

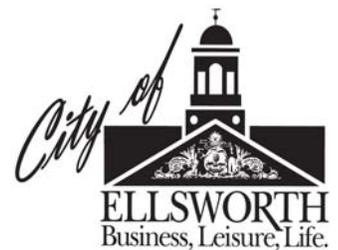
**City of Ellsworth  
Chapter 55**

**Water Supply Protection  
Ordinance**

A true copy –

Attest: Heidi-Noel Grindle

City Clerk



*Adopted July 18, 2005  
Effective August 11, 2005  
Amended Through March 15, 2010  
Amended August 16, 2010  
Amended January 14, 2013*

## **ARTICLE I. GENERAL PROVISIONS**

### **Section 1. Title**

This Ordinance shall be known and cited as the “Public Water Supply Protection Ordinance” of the City of Ellsworth, Maine.

### **Section 2. Authority**

This ordinance is adopted pursuant to Title 22 M.R.S.A. §2642.

### **Section 3. Purpose and Intent**

The purpose of this ordinance is to protect the water quality of Branch Lake, the Ellsworth drinking water supply and its sources, as well as the health, safety, and welfare of persons dependent upon such supplies. These supply sources include all perennial and intermittent streams, as well as the wetlands of ten (10) acres or more located within the Branch Lake Watershed Boundaries. The ordinance is intended to protect the drinking water supply and its sources from pollution and development; chemical contamination; increased recreational and boating pressures; and invasive aquatic species.

The provisions of this ordinance pertaining to surface water use and water-related activities include any activity in, on, or from the surface water or the frozen water of Branch Lake and its sources.

### **Section 4. Effective Date**

This ordinance enacted on the 18<sup>th</sup> day of July 2005 by the Ellsworth City Council shall take effect August 15, 2005.

### **Section 5. Applicability and Map**

This ordinance shall apply to all surface water use on Branch Lake or its sources, as delineated on the attached Public Water Supply Protection Area map. This area is considered to be essential to the protection of the existing water from the effect of possible contamination activities.

### **Section 6. Relationship with other Ordinances**

Whenever a provision of this ordinance is inconsistent with another provision of the ordinance or any other ordinance, regulation, or statute, the more restrictive provision shall control.

### **Section 7. Validity and Severability**

Should any section or provision of this ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this ordinance.

### **Section 8. Amendments**

#### **A. Initiation of Amendments**

A proposal for an amendment to this ordinance may be initiated by one of the following:

1. Planning Board;
2. City Council;
3. City Manager;
4. Water Department Superintendent;
5. Ellsworth Water Supply Commission; or

6. An individual, through the petition process described in the Charter of the City of Ellsworth, Article IX, as amended on November 4, 1997.

**B. Procedure for Amendments**

1. Upon receipt of a proposed amendment, the City Planner shall take all action necessary to schedule a public hearing to be conducted by the Planning Board on the request;

2. The Planning Board shall hold a public hearing within forty-five (45) days of receipt of a proposed amendment or repeal by the City Planner. At least thirteen (13) days before the hearing, the City shall advertise the date, time, place, and purpose of the Planning Board hearing in a newspaper of general circulation;

3. The Planning Board shall make its official report at the next meeting of the Ellsworth City Council, which is held at least ten (10) days after the public hearing; and

4. Before consideration of the proposed amendment or repeal by the Ellsworth City Council, it shall hold a public hearing. Said public hearing shall be published at least two (2) times in a newspaper having general circulation in the municipality, the date of the first publication must be at least seven (7) days before the hearing, and shall be posted in the municipal office at least fourteen (14) days before the public hearing.

**Section 9. Enforcement**

Any duly designated Ellsworth Police Officer, the Water Department Superintendent, their designees, and the Branch Lake Steward are authorized and shall have the authority to enforce all provisions of this ordinance, including the authority to deny or revoke, with cause, a Branch Lake Boating Permit and/or an Ellsworth Boat Tag.

Only the Branch Lake Steward, the Water Department Superintendent or designees are authorized to waive the inspection of a resident boat.

Ellsworth Boat Inspectors are authorized to issue, or deny, with cause, a Branch Lake Boating Permit and/or an Ellsworth Boat Tag to any boater.

**Section 10. Appeal**

Any person aggrieved by a decision of an Ellsworth Police Officer, the Branch Lake Steward, the Water Superintendent or designees, or an Ellsworth Boat Inspector may appeal said decision to the Ellsworth Board of Appeals within seven (7) days after said decision. The Board of Appeals may affirm, modify, or reverse the decision in accordance with the terms of this ordinance.

**Section 11. Civil Penalty**

Any person violating the provisions of this ordinance shall be liable to a civil penalty in accordance with 30-A M.R.S.A. §4452 as summarized below:

**A) Monetary penalties may be assessed on a per-day basis.**

1. The minimum penalty for a specific violation is \$100;

2. The maximum penalty outside a resource protection zone is \$2,500;

3. The maximum penalty is \$5,000 for any violation within a resource protection zone;
4. The maximum penalty is increased to \$25,000 when it is shown that there has been a previous conviction of the same party within the past 2 years for a similar violation.
5. The maximum penalty may be increased if the economic benefit resulting from the violation exceeds the applicable penalties

**B) In addition to penalties, legal fees may also be awarded as provided by court rule.**

**C) The violator may be ordered to correct, abate or mitigate the violations.**

**D) In setting a penalty, the following shall be considered:**

1. Prior violations by the same party;
2. The degree of environmental damage that cannot be abated or corrected;
3. The extent to which the violation continued following an order to stop.

### **Section 12. Revenues**

All revenues generated from this ordinance, including assessed penalties, shall only be used to support the administration of this ordinance and related programs to protect Ellsworth's public water supply, Branch Lake.

### **Section 13. Definitions**

**AEROPLANE:** An airplane that can land on or take off from water or ice.

**ALL-TERRAIN VEHICLE or ATV:** Any recreation vehicle with three (3) or more wheels and weighing under Fifteen hundred (1500) pounds.

**AMPHIBIOUS AEROPLANE:** An airplane that can take off and land using conventional runways and water.

**AMPHIBIOUS VEHICLE:** Any vehicle that can be used over land and water.

**ARSENIC-TREATED WOOD PRODUCTS:** Lumber, timber, poles, posts, plywood, shakes, shingles, or other wood or forest products intended for outdoor use that have been pressure treated to reduce decay with a wood preservative containing inorganic arsenic or inorganic arsenic compounds.

**AQUATIC PLANTS:** As defined by Title 12 MRSA sec. 13001, a plant species that requires a permanently flooded freshwater habitat.

**DOCK:** Floating or fixed structure located in, on, or over the waters of Branch Lake.

**BOAT INSPECTION:** The inspection of boat, motor vehicle, trailer, marine engine, live well, bilge, bait bucket and all other related equipment to ensure that no aquatic invasive plants are introduced in Branch Lake and in its sources.

**BOAT:** Any device capable of carrying one or more person in, on, or over the waters of Branch Lake. It does not include air mattresses, inner tubes, and beach and water toys.

**BOAT LAUNCH:** A facility designed primarily for the launching and landing of watercraft.

**CREOSOTE-TREATED WOOD :** Lumber, timber, poles, posts, plywood, shakes, shingles, or other wood or forest products intended for outdoor use that have been treated with creosote.

**FLOAT PLANE BASE:** On-water location designed for docking, mooring, or servicing three or more aeroplanes simultaneously.

**FUEL DEPOT:** Waterside fueling facility containing fuel storage in excess of 50 gallons.

**INFESTED WATER BODIES:** Lakes, Ponds, Rivers, or Streams known or suspected to contain invasive aquatic plants. For the purposes of this ordinance, all water bodies beyond the borders of the state of Maine will be suspected to contain invasive aquatic plants. Known Maine infested water bodies are those listed in the most recent annual Maine Department of Environmental Protection (ME DEP) update.

**INVASIVE AQUATIC PLANTS:** As defined by Title 38 MRSA Chapter 3, Subchapter 1, Section 410-N, a species identified by the ME DEP as an invasive aquatic plant, or one of the following species:

- (1) Eurasian water milfoil, *Myriophyllum spicatum*;
- (2) Variable-leaf water milfoil, *Myriophyllum heterophyllum*;
- (3) Parrot feather, *Myriophyllum aquaticum*;
- (4) Water chestnut, *Trapa natans*;
- (5) Hydrilla, *Hydrilla verticillata*;
- (6) Fanwort, *Cabomba caroliniana*;
- (7) Curly pondweed, *Potamogeton crispus*;
- (8) European naiad, *Najas minor*;
- (9) Brazilian elodea, *Egeria densa*;
- (10) Frogbit, *Hydrocharis morsus-ranae*; and
- (11) Yellow floating heart, *Nymphoides peltata*.

**MOORING:** Appliance used by a boat for anchoring purposes that is not carried aboard such boat when underway as regular equipment.

**MOTORBIKE:** Any self-propelled two (2) wheeled motorcycle or motor-driven cycle designed for or capable of traveling off developed roadways and highways.

**MOTOR VEHICLES:** A self-propelled wheeled conveyance, such as a car or truck.

**NORMAL HIGH-WATER LINE:** The line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers and great ponds, the normal high-water line is the upland edge of the wetland.

**NO WAKE SPEED:** Operation of a boat at the slowest possible speed to maintain steerage.

**PERSONAL WATERCRAFT (PWC):** A small, lightweight water jet propelled craft designed to be either sat-on or stood-on with motorcycle-like handlebars and squeeze throttle.

**RESIDENT BOAT:** Boat(s)/watercraft(s) belonging to a household owning property or right-of-way abutting Branch Lake.

**SNOWMOBILE:** Any self-propelled vehicle under one thousand (1,000) pounds unladen gross weight, that is steered by tracks, skis, or runners.

**SUBSTANTIAL IMPROVEMENTS:** Any reconstruction, rehabilitation or other improvement of a launch, dock, or other structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed.

**WATERCRAFT:** Any boat or other floating device of rigid or inflatable construction which is designated to carry people or cargo on the water, and which is propelled by machinery, oars, paddles or wind action on a sail; except: inner tubes, other floatable material not propelled by machinery, personal floating devices worn or held in hand, and other objects such as floating or swimming aids, including float tubes.

## **ARTICLE II. SURFACE WATER USE REGULATIONS**

### **Section 1. Establishment of Zones**

The Water Supply Protection Ordinance applies to three (3) zones depicted on the official City of Ellsworth Water Supply Protection Area map.

#### **A. Intake Zone**

This 280,000 square feet rectangular zone encompasses the area of water around the Ellsworth public water supply point of intake in Branch Lake commencing at the northwest corner of the Ellsworth tax map 55 lot 14 at the normal high-water line of Branch Lake and extending one hundred and twenty-four (124) feet in a generally northwesterly direction along the shoreline; thence at a right angle in a northeasterly direction seven hundred (700) feet to a point; thence at a right angle in a southeasterly direction four hundred (400) feet to a point; thence at a right angle in a southwesterly direction seven hundred (700) feet to a point; thence at a right angle in a northwesterly

direction two hundred and seventy-six (276) feet along the shoreline to the point of beginning.

## **B. Recreation Zone**

This zone encompasses all of the water surface of Branch Lake and its sources excluding the Intake Zone area (as depicted on the Ellsworth Public Water Supply Protection map - Attachment A).

## **C. Aeroplane Landing & Takeoff Zone**

This zone, located within the recreation zone listed in B above, encompasses waters in the “Upper Lake” section of Branch Lake north of a line running between the Branch View Drive peninsula and the 401 Phillips Way peninsula 200 feet North of so-called “Little John Island” as depicted on the Ellsworth Public Water Supply Protection map - Attachment A.

## **Section 2. Restrictions**

### **A. Intake Zone**

1. All water-related activities in this area are prohibited; no trespassing is allowed.
2. The Ellsworth Water Department shall have authority to place, at its discretion, signs and/or buoys in the lake delineating the zone and indicating the penalties to be imposed for trespassing.

### **B. Recreational Zone**

Protection measures for the Recreation Zone are:

1. **No Wake.** It shall be unlawful to operate any boat at speeds faster than no wake speed within 200 feet of the shoreline.
2. **Motor Vehicles.** Motor vehicles are prohibited unless used for the express purpose of launching a boat.
3. **ATVs.** ATVs are prohibited unless used on the ice or used to launch a boat.
4. **Motorbikes.** Motorbikes are prohibited unless used on the ice or used to launch a boat.
5. **Snowmobiles.** Snowmobiles are allowed on the ice of Branch Lake.
6. **Amphibious Vehicles.** Amphibious vehicles are prohibited, including amphibious aeroplanes.
7. **Aeroplanes.** No person shall cause or permit any aeroplanes to land, operate, or take off except under conditions outlined in Section 6 below.
8. **Diesel Engines.** All vessels with diesel engines are prohibited.
9. **House Boats.** No vessel fitted for use as a dwelling or residence or occupied as such shall be permitted.
10. **Engine Repairs.** Servicing or repair of engines is prohibited.
11. **Dumping of Wastes.** No person shall dump, cause to dump, or discard

feces, ashes, food wastes, offal, or any waste or refuse.

**12. Ice Shacks and On-ice Activities: See Section 5 below.**

**13. Overnight stay.** Overnight stays on the ice are prohibited.

**14. Moorings.** All mooring gear must be free of aquatic plants before being placed in Branch Lake or its sources.

**15. Fishing Equipment.** All fishing equipment must be free of aquatic plants before being placed in Branch Lake or its sources.

### **C. Aeroplane Landing and Takeoff Zone**

Protection measures for the Aeroplane Landing & Takeoff Zone are:

**1. Aeroplanes.** No person shall cause or permit any aeroplanes to land, operate, or take off except under conditions outlined in Section 6 below.

**2. No Wake.** It shall be unlawful to operate any aeroplane at speeds faster than no wake speed within 200 feet of the mainland or island shoreline.

### **Section 3. Protection of Water Supply Generally**

**A.** It shall be unlawful for any person to pollute, threaten, jeopardize or render impure, turbid or offensive the waters of Branch Lake or its sources.

**B.** No person shall put filth, sewage, ashes, animal or vegetable matter, wood chips, compost, construction debris, herbicide, wood shavings or any other substance or pollutant, whether solid or liquid in the waters of Branch Lake or its sources.

**C.** The owner or operator of a motorized vehicle or aeroplane that sinks beneath the water or ice of Branch Lake or its sources must contact the Ellsworth Water or Police Department(s) as soon as safety permits.

### **Section 4. Boat Launches and Docks**

**A.** All new boat launches, docks, and other structures in, on, or over the waters of Branch Lake are prohibited with the exception of docks used for residential purposes and those structures listed under Section 4-E.

**B.** Boat launches, docks, and other structures in place before the effective date of this ordinance may continue unless the use is discontinued for a period of 12 consecutive months.

**C.** All new docks and other structures in, on, or over the waters of Branch Lake must meet the following specifications and restrictions:

**1.** The structure shall be built no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area;

**2.** Habitable or enclosed structures are prohibited;

**3.** The use of metal drums is prohibited;

**4.** The use of any flotation devices that will sink when punctured are

prohibited;

5. The use of creosote- and arsenic-treated wood products are prohibited;

6. The use of drums, barrels or containers of any type that have been previously used to store oil, petroleum products or hazardous materials of any type are prohibited;

7. Toilet facilities on boat docks are prohibited; and

8. Boat docks shall be free of any invasive aquatic plant before being placed in Branch Lake or its sources.

D. A dock or other structure in place in, on, or over the waters of Branch Lake before the effective date of this ordinance must meet the specifications and restrictions set forth in Section 4.C of this ordinance if substantial improvements take place.

E. Boat launches, docks, and other structures in, on, or over the waters of Branch Lake erected on City-owned or State owned property are allowed.

F. No structures in, on, or over the waters of Branch Lake shall be used for building, constructing or repairing of any boat or aeroplane.

### **Section 5. Ice Shacks and On-ice Activities**

A. Ice shacks and other similar structures providing temporary protection are allowed. Ellsworth Water Department or other applicable City Enforcement staff may inspect temporary structures on Branch Lake at any time for conformance with this ordinance.

B. Disposal or abandonment of bottles, cans, ash, trash, human waste, pet waste, building materials or equipment on the ice or in the water is prohibited. Anything brought on the ice must be packed out.

C. Defecating and/or urinating on the ice or in the water is prohibited. Please make provision for these basic needs beforehand.

D. Burning of trash on the ice is prohibited.

### **Section 6. Aeroplane Use**

A. Before a pilot operates an aeroplane on Branch Lake, the pilot must be certified as an "Aeroplane Self-inspector" by the City of Ellsworth as outlined in Article IV-B, Aeroplane Inspection.

B. The authorized aeroplane landing and take-off zone on Branch Lake is in the basin depicted as the Upper Lake north of a line running between the Branch View Drive peninsula and the 401 Phillips Way peninsula 200 feet north of so-called "Little John Island" as depicted on the Ellsworth Public Water Supply Protection map - Attachment A. Because of the drinking water intake in the Lower Lake, only the taxiing of aeroplanes in the Lower Lake (southeast of the peninsulas) is allowed.

C. Aeroplane fly-in events are prohibited.

D. A 500 feet minimum altitude shall be maintained when not landing or taking off.

E. Self-inspection of an aeroplane, and therefore direct landing in Branch Lake, is prohibited if in the last twelve (12) months the aeroplane has been in an infested water

body as defined in Art. 1, Sec. 13. If the pilot of an aeroplane that has been in an infested water body within the last 12 months wishes to use Branch Lake, the pilot must contact the City of Ellsworth Water Department, and schedule an inspection conducted by the Water Department Superintendent, Branch Lake Steward or any duly designated Ellsworth Police Officer for a City performed Inspection.

**F.** No aeroplanes shall operate on Branch Lake in conjunction with any business enterprise, including but not limited to flight training schools, guiding operations, tour operations, resorts or housing developments, whether or not such enterprises are located in the Branch Lake watershed. No fuel depots or floatplane bases shall be operated on Branch Lake.

**G.** The owner or operator of an aeroplane that sinks beneath the water or ice or crashes onto the water or ice of Branch Lake or its sources must contact the Ellsworth Water or Police Department as soon as safety permits.

### **ARTICLE III. BOAT INSPECTION**

#### **Section 1. Tag, Inspection, Permit (TIP)**

Launching of any watercraft in Branch Lake is prohibited unless: 1) the boat has a valid TAG (sticker), 2) an INSPECTION was conducted, and 3) a PERMIT has been issued.

#### **A. TAG**

1. A Boat Tag consists of a City-supplied sticker applied to the left bow of the boat in plain view above the waterline.
2. Boat Tags are available at City Hall, at the City operated Branch Lake Launch located off the Happytown Road, and may be available from the City Manager appointed sub-station agents.
3. By the end of December of each year, the City Council shall establish the Boat Tag Fee Schedule for the next calendar year.
4. Boat Tags are mandatory for all boats, with or without inspection waivers.
5. Should a Boat Tag become mutilated so that it cannot be read easily, it must be removed and be replaced with a new Boat Tag.

#### **B. BOAT INSPECTION**

No person shall be extended the privilege of boating, including canoeing and kayaking, on the waters of Branch Lake without a boat inspection conducted for the presence of aquatic plants, unless otherwise specified. If an aquatic plant fragment is discovered during a boat inspection, the aquatic plant fragment shall be handled as described in the Ellsworth Boat Inspection Guidelines and shall be provided to the City of Ellsworth Police Department within 24 hours of discovery. The boat must be re-inspected and found to be free of aquatic plants before it will be permitted to enter Branch Lake.

##### **1. City Inspector**

Boat inspections are to be conducted by City Boat Inspectors at the City

operated Branch Lake Boat Launch off the Happytown Road. The City Manager may establish inspection substations in convenient locations and/or appoint inspection agents.

## **2. Certified Self-Inspector**

**i.** Self-inspector Certification can be obtained by anyone 16 years of age or older after successful completion of the Ellsworth Boat Inspection Training course.

**ii.** Certified Boat Self-inspectors can inspect boats under the following conditions:

1. The subject boat has a valid Tag.
2. The boat is inspected per the Ellsworth Boat Inspection Guidelines.

After these conditions have been met, the boater can be issued a valid permit by the Certified Boat Self-inspector.

**iii.** Self-inspection of boats is prohibited if in the last twelve (12) months the boat has been in an infested water body as defined in Art. 1, Sec. 13.

**iv.** Self-inspection of personal watercraft (PWC) is prohibited.

## **3. Waiver**

**i.** The requirements for inspections and permits are waived for boats belonging to a household owning property or right-of-way abutting Branch Lake - herein referred to as a “resident boat,” if all the following conditions are met:

1. The resident boat has not been used in any other water body since it was last hauled out of Branch Lake;
2. The resident boat has not been in any other water body within the last twelve (12) months; and
3. The resident boat will not be used in any other water body during the year’s boating season.
4. The owner of property on, or abutting a right-of-way to, Branch Lake attests in writing on a City waiver application form that the above stipulations apply and will be followed.

## **C. PERMIT**

**i.** Boating on Branch Lake is only allowed by permit. Boaters shall have their permits with them at all times, with the exception of “resident boats.”

**ii.** Once a boat passes inspection and is found clear of any aquatic plants a City Boat Inspector or a Certified Self-Inspector may issue a Branch Lake Boating Permit.

## **ARTICLE IV. AEROPLANE INSPECTION**

### **Tag, Inspection, & Permit (TIP)**

Landing of any aeroplane in Branch Lake is prohibited unless: 1) the craft has a valid TAG (sticker), 2) an INSPECTION has been conducted, and 3) a Self-inspection PERMIT LOG has been filled out.

#### **A. TAG**

1. An Aeroplane Tag consists of a City-supplied sticker applied to the left float of the aeroplane in plain view above the waterline.
2. Aeroplane tags are available at City Hall for certified aeroplane self-inspectors, and are available from the Branch Lake Steward.
3. By the end of December of each year, the City Council shall establish the Tag Fee Schedule for the next calendar year.
4. Should a Tag become mutilated so that it cannot be read easily, it must be removed and be replaced by a new Aeroplane Tag.

#### **B. INSPECTION & PERMIT**

No person shall be extended the privilege of operating an aeroplane on the waters of Branch Lake without an inspection conducted for the presence of aquatic plants. If an aquatic plant fragment is discovered during an inspection, the aquatic plant fragment shall be handled as described in the Ellsworth Aeroplane Inspection Guidelines and shall be provided to the City of Ellsworth Police Department within 24 hours of discovery. The aeroplane must be re-inspected before it will be permitted to land on Branch Lake.

##### **Certified Self-Inspector**

- i.** Self-inspector Certification can be obtained by anyone 16 years of age or older after successful completion of the Ellsworth Aeroplane Inspection Training course.
- ii.** Certified Aeroplane Self-inspectors can inspect aeroplanes under the following conditions:
  1. The subject aeroplane has a valid Tag.
  2. The aeroplane is inspected per the Ellsworth Aeroplane Inspection Guidelines.

When these conditions have been met, the Aeroplane Self-inspector completes a permit (log) and keeps it with the aircraft.
- iii.** Self-inspection of an aeroplane is prohibited if in the last twelve (12) months the aeroplane has been in an infested water body as defined in Art. 1, Sec. 13. If the pilot of an aeroplane that has been in an infested water body within the last 12 months wishes to use Branch Lake, the pilot must contact the City of Ellsworth Water Department, and

schedule an inspection to be conducted by the Water Department Superintendent, Branch Lake Steward or any duly designated Ellsworth Police Officer.

Ellsworth Ord55 approved 01-14-13