

Presented by:PPC
Introduced: 02/11/2002
Drafted by: J.R. Corso

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2002-04(am-2)

An Ordinance Amending the Urban Bear Control Ordinance to Identify as a Bear Attraction Nuisance Certain Types of Dumpsters, Providing for the Abatement of Such Nuisance, and Reducing the Offense of Unintentionally Maintaining a Bear Attraction Nuisance from a Misdemeanor to an Infraction.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. Sections 1 through 3 are of a general and permanent nature and shall become a part of the City and Borough code. Section 4 is a noncode section.

Section 2. Amendment of Section. CBJ 03.30.053 is amended with respect to the bail schedule for Bear Attraction Nuisance as f

36.20.056(a)(2)b	Bear attraction nuisance (nonpurposeful)	1st 2nd within 2 years 3rd and subsequent within 2 years	\$ 50.00 \$100.00 \$300.00
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Section 3. Amendment of Section. CBJ 36.20.056 is amended to read:

- (a) Bear Attraction Nuisance.
 - (1) A peace officer or enforcement agent may issue a written notice to the owner or person in control of a bear attraction nuisance. The notice shall describe the nature of the nuisance and the action necessary to abate it. The recipient shall within 48 hours abate the nuisance described in the notice.
 - (2) Violation of this section is
 - a. A class A misdemeanor if the bear attraction nuisance is created or maintained for the purpose of attracting bears; or
 - b. An infraction if the bear attraction nuisance is not created or maintained for the purpose of attracting bears.

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- (b) Storage of Garbage.
 - (1) Except as provided in this section, no owner or person in charge of property shall willfully or negligently cause or allow the storage of garbage on that property or any right of way adjacent thereto, except in:
 - a. A fully enclosed structure subject to the setback requirements of Title 49 of this code;
 - b. A garbage can owned and emptied daily by a government agency;
 - c. A bear-resistant structure or container; or
 - d. A certificated landfill.
 - (2) Notwithstanding subsection (b)(1) of this section, garbage may be stored outside in a garbage can meeting only the requirements of subsection (c) of this section, temporarily for purposes of collection after 4:00 a.m. on a day scheduled for collection.
 - (3) Violation of subsection (b) of this section is an infraction.
 - a. Whenever a garbage can is found in violation of any of the restrictions imposed by this subsection (b), the officer finding it may note the address and any other information upon or within the garbage can which may identify the owner or person in charge of the property using the garbage can, and shall conspicuously affix to such property a summons and complaint for the owner or person to answer to the charge in court at a specified time.
 - b. It shall be no defense for the owner of property to a charge under subsection (b) of this section that the property was in the possession or control of another, unless it can be shown to the satisfaction of the court that at such time such property was being used without the consent of the owner. It shall be a defense for the owner of property to a charge of a failure to appear if it is shown to the court's satisfaction that the owner was not aware of the citation and that such property was in the possession or control of another.
- (c) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
 - "Bear attraction nuisance" means
 - (1) Property other than a certificated landfill containing more than five gallons of garbage not in any structure or container or in only a cardboard box or plastic bag;
 - (2) Property other than a certificated landfill containing any organic material other than indigenous vegetation or wildlife which has on one or more prior occasions attracted a bear to the property; or

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(3) A metal garbage container designed to be lifted and emptied by a garbage truck if

- a. The container:
 1. has been tagged or posted by a City and Borough enforcement agent with a notice meeting the requirements of CBJ 36.20.056 (a)(1) that the Manager has found the container to be a bear attraction nuisance on the grounds that it
 - i. is located within a bear problem area
 - ii. has on one or more prior occasions at the same property been opened by a bear
 - iii. is emitting a clearly detectible odor likely to attract bears, or
 2. is used for disposal of waste from a restaurant, cafeteria, or other facility regularly preparing or serving food, and
- b. The container is not:
 1. tightly covered by a bear-resistant metal lid fastened with a bear-resistant device, or
 2. located within a garbage containment area behind barriers approved by the City and Borough as sufficient to withstand entry by a bear.

“Bear problem area” means an area declared as such by the Manager in a public notice which describes the boundaries of the area and the basis for the declaration, which may include any human or bear concentration or activity likely to result in encounters or confrontations sufficient to constitute a danger to the public.

“Bear-resistant” means capable of preventing access to the contents by a person using neither hands nor tools.

“Garbage” means all putrescible wastes, except animal wastes, but including disposable diapers and wastes resulting from the handling, preparation and consumption of food.

“Garbage can” and “garbage container” mean a watertight, odor-free, corrosion-resistant container of not less than 20 gallons, nor more than 33 gallons capacity, equipped with tight-fitting covers, loaded only as much as will allow the covers to be securely placed, and inscribed with the address of its owner.

“Person in control” means a tenant or an agent, superintendent, or other owner’s representative.

“Property” means developed or undeveloped real property, including any apartment house, mobile home park, planned unit development, or other multifamily development.

(d) Regulations. The director of the department of community development may adopt regulations pursuant to chapter 01.60 to implement the provisions of this chapter.

Section 4. Affirmative Defense. It shall be an affirmative defense to a prosecution under section 3(b) of the definition of “bear attraction nuisance” that the owner or person in control of the garbage container has made a good faith effort to acquire a metal lid, but because of a limited supply, has been unable to do so. This section shall expire on December 31, 2002.

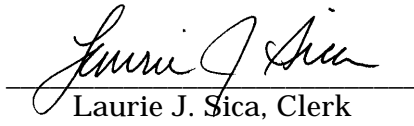
Section 5. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 18th day of March, 2002.



Sally Smith, Mayor

Attest:



Laurie J. Sica, Clerk