(passed 3-0)

ORDINANCE 06-09

TO AMEND THE TITLE 11 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED "LAKES AND RESERVOIRS"
Re: Extensive Revisions to Chapter 11.04 Entitled "Lake Lemon"

WHEREAS, the City of Bloomington Utilities Department owns the property known as Lake Lemon and various parcels in its vicinity (the "Premises"); and,

WHEREAS, on November 27, 1995, the City of Bloomington Utilities Service Board entered into a Lease Agreement with the Lake Lemon Conservancy District (hereinafter "LLCD"), which gave the LLCD the responsibility to operate and maintain the Premises consistent with the terms of the Lease Agreement, State law, and local ordinances and rules; and,

WHEREAS, Chapter 11.04 of the Bloomington Municipal Code, entitled "Lake Lemon," contains provisions which are relevant to the maintenance and operation of the Premises which have not been modified or updated since well before the Lease Agreement was entered into; and,

WHEREAS, said provisions of the Bloomington Municipal Code are in need of updating to reflect the current situation regarding the management and operation of the Premises by LLCD and policies and procedures which are necessary and appropriate to allow for effective maintenance and operation of the Premises;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. This ordinance makes extensive revisions to Chapter 11.04 of the Bloomington Municipal Code entitled "Lake Lemon." When codifying these provisions, the codifier shall reflect the new section titles in the index to this Chapter and shall preserve the citations to the prior code as well as to the ordinances affecting this chapter as they appear at the end of certain sections and paragraphs.

SECTION 2. Article I of Chapter 11.04 entitled "Generally" shall be deleted and replaced with the following:

Article I. Generally

11.04.010 Definitions.

When used in this chapter:

(1) "City" means the city of Bloomington, Indiana;

(2) "High water line" means the contour known as six hundred thirty-five referred to in United States Government elevations as being a contour line six hundred thirty-five feet above Mean Sea Level (M.S.L.);

(3) "Intake" means the place where the water supply for the city is taken from the lake involving the sluice gate and control at the dam, which controls the flow of water into Bean Blossom Creek below the dam;

(4) "Lake" means the artificial lake and water known as Lake Lemon impounded therein by means of the dam and spillway constructed across the valley of Bean Blossom Creek in Benton Township of Monroe County, Indiana;

(5) "Lake Lemon Conservancy District or LLCD" means the area encompassing Lake Lemon and its surrounding boundaries as defined by order of the Monroe Circuit Court under Cause No. 53 C05 9410 CP01187 and managed by the Lake Lemon Conservancy District Board of Directors consistent with Indiana Code 14-33 et. seq. and this Chapter.

(6) "Marginal land" means the land owned or controlled by the city adjacent to the shoreline and not flooded by the waters of the lake, which land is leased to the LLCD by virtue of a certain Lease Agreement and also which contains Surplus Parcels available for sublease to LLCD landowners;

(7) "Person" means the feminine as well as the masculine when applicable, and the plural as well as the singular when applicable; it also includes a firm, corporation, association, club, organization or other legal entity;

(8) "Shoreline" means the extended point where the plane of the surface of the waters of the lake borders the land;

(9) "Subdivision" means a tract of land owned by one person, or jointly owned by two or more persons, whereon five or more dwellings or business establishments of any kind or character are proposed to be located;

(10) "Watercourse" means any stream, natural or artificial channel, spring or depression of any kind in which water flows continuously or intermittently over any part of the drainage area, directly or indirectly, into any part of the lake. (Prior code § 29-7).

11.04.020 Violation of provisions-- Liability--Nuisance.

Any person violating any of the provisions of this chapter shall become liable to the city or the LLCD for the expense, loss or damage occasioned by reason of such violation, including reasonable attorney fees, and such violation is a nuisance subject to injunction. (Prior code § 29-8).

11.04.030 Trespass.

The city owns the land upon which the lake is constructed and the water thereon. It is the policy of the city that any entrance upon the lake or lands owned by the city, without the permission and consent of the city or the LLCD is a trespass upon city lands, and as such, a violation of the law of the state and actionable thereon by the city or the LLCD. (Prior code § 29-9).

11.04.040 Fishing.

No person shall take, catch or attempt to take or catch any species of fish from the lake without a state fishing license in full force and effect issued to such person and in his possession; and all officers of the state with proper credentials are permitted to enter upon the lake area for the purpose of enforcing the laws of the state. Goldfish and other of the carp group of fishes shall not be used as bait at any time or placed on or from the shores of Lake Lemon. The practice of Jug Fishing as described by the Indiana Department of Natural Resources is prohibited on the lake. (Prior code § 29-10).

11.04.050 Use of firearms.

No person shall carry, fire or discharge any firearm of any description within the limits of the lake except law enforcement officers in the performance of their duties, except, however, that duly licensed hunters, licensed by the state and by the federal government may hunt waterfowl during the time of each year as designated for such hunting season. Recreational fishing, hunting and trapping is permitted except in those areas near the spillway where watercraft are prohibited as marked by regulatory buoys. No person shall enter upon the waters of the lake for such purpose, or shoot over the waters of the lake unless he is the holder of a valid boat license of the city or the LLCD. (Prior code § 29-11).

11.04.060 Swimming.

It is the policy of the city that swimming shall be permitted in the lake, at the swimmer's own risk, only at sites designated or authorized by the city or the LLCD. Those sites specifically include the embayment, at the dam, identified by regulatory buoys marked "Swim Area" and the

Riddle Point Swim Beach during hours posted at the beach. Residential property owners and invited guests may swim at their property site, but no further than 60 feet into the lake from the shore. (Prior code § 29-12).

11.04.070 Lake patrol officers.

The city or the LLCD may employ Lake Patrol Officers to ensure public safety, environmental protection, and to enforce the Indiana Statutes and local ordinances concerning boating, lake usage and other recreational activities. (Prior code § 29-13).

11.04.080 Public nuisance.

The violation of any provision of this chapter whereby any unsanitary condition is created is a public nuisance. (Prior code § 29-14).

11.04.090 Civil liability.

Any person violating any provision of this chapter shall become liable for all damage and expense, including reasonable attorneys fees, caused to the city and/or LLCD by reason of such violation in addition to the penalties provided in this chapter. (Ord. 81-5 § 5, 1981: prior code § 29-15).

SECTION 3. Article II of Chapter 11.04 entitled "Sanitary Regulations" shall be deleted and replaced with the following:

Article II. Sanitary Regulations, Geothermal Systems.

11.04.100 Sewage, garbage, deposited below high water line.

It is unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner upon public or private property below the high water line any sewage, garbage, waste or waste water. (Prior code § 29-16).

11.04.110 Privies and septic systems in areas contaminating watercourse.

It is unlawful to construct or maintain any privy, privy vault, septic tank or septic system seepage pit, or other facility intended or used for the disposal of sewage or waste in any area which will contaminate the watercourse which continuously or intermittently flows directly or indirectly into the lake. (Prior code § 29-17).

11.04.120 Installation of suitable toilet facilities.

The owner of all houses, buildings or property used for human occupancy, employment, business, recreation or other purposes situated above the high water line shall be required at his own expense to install suitable toilet facilities and facilities for the disposition of waste water thereon which will not contaminate the lake or any watercourse. All sewage disposal systems surrounding the lake shall be constructed and maintained in a manner approved by the State Board of Health and in accordance with the Health Codes of the County in which the system is located. (Prior code § 29-18).

11.04.130 Geothermal systems.

Geothermal systems involving a thermal transfer unit installed in the waters of the lake are not permitted. Systems installed prior to March 31, 1996 are grandfathered. . (Prior code § 29-19).

11.04.140 Compliance with state regulations for sewage disposal and privies--Incorporation by reference.

All sewage disposal systems and privies shall be constructed and maintained at no expense to the city or the LLCD and in an approved manner as described and illustrated in Bulletin S.E. 8 and S.E.11, as the same may be amended from time to time of the State Board of Health and any

subsequent publication of such bulletins or revisions thereof. (Prior code § 29-20).

11.04.150 Subdivisions in vicinity-- Approval of sanitary facilities by State Board of Health.

All persons platting subdivisions in the vicinity of the lake area wherein any part of the land in such subdivision borders upon or drains across land owned by the city shall submit to the State Board of Health and appropriate county Board of Health the plan by which they propose to dispose of sewage and waste, and shall secure approval of such plan from the State Board of Health before any system for the disposal of sewage or waste water is installed or constructed. (Prior code § 29-21).

11.04.160 Subdivisions in vicinity-- Inspection of sanitary facilities.

The city engineer, or some person designated for and on behalf of the city by the city engineer, and employees of the appropriate county Board of Health shall be allowed to inspect the work upon any such sanitary or sewage facility or structure at any stage of construction. The city engineer and other duly authorized employees of the city or county shall be permitted to enter upon all properties for the purpose of inspecting, observing and testing any sanitation facilities installed upon any land bordering the lake. (Prior code § 29-22).

11.04.170 Subdivisions in vicinity-- Correction of violations.

Any person violating any provision of Sections 11.04.100 through 11.04.160 shall be notified by the city, the LLCD or appropriate regulatory agency in writing, stating the nature of the violation and providing a time limit not to exceed two weeks for the satisfactory correction thereof. The offender shall, within the period of two weeks stated in such notice, permanently cease all violation or correct it at his own expense in a manner approved by the governing regulatory agency. A person failing to correct such violation after such notice shall be subject to the general penalty provisions of this code. (Ord. 81-5 § 6, 1981: prior code § 29-23).

SECTION 4. Article III of Chapter 11.04 entitled "Boating" shall be deleted and replaced with the following:

Article III. Boating

11.04.180 Registration and license-- Required--Application.

No boat of any kind (except canoes, paddle boats and kayaks) may be propelled, kept or used in the lake or stored or kept on the marginal land surrounding the lake until the owner thereof registers such boat or craft and secures a written license and registration number from the city or the LLCD based upon a written application setting forth the type of such boat, craft or floating raft, its means of locomotion, the name and address and phone number of the owner thereof, and such further information as the city or the LLCD may from time to time require. (Prior code § 29-24).

11.04.190 License--Inspection.

(1) All boats must be licensed by the LLCD before launching;

(2) All watercraft are subject to inspection by law enforcement personnel and the authorized agents of the LLCD. Inspection may be conducted at the Riddle Point launch area or other locations as designated by the LLCD. Inspections may include safety requirements and such other requirements as necessary for the protection of the lake and its users. The City or the LLCD reserves the right to inspect any watercraft entering, operating or moored on the lake. (Prior code § 29-25).

11.04.200 License--Issuance--Display.

Such license when granted, shall be in writing, and shall be further evidenced by official registration number decals to be furnished by the city or the LLCD to the licensee and must be uniformly and permanently displayed on the left front bow and visible outside the boat at all

times. Such registration numbers shall be issued annually and shall expire on the next ensuing March thirty-first of the year issued. A new license may be obtained by filing an application and upon payment of the annual fee. Daily use licenses shall also be granted by the LLCD and must be displayed on the boat so long as the boat is in the waters of the lake. (Prior code § 29-26).

11.04.210 License--Owned by officers of state.

Privately owned boats of all officers of state and political subdivisions of the state must be licensed. (Prior code § 29-27).

11.04.220 License—Decals--Plates--Place of obtaining--Information displayed.

Registration decals may be obtained at the LLCD office at Riddle Point Park during business hours and shall give the following information:

(1) The year of issue;

(2) The type of boat;

(3) The number assigned to each particular boat;

(Prior code § 29-28).

11.04.230 License-- Fee.

In order to provide a fund used to defray the expenses of inspection and supervision of boats or craft on the lake, to enforce the provisions of this chapter, and for the improvement of navigation and the safety and pleasure of boating, such application or renewal must be accompanied by the payment of annual license fees to the LLCD in an amount to be determined annually by the LLCD. (Prior code § 29-29).

11.04.240 Commercial--Lease.

No boat, canoe, other vessel or dock, shall be placed upon or operated upon the waters of the lake for fee or profit, for hire or rental to a second party either as a direct charge to such second party or as an incident to other services provided to such party, except as specifically authorized by lease, license or concession contract with the city or the LLCD. (Prior code § 29-30).

11.04.250 Commercial--License fees generally.

For the purposes set forth in Sections 11.04.180 through 11.04.390 with reference to regulations of craft upon the lake, and in order to ensure the necessary and proper inspection of boats and motors used for rental or hire on the lake, so that the provisions guaranteeing public safety may be continuously enforced and at all times observed on the waters and within the boundaries of the lake, the fees for licensing and registering such boats, canoes, other vessels, or docks for hire or rental shall be in an amount to be determined annually by the city or the LLCD. (Prior code § 29-31).

11.04.260 Watercraft Size.

The overall length of any watercraft permitted on Lake Lemon shall not exceed 30 feet, per the boat's certificate of registration or title. Any watercraft over 30 feet but licensed for use on the lake prior to January 1, 1996, is grandfathered. (Prior code § 29-32).

11.04.270 No proration of license fee.

For the fractional part of any calendar year the license fee shall be the same as specified for annual licensing. (Prior code § 29-33).

11.04.280 Safety equipment.

Unsafe boats shall not be used upon the water of the lake. All boats operated upon the lake must be equipped for safe operation, and shall be equipped with oars or paddles, fire extinguishers and with a sufficient number of an approved type of life preservers, which shall at all times be in place and available to each passenger in the boat when such boat is being used and operated upon the waters of the lake, all in compliance with the applicable regulations published by the Department of Natural Resources of the State of Indiana. (Prior code § 29-34).

11.04.290 Regulatory buoys.

Only those regulatory or informational buoys authorized and installed by the city or the LLCD shall be permitted on Lake Lemon. No person shall tamper with any buoy on the lake. Requests for buoys or markers for special events, hazards or personal use will be reviewed by the LLCD for consideration. (Prior code § 29-35).

11.04.300 Permits for special events.

The LLCD may, upon written application, issue a special permit for boats or craft for any properly sponsored special event. (Prior code § 29-36).

11.04.310 Applicability of state law generally.

The attention of all boat licensees is directed to applicable state statutes and regulatory provisions. All state laws governing water sports and safety will apply to Lake Lemon. (Prior code § 29-37).

11.04.320 Applicability of state speed laws.

No boat or watercraft shall be operated on the surface of the lake at a speed or in a manner in conflict with state laws concerning operation of watercraft. No boat or watercraft may be operated at a speed greater than is reasonable and prudent, having due regard for the conditions and hazards, actual and potential, then existing, including weather and density of traffic; or that will permit a person, in the exercise of reasonable care, to bring the watercraft to a stop within the assured clear distance ahead. (Prior code § 29-38).

11.04.330 Regulation generally-- Revocation of license.
The city or the LLCD shall at all times have power and authority to prohibit, restrict or otherwise limit or regulate the keeping, maintenance or operation of any or all boats and watercraft on the waters of the lake should it become necessary to do so in the interest of the public health or safety, or for the protection or improvement of the lake or other cause. The City or the LLCD shall at all times have the authority to revoke any license and/or registration for the infraction of any posted or printed regulation or rule; or infraction of any law or ordinance. (Prior code § 29-39).

11.04.340 Operation near shoreline.

No person shall operate any type of boat within two hundred feet of the shoreline at a speed in excess of five miles per hour. (Prior code § 29-40).

11.04.350 Lights.

All watercraft in operation between sunset and sunrise, whether moving or stationary, must display navigation and anchoring lights as required by regulations promulgated by the Department of Natural Resources of the State of Indiana. (Prior code § 29-41).

11.04.360 Houseboats--Toilet facilities—Overnight stays.

No boat or watercraft commonly known as a houseboat on which the occupants have sleeping accommodations, shall be permitted on the lake, unless the onboard toilet facilities have been sealed in such a way as to make them incapable of use in compliance with the applicable

regulations of the Department of Natural Resources of the State of Indiana. The maximum length of stay for such a boat for any one-time visit is two consecutive nights, unless the boat is moored at a private or commercial dock. (Prior code § 29-42).

11.04.370 Creating nuisance.

No boat or watercraft shall be used or operated, nor any horn or sound device sounded so as to create a nuisance or disturb the peace or quiet of any neighborhood. (Prior code § 29-43).

11.04.380 Creating unsanitary conditions.

Persons using or operating any boat or watercraft on the waters of the lake shall do so in such a manner as not to create any unsanitary condition in or about such waters, and shall not pollute such waters by their discharge, in any material amount of oil or other polluting liquid or solid tending to make such waters unwholesome or unfit for water supply purposes or injurious to the aquatic life thereof. (Prior code § 29-44).

11.04.390 Abandoned boats.

Any boat or watercraft found abandoned or adrift in the lake or any unlicensed boat or watercraft thereon shall be taken up by the city or the LLCD and the city or the LLCD shall have a lien for all license fees and the expenses of taking, towing, keeping, advertising and selling it, and for all damages caused by such watercraft to property of the city, and may enforce such lien by advertisement and sale of such watercraft in a like manner as chattel mortgages may be foreclosed under the laws of this state. Nothing in this section shall be construed as exonerating the owner or operator of any boat or watercraft from personal liability to the city, the LLCD, or any other person, for any damage or injury caused by such boat or watercraft. (Prior code § 29-45).

SECTION 5. Article IV of Chapter 11.04 entitled "Docks and Piers" shall be deleted and replaced with the following:

Article IV. Docks and Piers

11.04.400 General policy--Permit for construction.

The city reiterates its policy of not limiting the use of privately owned property, but since usable docks and piers can only be constructed in the lake area owned or controlled by the city or the LLCD, the following regulations pertaining to such structures are enacted:

No person shall construct a boathouse or permanent structure of any type upon land adjoining the lake within the flowage easement (635 M.S.L. to 630 M.S.L.) without written permission of the city or the LLCD.

No person shall alter the shoreline of the lake within the flowage easement (635 M.S.L. to 630 M.S.L.), nor shall any person fill, dredge or excavate any soil into or from the lake bed without first obtaining written permission from the city or the LLCD, together with all necessary Federal and State permits. (Prior code § 29-46).

11.04.410 Maximum size—Placement—Commercial use.

Docks placed in the lake are limited in length to sixty (60) feet from the established shoreline. In the event that 60 feet of length is insufficient to reach a water depth of 4 feet at the lakeward end of the dock, an exception may be made by the city or the LLCD for the construction of a longer dock. In deciding on exceptions, consideration will be given to whether the longer dock unreasonably obstructs navigation or access to docks of adjacent landowners. Finger docks ("T"s or "L"s) may be used to provide mooring slips or to stabilize a dock. Finger docks may not exceed 20 feet in length.

A landowner with riparian rights may place a dock within the landowner's riparian zone. A landowner of property lacking riparian rights may enter into a lake access lease, covering

marginal land, with the city and the LLCD, upon which a dock may be placed consistent with conditions of a sublease agreement approved by the City and the LLCD. Riparian landowners are limited to one dock for the first 50 feet (or part thereof) of shoreline owned and one additional dock for each additional 50 feet of shoreline owned, with a maximum of three docks and a total of four boats moored per dock. Dock configurations and number of moored boats per dock not in compliance with this requirement as of the date of adoption of this provision are grandfathered.

No dock, pier or boat ramp shall be placed upon or operated upon the waters of the lake for fee or profit, for hire or rental to any other party either for a direct payment in cash or payment in kind from such other party or as an incident to other services provided to such party, except as specifically authorized by license, lease or concession with the city or the LLCD. The rental of a dock, pier or boat ramp, incidental to and included in the rental of a residence located within the LLCD, is specifically exempted from the provisions of this paragraph, so long as the renter of the residence is the only party using the dock, pier or boat ramp. (Prior code § 29-47).

11.04.420 Maintenance.

All persons constructing docks, piers or boathouses in the lake area, shall maintain such docks, piers or boathouses in such a manner that they shall be safe and sanitary. Any dock, pier or boat house deemed unsafe or unsanitary by the city or the LLCD shall be repaired satisfaction of the city or the LLCD, or shall be removed by the owner at the owner's expense. (Prior code § 29-49).

SECTION 6. Article V of Chapter 11.04 entitled "Penalties" shall be deleted and replaced with the following:

Article V. Penalties

11.04.430 Penalties.

Each day that a condition or act in violation of this chapter remains or continues shall be deemed on the part of the person guilty of such violation to be a separate and distinct offense. Each offense shall be punished by a fine of not less than five dollars and not more than two hundred dollars to which may be added a revocation of any license, lease or concession contract issued pursuant to this chapter. (Ord. 81-5 § 7, 1981: prior code § 29-50).

SECTION 7. **Severability.** If any sections, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 8. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington and approval of the Mayor and publication as required by law.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 17th day of MAY, 2006.

CHRIS STURBAUM, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 18th day of MAY, 2006.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 18TH day of MAY, 2006.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance updates Title 11 Lakes and Reservoirs, Chapter 11.04 Lake Lemon, of the Bloomington Municipal Code to reflect the current situation regarding the management and operation of Lake Lemon by the Lake Lemon Conservancy District, and articulates policies and procedures which are necessary and appropriate to allow for effective maintenance and operation of the Lake.

Signed copies to:
legal (5)
conservancy district
USB
utilities dept.
clerk
BMC file (2)
CA/CA (3)
file