

2013-0312

**INTRODUCED BY:
ORDINANCE NO.**

An ordinance to amend the Parish Code of Ordinances, Chapter 5-Boats, Docks, and Waterways; Article II-Airboats and all sections thereof.

- WHEREAS,** the unauthorized operation of airboats on private and public property and waterways creates an unnecessary risk of damages to the property of area residents and hazards to public health and safety; and,
- WHEREAS,** airboats can generate excessive noise, vibrations, speed and exhaust detrimental to migratory birds, marine life, marine traffic, wildlife habitats, and wetlands preservation in environmentally sensitive areas; and,
- ~~**WHEREAS,** the Parish Council requested an Attorney General opinion on whether or not the Hahnville Canal, the Paradis Canal, and the 80 Arpent were navigable waterways; and,~~
- ~~**WHEREAS,** the Attorney General advised the Council that they would not render an opinion on this issue and advised that the Office of State Lands should be able to provide this information; and,~~
- ~~**WHEREAS,** the Louisiana State Land Office subsequently advised that the Hahnville Canal, Paradis Canal, 80 Arpent Canal, and the Providence Canal are not claimed by the State as navigable waterways; and,~~
- WHEREAS,** the purpose of this ordinance is to eliminate the hazards of improper and unauthorized airboat uses within St. Charles Parish and is designed to safeguard the health, safety, and welfare of the persons, and to protect private and public property.

**CHAPTER 5 – BOATS, DOCKS, WATERWAY
ARTICLE II – AIRBOATS**

Sec. 5-14. Defined.

As written-

An airboat is defined to be any boat, sled, sea skiff or swamp boat pushed, pulled or propelled by airpower generated by a non-detachable motor of more than twenty-five (25) horsepower including any vessel with a propulsion mechanism similar to that of an airplane with propulsion out of the water.

Amended-

A. "Airboat" shall be defined as any water craft propelled by means of an air propeller powered by an engine of at least twenty five (25) horsepower.

B. "Idle" speed and "No Wake Zone" shall mean bare steerage speed, the slowest speed the vessel can travel while allowing the operator to maintain directional control of the vessel to produce the minimum water surface turbulence.

C. "Sign" means any 'No Trespass-Airboats Prohibited' or 'Posted-Airboats Prohibited' sign or signs placed on real property in such place or places where the sign(s) may reasonably be expected to be seen. A sign forbidding entry of airboats on the property shall be conspicuously posted or exhibited at the entrances of said property regulated by this section.

Sec. 5-18. Area of use restricted.

As written-

The operation and use of airboats in the parish is hereby restricted to use for lawful purposes on real property or land for which the airboat is registered and the navigable streams of the parish.

Amended-

~~A. The operation and use of airboats in the parish is hereby restricted to use for lawful purposes on real property or land for which the airboat is registered and the navigable streams of the parish. It shall be unlawful for any commercial or recreational airboat to commit a trespass on private or public real property and on non-navigable streams or waterways within St. Charles Parish.~~

~~B. Non navigable streams, for example are the Hahnville Canal, Paradis Canal, 80 Arpent Canal, and the Providence Canal.~~

~~C. A. It shall be unlawful to operate an airboat at more than idle speed within three hundred (300') feet of a public boat launch and/or public docking facility adjacent to a public boat launch and within one-fourth mile of any inhabited dwelling within the boundaries of unincorporated St. Charles Parish.~~

~~D. B. Airboats shall at all times be operated in compliance with all parish, state and federal laws and regulations and in additional to any restrictions placed on the use of the airboats in a "letter of no objection" or other "use specific written permission" issued by any affected property owner(s). An exception to the Parish's restrictions regarding use on private or public real property and on non-navigable streams within St. Charles Parish is allowed provided written permission is granted by the property owner specifically granting the exception.~~

Sec. 5-20. Penalty.

As written-

Any person violating any of the provisions of this article shall be guilty of a misdemeanor and upon conviction by a court of competent jurisdiction shall forfeit and surrender his license to the court and shall be fined not exceeding one hundred dollars (\$100.00) or imprisoned for not more than thirty (30) days, or both, at the discretion of the court.

Amended-

Sec. 5-20. Enforcement and Penalty.

A. Enforcement of this Article is authorized, by state and local law enforcement agencies, and duly commissioned officers of state or federal wildlife and fisheries agencies. No person shall be convicted, of trespass if signs as defined in this Section 5-14 were not in place at the time of the alleged violation. It shall be unlawful for any person to remove, without the permission of the landowner, any signs posted or exhibited on any property in accordance with this ordinance.

B. Any person violating any of the provisions of this article shall be guilty of a misdemeanor and upon conviction by a court of competent jurisdiction shall forfeit and surrender his license to the court and shall be fined not exceeding two hundred dollars (\$200.00) or imprisoned for not more than thirty (30) days, or both, at the discretion of the court.

C. **The penalty for any person violating the speed restrictions set forth in Section 5-18 (B) shall be in accordance with La. Revised Statute 56:31.**

ADD NEW SECTION TO CURRENT CODE

Sec. 5-21. Exemptions

This ordinance shall not apply to any emergency, police, fire, ambulance, or other governmental vessels, airboats or other water craft when same being operated in an official capacity. In addition, no person shall be found in violation of this article by reason of being upon a non-navigable waterway without authorization for the purpose of accessing hunting or trapping land where no other waterway is available, for repairs to any utilities, pipelines, transmission lines, or related infrastructure, and for maritime or other emergency use.

Sec. 5-22. Severability

The provisions of this Ordinance are severable and if any of its sections, clauses or sentences shall be held illegal, invalid or unconstitutional, such provisions shall not affect or impair any of the remaining sections, clauses or sentences.

NOW, THEREFORE BE IT ORDAINED, THAT WE, THE MEMBERS OF THE ST. CHARLES PARISH COUNCIL, do hereby amend the Parish Code of Ordinances, Chapter 5-Boats, Docks, and Waterways; Article II-Airboats and all sections thereof.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

And the ordinance was declared adopted this _____ day of _____, 2014, to become effective five (5) days after publication in the Official Journal.

2013-0312 (11-11-14) revised ORD Airboats

CHAIRMAN: _____

SECRETARY: _____

DLVD/PARISH PRESIDENT: _____

APPROVED: _____ DISAPPROVED: _____

PARISH PRESIDENT: _____

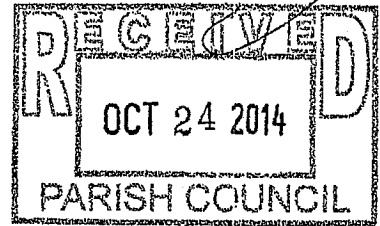
RETD/SECRETARY: _____

AT: _____ RECD BY: _____



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005



OCT 20 2014
OPINION 14-0164

172 WATERS & WATER COURSES- Boats, Motorboats & Vessels

Ms. Tiffany K. Clark
Council Secretary, St. Charles Parish
P.O. Box 302
Hahnville, LA 70057

La. R.S. 34:851.27
La. R.S. 34:851.31

La. R.S. 34:851.2
La. R.S. 33:1236(39)

La. R.S. 34:851.27(B)(1) allows parish governing authorities to regulate the speed of an air boat on parish waterways. In addition, La. R.S. 34:851.27(B)(7) grants such governing authorities the power to prohibit the operators of air boats from committing trespass.

Dear Ms. Clark:

As the Secretary of the St. Charles Parish Council ("Council"), you have requested an Attorney General's opinion as to whether the Council has the authority to adopt Ordinance No. 2013-0312 ("proposed Ordinance"), which amends the Parish's existing ordinance regulating air boats. Specifically, you ask if La. R.S. 34:851.27, among other laws, would prohibit such an amendment to the Parish Code of Ordinances.

St. Charles Parish operates under a Home Rule Charter, which came into existence following the enactment of Article VI, § 5(E) of the Louisiana Constitution (1974). As such, this political subdivision is governed by its charter to the extent the provisions are consistent with state law and the state constitution.

In sum, the proposed Ordinance seeks to provide enhanced definitions (Sec. 5-14) and extend restrictions related to the regulation of air boats (Sec. 5-18). The proposed Ordinance also amends the language concerning enforcement (Sec. 5-20) and provides new provisions concerning exemptions (Sec. 5-21) and severability (Sec. 5-22).

La. R.S. 33:1236(39) was enacted by Act 240 of 1974 to give parishes the authority to adopt ordinances for regulation of air boat operations and to fix penalties for violations within the parish boundaries. However, by Act 288 in 1984, the legislature enacted statewide comprehensive boating regulations. Specifically, La. R.S. 34:851.27 prohibits local regulations of any kind except for the posting speed limits on waterways within local jurisdictions.¹

In La. Atty. Gen. Op. No. 95-399, we analyzed the conflict between La. R.S. 33:1236(39) and La. R.S. 34:851.27, and concluded that the later legislation must prevail.

¹ Certain watercraft regulations by the governing authority of Calcasieu Parish and the Cane River Commission were also exempted; however, neither exemptions are applicable here.

La. R.S. 34:851.27, states, in pertinent part:

A. ...[A]ll political subdivisions of this state are expressly prohibited from regulating watercraft in any respect, including, but not limited to, their operation, minimum equipment requirements, registration (with or without a fee) or inspection.

B. (1) The governing authority of any parish or municipality may establish and post speed limits on waterways within its jurisdiction....

...
(4) The governing authority of any parish or municipality may establish penalties for violation of such ordinances in accordance with law.

...
(7)... [T]he operation of all vessels and motorboats shall be subject to state law and local ordinance prohibiting trespass or unauthorized entry.

...
C. In addition to speed limits established by any governing authority of any parish or municipality under the provisions of this Section, there are hereby established certain "no-wake" zones where each vessel shall operate at bare steerage speed, the slowest speed the vessel can travel while allowing the operator to maintain directional control of the vessel to produce the minimum water surface turbulence. The "no-wake" zones are established on all waterways within three hundred feet of any of the following facilities:

(1) A boat launch accessible by the public.

(2) A docking facility adjacent to a boat launch accessible by the public.

La. R.S. 34:851.27(B)(1) and (7) allow parish governing authorities to regulate only the speed of vessels on parish waterways and to enforce certain trespass laws against the operators of such vessels.² Thus, the exercise of authority over the operation of air boats, aside from the precise provisions relative to speed of water traffic, is specifically prohibited.³

Under these circumstances, the first paragraph of Sec. 5-18(A) of the proposed Ordinance, stating that the operation and use of air boats is restricted to use for lawful purposes on real property or land for which the air boat is registered and the navigable streams of the parish, is outside the Council's authority and is, therefore, prohibited.⁴

² La. R.S. 34:851.2(10) defines "vessel" as "watercraft and air boats of every description, other than a seaplane on the water, used or capable of being used as a means of transportation on water." "Watercraft" is defined in La. R.S. 34:851.2(11) to mean "any contrivance used or designated for navigation on water." Accordingly, air boats are controlled by this statute.

³ La. Atty. Gen. Op. No. 82-711 (stating that a Parish Council may not prohibit water skiing on parish waterways). Also see La. Atty. Gen. Op. No. 78-452 (stating that La. R.S. 34:850.23 seems sufficiently inclusive to preclude and prohibit the regulating of pleasure watercraft in any respect.) (Note that pursuant to Act 288 of 1984, La. R.S. 34:850.23 became La. R.S. 34:851.27).

⁴ See La. Atty. Gen. Op. No. 95-399.

In contrast, La. R.S. 34:851.27(B)(7) grants the governing authority power to prohibit the operator of a vessel from trespassing or committing an unauthorized entry. Accordingly, Sec. 5-18(A), second paragraph, declaring it unlawful for an operator of any commercial or recreational air boat to commit trespass is a valid proposed Ordinance as it is also consistent with the extent of parish authority under the state law.⁵ Note that Sec. 5-18(C), providing for an exception to trespassing when the affected property owner issues a "letter of no objection" or "written permission" is valid, but is also likely unnecessary. The reason that such a provision may be unnecessary is that obtaining express, legal or implied authority to be on the property of the affected party, by definition, eliminates the violation.⁶

Furthermore, it appears that Sec. 5-18(B) of the proposed Ordinance establishing the maximum speed at no more than idle speed within three hundred feet of a public boat launch and/or public docking facility adjacent to a public boat launch and within one-fourth mile on any inhabited dwelling is in agreement with the controlling statute and thus is valid.⁷

La. R.S. 34:851.27(B)(4) authorizes the governing authority to establish penalties for violations of its ordinances. As such, Sec. 5-20, which provides for enforcement and penalties, is also valid. However, it is important to note that, pursuant to La. R.S. 34:851.31(A)(1), a violation under La. R.S. 34:851.27(C) is considered a class one violation. Thus, if the speeding violation was committed within a "no-wake" zone as provided by the statute, the penalty must be in accordance with La. R.S. 56:31.⁸

We do not find any prohibition in the law to establish certain exceptions on the applicability of the proposed Ordinances; thus, it appears that Sec. 5-21 is valid.

In sum, it is the opinion of this office that La. R.S. 34:851.27(B)(1) allows parish governing authorities to regulate the speed of an air boat on parish waterways. In addition, La. R.S. 34:851.27(B)(7) grants such governing authorities the power to prohibit the operators of air boats from committing trespass. Also, our review of other Louisiana law has identified no further restrictions applicable to the proposed Ordinance.

⁵ The wording of the proposed Ordinance needs to be revised. It appears that the intent of the local legislative body is to prohibit the operator of an air boat from committing trespass, since an "air boat" cannot have the required criminal intent.

⁶ La. R.S. 14:63(D).

⁷ See La. Atty. Gen. Op. No. 82-702.

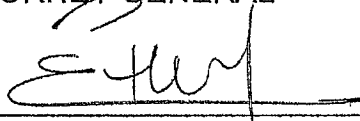
⁸ Local ordinances are restricted insofar as the general laws of the State are paramount, and local ordinances cannot be in conflict with or provide a greater penalty than the State statute punishing the same crime. La. Atty. Gen. Op. No. 79-864.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

By:


Ethel Solache Graham
Assistant Attorney General

JDC: ESG