Edward M. Augustus, Jr.
City Manager

CITY OF WORCESTER

cm2020oct13020502 Attachment for Item # 9.13 A

October 20, 2020

TO THE WORCESTER CITY COUNCIL

COUNCILORS:

The attached report relative to eliminating or decreasing the use of jet skis on Indian Lake, as received from Michael E. Traynor, City Solicitor, is forwarded for the information of your Honorable Body.

The city solicitor concludes that pursuant to M.G.L. c. 90B, Section 15, the City Council may adopt an ordinance that would regulate or ban the use of jet skis and other personal watercraft at Indian Lake provided the proposed ordinance is first approved by the director of the Division of Law Enforcement of the Department of Fisheries, Wildlife and Environmental Law Enforcement.

Other municipalities in the Commonwealth have passed laws either banning or restricting the use of personal watercraft at bodies of water within their jurisdictional limits. Provincetown, Lowell and Falmouth have enacted total bans, while Webster restricts the launching of jet skis to town residents at the Webster Memorial Beach Boat Ramp.

Should the Council choose to adopt either a regulation or ban of personal watercraft at Indian Lake, the administration will then meet with representatives from the Commonwealth's Division of Law Enforcement of the Department of Fisheries, Wildlife and Environmental Law Enforcement to obtain the director's approval, as required by M.G.L. c. 90B, Section 15. After obtaining the director's approval, the appropriate ordinance would be submitted for your consideration and adoption.

The city solicitor notes that problems with jet ski usage on Lake Quinsigamond was also raised during the discussion requesting this report. Because of the shared jurisdiction of Lake Quinsigamond, the solicitor suggests we ask for a meeting with the towns of Shrewsbury and Grafton, the Commonwealth and the Lake Quinsigamond Commission to discuss the issues with personal watercraft on the lake and what steps, if any, the other stakeholders would be interesting in pursuing.

Respectfully submitted,



Edward M. Augustus, Jr.
City Manager

CITY OF WORCESTER, MASSACHUSETTS

Law Department

Michael E. Traynor
City Solicitor

To: Edward M. Augustus, Jr., City Manager

From: Michael E. Traynor, City Solicitor

Date: October 20, 2020

Re: Request City Manager request City Solicitor provide City Council with a legal opinion and recommendations for working with the state of Massachusetts to eliminate or decrease the use of jet skis on Indian Lake.

This memorandum responds to the above request from the City Council relative to regulating, or banning, the use of jet skis or other personal watercraft at Indian Lake and concludes that the City may, in compliance with state law, enact an ordinance to achieve either of those goals.

Massachusetts General Laws Chapter 90B, Section 9A, provides, *inter alia,* "no person shall operate a jet ski, surf jet or wetbike ... (c) on waters of the commonwealth of less than seventy-five acres..." Further, M.G.L. Chapter 90B, Section 15, authorizes cities and towns to enact regulations concerning the operation of personal watercraft, provided the local regulations are approved by the director of the Division of Law Enforcement of the Department of Fisheries, Wildlife and Environmental Law Enforcement and published in a newspaper of general circulation in the city or town not less than five (5) days before the effective date thereof.

Indian Lake, a Great Pond, today consists of about two hundred (200) acres in total.

The above-referenced Section 9A does not confer "an absolute and unregulable right on individuals to operate jet skis or other personal watercraft in waterways of greater than seventy-five acres," quoting *Mad Maxine's Watersports, Inc. v. Harbormaster of Provincetown*, 67 Mass. App. Ct. 804, 809 (2006). Cities and towns are authorized to regulate personal watercraft "so long as the regulation is not contrary to the provisions of M.G.L. c. 90B or its implementing regulations, and so long as prior notice and approval by the appropriate State official are given." *Id.* at 811.

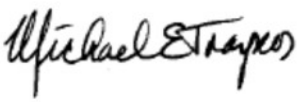
In *Mad Maxine's*, the town of Provincetown restricted the use of personal watercraft to a 200-foot channel in Provincetown Harbor, restricted launching them to a single point of entry, and required that while in the channel the watercraft must operate at "headway speed" (i.e., slowest operating speed that will maintain steerage). Other examples of local enactments include the city of Lowell's ban on the use of personal watercraft in the

Merrimack River Waterway and the Lowell Canal System; the town of Webster restricts the launching of personal watercraft at the Webster Memorial Beach Boat Ramp to town residents; and the town of Falmouth adopted a by-law in 1989 banning jet skis at Ashumet Pond, a body of water it shares with the town of Mashpee. Mashpee has heretofore not adopted any regulations or ban but Mashpee's October 2020 Town Meeting will be asked to pass an article banning the use of personal watercraft on Ashumet Pond.

Going forward the first step is to decide whether to regulate or ban jet skis and other personal watercraft at Indian Lake. Assuming the City Council chooses one of those options, City officials should next meet with representatives from the Commonwealth's Division of Law Enforcement of the Department of Fisheries, Wildlife and Environmental Law Enforcement to obtain the director's approval as required by M.G.L. c. 90B, Section 15. Following such approval the City Council could pass the relevant ordinance.

During discussion of the request for this report problems with the operation of jet skis on Lake Quinsigamond was also brought up. The Lake presents a different situation because it is shared with the towns of Shrewsbury and Grafton. Worcester might adopt a ban on personal watercraft but it would only apply to that portion of the lake within the territorial limits of the city. My recommendation to address the issues confronting Lake Quinsigamond is to seek a convening of a group of officials from the towns, the city, the Commonwealth, and the Lake Quinsigamond Commission to discuss options ranging from restrictions to a total ban.

Sincerely,



Michael E. Traynor
City Solicitor