

MUNICIPALITY OF SKAGWAY, ALASKA

ORDINANCE NO. 07-26 Substitute

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING CHAPTER 8.04, NUISANCES BY ADDING SECTION 8.04.035 TO ADDRESS BEAR ATTRACTION NUISANCE.

BE IT ORDAINED AND ENACTED BY THE MUNICIPALITY OF SKAGWAY, ALASKA AS FOLLOWS:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Skagway Municipal Code.

Section 2. Purpose. To amend Property Tax regarding exemptions for senior citizens and fire protection systems. The Skagway Municipal Code is hereby amended (~~strike through~~) indicates text to be deleted from, and **bold** indicates text added to current code as follows:

Section 3. Amendment. Chapter 8.04 Nuisances is amended as follows by adding Section 8.04.035 Bear Attraction Nuisance:

Chapter 8.04 NUISANCES

Sections:

8.04.010	Nuisances declared.
8.04.020	Burial.
8.04.030	Slaughterhouses.
8.04.035	Bear attraction nuisance.
8.04.040	Polluting water.
8.04.050	Gutters to be kept clean.
8.04.060	Industrial waste.
8.04.070	Junk and debris prohibited.
8.04.080	Miscellaneous public nuisances.
8.04.090	Abatement procedure.
8.04.100	Penalty.

8.04.035 Bear attraction nuisance.

A. Offense. Except as provided in this section, no owner or person in charge of property shall cause or allow the creation or maintenance of a bear attraction nuisance on that property or the adjacent right-of-way.

B. Classification of offense. Violation of this section is

1. A class A misdemeanor if the offense is committed intentionally, knowingly, or recklessly;

2. A class B misdemeanor if the offense is committed with criminal negligence;

3. An infraction if the offense is not committed intentionally, knowingly, recklessly, or with criminal negligence;

4. Terms in this subsection identifying culpable mental states shall have the following meaning:

a. *Intentionally.* A person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective.

b. *Knowingly.* A person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance.

c. *Recklessly.* A person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk.

d. *Criminal negligence.* A person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

GB. Citations. Whenever waste or other material in violation of this section is found on property, the officer finding it may note the address and any other information upon or within the material which may identify the owner or person in charge of the property, 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, provided, however, that service for misdemeanor offenses shall be according to the Alaska Rules of Court.

D. *Defenses.*

1. It shall be no defense for the owner of property to a charge under 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.

~~2. It shall be a defense for the owner of property to a charge of a failure to appear in court 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.~~

~~EC. Definitions. For purposes of this section:~~

~~1. "Bear attraction nuisance" means~~

~~a. More than one-half gallon of any putrescible material, including packaging or other surfaces to which the material is adhered;~~

~~b. Any organic material of a type which has previously attracted a bear to the property;~~

~~c. Soiled disposable diapers;~~

~~d. Exceptions. "Bear attraction nuisance" does not include:~~

~~i. Manure or sewage;~~

~~ii. Material in a garbage can stored outside temporarily for purposes of collection after 4:00 a.m. on a day scheduled for collection;~~

~~iii. Living or dead flora or fauna indigenous to the property on which it is located;~~

~~iv. Material completely enclosed in a structure or container which requires hands or tools to open;~~

~~v. material in a metal garbage container designed to be lifted and emptied by a garbage truck, provided that the container is tightly covered or located within a garbage containment area behind barriers approved by the Municipality as sufficient to withstand entry by a bear.~~

~~2. "garbage can" means a watertight, odor-free, corrosion-resistant container and equipped with a tight-fitting cover secured so as to remain in place if the can is knocked over.~~

~~3. "Person in control" means a tenant or an agent, superintendent, or other owner's representative.~~

~~4. "Property" means developed or undeveloped real property, including any apartment house, mobile home park, planned unit development, or other multifamily development.~~

8.04.100 Penalty.

A. Violation of any provision of this chapter except Section 8.04.035 shall be a noncriminal infraction, punishable by a civil penalty not in excess of three hundred dollars (\$300.00).

B. Violation for bear attraction nuisance as set out in Section 8.04.035 shall be charged for as follows:

<u>First Offense:</u>	<u>\$50.00</u>
<u>Second Offense within 2 years:</u>	<u>\$100.00</u>
<u>Third and subsequent offenses within 2 years</u>	<u>\$300.00</u>

Section 4. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 5. Effective Date. This ordinance shall become effective immediately upon adoption.

PASSED AND APPROVED this _____ day of _____, 2007.

Thomas D. Cochran, Mayor

ATTEST:

Marjorie D. Harris, Borough Clerk

(SEAL)

Proposed by: **Assemblyman Schaefer**

First Reading: **09/20/2007**

Second Reading: **10/04/2007**

Vote: ___ **Aye** ___ **Nay** ___ **Absent**