

POSSIBLE MOTION

I MOVE TO approve Ordinance 2017-10 on second and final reading.

CITY AND BOROUGH OF SITKA
ORDINANCE NO. 2017-10

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING SITKA GENERAL
CODE CHAPTER 9.24 ENTITLED "BEAR ATTRACTION NUISANCE" BY AMENDING
SECTION 9.24.050 ENTITLED "FINES"

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to be a part of the Sitka General Code of the City and Borough of Sitka, Alaska.
2. **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 application thereof to any person and circumstances shall not be affected thereby.
3. **PURPOSE.** The purpose of this ordinance is to amend the fines section of the bear attraction nuisance code to increase the fines, provide clarity, and so that citations can be disposed of without a mandatory court appearance.
4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that the Sitka General Code Chapter 9.24 "Bear Attraction Nuisance" is amended by amending section 9.24.050 "Fines" (new language underlined; deleted language stricken):

Chapter 9.24
BEAR ATTRACTION NUISANCE

Sections:

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

* * *

9.24.010 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. Any amount of putrescible waste, including packaging or other surfaces to which the ~~material it is~~ material ~~is~~ adhered;
2. Any organic material of a type which has previously attracted a bear to the property within the past five years; or
3. Soiled disposable diapers.
4. "Bear attraction nuisance" does not include:
 - a. Material, that would otherwise be considered a bear attraction nuisance, in a certified landfill;
 - b. Manure or sewage;
 - c. Material, that would otherwise be considered a bear attraction nuisance, in a refuse container receptacle temporarily placed outside which is placed for

49 collection no earlier than four a.m. on refuse collection day, with the material
50 being either collected or removed from the container no later than eight p.m. that
51 same day;

52 d. Living or dead flora or fauna indigenous to the property; or

53 e. Material, that would otherwise be considered a bear attraction nuisance,
54 which is completely enclosed in a structure or container when the structure or
55 container has all places of entry covered by a door, window, lid, or other covering
56 which requires hands or tools to open, unless the structure, container or covering
57 has proven ineffective to withstand entry by a bear, whether due to design or
58 improper use, two or more times within the previous year.

59
60 B. "Person in control" means a tenant or an agent, superintendent, or other owner's
61 representative.

62 C. "Putrescible waste" means organic waste, including animal and fish parts, human and
63 animal excrement, or bodily fluids, which is capable of being decomposed by microorganisms.

64
65 **9.24.020 Unlawful acts.**

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

72
73 **9.24.030 Enforcement.**

74 This chapter shall be enforced by the police department or by other employees authorized by
75 the municipal administrator. Whenever putrescible waste or other material is found on property
76 or any adjacent right-of-way in violation of this chapter, the officer or authorized employee shall
77 issue a citation stating the nature of the offense ~~and the date and time for a court appearance,~~
78 and:

79 A. Mail the citation to the owner's address listed in the municipal property assessor records
80 and to the address of the person in control of the property when known; and

81 B. Conspicuously affixing a copy of the citation on the property.

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83 **9.24.040 Defenses.**

84 A. It shall be no defense for the owner of property issued a citation under this chapter that the
85 property was in possession or control of another, unless the owner of the property meets the
86 burden of proof that the property was being used without the consent of the owner when the
87 bear attraction nuisance was created, maintained and/or permitted.

88 B. It shall be a defense for the owner of property or person in possession or control of the
89 property who is issued a citation under this chapter ~~who fails to appear in court~~ if the owner or
90 person in control of the property meets the burden of proof of being unaware of the citation.

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92 **9.24.050 FinesPenalties.**

93 A. Each person who owns and/or is in control of property that creates, maintains, or permits a
94 bear attraction nuisance on the property shall be charged with ~~an infraction and subject to the~~
95 following fine a minor offense. The maximum penalty for violation of the provisions of this
96 chapter is five hundred dollars.:

97 1. ~~First offense within one year: fine not exceeding one hundred dollars.~~

98 2. ~~Second and subsequent offenses within one year: fine not exceeding three hundred~~
99 ~~dollars.~~

100 In accordance with AS 29.25.070(a), citations for offenses in this chapter may be disposed of as
101 provided in AS 12.25.175 -.230, without a court appearance, upon payment of the fine amounts
102 stated herein plus the state surcharge required by AS 12.55.039 and AS 29.25.074. Fines must
103 be paid to the city and borough of Sitka. The Alaska Rules of Minor Offense Procedure in the
104 Alaska Rules of Court apply to all offenses referenced herein. Citations charging these
105 offenses must meet the requirements of Rule 3 of the Alaska Rules of Minor Offense Procedure.
106 For the first offense, the fine shall be fifty dollars. For the second offense, the fine shall be one
107 hundred dollars. For the third offense, the fine shall be two hundred dollars. For any
108 subsequent offense after three, the offender must appear in court to answer for the charges. If
109 a person charged with one of these offenses appears in court and is found guilty, the penalty
110 imposed for the offense may not exceed the fine amount for that offense stated herein. These
111 finances may not be judicially reduced. For purposes of this section, prior offenses must be within
112 the previous five years.

113 B. Each and every day during any portion of which a violation or failure to comply is
114 committed, permitted, or continued, shall be treated as a separate offense, and subject the
115 offender to separate charges and a fine as provided in subsection A of this section.

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119 5. **EFFECTIVE DATE.** This Ordinance shall become effective the day after the date of its
120 passage.

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122 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka,
123 Alaska this 25th day of April, 2017.

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Matthew Hunter, Mayor

128 ATTEST:

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130 _____
131 Sara Peterson, CMC
132 Municipal Clerk

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134 1st reading 4/11/17
135 2nd reading 4/25/17