

**TOWN OF MOUNT DESERT
PUBLIC WATER SUPPLY PROTECTION ORDINANCE**

This ordinance, as enacted at the May 2, 2023 Annual Town Meeting, repeals the No Swimming Ordinance enacted May 5, 2009

AND the

Ordinance Limiting Motor Vehicle Access to Great Ponds enacted May 5, 2009

Enacted May 2, 2023

Section 1. Title. This Ordinance shall be known and may be cited as the "Public Water Supply Protection Ordinance"

Section 2. Authority. This Ordinance, is adopted pursuant to the Maine Revised Statutes, Title 30-A, Part 2, Subpart 4, Chapter 141 (30-A M.R.S.A. § 3001, et seq.), specifically 30-A M.R.S.A. § 3009 (1)(E); and Title 22, Subtitle 2, Part 5, Chapter 601, Subchapter 4, Article 141, § 2642 (22 M.R.S.A. § 2642) and 30-A M.R.S.A. §4452.

Section 3. Purpose. The purpose of this ordinance is to protect the water quality of Jordan, Upper and Lower Hadlock Ponds, the Mount Desert drinking water supply and its sources, as well as the health, safety, and welfare of persons dependent upon such supplies. 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 Jordan, Upper and Lower Hadlock Ponds and their sources.

Section 4. Applicability. The Ordinance shall apply to: Jordan Pond in Seal Harbor and Upper Hadlock Pond and Lower Hadlock Pond in Northeast Harbor (together, the "Ponds"). This Ordinance supersedes and replaces the "No Swimming Ordinance re Upper Hadlock Pond, Lower Hadlock Pond and Jordan Pond" as well as the "Ordinance Limiting Motor Vehicle Access to Great Ponds."

Section 5. 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 the Ponds or their sources.
- B. The owner or operator of a motorized vehicle, boat or ice shack that sinks beneath the water or ice of one of the Ponds, or any of their sources, must contact the Mount Desert Water District or Police Department as soon as safety permits.

Section 6. Motor Vehicles Prohibited From Icebound Surface of Ponds. No person shall operate a motor vehicle on the icebound surface of the Ponds and no person shall allow a motor vehicle owned by him or her or under his or her control to enter upon the icebound surface of the Ponds.

Section 7. Definition of Motor Vehicle. For purposes of this Ordinance, the term "motor vehicle" shall be as defined in M.R.S.A 29-A § 101(42), as may be amended from time to time. For convenience, § 101(42) as of the date of adoption of this Ordinance is reproduced below. "'Motor vehicle.' 'Motor vehicle' means a self-propelled vehicle not operated exclusively on tracks but does not include; A. A snowmobile

as defined in Title 12, section 13001; B. An all-terrain vehicle as defined in Title 12, section 13001, unless the all-terrain vehicle is permitted in accordance with section 501, subsection 8 or is operated on a way and section 2080 applies; and C. A motorized wheelchair or an electric personal assistive mobility device.”

Section 8. Water Withdrawal. Water withdrawal from the Ponds and is not allowed. No pumping or siphoning of water out of our drinking water sources by parties other than the Mount Desert Water District or the Town of Mount Desert is allowed unless for fire department use.

Section 9. Boats. Traditional row boats with or without motors less than 10hp, kayaks and canoes are allowed uses on the Ponds. Evolving watercraft including but not limited to sailboats, sailboarding, and paddle boards, as well as boats with motors in excess of 10 hp, are not permitted.

Section 10. Ice Shacks and On-ice Activities.

- A. Ice shacks and other similar structures providing temporary protection on the Ponds are allowed.
- B. Disposal or abandonment of bottles, cans, ash, trash, human waste, pet waste, building materials or equipment on the ice or in the water of the Ponds is prohibited. Anything brought on the ice must be packed out.
- C. Ice Shack placement and removal on the Ponds must follow all state laws. However, the Mount Desert Water District has the right to require ice shacks to be removed from the ice during ice-fishing season when local weather conditions create thinning/poor quality ice potentially causing its source water to be at risk. If the owner or occupant of the shack will not remove the shack voluntarily, the Mount Desert Water District and/or the Town may do so, with any associated costs payable by the person or persons who constructed or occupied the shack.
- D. The Mount Desert Water District or other appropriate municipal staff may inspect temporary structures and their surrounding environments at any time for conformance with this Ordinance.

Section 11. No Swimming. It shall be unlawful:

- A. For any person or persons to swim or wade in the waters of the Ponds.
- B. For the owner or person in control of any domestic animal to allow such domestic animal to enter waters of the Ponds.
- C. To leave any domestic animal waste within the watershed(s) of the Ponds.

Section 12. Penalty and Costs.

Any person or entity 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. Any person violating this Ordinance shall also be liable to any other appropriate party for any costs incurred as a result of the violation, including but not limited to costs associated with the salvage of the motor vehicle, ATV, snowmobile, boat, ice-shack or any other foreign object from the pond.

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.

This ordinance is adopted pursuant to the Maine Revised Statutes, Title 30- A, Part 2, Subpart 4, Chapter 141 (30-A M.R.S.A. § 3001, et seq.), and Title 22, Subtitle 2, Part 5, Chapter 601, Subchapter 4, Article 141, § 2642 (22 M.R.S.A. § 2642).

The original ordinances “No Swimming Ordinance re Upper Hadlock Pond, Lower Hadlock Pond and Jordan Pond” as well as “Ordinance Limiting Motor Vehicle Access to Great Ponds” were, pursuant to 22 M.R.S.A. § 2642, originally adopted by the Board of Selectmen for the Town of Mount Desert on May 23, 1977, and then was ratified by the voters of the Town at a Town Meeting held on May 5, 2009. They are hereby superseded and replaced.

This Ordinance shall be enforced by the Police Department of the Town of Mount Desert. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

The effective date of this Ordinance is May 2, 2023.