlife] commission's standard." TEX. PARKS & WILD. CODE §31.095(b).

As noted in the City's petition, the Parks and Wildlife Commission's standards as contained in TPWD rules provide that these regulated areas of public water shall be designated and posted as "Slow, No Wake" areas and that numerical speed limits not be used on public waters. 31 Tex. Admin. Code §55.303.

Buoy and Markings Standards

In carrying out its authority under the Water Safety Act "to provide for a standardized buoy-marking program for the inland water of the state," in 1990, the Parks and Wildlife Commission enacted rules that adopted the United States Coast Guard (USCG) standards for buoy markings. The portion of these TPWD rules of interest to the City states, "[The governing board shall post and maintain regulated areas with buoys or pilings consistent with the uniform state waterway buoy marking system authorized by these rules." 31 Tex. Admin. Code §55.303(1)(D).]

The Uniform State Waterway Marking System (USWMS) referenced in the TPWD rules was replaced in 2003 by the U.S. Aids to Navigation System (USATONS). The USATONS guidelines are set out in federal regulations. See, 33 C.F.R. Part 62. These regulations specify the content of buoys and signage, but do not dictate the distances between buoys or markings or locations of buoys or markings. Although TPWD rules and the Water Safety Act require that regulated areas be clearly marked, TPWD rules do not

dictate the distance between buoys or signage. The decision regarding the location of and distance between buoys and markings is best left to the governmental body with authority over the water body. Therefore, TPWD staff recommends against enacting TPWD regulations establishing separate TPWD buoy and marking requirements for specific water bodies.

From a law enforcement and public safety perspective, and as stated in the Water Safety Act, TPWD staff recommends that bathing fishing, swimming, or otherwise restricted areas "be clearly marked, by buoys, or some other distinguishing device." *See*, TEX. PARKS & WILD. CODE §31.102. In addition TPWD staff recommends that buoys and markings be positioned to ensure public notice of any regulatory requirements, as well as any navigation hazards or other public safety concerns. In determining the appropriate location of and distance between buoys and markings, a governmental body should consider the topography of the water body, the width and depth of the water body and the presence or absence of navigation hazards.

Recommendation

For the reasons explained above, TPWD staff recommends that the petition be denied. The decision regarding the placement of buoys and markings in Lake Austin is best left to the discretion of the City, taking into consideration the matters addressed above. However, TPWD staff would welcome the opportunity to work with the City regarding appropriate markings for the proposed new no wake areas for Lake Austin.



City of Austin

City Manager's Office

P. O. Box 1088, Austin, TX 78767
(512) 974-2200, Fax (512) 974-2833

Marc A. Otis, City Manager
Marc.Otis@cityofaustin.tx.us

December 8, 2014

Roger MacDonald
Program Specialist
General Counsel, Legal Division
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, TX 78744

Re: Petition for Amendment to Title 31, Texas Administrative Code, Section 55.303

Dear Mr. MacDonald,

This is a petition to the Texas Parks and Wildlife Department to amend its administrative rule that requires the use of buoys or pilings to mark the boundaries of a "Slow, No Wake Zone" as it applies to Lake Austin. That rule is Texas Administrative Code, Title 31, Chapter 55, Law Enforcement, Subchapter G, Boat Speed Limit and Buoy Standards, Section 55.303, General Rules.

The Austin City Council passed the enclosed resolution on November 6, 2014. The resolution directs the City Manager to petition the Texas Parks and Wildlife Department to amend its rules concerning boating safety. The reasons for this petition are set out in the resolution. I am writing to you on behalf of the City Manager.

In summary, the City finds that boating conditions on Lake Austin are creating a public safety hazard for users of the lake. This public safety concern is caused by the increasing size and number of motorized boats operated on Lake Austin. We have also been told of incidents in which motorized boats have approached smaller boats and swimmers too closely, creating dangerous situations.

The City Council resolution was based on a City-sponsored task force's recommendation that a no-wake zone be established for areas within 50 feet of the shoreline of Lake Austin. Since the lake is approximately 21 miles in length, a requirement that buoys be posted for that complete distance is cost prohibitive. If buoys were to be posted at 100 yard intervals, the purchase price alone would exceed \$370,000.

The City believes that other alternatives can provide equivalent notice to boaters. For example, signs warning boaters of the no-wake zone could be posted at each Lake Austin public boat ramp.

December 8, 2014

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While the City believes that the public safety risks exist for the entire length of the lake, buoys could be placed at the areas of the lake that have the most serious public safety concerns.

Therefore, the City of Austin petitions the Department to adopt the following amendment to Title 31, Texas Administrative Code, Section 55.303 by adding subsection (3) as set out below.

"The following rules shall govern the speed limits of moving vessels on all public waters of this state.

(1) Governing boards may establish regulated areas under procedures and rules set out in Parks and Wildlife Code, §31.092, when these rules are determined to be necessary for public safety.

(A) Regulated areas shall be designated and posted as "Slow, No Wake" areas.

(B) Numerical speed limits, such as miles per hour, shall not be used on public waters.

(C) Boat speeds outside of regulated areas shall be governed by the Parks and Wildlife Code, §31.095(a).

(D) The governing board shall post and maintain regulated areas with buoys or pilings consistent with the uniform state waterway buoy marking system authorized by these rules.

(2) Regulations governing water events and regattas administered by the United States Coast Guard are exempt from these rules to the extent of conflict.

(3) Regulations governing a "Slow, No Wake" area on Lake Austin are exempt from the requirements of Subsection (1)(D) if the governing board adopts an ordinance requiring a form of notice other than buoys or pilings that the governing board deems appropriate.

Alternatively, the City of Austin petitions the Department to adopt the following amendment to Title 31, Texas Administrative Code, Section 55.303 by adding subsection (3) as set out below.

"The following rules shall govern the speed limits of moving vessels on all public waters of this state.

(1) Governing boards may establish regulated areas under procedures and rules set out in Parks and Wildlife Code, §31.092, when these rules are determined to be necessary for public safety.

(A) Regulated areas shall be designated and posted as "Slow, No Wake" areas.

(B) Numerical speed limits, such as miles per hour, shall not be used on public waters.

(C) Boat speeds outside of regulated areas shall be governed by the Parks and Wildlife Code, §31.095(a).

(D) The governing board shall post and maintain regulated areas with buoys or pilings consistent with the uniform state waterway buoy marking system authorized by these rules.

(2) Regulations governing water events and regattas administered by the United States Coast Guard are exempt from these rules to the extent of conflict.

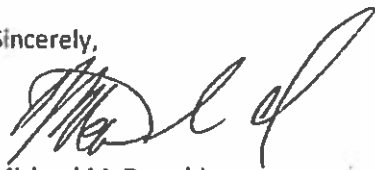
December 8, 2014

Page 3

(3) Regulations governing a "Slow, No Wake" area on Lake Austin are exempt from the requirements of Subsection (1)(D) if the governing board adopts an ordinance that requires the posting and maintenance of signs at all public boat ramps that provide access to the lake, along with buoys or pilings at the areas which the governing body determines have the highest public safety risk.

If you have any questions about this petition, please contact Assistant City Attorney David Douglas, at 512-974-2667.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael McDonald', written over a horizontal line.

Michael McDonald
Deputy City Manager

Enclosure

Cc: Marc A. Ott, City Manager
David M. Douglas, Assistant City Attorney

RESOLUTION NO. 20141106-065

WHEREAS, the City of Austin has authority to regulate a variety of commercial and other uses, activities, and development on, around, and affecting Lake Austin and its components and features for the public health, safety, general order and welfare, environmental and natural resource conservation and sustainability, and for other good and justified cause;

WHEREAS, on May 24, 2012, the Austin City Council created a Lake Austin Task Force (LATF) to address the impact that commercial, residential, and recreational activity has had on Lake Austin;

WHEREAS, the LATF finalized its recommendations on June 3, 2013;

WHEREAS, development and recreation pressures along the shores of the lake have been steadily increasing and are anticipated to continue to increase;

WHEREAS, the increasing size and number of motorized watercraft on Lake Austin compounded by new recreational activities may be contributing to an increasing health and safety hazard for swimmers and operators of smaller, non-motorized watercraft;

WHEREAS, according to Section 8-5-46(B)(1) of the City Code, a person may swim within 50 feet of the shoreline, increasing the likelihood of watercraft-swimmer conflicts;

WHEREAS, establishing a no-wake zone within 50 feet of the entire shoreline of Lake Austin was a consensus recommendation of the LATF;

WHEREAS, Texas Parks and Wildlife (TPW) Code, Section 31.092 allows a city to designate or otherwise restrict certain areas for bathing, fishing, or swimming and to make rules and regulations relating to the operation and equipment of boats which it deems necessary for the public safety;

WHEREAS, Title 31 of the Texas Administrative Code, Section 55.303 provides that governing boards may establish regulated areas under procedures and rules set out in TPW Code, Section 31.092;

WHEREAS, TPW Code, Section 55.303(1) provides that regulated areas be designated and posted as "Slow, No Wake" areas and that "the governing board post and maintain regulated areas with buoys or pilings consistent with the uniform state waterway buoy marking system authorized by these rules;"

WHEREAS, the Lower Colorado River Authority imposes a no-wake zone rule within 50 feet of the entirety of the shoreline of the Highland Lakes without placing buoys or pilings;

WHEREAS, to comply with this section of the TPW Code along the entirety of the 42 miles of Lake Austin shoreline, should buoys be spaced at 100-yard intervals, approximately 756 buoys would be required with a total estimated purchase cost of \$378,000, plus installation and maintenance;

WHEREAS, protecting public health and safety is a foremost concern of the City as is fiscal responsibility, and it is the City's position that public health and safety can be protected by strategic placement of buoys and pilings, thus reducing the financial impact to taxpayers;

WHEREAS, to protect the health and human safety of the citizens of Austin who enjoy recreational activities on Lake Austin, the City Council desires to have the authority to designate the area within 50 feet of the shoreline of Lake Austin as a "Slow, No Wake" zone, with the option to place buoys or pilings consistent with the uniform state waterway buoy marking system as the City deems necessary to protect public health and safety.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Manager is directed to petition the Texas Parks and Wildlife Department for an amendment to Title 31 of the Texas Administrative Code, Section 55.303, which requires that governing boards post and maintain

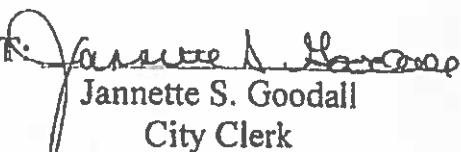
buoys in areas designated as no-wake zones, specifically waiving these requirements on Lake Austin and allowing the City the authority to place buoys, pilings, and other notices as the City deems necessary to protect public health and safety.

BE IT FURTHER RESOLVED:

Upon approval of a waiver of this requirement by the Texas Parks and Wildlife Department the City Manager will immediately initiate action to implement the "Slow, No Wake" zone within 50 feet of the shoreline of Lake Austin.

ADOPTED: November 6, 2014

ATTEST:


Jannette S. Goodall
City Clerk

4 RECEIVED

DEC 11 2014

**PARKS & WILDLIFE
AUSTIN, TX 78744**

