

**TOWNSHIP OF ORANGEVILLE
BARRY COUNTY, MICHIGAN
(Ordinance No. 0419)**

At a regular meeting of the Township Board for Orangeville Township held at the Township offices on APRIL 2, 2019, beginning at 7 p.m., Township Board Member PERINO made a motion to adopt this Ordinance, which was seconded by Township Board Member RISNER :

AN ORDINANCE TO REGULATE BUBBLERS ON AND WITHIN GUN LAKE; TO ADMINISTER THE ORDINANCE AND TO PROVIDE PENALTIES FOR VIOLATION OF THE ORDINANCE.

THE TOWNSHIP OF ORANGEVILLE (the "Township"), BARRY COUNTY, MICHIGAN, ORDAINS:

Section 1 - TITLE

This Ordinance shall be known and may be cited as the "Orangeville Township Bubbler Ordinance."

Section 2 - LEGISLATIVE FINDINGS; PURPOSE

A. The Township Board for Orangeville Township, Barry County, Michigan, finds and determines that it is necessary to adopt this Ordinance in order to protect the health, safety and welfare of Township residents, landowners and visitors; to prevent or avoid impairment of an important irreparable natural resource (Gun Lake and its waters); to avoid or prevent impairment of property values of lands adjoining Gun Lake; to provide regulations which are designed to protect the public health, safety and welfare of the users of the lake and winter navigability of the lake; and to minimize or reduce the dangers from the use of bubblers in the lake to persons using the lake and riparian property owners.

B. The Township Board expressly also finds all of the following:

1. Bubblers are dangerous to people who are present on the ice of Gun Lake in the winter, including the following persons:
 - Snowmobilers and operators of ATVs.
 - Ice fisherpersons
 - Children playing
 - Pedestrians
 - Cross-country skiers
 - Other users of the otherwise frozen surface of Gun Lake
2. Bubblers interfere with the safe, convenient and reasonable navigability of Gun Lake in the winter. Navigability in the winter includes such activities as cross-country skiing, snowmobiling, ATV use, ice fishing and walking.
3. Bubblers interfere with and have negative impacts upon the ecology and the environment of Gun Lake, as frozen ice is necessary for the lake habitat to regenerate during the winter.
4. The use of bubblers on Gun Lake during the winter is an inherently dangerous use and activity.
 - Visibility is often lower during winter conditions due to blowing snow, whiteouts, etc.
 - Open water or weakened ice is often difficult to detect at night.
 - Children are especially susceptible to the dangers of weak ice and open water.

Section 3 - DEFINITIONS

The following words, terms and language shall mean the following for purposes of this Ordinance:

- A. "Bubbler" or "bubbling system or mechanism" means any machinery, motor, engine, item, equipment, mechanism, pump, compressor or compression system or any structural, mechanical or other system whether automatically or manually operated and which is designed, intended or functions to interrupt, stop or slow down the natural freezing of waterways or to break up any ice surrounding or adjacent to any boat, vessel, pier, dock or seawall as a means of a wet storage system for such boat or vessel, or protection for any dock, structure, pier or seawall, during the winter months. This definition also includes any system or apparatus that uses aerators, forced air, props, a pump, agitation or other motion to weaken or prevent ice within a lake.
- B. "Lake" means Gun Lake, as well as its waters, ice, shore and bottomlands.
- C. "Marina" shall mean the commercial renting, lease or letting of three or more boat slips, places at a dock or pier, boat mooring spots, boat hoists or the equivalent, which shall also include any facilities related thereto. "Marina" shall also mean a waterfront property with one or more docks, piers, boat hoists or boat slips that are used by three or more different families (i.e., effectively a multi-family use). "Marina" shall also include a facility or area containing, having or serving three or more boat slips (or the equivalent) that are part of a commercial venture or an association or cooperative or that are condominiumized or the equivalent. "Marina" also means a facility on a lake that offers service to the public or to members of the marina (including members of an apartment complex, a yacht

club, boating association, condominium association or similar association or group of people) for docking, boat launching and/or potentially other services related to boats and watercraft. A “marina” shall also mean any facility, use or activity defined or licensed as a “marina” by Michigan statute.

Section 4 – PROHIBITION ON BUBBLERS

Except as expressly allowed in Section 5 hereof, the use of bubblers is expressly prohibited within Gun Lake (including its waters, ice, shoreline and bottomlands).

Section 5 – COMMERCIAL MARINAS AND BUBBLERS

Notwithstanding the prohibition against bubblers in Gun Lake specified in Section 4 of this Ordinance, any commercial marina on Gun Lake within the Township that lawfully existed as of February 1, 2019 may have bubblers along its docks or piers but subject to all of the following regulations, requirements and limitations:

- A. The marina must have been both fully lawful in existence and state licensed as of February 1, 2019.
- B. The number of bubblers, the size, location and scope of the docks or piers for which the bubblers are used and the area involved for bubblers cannot exceed in scope, size or area thereafter what was lawfully in place as of February 1, 2019.
- C. The bubblers cannot cause any open water or weakened ice further than 10 feet from the dock, pier, boat or other structure or item protected by the bubbler.
- D. For any open water or weakened ice caused by a bubbler allowed under this Section 5, the owner of the marina involved shall do all of the following:
 1. Place and maintain signs along the ice within 10 feet of the open water or weakened ice (and facing away from the open water or weakened ice) and

spaced no more than 20 feet apart signs that are at least 9 square feet in size and which state the following:

“Danger, open water or thin ice.”

2. Keep in effect at all times liability insurance in an amount of least \$2,000,000 for insurance coverage should anyone drown or be injured due to open water or weakened ice from a bubbler.
 3. Have available (and visible to the public) within 100 feet of each bubbler system all of the following items:
 - a. A buoyant life preserving ring with at least 50 feet of attached rope.
 - b. A lightweight ladder at least 10 feet in length.
 - c. A 20-foot long light-aluminum or other light metal pole.
- E. The open water and weakened ice caused by a bubbler shall not extend in the lake beyond or over a line extended out into the lake perpendicular to the shore from where the side property lines of the property with the bubbler intersect with the ordinary high water mark.
- F. No bubbler shall be used in Gun Lake unless a permit has been issued for such use by the Township Zoning Administrator (or such other Township official as the Township Board shall designate).
1. No bubbler permit shall be issued or approved by the Township unless the Township Zoning Administrator finds that all of the following standards and requirements will be met:

- a. The bubbler complies with this Ordinance and also all applicable zoning regulations, state laws and county requirements.
 - b. The bubbler will not unreasonably interfere with the riparian rights of the owners of other lakefront properties on Gun Lake, including the owners of all riparian or waterfront properties located within 500 feet of the marina involved.
 - c. The bubbler will not have significant negative impacts upon the area of Gun Lake, the environment and ecology of the lake or lake waterfowl and fauna.
2. The Zoning Administrator may attach reasonable conditions to any approved permit.
 3. Should any bubbler or its use be in violation of this Ordinance, the bubbler permit or any other Township ordinance, in addition to the other penalties specified in this Ordinance, the Township Board may revoke the bubbler permit after a public hearing. Once a permit has been revoked, the marina shall discontinue all bubbler operations and use immediately.
 - a. Prior to revoking a permit, the Township shall send a written notice to the owner of the marina involved indicating which ordinance or permit provisions the marina is violating and also indicating that the bubbler permit may be revoked. The Township shall also provide the marina involved with a notice of the public hearing regarding revocation at least 15 days before the hearing.

- b. The Township Board may revoke a bubbler permit if it finds that any of the following has occurred:
 - i. The marina is in substantial and material violation of this Ordinance, its bubbler permit or any other Township ordinance.
 - ii. The marina violates a federal or state law.
 - iii. The marina's bubbler has been operated in an unsafe/or unreasonable fashion.

Section 6 - SEVERABILITY

If any sentence, section, paragraph or part of this Ordinance is determined to be unconstitutional or unenforceable by a court of competent jurisdiction, it shall be severed from the remainder of the Ordinance and such determination shall not affect the remainder of the Ordinance which shall remain valid and in effect.

Section 7 – PENALTIES; ENFORCEMENT

- A. A violation of this Ordinance constitutes a municipal civil infraction. Any person who violates, disobeys, omits, neglects, or refuses to comply with any provision of this Ordinance, or any amendment thereof, or any person who knowingly or intentionally aids or abets another person in violation of this Ordinance, shall be in violation of this Ordinance and shall be responsible for a civil infraction. The civil fine for a municipal civil infraction shall be not less than one hundred dollars (\$100.00) for the first offense and not less than two hundred dollars (\$200.00) for subsequent offenses, in the discretion of the court, in addition to all other costs, damages, expenses and remedies provided by law. For purposes of this section,

“subsequent offense” means a violation of the provisions of this Ordinance committed by the same person within twelve (12) months of a previous violation of the same provision of this Ordinance or similar provision of this Ordinance for which said person admitted responsibility or was adjudged to be responsible. Each day during which any violation continues shall be deemed a separate offense.

- B. Anyone who assists another in violating this Ordinance, or who aids and abets another in violation of this Ordinance, shall also be deemed to be in violation of this Ordinance.
- C. In addition to the above-mentioned remedies, the Township is also authorized (at its option and discretion) to pursue a civil lawsuit to enforce and/or ensure compliance with this Ordinance in the Barry County Circuit Court. The remedies and penalties provided in this Ordinance are cumulative and not exclusive.
- D. This Ordinance may be enforced by the Township Zoning Administrator, the Township Building Inspector, the Township Zoning Enforcement Officer, a Deputy County Sheriff, and such other Township officials or agents as the Township Board may designate from time to time by resolution.
- E. A violation of this Ordinance is also hereby declared to be a nuisance *per se* (which should be abated) and is also declared to be offensive to the public health, safety and welfare.

Section 8 - EFFECTIVE DATE

This Ordinance shall take effect upon the expiration of thirty (30) days after its publication (or a summary thereof) in the manner provided by law.

The vote to adopt this Ordinance was as follows:

YEAS: ROOK, PERINO, RISNER, RITCHIE, RIBBLE

NAYS: NONE

ABSENT/ABSTAIN: NONE

ORDINANCE DECLARED ADOPTED.

CERTIFICATION

I hereby certify that the above is a true copy of an Ordinance adopted by the Township Board for Orangeville Township at the time, date and place as specified above, pursuant to the required statutory procedures.

Respectfully submitted,

By Mel Risner
Mel Risner
Orangeville Township Clerk