

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2008-09

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA ENACTING A  
NEW CHAPTER 24 UNDER TITLE 9 OF THE SITKA GENERAL CODE,  
ENTITLED "BEAR ATTRACTION NUISANCE"

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code ("SGC").

2. **SEVERABILITY.** If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person or circumstance shall not be affected.

3. **PURPOSE.** The ordinance would enact a new chapter 24, entitled "Bear Attraction Nuisance," at Title 9 of the Sitka General Code (SGC) governing health and sanitation. Juneau and Skagway bear attraction nuisance ordinances were used as models, but this ordinance excludes (1) requiring bear-resistant refuse receptacles because Sitka's refuse collection contractor provides the refuse receptacles as part of its contract; and (2) criminal prosecution, because Sitka does not have the prosecution resources available to communities such as Juneau that has such provisions.

The ordinance requires people to keep the materials that may attract bears inside until 4:00 a.m. on garbage collection day, or assume the responsibility for providing a bear-resistant outdoor storage container.

The ~~fine~~ fee provision in the ordinance allows for a warning for the first offense. This seems appropriate in view of the fact that this would be a new law and ensures that citizens who may not pay attention to assembly enactments or seasonal residents would have actual notice of the prohibited conduct before they have to pay a fine. This reflects the approach of some of the other municipal ordinances. The fine amounts are similar to those assessed by other municipalities and similar code enforcement provisions in SGC, prosecuting the offenses as violations rather than criminal offenses.

The fines will be imposed on the owner of the property upon which the bear attraction nuisance occurs, as well as on any person in control of the property, who caused or allowed the nuisance to occur. Citations will be mailed to the last known address of the owner of the property and any known person in control of the property, as well as posted on the property. The property owner and the person in control of the property would have a defense to such a fine if they proved that the property was being used without their consent. The property owner and the person in control of the property would also have a defense to a default regarding the citation if they meet their burden of

proof that they were unaware of the citation, and therefore did not timely appear at their scheduled court hearing listed on the citation. This ordinance does hold the property owner liable even when the actual nuisance may be created by someone who the property owner allows to control the property, if the property owner allows the nuisance to continue. This is to induce the property owner to exercise better control over anyone who the property owner allows to use the property

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that SGC Title 9 is amended by adding a new chapter 24 entitled “Bear Attraction Nuisance” (new language underlined; deleted language stricken; amendment new language - double underline; amendment deleted language - double-strikes):

**Title 9  
HEALTH AND SANITATION**

**Chapters:**

- 9.08 Refuse Collection and Disposal**
- 9.12 Litter**
- 9.16 Ambulance Service**
- 9.20 Smoking in Public Places and Places of Employment**
- 9.24 Bear Attraction Nuisance**

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**Chapter 9.24  
BEAR ATTRACTION NUISANCE**

**Sections:**

- 9.24.010 Definitions.**
- 9.24.020 Unlawful acts.**
- 9.24.030 Defenses.**
- 9.24.040 Enforcement.**
- 9.24.050 Fines.**

**9.24.040 Definitions.**

The terms and phrases used in this chapter shall have the following meanings:

- A. “Bear attraction nuisance” means, except as otherwise provided in this section:

1. More than one-half gallon of any putrescible waste, including packaging or other surfaces to which the material is adhered;
  2. Any organic material of a type which has previously attracted a bear to the property; or
  3. Soiled disposable diapers.
  4. “Bear attraction nuisance” does not include:
    - a. Material in a certified landfill;
    - b. Manure or sewage;
    - c. Material in a refuse receptacle temporarily placed outside no earlier than 4:00 a.m. on refuse collection day;
    - d. Living or dead flora or fauna indigenous to the property; or
    - e. Material completely enclosed in a structure or container which requires hands or tools to open.
- B. “Person in control” means a tenant or an agent, superintendent, or other owner’s representative.
- C. “Putrescible waste” means organic waste, including ~~human or~~ animal parts, human and animal excrement, or bodily fluids, which is capable of being decomposed by microorganisms.

**9.24.010 Unlawful acts.**

No owner or person in control of property shall cause or allow the creation or maintenance of a bear attraction nuisance on that property or any adjacent right-of-way. Except as otherwise provided for in this chapter, the property owner and the person in control of the property may both be liable for a violation of this chapter concerning the same unlawful act. The unlawful act involves not only the creation of a bear attraction nuisance, but allowing the offense to continue.

**9.24.020 Enforcement.**

This chapter shall be enforced by the Police Department or by other employees authorized by the municipal administrator. Whenever waste or other material is found on property in violation of this chapter, the officer or authorized employee shall issue a citation stating the nature of the offense and the date and time for a court appearance, and:

- A. Mail the citation to the owner's address listed in the municipal property assessor records, and to the address of the person in control of the property when known; and
- B. Conspicuously affixing a copy of the citation on the property.

**9.24.030 Defenses.**

- A. It shall be no defense for the owner of property issued a citation under this chapter that the property was in possession or control of another, unless the owner of the property meets the burden of proof that the property was being used without the consent of the owner when the bear attraction nuisance was created.
- B. It shall be a defense for the owner of property or person in possession or control of the property who is issued a citation under this chapter who fails to appear in court if the owner or person in control of the property meets the burden of proof of being ~~that the owner was~~ unaware of the citation.

**9.24.040 Fines.**

- A. Each person who owns and/or is in control of property that creates, maintains, or permits a bear attraction nuisance on the property, shall be charged with an infraction and subject to the following fine:
  - 1. First offense within one year– warning with no fine.
  - 2. Second offense within one year - fine not exceeding one hundred dollars.
  - 3. Third and subsequent offenses within one year - fine not exceeding ~~two~~ ~~three~~ hundred dollars.
- B. Each and every day during any portion of which a violation or failure to comply is committed, permitted, or continued, shall be treated as a separate

offense, and subject the offender to separate charges and a fine as provided above.

5. EFFECTIVE DATE. This ordinance shall become effective on April 30, 2008.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 8<sup>th</sup> day of April, 2008.

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Marko Dapcevich, Mayor

**ATTEST:**

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Colleen Pellett, MMC  
Municipal Clerk