

ORDINANCE NO. 1207-08-2008

AN ORDINANCE AMENDING THE CITY OF GAINESVILLE CODE OF ORDINANCES, CHAPTER 5 BUILDINGS AND BUILDING REGULATIONS, ARTICLE VI ACTIVITIES UPON MOSS LAKE PROPERTIES; AMENDING SECTION 5-230 DEFINITIONS; AMENDING SECTION 5-236 CONSTRUCTION OF FIXED STRUCTURES; AMENDING SECTION 5-238 FLOATING FACILITIES; SECTION 5-240 PRIVATE USE OF LAKE WATER; SECTION 5-246 BOATING AND PERSONAL WATERCRAFT REGULATIONS; SECTION 5-250 BOATS GENERALLY; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING AN EFFECTIVE DATE; AND MAKING AN OPEN MEETING FINDING.

WHEREAS, the ordinance that regulates Moss Lake has not been reviewed or amended since 2004; and

WHEREAS, there has been an increase in the development and activity at Moss Lake in the past few years; and

WHEREAS, the City needs to regulate and control the use of the lake for the health and safety of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS:

Section 1. Amend Chapter 5 Section 5-230

Chapter 5 Section 5-230 is hereby amended to include the following:

Catwalk shall mean the narrow walkway of a dock providing access to a dock or moored watercraft. In terms of measurement, the catwalk shall follow the same requirements associated with the dock deck.

Dock shall mean any dock, pier, wharf or other structure installed in or on the water and connected to the shoreline.

Dock Deck shall mean a flat floor surface area with supporting fixed piers or floating devices built over the lake water either attaching directly to the shoreline or adjoining the end of a fixed catwalk.

Section 2. Amend Chapter 5 Section 5-236

Chapter 5 Section 5-236 is hereby amended to read as follows:

Construction of fixed structures.

- a. *Permit*. No person shall construct any dock from elevation seven hundred fifteen (715) feet above sea level into or toward the lake without first having

obtained from the city a building permit for the construction of such structure. All applications for such permits shall set out the location, notation of the 715 elevation, the length of any such proposed structure, a scaled drawing, and any other information the city deems necessary. Upon receipt of such application for a permit, for each dock and a one hundred dollar (\$100.00) permit fee, and provided the application meets the requirements set forth in this article, the city shall issue to the applicant a permit number which shall be fixed upon and prominently displayed (visible from the lake) on the dock for identification. The application shall provide plans and specifications before any permits are issued.

1. A copy of the permit shall be prominently displayed (visible from the lake) when the dock is under construction.
 2. Major renovations of existing docks shall also require a building permit as outlined above. Major renovations means changing the footprint of the dock. Regular maintenance shall not require a building permit.
- b. *No more than one dock or floating facility per lot.* No more than one dock or floating facility per lot that adjoins Moss Lake shall be allowed in the lake.
- c. *Anchoring.* All fixed structures upon the lake shall be firmly and securely anchored or fixed in such a manner as to prevent loosening or removal by normally anticipated wave and weather conditions.
- d. *Size Limit*
1. No person shall construct in or upon the shores any dock, pier, wharf or similar fixed structure extending more than fifty (50) feet from the elevation seven hundred fifteen (715) feet above sea level into or toward the lake.
 - i. Waivers may be provided by the city on a case-by-case basis for 10-foot incremental extensions to achieve an average depth of 7 feet of water at the end of the dock or floating facility, while the lake is at the elevation of seven hundred fifteen (715) feet. (The city shall use the Real-Time Water Data, Elevation above NGVD 1929, feet data, which is located on the United States Geological Survey website to determine the elevation of Moss Lake.) At no time shall a dock be longer than 100 feet or block access to any section of the lake.
 - ii. The fee for requesting a waiver is ten dollars (\$10) per 10-foot incremental extension.
 2. No person shall construct in or upon the lake any dock deck or catwalk that is wider than 54 feet or more than 50% of the width of adjoining tract of land that abuts the lake.
 3. No person shall construct in or upon the lake any dock deck or catwalk that totals more than 1000 square feet.
 4. All current facilities and facilities that are at least fifty percent (50%) complete are exempt from the length, width, and wall requirements until the facility loses forty percent (40%) of its value. Once an exempt facility loses forty percent (40%) of its original value, the legal

non-conforming facility shall come into compliance with this ordinance. Any new construction on such exempt facility shall not aggravate the non-compliance. This section does not prevent maintenance on such facilities.

5. All current owners of facilities and facilities that are at least fifty percent (50%) complete shall provide the city with plans that show the current length, width, shape, and other features on the dock. The owners shall also pay for an annual permit. If a dock is under construction, the owner shall procure a permit to complete the facility.
- e. *Roofs.* No roof shall be constructed over a dock deck or boat slip that exceeds 18 feet in height, including clerestory. Measurement is to be made from the top of the dock deck or catwalk to the vertex of the main or clerestory roof, whichever is greater. Roof shall not extend past the dock or boat slip more than 18 inches.
 1. The square footage for a roof shall not be calculated with the square footage for the dock.
 - f. *Limited Enclosures.* Docks will be of an open design with no enclosures, except for a closet of no larger than 32 square feet located as near as practical to the shore side of the dock. No other walls or enclosures shall be allowed past the elevation seven hundred and fifteen (715) feet above sea level into or toward the lake.
 - g. *Annual fee.* The owners of all existing and future structures shall pay an annual fee to the city of fifty dollars (\$50.00) for maintaining a private facility on city property. Such annual fee shall be due on January 1 of each year. The owners of existing docks shall pay the current annual fee for 2008 by October 1, 2008 or the owners shall be charged a penalty as outlined in Section 5-236 h or removal of such facility.
 - h. *Penalties.*
 1. Failure to acquire a building permit for a dock on Moss Lake shall result in a penalty of five hundred dollars (\$500), which shall be paid in conjunction with the dock permit fee before a permit may be issued.
 2. Failure to pay the annual fee for any dock on Moss Lake shall result in a penalty of two hundred-fifty dollars (\$250), which shall be paid in conjunction with the annual fee for maintaining a private facility on city property.
 3. Failure to have a permit properly posted during construction or after construction shall result in a penalty of fifty dollars (\$50).
 - i. *Removal of private facilities.* The city shall require an owner of a private dock to remove the dock from Moss Lake if the dock is not properly permitted, if the annual payment for a private facility has not been paid, or the private dock has been determined by the city (at the city's sole discretion) to be a health and safety hazard. If the owner of the private dock does not remove the facility within 30 days after the city mails a letter to the last known address provided on the most recent permit application or annual renewal for the facility, the city shall remove the dock (at the owners expense) from the lake. If such dock does not have a permit the city has no obligation to attempt to

contact the owner because the dock is built on city property. The city shall use all legal means to collect for the removal costs.

- j. *Safety Requirements.* All docks whether fixed or floating shall have reflective devices, tape or operating solar lights installed on each side near the end of the dock for night safety.

Section 3. Amend Chapter 5 Section 5-238

Chapter 5 Section 5-238 is hereby amended to read as follows:

Floating facilities.

- a. No person (except the City of Gainesville) shall place upon the lake any floating pier, dock, barge, buoys, or similar facility that are not permanently affixed to land by a dock or walkway. All current floating piers, docks, boathouses, buoys or similar facilities that are not permanently affixed to land by a dock or walkway or were not placed by the City of Gainesville shall be removed by March 1, 2009. If the owner of the private floating pier, dock, boathouse, buoys, or similar facility that is not in conformance with this ordinance does not remove the facility by March 1, 2009, the city shall remove the facility (at the owners expense) from the lake. The city shall use all legal means to collect for the removal costs.
- b. All floating facilities shall use enclosed flotation and follow the same design standards as in section 5-236 for fixed structures. All repairs to the flotation system on a floating facility shall use enclosed flotation.
- c. No person shall place upon the lake any floating pier, dock, or similar facility without first making application for a permit to do so in the same manner as provided in section 5-236, except as outlined in Section 5-238d.
- d. Inflatable swimming platforms, inflatable trampolines and other such recreation devices are permitted without a permit, but are not allowed to be left out beyond the end of the dock overnight.

Section 4. Amend Chapter 5 Section 5-240

Chapter 5 Section 5-240 is hereby amended to read as follows:

Private use of lake water.

No person shall use any water directly from Moss Lake without consent of the City of Gainesville and having paid an annual fee of three hundred dollars (\$300.00). Water withdrawal shall be made with a pump not larger than $\frac{3}{4}$ horsepower with a maximum size of one-inch intake and discharge lines. Once the annual fee has been paid, the city shall issue a tag that shall be fixed upon and prominently displayed (visible from the lake) on the intake line. The city retains the right to stop private withdrawals from the lake because of water shortage or drought conditions without providing any refunds. The penalty for withdrawing water from Moss Lake without consent of the city shall be \$1,000.

Section 5. Amend Chapter 5 Section 5-246

Chapter 5 Section 5-246 is hereby amended to read as follows:

Boating and personal watercraft regulations.

- a. The activities of all boats, personal watercraft, and all water sports shall be governed by the Texas Water Safety Act.
- b. City of Gainesville Police Officers certified as Marine Safety Enforcement Officers shall have the authority to issue citations for violations of the Texas Water Safety Act.
- c. Citations written under authority of this section shall be filed with the City of Gainesville Municipal Court.
- d. The City of Gainesville Police Officers certified as Marine Safety Enforcement Officers may require the removal of any boat or personal watercraft from the lake that:
 1. Is deemed to be operating in an unsafe or reckless manner;
 2. Is deemed to be in unsafe mechanical operating condition; or
 3. Is in violation of the provisions of this article.

Section 6. Amend Chapter 5 Section 5-250

Chapter 5 Section 5-250 is hereby amended to read as follows:

Boats generally.

Boat Permit fee. Any person desiring to place, operate or utilize a boat, personal watercraft or other water vessel that is required to be registered by the State of Texas on the waters of the lake for any purpose shall first obtain a boat permit from the city by paying a permit fee of thirty-five dollars (\$35) due on January 1 of each year. Failure to acquire a permit for a boat on Moss Lake shall result in a penalty of \$100. The city shall waive the requirement for a boat permit during the Annual Two-Day Moss Lake Volunteer Fire Department Fishing Tournament for any person that is competing in the event. The Moss Lake Volunteer Fire Department should notify the city of the fishing tournament two weeks prior to the event.

Section 7. SEVERABILITY. If any provision, section, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstance, if for any reason held to be unconstitutional, void, or invalid (or for any reason unenforceable), the validity of the remaining portion of this Ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intention of the City Council and of the Mayor of the City of Gainesville in adopting and approving this Ordinance, that no portion hereof or provision or regulation contained herein shall become inoperative or fail by any reason of any unconstitutionality or invalidity of any other portion, provision, or regulation.

Section 8. REPEAL OF CONFLICTING ORDINANCES. All Ordinances of the City of Gainesville, or provisions thereof, in conflict with this Ordinance and not specifically repealed herein are hereby repealed.

Section 9. EFFECTIVE DATE. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the *Tex. Loc. Gov't Code*.

Section 10. OPEN MEETINGS. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't Code*.

INTRODUCTION AND FIRST READING

INTRODUCED AND READ FOR THE FIRST TIME IN REGULAR SESSION BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS ON THIS THE 17th DAY OF JUNE 2008, BY THE FOLLOWING VOTE:

6 AYES, 0 NAYS, 1 ABSENT, 0 ABSTENTIONS

JIM GOLDSWORTHY, MAYOR PRO TEM

ATTEST:

KAY LUNNON, CITY SECRETARY

SECOND READING

READ FOR THE SECOND TIME BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE ON THE 5th DAY OF AUGUST 2008.

6 AYES, 0 NAYS, 1 ABSENT, 0 ABSTENTIONS

GLENN LOCH, MAYOR

ATTEST:

KAY LUNNON, CITY SECRETARY

THIRD READING

READ FOR THE THIRD TIME AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE ON THE 19TH DAY OF AUGUST 2008.

5 AYES, 0 NAYS, 2 ABSENT, 0 ABSTENTIONS

GLENN LOCH, MAYOR

ATTEST:

KAY LUNNON, CITY SECRETARY