

ORDINANCE NO. 62-2016

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE AMENDING CHAPTER 15, LAKES, ARTICLE I. IN GENERAL, SECTION 15-4, "FISHING REGULATIONS," AND SECTION 15-5, "FISHING FROM BRIDGES, CULVERTS, PROHIBITED;" ARTICLE II. LAKE FORT PHANTOM HILL, DIVISION 1. GENERALLY, SECTION 15-18, "PROHIBITED AREAS," ARTICLE III. LAKE ABILENE AND LAKE KIRBY, SECTION 15-72, "ENFORCEMENT," SECTION 15-73, "PROHIBITED AREAS," SECTION 15-74, "FISHING REGULATIONS," AND SECTION 15-75, "LAKE ABILENE HOURS OF OPERATION," OF THE ABILENE MUNICIPAL CODE AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.

WHEREAS, City of Abilene ("City") ordinances that regulate fishing at Lake Kirby, Lake Abilene, and Lake Fort Phantom Hill were originally adopted in 1965; and

WHEREAS, such ordinances have since been pre-empted by State Law and need to be amended in order to comply with Texas Parks and Wildlife Department ("TPWD") regulations; and

WHEREAS, the Wildlife Conservation Act of 1983 (the "Act") provides the TPWD with authority over the "means, methods, and places" in which an individual may take wildlife resources from within the State; and

WHEREAS, this authority applies regardless of whether a separate public entity may own or control the land upon which a body of water is situated; and

WHEREAS, the Texas Attorney General has interpreted the legislative intent of the Act to give "exclusive jurisdiction" to TPWD to regulate the means, methods, manners and places by which one may take or possess fish, and that the intent of the Legislature with the Act was to "preempt the field" with regard to regulations on the means or methods of taking wildlife, such as bag or size limits; and

WHEREAS, the Act preempts any local laws that regulate the same area in which TPDW has been given authority; and

WHEREAS, Chapter 15 of the City of Abilene Code of Ordinances includes several prohibitions on the times, places, methods, and means of taking fish from Lakes Kirby, Abilene, and Lake Fort Phantom Hill; and

WHEREAS, these City Ordinances should be amended in order to comply with State Law and remove any City regulation of fishing at the aforementioned lakes.

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

PART 1: That Chapter 15, Article I, Sections 15-4 and 15-5, Article II, Section 15-18, Article III, Sections 15-72, 15-73, 15-74, and 15-75, of the Code of Ordinances, City of Abilene, Texas, are hereby amended as set out in Exhibit A, attached and made a part of this ordinance for all purposes.

PART 2: That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.

PART 3: That any person, firm, or corporation violating the provisions of this Ordinance, shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.

Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

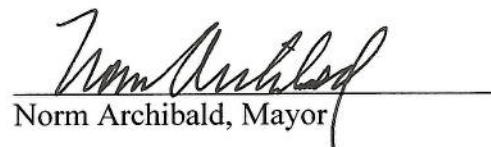
PASSED ON FIRST READING this 17th day of November, 2016.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 20th day of November, 2016, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 1st day of December, 2016, to permit the public to be heard. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING this 1st day of December, 2016.

ATTEST:


Danette Dunlap, City Secretary


Norm Archibald, Mayor

APPROVED:


Stanley Smith, City Attorney

EXHIBIT "A"

LAKES

ARTICLE I. IN GENERAL

Sec. 15-4. Fishing regulations.

The general laws of the state, shall control the taking of fish from any lake.

ARTICLE II. LAKE FORT PHANTOM HILL

DIVISION I. GENERALLY

Sec. 15-18. Prohibited areas.

(a) A prohibited area is hereby established surrounding the water intake pump station on the east shore of Lake Fort Phantom Hill, within a five hundred (500) foot radius of the pump station. Boating, skiing, swimming, or any other activity is hereby prohibited within the buoys marking the boundary of this area. However, persons owning or leasing property the shoreline of which is within the five hundred (500) foot area shall be allowed to operate a boat at a speed which produces no white wake from their property to the nearest point outside the prohibited area, and return only.

(b) A prohibited area is hereby designated within a fifty (50) foot radius of the control tower located near the east end of the dam at Lake Fort Phantom Hill. No boating, skiing, , swimming, or any other activity is allowed in the prohibited area.

ARTICLE III. LAKE ABILENE AND LAKE KIRBY

Sec. 15-72. Enforcement.

The chief of police or any city policemen or other peace officers or any person employed or designated through agreement as having control or responsibility for the lake by the city shall have full power and authority to enforce this article and other ordinances made in relation to the regulation of police conditions on either Lake Abilene or Lake Kirby. Such officer and employees may arrest without warrant persons violating this division or other similar ordinances and may deliver the offender to the proper authorities where complaint may be filed and prosecution had in terms of the law for such violation.

Sec. 15-73. Prohibited areas.

(a) No person shall operate a water vessel in the waters of Lake Abilene at a distance of less than two hundred (200) feet from the water intake.

- (b) Swimming is prohibited in all areas of Lake Kirby.
- (c) Operation of small recreational water vessels, e.g., jet skis and wind/surf craft, is prohibited at Lake Kirby and Lake Abilene.
- (d) No person shall drive, park or otherwise place a motor vehicle, motorcycle, dirt bike, 4-wheeler or other wheeled-recreational vehicle, nor place any other obstruction, upon the bed of Lake Abilene or Lake Kirby.
- (e) Nothing in this section shall be construed as prohibiting any use authorized by the city or the operation of water vessels (other than those listed in (c) above) upon the waters of said lakes nor the launching of water vessels at launching ramps at said lakes through the use of a motor vehicle or through the use of other lawful means.

Sec. 15-75. Lake Abilene hours of operation.

Lake Abilene shall be closed to all recreational uses including but not limited to swimming, boating, or camping, between sunset of one day and sunrise of the following day except by special permission from the director of water utilities.