Chapter 5.40 Bear Attraction Nuisances

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5.40.010 Bear attraction offense. a. 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 the right-of-way abutting that property.

b. Every act of violation and every day upon which such violation shall occur shall constitute a separate offense. (Ord. 06-31, 2006).

5.40.020 Penalties. a. Terms used in this section identifying culpable mental states shall have the meaning ascribed to them in Section 5.40.050. Upon conviction of a violation of this chapter, a person shall be punished by a fine as follows:

1. A fine of not less than $250 and not more than $500 if the offense is committed intentionally, knowingly, recklessly, or with criminal negligence;

2. A fine of not less than $50 and not more than $300 if the offense is not committed intentionally, knowingly, recklessly, or with criminal negligence.

b. In addition, the City may pursue any civil remedy available under Section 1.16.020 or other law. (Ord. 06-31, 2006).

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5.40.030—5.40.050(a)(4)(vi)

5.40.030 Citation. Whenever any material constituting a bear attraction nuisance is found on property in violation of this chapter, the official finding it may note the address and any other information upon or within the material that may identify the owner or person in. charge of the property. The official shall affix to such property in a conspicuous location a summons and complaint for the owner or person in control to answer to the charge in court at a specified time; and a copy of the summons and complaint shall be mailed to the owner or person in control of the property at the last known or reasonably ascertainable address of such person. In lieu of affixing the summons and complaint to the property and mailing, the official may personally serve the summons and complaint upon the owner or person in control of the property.

5.40.040 Defenses. a. With respect to a charge made under this chapter, it is no defense to the owner of property that such property was in the possession or control of another, unless it is shown to the satisfaction of the court that at the time of the offense such property was being used without the consent of the owner.

b. With respect to a charge of failure to appear in court in response to a summons and complaint making a charge under this chapter, it is a defense to the owner of property 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 at the time of the offense.

5.40.050 Definitions. As used in this chapter, the following words and phrases shall be construed as defined below, unless the context clearly indicates a different meaning is intended:

a. Bear attraction nuisance means

1. More than one-half gallon of any putrescible material, including packaging or other surfaces to which the material is adhered or in which it is contained;

2. Any organic material of a type that has previously attracted a bear to the property;

3. Soiled disposable diapers;

4. Exceptions. "Bear attraction nuisance" does not include:

i. Material in a certificated landfill;

ii. Manure or sewage;

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

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

v. Material completely enclosed in a structure or container that requires hands or tools to open;

vi. Material in a metal garbage container designed to be lifted and emptied by a garbage truck, provided that the container is tightly covered by a bear-resistant metal lid fastened with a bear-resistant device or located within a garbage containment area behind barriers sufficient to withstand entry by a bear.

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5.40.050(b)—5.40.060

b. 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.

c. Garbage can means a watertight, odor-free, corrosion-resistant container inscribed with the address of its owner and equipped with a tight-fitting cover secured so as to remain in place if the can is knocked over.

d. 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.

e. 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.

f. Person in control means a tenant or an agent, manager, superintendent, or other owner's representative.

g. Property means real property, developed or undeveloped, including without limitation any real property with a

house, apartment building, mobile home, mobile home park, other multifamily development, any commercial or industrial structure or use, any public or private institution or organization, and vacant land.

h. 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.

i. Summons and complaint means a citation that meets the requirements of Alaska District Court Criminal Rule 8(c) or other form of summons and complaint acceptable to the Alaska court system.

5.40.060 Regulations. The city manager may adopt regulations pursuant to implement the provisions of this chapter, which shall become effective upon approval by resolution of the City Council after conducting a public hearing.

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