

Chapter 5

Regulation of Parks and Navigable Waters

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Article A: **General Regulations**

Sec. 4-5-1 Park Regulations.

- (a) **Purpose and Definition.** In order to protect the parks, parkways, recreational facilities and conservancy areas within the Town of Westport from injury, damage or desecration, these regulations are enacted. The term "park," as hereinafter used in this Chapter, shall include all grounds, structures and watercourses which are or may be located within any

area dedicated to the public use as a park, parkway, public boat landings, public lake accesses, recreation facility or conservancy district in the Town of Westport.

(b) **Specific Regulations.**

- (1) **Littering Prohibited.** No person shall litter, dump or deposit any rubbish, refuse, earth or other material in any park, except by placing such material in receptacles provided for such purpose.
- (2) **Sound Devices.** No person shall operate or play any amplifying system unless specific authority is first obtained from the Town Board, or its authorized designee.
- (3) **Pets.** No person shall permit any dog, cat or other pet owned by him/her to run at large in any park or to allow pets to enter any public buildings, bathing beaches, boating beaches, picnic grounds or playgrounds within any park. Dogs shall, at all times, be restrained on a leash no more than six (6) feet in length and controlled. No dog, cat or other pet shall be allowed in the Town Center Park area at any time.
- (4) **Bill Posting.** No person shall post, paste, fasten, paint or attach any placard, bill, notice, sign or advertising matter upon any structure, tree or other natural object in any park, except park regulations and other signs authorized by the Town Board.
- (5) **Trapping.** No person shall trap in any Town park unless specific written authority is first obtained from the Town Board.
- (6) **Making of Fires.** No person shall start, tend or maintain a fire except in personal grills or designated fireplaces. Personal grills shall be used only in designated picnic areas. The use of personal grills is permitted provided lawns and vegetation are not endangered. Unburned fuel and ashes shall be disposed of in such a manner as to prevent fire or damage to any park property.
- (7) **Protection of Park Property.** No person shall kill, injure or disturb or attempt to injure or disturb waterfowl, birds or animals, wild or domestic, within any park. No person shall climb any tree or remove flowers or fruit, wild or cultivated, or break, cut down, trample upon, remove or in any manner injure, deface, write upon or ill use any tree, shrub, flower, flower bed, turf, soil, sand, fountain, ornament, building, structure, apparatus, bench, table, official notice, sign or other property within any park.
- (8) **Motorized Vehicles.** No person shall operate an unlicensed or licensed motorized vehicle outside of areas specifically designated as parking areas, except areas where the operation of such vehicles is specifically permitted.
- (9) **Reckless Driving in Parks Prohibited.** No person shall operate a motor vehicle in a reckless manner in any of the public parks of the Town.
- (10) **Parking in Parks.** No person shall park any motor vehicle in any park in the Town except in a designated parking area.

- (11) **Illegal Entry.** It shall be unlawful for any person to enter in any way any park building, installation or area after the posted closing time or before the posted opening time, or contrary to posted notices.
- (12) **Throwing Stones and Missiles Prohibited.** No person shall throw stones or other missiles in or into any park.
- (13) **Removal of Park Equipment Prohibited.** No person shall remove benches, seats, tables, or other park equipment from any park, unless authorized by the Town Board or its designee.
- (14) **Closing Hours.** It shall be unlawful for any person to be or remain in any Town park in the Town of Westport, including bathing beaches contiguous or adjacent to public parks, between the hours of 10:00 p.m. to 6:00 a.m., provided, however, that this Subsection shall not prohibit passing through a park area either in a vehicle or on foot without stopping during such hours, nor shall this Subsection apply to those parks which have regularly scheduled recreational activities which conclude after 10:00 p.m. The Town Board may by resolution permit specific parks to be open after 10:00 p.m. for designated events.
- (15) **Speed Limit.** No other person shall operate any vehicle in a Town park in excess of fifteen (15) miles per hour unless otherwise posted.
- (16) **Firearms.** Within a Town park it shall be unlawful for any person to have in his/her possession or under his/her control:
 - a. Any firearm or airgun as defined in the Wisconsin Statutes, unless the same is unloaded and enclosed in a carrying case.
 - b. Any bow, unless the same is unstrung or enclosed in a carrying case or unless written permission has first been granted by the Town Board to use a bow in a specific, supervised sport or activity, and then only within a designated area, provided, however, that it shall be unlawful to engage in any sport or activity involving a strung bow that constitutes a safety hazard in the judgment of any law officer or Town Board personnel.
Hunting is prohibited in all Town parks and recreational areas.
- (17) **Vending.** Vending is prohibited in Town parks unless authorized by the Town Board.
- (18) **Plant Materials.** No unauthorized removal of any plant materials or plants from any park.
- (19) **Structures.** No temporary or permanent structures are to be erected in a park without specific approval of the Town Board. **Cross-Reference** Title 7, Chapter 10.
- (20) **Golfing Activities.** No person shall utilize any Town Park or recreational area for golfing activities, including for practice in striking a golf ball or similar type ball, due to the danger it poses for park users when such balls are left in playing fields, due to the damage that golf clubs do to turf, and due to the availability of golf practice ranges in the Town and surrounding area.

- (21) **Glass Containers.** No person shall be in the possession of or use of any glass beverage container in any Town park or recreational area.
- (22) **Fishing in Town Center Park Pond.** No person shall fish in the Town Center Park Pond unless they are 14 years old or under.

Sec. 4-5-2 Radio-Controlled Model Airplanes Prohibited in Parks.

No person shall fly a radio-controlled model airplane in any park in the Town of Westport except in areas specifically designated and posted for such purpose.

Sec. 4-5-3 Use of Metal Detectors on Public Property.

Absent authorization by the Town Board, the use of metal detectors and digging for buried objects on Town property, except beaches where no vegetation is present, is prohibited.

Sec. 4-5-4 Fees and User Regulations.

- (a) **Fee Schedule.** It shall be unlawful for any person to use any Town of Westport park facility, shelter, land, or recreational area for which a fee or charge has been approved by the Board without payment of such fee or charge.
- (b) **Additional Rules.** Rules and regulations may be made from time to time by the Town Board governing the further use of and enjoyment of Town parks, parkways, playgrounds, beaches, boat landings, campgrounds, lakes, streams, and the facilities thereof. Any person who shall violate such rules or regulations may be excluded from the use of such facility.
- (c) **Permits.** Any person to whom a permit shall have been issued by the Town Board or agent thereof shall be bound by the provisions of all ordinances and rules of the Town of Westport as fully as though the laws were inserted in each permit.

Sec. 4-5-5 Public Utilities and Private Construction.

- (a) **Public Utilities—Location.** The location of all sewers and receivers, gas pipes, water pipes, stopcock boxes, hydrants, lamp posts, telegraph, telephone and electric power posts and lines, manholes, conduits, and pumps within any Town park or parkway shall be subject to the jurisdiction and control of the Town Board, and their construction, repair or relocation shall be undertaken only after written permission is received from the Town Board.
- (b) **Private Construction.**
 - (1) No curb, whether stone, concrete, or grass, shall be cut for the purpose of constructing a private driveway across any parkway border, nor for any other purpose, without the written permission of the Town Board.

- (2) The location, width, grade, and construction of all paths, driveways, and roadways across any sidewalk bordering along any parkway shall be subject to the approval of the Town Board and constructed only after written permission is obtained from the Town Board.

Sec. 4-5-6 Reservation of Park Space or Shelters.

- (a) **Policy on Reservation.** The Town-owned hall, park and park facilities and shelter areas are primarily for the nonexclusive use of the residents and visitors of the Town of Westport. However, under proper circumstances, exclusive use of the same or parts thereof may be permitted. This Section is intended to regulate exclusive use of Town-owned halls, parks, park facilities, shelters, or parts thereof in the Town to the end that the general welfare of the Town is protected.
- (b) **Reservation of Park Space.** A person or group, firm, organization, partnership, or corporation may reserve the use of a Town-owned hall, park facility or shelter by written application filed with the Town Clerk/Treasurer for a permit for exclusive use of the same. The Clerk/Treasurer shall issue permits for exclusive use of a shelter or hall, while the Town Board shall issue permits for the exclusive use of Town parks.
- (c) **Application.** Applications shall be filed with the Clerk/Treasurer at least fourteen (14) days prior to the date on which the exclusive use of the entire park is requested, or at least three (3) days prior to the date on which a shelter is to be used, and shall set forth the following information regarding the proposed exclusive use:
 - (1) The name, address, and telephone number of the applicant.
 - (2) If the exclusive use is proposed for a group, firm, organization, partnership, or corporation, the name, address, and telephone number of the headquarters of the same, and the responsible and authorized heads or partners of the same.
 - (3) The name, address, and telephone number of the person who will be responsible for the use of the said park, hall, area, or facility.
 - (4) The date when the exclusive use is requested and the hours of the proposed exclusive use.
 - (5) The anticipated number of persons to use the said park, hall, area, or facility.
 - (6) Any additional information which the Town Clerk/Treasurer or Town Board finds reasonably necessary to a fair determination as to whether a permit should be issued.
- (d) **Deposit.** All applicants for reservation of park or hall space, or shelters, for which a permit is required shall pay a deposit in an amount to be determined from time to time by the Town Board to pay for the Town's maintenance and clean-up expenses. The deposit shall be returned if clean-up or repair by the Town is not required.
- (e) **Action on Application.** The Town Board or appropriate designee thereof shall act promptly on all applications for permits for exclusive park use (not shelter use) after consulting with the applicant, if necessary.
- (f) **Reasons for Denial.** Applications may be denied for any of the following reasons:

- (1) If it is for a use which would involve a violation of federal or state law or any provision of this Code.
 - (2) If the granting of the permit would conflict with another permit already granted or for which application is already pending.
 - (3) If the application does not contain the information required by Subsection (c) above.
 - (4) The application is made less than the required days in advance of the scheduled exclusive use.
 - (5) If it is for a use of the park or park facility at a date and time when, in addition to the proposed use, anticipated nonexclusive use by others of the hall, park or park facility is expected and would be seriously adversely affected.
 - (6) If the law enforcement requirements of the exclusive use will require so large a number of persons as to prevent adequate law enforcement to the hall, park, park facility, or shelter area involved or of the rest of the Town.
 - (7) The exclusive use will reasonably create a substantial risk of injury to persons or damage to property.
 - (8) The exclusive use is so poorly organized that participants are likely to engage in aggressive or destructive activity.
- (g) **Indemnification.** Prior to granting any permit for exclusive use of the park, the Town may require the permittee to file evidence of good and sufficient sureties, insurance in force, or other evidence of adequate financial responsibility, running to the Town and such other third parties as may be injured or damaged, in an amount depending upon the likelihood of injury or damage as a direct and proximate result of the exclusive use sufficient to indemnify the Town and such third parties as may be injured or damaged thereby, caused by the permittee, its agents, or participants.
- (h) **Permit Not Required for Town Activity.** A permit is not required for exclusive use of the park or a park facility sponsored by the Town.
- (i) **Permit Revocation.** The Town Board after a permit is granted, may revoke a permit already issued if it is deemed that such action is justified by an actual or potential emergency due to weather, fire, riot, other catastrophe, or likelihood of a breach of the peace or by major change in the conditions forming the basis of the issuance of the permit.
- (j) **Form of Permit.** Each permit shall be in a form prescribed by the Town Board and shall designate the park, park facility, or shelter area involved, date, hours of the exclusive use, purpose of the exclusive use, and the name of the person, group, firm, organization, partnership, or corporation to which the permit is issued.

**Sec. 4-5-7 Regulation of Water Traffic, Boating and Water Sports
Upon the Waters of the Yahara River and Prescribed
Penalties for Violation Thereof.**

- (a) **Applicability and Enforcement:** The provisions of this ordinance shall apply to the waters and to persons, vessels, objects or things upon the waters of the Yahara River within the jurisdiction of the Town of Westport as prescribed by the state conservation commission, which waters are described as follows: that portion of the Yahara River within the Town of Westport.
- (b) **State Boating and Water Safety Laws Adopted.** Sec. 30.50 to 30.71, Wis. Stats., and any rules promulgated under those sections as amended from time to time, relating to water traffic, boats, boating and related water activities, exclusive of any provisions therein relating to the penalties to be imposed or the punishment for violation of said statutes, are hereby adopted and by reference made a part of this ordinance as if fully set forth therein. Any act required to be performed or prohibited by the provisions of any statute incorporated by reference herein is required or prohibited by this ordinance.
- (c) **Speed Restrictions.**
- (1) **Maximum Speed.** No person shall operate a boat upon the waters covered by this ordinance at a speed in excess of that speed to which a boat moves as slowly as possible while still maintaining steerage control provided that this provision shall not apply to boats participating in duly authorized races over a course laid out and plainly marked and adequately patrolled.
 - (2) **Passing Canoe, Rowboat or Swimmer.** No person shall operate a motorboat within 200 feet of any canoe, rowboat or swimmer at a speed in excess of that speed to which a boat moves as slowly as possible while still maintaining steerage control.
 - (3) **Bridges and Channels.** No person shall operate a boat at a speed in excess of that speed to which a boat moves as slowly as possible while still maintaining steerage control within 100 feet of any bridge or when passing through channels.
- (d) **Markers and Navigation Aids.**
- (1) **Duty of Constable.** The Town constable or any other person authorized by the Town Board is authorized and directed to place and maintain suitable markers, navigation aids and signs in such areas of the river as shall be appropriate to advise the public of the provisions of this ordinance and to post and maintain a copy of this ordinance at all public access points within the jurisdiction of the Town.
 - (2) **Standard Markers.** All markers placed by the constable or any other person upon the waters of the river shall comply with the regulations of the conservation commission.
 - (3) **Interference with Markers Prohibited.** No person shall without authority remove, damage or destroy or moor or attach any water craft to any buoy, beacon or marker placed in the waters of the river by the authority of the United States, state or town or by any private person pursuant to the provisions of this ordinance.
- (e) **Penalties and Deposits.**
- (1) **Major Violations.** Any person who shall violate the provisions adopted by

reference in section 2 of this ordinance as described and defined in Subsection 31.67(1) or 30.68(1) or (2), Wis.Stats, shall upon conviction thereof forfeit not more than \$200 nor less than \$25 together with the costs of prosecution and in default of payment of such forfeiture and costs shall be imprisoned in the county jail until full payment thereof is made, but not exceeding 60 days.

- (2) **Minor Violations.** Any person who shall violate any provision of this ordinance except as specified in sub. (a) of this section shall upon conviction thereof forfeit not less than \$1 nor more than \$100 together with the costs of prosecution and in default of payment thereof shall be imprisoned in the county jail until full payment is made, but not exceeding 30 days.
- (3) **Money Deposits.** Any officer arresting a person for violation of a provision of this ordinance who is unable to bring the person arrested before the justice of peace of justice court without unnecessary delay shall permit such person to make a money deposit as provided in Sec. 30.76, Wis. Stats. Such deposit shall be made to the town justice of the peace.

Sec. 4-5-8 Bulkhead Line.

The bulkhead line of that part of the North shore of Lake Mendota, described and shown by Map # 2861, is established. A copy is located at the Town Clerk/Treasurer's office.

Article B: Impact Fees

Sec. 4-5-9 Intent.

This Article is intended to allocate financial burdens of providing public facilities fairly between existing Town residents and owners of existing land developments within the Town on the one hand and developers of new land developments on the other, and to comply with Sec. 66.0617, Wis. Stats., on municipal impact fees. It is also made necessary by the Wisconsin Legislature and Governor enacting legislation in 2006 eliminating the use of fees in lieu of parkland dedication for land division, a long time and valuable tool in providing for adequate parkland and improvements in the Town.

Sec. 4-5-10 Imposition of Park Facilities Impact Fees.

- (a) **Appropriateness and Use of Fees.** The Town Board has determined that it is appropriate to impose and use impact fees to pay for the capital costs for park facilities that are necessary to accommodate new land development without decreasing current levels of

service in the Town. The impact fees will be imposed in accordance with Sec. 66.0617, Wis. Stats., and the needs assessment and methodology set forth in the Park and Outdoor Recreation Impact Fee Needs Assessment, as prepared in 2006, on file in the office of the Town Clerk. The Needs Assessment shall delineate geographically defined zones, hereby approved, and shall impose impact fees in those zones that differ from impact fees in other zones in the Town.

- (b) ***Payment of Park Facilities Impact Fees Required.*** Any person who, after the effective date of this Article, applies for a building permit or an extension of a previously issued building permit, for the construction or modification of improvements to real property that creates additional residential dwelling units within the Town, shall pay impact fees as set forth in the Park and Outdoor Recreation Impact Fee Needs Assessment, as prepared in 2006, on file in the Office of the Town Clerk. Payment of the impact fees shall be made to the Town prior to the issuance of any building permit for which the fee is applicable except as provided in subsection (c) below. The impact fee amount due shall be that amount in effect at the time payment of the impact fee is due. Impact fee payments shall be the responsibility of the owner of record of the property for which a building permit is sought. All fees shall be paid at the Town of Westport Administration Building, 5387 Mary Lake Road. No building permit shall be issued unless the impact fee required is paid.
- (c) ***Low-cost Housing.*** The impact fee imposed by this section may be waived or reduced by the Town Board upon recommendation of the Plan Commission on new development for low-cost housing in accordance with Sec. 66.0617(7), Wis. Stats.
- (d) ***Definitions.*** The definitions set forth in Sec. 66.0617(1), Wis. Stats., and any amendments thereto, are hereby incorporated and made a part of this Article unless otherwise expressly modified in the needs assessment reports.
- (e) ***Fees Review.*** The Town Treasurer shall report annually to the Town Board with regard to all deposits, withdrawals and fund balances in the accounts established for impact fees. Upon review of such reports, the Town Board may determine to make reasonable modifications to the impact fees, if necessary, in accordance with Sec. 66.0617, Wis. Stats.

4-5-11 Other Means of Financing Park Improvements Reserved.

- (a) Pursuant to Sec. 66.0617(2)(b), Wis. Stats., the imposition of a park facilities impact fees under this section does not prohibit or limit the Town's authority to finance park facilities by other means authorized by law, including but not limited to, for example, the use of fees in lieu of land dedication under the Town Code which are deemed to not be impact fees as that term is used in Sec. 66.0617, Wis. Stats.
- (b) Notwithstanding the intent to impose land dedication requirements on developers, separate park impact fees shall be imposed on property owners in accordance with this Article, and any land dedications or fees in lieu of land dedication required by the Town under Ch. 236, Wis. Stats., and the Town Code, shall be credited to land owners who

shall be required under this Article to pay park facilities impact fees. If the Town and any land division developer agree upon the dedication of land in lieu of all or a portion of the impact fees imposed in this Article, the impact fees owed on the land development shall be reduced by an amount equal to the value of land being dedicated to the Town. If the Town and Developer cannot agree on this value, then the value of the land to be dedicated shall be determined by the Town's Assessor on the basis of full and fair market value of the land to be dedicated. If the developer is not satisfied with the appraisal, he may appeal the determination, in which case an appraisal board consisting of one appraiser selected by the Town at its own expense, one appraiser selected by the developer at his own expense, and a third selected by the two appraisers at the Town's expense, shall determine the value.

4-5-12 Public Facilities Needs Assessments for Park Improvements.

In accordance with Sec.66.0617(4), Wis. Stats., the Town has prepared a needs assessment report for park facilities improvements. The needs assessment, standards and methodology used for calculation of the park facilities impact fee, together with documentation of the Town's compliance with the statutory requirements, are contained in the Park and Outdoor Recreation Impact Fee Needs Assessment, as prepared in 2006, on file with the Town Clerk.

4-5-13 Disposition of Revenues; Expenditures.

Revenues collected as impact fees under this Article shall be placed by the Town Treasurer in segregated interest-bearing accounts and shall be accounted for separately from other funds of the Town. Impact fee revenues and interest earned on impact fee revenues may be expended by the Town only for the capital costs for which the impact fees were imposed and shall be expended on a first-in first-out basis. Separate accounts shall be kept of fees collected from different impact fee zones, and revenues collected in particular zones shall be spent in those zones as appropriate.

4-5-14 Time Limits.

- (a) The length of time determined appropriate for the planning, financing, acquisition and construction and equipment for park facilities shall be a maximum of 7 years from the time of collection to the time of use of the fee.
- (b) Fees that are held by the Town under this Article and not used within the time period specified in this section to pay the indicated capital costs shall be refunded to the owners of record of the properties from which the fee was collected at the time of refund.

4-5-15 Appeals.

- (a) Appeals to this Article may be brought by developers as defined in Sec. 66.0617, Wis. Stats., as follows:
- (1) It shall be a condition to the lodging of such an appeal that the impact fee appealed from shall be paid as and when the fee or any installments thereof become due and payable, and upon default in making any such payment, such appeal shall be dismissed.
 - (2) The only questions that are appealable under this Article are the following, pursuant to Sec. 66.0617, Wis. Stats.:
 - a. The amount of fee charged to and paid by the appellant developer.
 - b. The method of collection of the fee.
 - c. The use of the particular fee charged to and paid by the appellant developer.
 - (3) Pursuant to Sec. 66.0617, Wis. Stats., the appeal board may authorize the payment of a fee that is otherwise payable at the time of issuance of a building permit or other required municipal approval as specified within the ordinance imposing the particular impact fee in installment payments. The appeal board may require that interest be paid on installment payments at a rate comparable to the rate charged by the Town on installment payments of special assessments modified to reflect then-current interest costs or interest cost estimates.
 - (4) A challenge to the use of impact fees that are collected shall address solely the question of whether the fees are being used for the purposes for which they were collected within the allowable time established herein. Appeals as to use of proceeds are not entitled to challenge the Town's public facility plans or needs assessments.
 - a. Appeals must be brought within 30 days of the date of payment of the impact fee by the appellant. The appeal must be submitted to the Town Clerk in writing and must specify the basis of the appeal.
 - b. For purposes of this Article, the Town Board shall be the hearing and appeals board, and appeals and notices of appeal shall be filed with the Town Clerk. An application fee to bring an appeal shall be paid at the time of the filing of the appeal in the amount of \$320.00. The appeal fee is nonrefundable, and failure to pay this amount shall cause the appeal to be dismissed.
 - c. Following the filing of appeal, the Town Clerk shall compile a record of the ordinance imposing the impact fee that is the subject of the appeal, a record of the management and expenditure of the proceeds of such fee and shall transmit such with the appeal documents to the appeal board. In consultation with appropriate departments, the Town Clerk shall also compile a report on each appeal in which the appellant is seeking a reduction or total refund in the fee paid by the appellant. This report shall

identify the fiscal impact on the Town if the request to the appellant is granted. If this fiscal impact report indicates that the granting of the appeal will cause a revenue shortfall that otherwise had not been expected with respect to the public facility, and if this revenue shortfall cannot be reconciled by reduction in impacts caused by development on the appellant's property, the report shall estimate whether it will be necessary for the Town to adjust impact fees to amendment of existing ordinances, to make up the revenue shortfall.

- d. The appeal board shall hold a public hearing on the appeal proceeded by a class 1 notice under Ch. 985, Wis. Stats., providing fair opportunity for the appellant to be heard. The burden shall be on the appellant to establish illegality or impropriety of the fee from which the appeal has been taken. Following the close of the public hearing, the appeal board shall deliberate upon the matter, conducting such studies and inquiries as it deems appropriate, and shall decide the appeal.
- e. If the appeal board feels that the appeal has merit, the appeal board may determine the appropriate remedies. These may include redirection of the proceeds of the impact fee in question to accomplish the purposes for which the fee was collected, refunding in full or in part the impact fee that was collected along with interest collected by the Town thereon or granting the appellant the opportunity to make the impact fee payment in installment payments as described in this Article or such other remedies as the appeal board deems appropriate to the case.

4-5-16 Severability.

If any provision of this ordinance or Article is declared illegal or invalid for any reason, that illegality or invalidity shall not affect the remaining provisions which shall remain in full force and effect.