

ORDINANCE NO. 122

AN ORDINANCE OF THE CITY OF FERNAN LAKE VILLAGE, KOOTENAI COUNTY, IDAHO, PROVIDING FOR THE CREATION OF A NAVIGABLE WATER DISTRICT, PROHIBITING POLLUTING ACTIVITY; REQUIRING SUBMISSION OF PLANS FOR DEVELOPMENT WITHIN THE WATERSHED; PROVIDING FOR COMPLIANCE WITH THE LAKE PROTECTION ACT; IDENTIFYING A SPECIAL PROTECTION AREA; REQUIRING NOTICE OF DOCK APPLICATIONS TO ALL RIPARIAN OWNERS AND TO THE CITY; PROVIDING FOR RESTRICTED BATHING AREAS AND PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE.

WHEREAS, the City of Fernan Lake Village has extended its boundaries one quarter (1/4) mile over Fernan Lake in accordance with Idaho Code § 50-221, therefore,

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF FERNAN LAKE VILLAGE, KOOTENAI COUNTY, IDAHO, THAT THERE BE CREATED A NAVIGABLE WATER DISTRICT WITH THESE PROVISIONS:

NAVIGABLE WATER DISTRICT

**Section 1. Generally:**

- A. The Navigable Water District is intended to provide for the appropriate usage and for adequate protection of the surface water resource that is within the City limits.
- B. Subject to the restriction and limitations set forth herein, the use of navigable waters in addition to recreation and other public uses should allow the normal auxiliary uses required by the upland property owners adjacent to the lake and river as well as long established activities.

- C. Compliance with all applicable City, County, State and Federal laws is required.
- D. Project review is required for all proposed future uses.

**Section 2. Restrictions and Limitation.**

- A. The Idaho Lake Water Quality Assessment Report, (Water Quality Status Report No. 105) prepared by the North Idaho Regional Office of the Division of Environmental Quality, Idaho Department of Health and Welfare in March of 1993, found that Fernan Lake is mesotrophic to late mesotrophic with tests of water chemistry data indicating that the lake was experiencing eutrophication.
- B. The Idaho Lake Management Guide (Water Quality Bureau Report) prepared by the Division of Environment, Idaho Department of Health and Welfare in July of 1987, concluded that lakes were most sensitive to phosphorous enrichment which could lead to dramatically adverse effects. The Guide states that the most effective point to control excessive nutrient and sediment inputs and their adverse effects is before they reach the lake ecosystem.
- C. Any human activity or development on or adjacent to Lake Fernan within the Navigable Water District which would contribute to tend to contribute excessive nutrient or sediment inputs into Fernan Lake shall be prohibited.
- D. Any person proposing any development upon any land within the watershed of Fernan Lake whether within or without

the territorial city limits, shall submit to the Mayor and City Council a generalized narrative describing the concept of development, status of ownership, site location, acreage, proposed uses and activities, proposed densities, and physical land alteration required by the development. The submission shall include a full report by a qualified engineer as to how the proposed development will comply with any applicable storm water management ordinances. The submission shall further include a full description of the area of or impervious surface to be created by the development and an analysis prepared by a qualified environmentalist or engineer of the annual increase in quantity of phosphorous to be generated in the development.

- E. The City Council shall within sixty (60) days after submission approve the proposed development and issue a permit or shall reject the proposed development. No development may proceed without a permit.
- F. Any person who proceeds with any development without a permit or conducts any activity which may significantly degrade the water quality of Fernan Lake shall be deemed to be in violation of the ordinances of this City. The City shall be authorized to enforce these restrictions and limitations by civil action with remedies including injunctive relief, damages, restrictions, rehabilitation and attorney's fees.

**Section 3. Lake Protection Act.**

- A. The Lake Protection Act, Idaho Code §58-1301 et. seq., regulates encroachments upon in or above the beds or waters of navigable lakes to protect property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality. In the application of the Lake Protection Act, the Idaho Board of Land Commissioners is required to recognize the authority granted to cities situated on navigable lakes to exercise policy power within one-quarter mile under the provisions of Idaho Code §50-221.
- B. The outlet bay and the south shore of Fernan Lake within the city limits as extended require special protection and are hereby designated as qualified for denial of any encroachments as being in the most unusual of circumstances within the meaning of Idaho Code §58-1305(a).
- C. Every owner of riparian land situated upon Fernan Lake is declared to be an adjacent owner entitled to notice of any application for a noncommercial or commercial navigational encroachment by any person within or without the city limits. The Department of Lands shall provide for notice to all such declared adjacent owners and to the City Clerk of the City of Fernan under the provisions of Idaho Code §§58-1305 and 58-1306 and the applicable

rules for the regulation of beds, water and airspace over navigable lakes in Idaho.

- D. The installation and use of any more than a single dock at any property is declared to create a danger to public health, safety and welfare, in general, and to water quality, fish and wildlife habitat, aesthetics and recreation in particular and to be contrary to the public policy established by the City of Fernan Lake Village.
- E. The City shall have the authority granted under Idaho Code § 67-7026 to mark by buoys or other distinguishing devises any portion of the lake within its boundaries as extended as a bathing, swimming or other restricted area where the use of power boats would be prohibited.

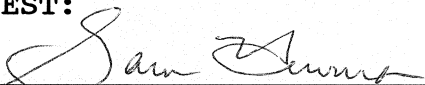
**Section 4. Publication.**

This Ordinance shall be in full force and effect upon its passage, approval and publication in at least one (1) issue of the Coeur d'Alene Press, a newspaper of general circulation in Kootenai County, Idaho, hereby declared to be the official newspaper for the publication of this ordinance.

PASSED AND ADOPTED as an Ordinance of the City of Fernan Lake Village, Kootenai County, Idaho, in a special session of the City Council on the 20 day of November, 1995.

  
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Mayor Douglas Potter

ATTEST:

  
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Sam Newman, City Clerk