

ORDINANCE NUMBER 3419

AN ORDINANCE AMENDING TITLE 8, CHAPTER 8.28, MISSOULA MUNICIPAL CODE ENTITLED, "GARBAGE AND RUBBISH" GENERALLY AMENDING CHAPTER 8.28 TO PROVIDE FOR SPECIAL MANAGEMENT OF GARBAGE IN SPECIFIC AREAS WITHIN THE CITY OF MISSOULA WHERE THERE IS CONFLICT WITH BEARS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MISSOULA, STATE OF MONTANA, THAT TITLE 8, CHAPTER 8.28, CODE SECTIONS 8.28.010 THROUGH 8.28.150 BE AMENDED AS FOLLOWS:

8.28.010 Definitions. For the purposes of this chapter, the following words shall have the meanings set out below:

A. "Bear Buffer Zone" means a zone within the City of Missoula limits approved by City Council resolution on advice from the Montana Department of Fish, Wildlife and Parks (FWP). Copies of the map are available from the City/County Animal Control Division, FWP, and the City Mapping and GIS Section.

B. "Bear Resistant Container" means any fully enclosed container with a lid certified by the Interagency Grizzly Bear Committee (IGBC) or approved by FWP. The lid must have a latching mechanism or other device of sufficient design and strength to prevent access of the contents by bears.

C. "Bear Resistant Enclosure" means a fully enclosed structure capable of reliably excluding a bear.

D. "Commercial garbage container" means watertight, insect-proof, durable metal or plastic containers having tight-fitting lids which are so designed as to be mechanically dumped, and so that they cannot be dumped over by children or animals.

E. "Garbage" means putrescible animal and vegetable wastes resulting from handling, preparation, cooking and consumption of food.

F. "Litter" means any quantity of uncontainerized paper, metal, plastic, glass, or miscellaneous solid waste which may be classed as trash, debris, rubbish, refuse, garbage or junk.

G. Notice. The city shall give "notice" under this chapter by one of the following methods:

1. Delivering written notice at the place of business of the owner through which a rental agreement was made if the property is nonowner occupied;

2. Mailing a written notice by registered or certified mail to the owner, agent, occupant, or lessee at the address held out by him as the place for receipt of communications or, in the absence of such designation, to his last known address;

3. Delivery of written notice by hand to owner, agent, occupant, or lessee.

H. "Person" means an individual, group of individuals, partnership, firm, corporation, association, company, county, city, village, or improvement district.

I. "Private property" includes, but is not limited to, the following exterior locations owned by private individuals, firms, corporations, institutions or organizations: yards, grounds, driveways, entranceways, passageways, parking areas, working areas, storage areas, vacant lots and recreation facilities.

J. "Public property" includes, but is not limited to, the following exterior locations: streets, street medians, roads, road medians, catch basins, sidewalks, strips between streets and sidewalks, lanes, alleys, public rights-of-way, public parking lots, school grounds, municipal vacant lots, parks, playgrounds, other publicly owned recreation facilities and municipal waterways and bodies of water.

K. "Refuse" means all putrescible and nonputrescible solid waste except human body wastes, including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

L. Residential Garbage Container. A "residential garbage container" is designed to be emptied manually, shall have a capacity of not less than ten gallons and not more than thirty-two gallons, and shall have two handles located on opposite sides of the containers, located not lower than twenty-two inches above the bottom, shall be watertight, insect-proof, have overlapping tight-fitting lids, and be constructed of durable metal or plastic.

M. "Rubbish" means nonputrescible solid waste consisting of both combustible and noncombustible wastes such as paper, cardboard, abandoned vehicles, tin cans, wood, glass, crockery, lawn clippings, and similar materials.

8.28.020 Jurisdiction. The provisions of this chapter shall apply to all areas within the city.

8.28.030 Enforcement authority.

A. The city-county health department has the primary responsibility for enforcement of all provisions of this chapter. The police department also has authority to enforce the provisions of this chapter. Members of police units assigned to special parking details in downtown or other commercial areas (patrolmen, meter maids) have authority to enforce in their normal course of duty violations of this chapter.

B. The city-county health officer has primary responsibility to make the determinations required in Sections 8.28.050D and 8.28.080F. The city-county health officer also has authority to enforce all provisions of this chapter within the city.

C. The health officer and chief of police are authorized to delegate enforcement authority to such officers and/or inspectors within the health department or police department as he deems appropriate.

8.28.040 Containers--Zoning permit requirement.

A. A zoning compliance permit shall not be issued for construction of commercial buildings and multiple-dwelling units until plans for the adequacy, location, and accessibility of garbage and rubbish containers and facilities have been reviewed and approved by the city zoning officer.

B. No certificate of occupancy shall be issued for the premises until the city zoning officer has approved the garbage and rubbish containers and facilities.

8.28.050 Containers--Commercial.

A. Commercial garbage containers shall be kept covered at all times.

B. Commercial garbage containers shall be placed on a hard level surface for emptying.

C. Commercial garbage containers shall be emptied at intervals of seven days or less.

D. Commercial garbage containers are required of all of the following: All trailer courts and mobile home parks with four or more units, hotels, motels, retirement homes, nursing homes, hospitals, schools, establishments selling food or drink for consumption on or off the premises, and apartments or apartment complexes having four or more living units or any other establishment which in the judgment of the city-county health officer generates sufficient refuse to warrant a commercial container. Exceptions to this requirement may be granted by the city-county health officer upon a finding that the container is unnecessary or impracticable.

8.28.060 Containers--Residential.

- A. Residential garbage containers shall weigh not more than seventy pounds when fully loaded.
- B. Residential garbage containers shall be kept covered at all times
- C. All residential garbage containers shall be emptied at intervals of seven days or less, unless the volume of garbage generated during this interval is normally less than the capacity of the containers.
- D. Installation of sunken residential garbage containers after the effective date of the ordinance codified in this chapter shall not be permitted.
- E. Residential garbage container racks must be provided to hold all such containers. Racks must be so designed, installed and maintained as to secure and hold the containers so that they cannot be spilled, tipped and overturned and the contents strewn on the ground. The requirement for racks shall be waived where containers must be placed for collection at the curb because no alley exists. In such cases, containers shall be at the curb for no longer than twelve consecutive hours. However, all provisions of Section 8.28.140 and subsection B of this section still apply.

8.28.070 Containers--Supply and use.

- A. Every person owning or in possession of property from which refuse is generated shall maintain at all times in a place easily accessible to the garbage collector, and where it will not be offensive or a public nuisance, one or more residential or commercial garbage containers as defined in this section. The capacity of the containers shall be adequate to hold all refuse generated between collections.
- B. All garbage accumulated on the premises shall be placed in the garbage containers.
- C. Rubbish consisting wholly of lawn clippings, leaves, nonfood garden wastes, cardboard boxes, foliage trimmings and small pieces of waste lumber for collection may be stored in garbage containers or next to the garbage rack for pickup in plastic bags or neatly tied into bundles or placed in sturdy cardboard boxes. No rubbish or garbage shall be placed out for collection in paper bags or sacks.
- D. No garbage, refuse or litter container shall be stored or set out for collection in the public right-of-way so as to impede or block public access or use or constitute a hazard or nuisance.
- E. Any garbage, refuse or litter container which is not watertight, has sharp or ragged edges, which does not conform to prescribed standards or which has defects likely to hamper collection or injure the person collecting the contents thereof or the public generally, shall be replaced promptly by the owner or user of the container upon receipt of written notice of such defects. Failure to do so within ten days of notification shall constitute a violation of this section.

8.28.080 Keeping property and containers clean.

- A. It is the duty of the owner, agent, occupant, or lessee of property to keep premises free of litter, rubbish, and garbage. This requirement applies not only to loose litter but also to materials that already are or become trapped at such locations as fence and wall bases, grassy and planked areas, borders, embankments, and other lodging points.
- B. It is the duty of the owner, agent, occupant, or lessee of property to keep garbage and rubbish containers of property reasonably clean and free of offensive odors.
- C. Owners, agents, occupants, or lessees whose properties face on municipal sidewalks and boulevards are responsible for keeping that portion of the sidewalks and boulevards adjacent to their property free of garbage, litter, and rubbish. Owners, agents, occupants, or lessees whose properties

face on alleys are responsible for keeping that half of the alley adjacent to the property free of garbage, litter and rubbish.

D. It is unlawful to sweep or push litter from sidewalks and boulevard into streets.

E. It is the duty of every owner of vacant property to keep that property free of litter.

F. If an owner, agent, occupant, or lessee of property fails to remove litter on his or her property within ten days after notice by the city-county health officer or police department, the litter will be removed by the city and the owner or his appointed agent, occupant, or lessee billed for the cost thereof.

G. If, in the determination of the city-county health officer a litter situation exists that constitutes an "emergency" to the city or neighboring property owners, the city may remove the litter and bill the owner, his appointed agent, occupant, or lessee of the property for the cost thereof after making a good faith effort to notify by telephone or in person, the owner, agent, occupant, or lessee of the problem and giving him or her a twenty-four hour period to remedy the problem.

8.28.085 Special provisions for the accumulation and storage of garbage within the Bear Buffer Zone.

A. It is unlawful to accumulate or store garbage that is attractant to bears within the Bear Buffer Zone in any manner that allows bears access. For the purpose of this chapter, garbage is also defined as any other human generated waste that attracts bears, not to include roadkill or windfall fruit. Except as provided in B. through D. below, bear attractant garbage shall be secured in a bear resistant container or enclosure.

B. Persons may, as an alternative to A. above, place non-bear resistant garbage containers containing bear attractants at the curb, alley, or public right-of-way only after 5:00 am on the morning of waste pickup. After waste pickup, the non-bear resistant garbage container that previously held bear attractants must be re-secured and stored inside an enclosed building or inside a bear resistant enclosure by 9:00 pm on the day of waste pickup.

C. Commercial, governmental, and institutional entities located within the Bear Buffer Zone may as an alternative to A. or B. above, develop a written waste management plan to prevent bears access to attractant waste. The waste management plan and any amendments will be approved in writing by Montana Fish, Wildlife, and Parks (FWP) and appropriate commercial waste hauler. City-County health department may be petitioned to arbitrate in the event plan agreement cannot be made between FWP and the entity.

D. Outdoor trash compactors may be used within the Bear Buffer Zone provided no waste is exposed and compactor doors are kept closed at all times, except when loading or removing wastes. The area around the compactor must be kept clean of garbage.

8.28.090 Distribution of handbills. It is unlawful for any person to throw, scatter, distribute or cause to be thrown, scattered or distributed upon or along any of the sidewalks, streets, avenues or alleys of the city, or within or upon any of the public places within the city, and bills, posters, dodgers, cards or other advertising matter of any kind.

8.28.100 Littering.

A. It is unlawful for any person to throw, discard, place or deposit litter in any manner or amount on any public or private property except in containers or areas lawfully provided therefore.

B. In the prosecution charging a violation of subsection A of this section from a vehicle, proof that the particular vehicle described in the complaint was the origin of the litter, together with proof that the defendant named in the complaint was at the time of the violation the registered owner of the vehicle,

shall constitute in evidence a presumption that the registered owner was the person who committed the violation.

C. It is the duty of every person distributing or causing to be distributed commercial handbills, leaflets, flyers or any other advertising and informational material to take reasonable measures to keep such materials from littering public or private property.

D. It is unlawful for any person to deposit household garbage or refuse in garbage or refuse containers maintained for the use of other residences or establishments.

8.28.110 Removal of litter at construction and other sites.

A. Any owner or occupant of an establishment or institution at which litter or rubbish is attendant to the packing, unpacking, loading or unloading of materials at exterior locations shall provide suitable containers for the disposal and storage of such litter and rubbish and shall make appropriate arrangements for the collection thereof.

B. It is unlawful for the owner, agent or contractor in charge of any construction or demolition site to cause, maintain, permit, or allow to be caused, maintained or permitted, the accumulation of any litter or rubbish on the site before, during or after completion of the construction or demolition project.

C. It is the duty of the owner, agent, or contractor to have on the site adequate containers for the disposal of litter and rubbish and to make appropriate arrangements for its collection and transportation to an authorized facility for final disposition.

D. The owner, agent, or contractor may be required at any time to show proof of appropriate collection or final disposition at an authorized facility.

E. It is the duty of the owner, occupant, contractor, or agent to remove at the end of each working day any litter and rubbish which has not been containerized.

8.28.120 Transportation requirements.

A. It is unlawful for any person to remove any garbage or carry it through the streets of the city except in vehicles having metallic or metal-lined bins, with covers so that the garbage shall not be offensive. The garbage must be protected from the wind and rain and be loaded in such a manner that none of it shall fall, drop, blow, or spill upon the ground.

B. It is unlawful for any person to carry any rubbish on the streets except in vehicles having bins, containers, or enclosures so designed that no material loaded within shall fall, drop, blow, or spill upon the ground or public thoroughfare. Any load containing paper must be covered while moving through the streets. All rubbish so carried must be loaded into the transportation vehicle in such a manner that none of it shall fall, drop, blow, or spill upon the ground.

C. The duty and responsibility imposed by subsections A and B of this section shall be applicable alike to the owner of the truck or other vehicle, the operator thereof and the person, firm, corporation, institution or organization from which residence or establishment the cargo originated.

8.28.130 Dumping on vacant lots. It is unlawful for any person to dump, place, or leave, or cause to be dumped, placed, or left upon public property, including any of the streets, avenues, or alleys of the city any rock, gravel, dirt, earth or soil, garbage or rubbish, unless permission to do so is first obtained from the street department of the city; or to dump, place, or leave or cause to be dumped, placed or left upon any vacant or unoccupied private lot or lots any rock, gravel, dirt, earth or soil on private property, unless permission to do so shall be first obtained from the owner or owners of the vacant or unoccupied lot or lots.

8.28.140 Burning and burying garbage. Except in case of composting, it is unlawful for any person to burn or bury any garbage, rubbish, or litter in any yard or open space, unless a disposal site license has been obtained from the Solid Waste Bureau of the Montana State Department of Health and Environmental Sciences.

8.28.150 Violation--Penalty. It is a misdemeanor for any person to do any act forbidden or to fail to perform any act required by this chapter. Every person convicted of a violation of any provision of this chapter shall be punished by a fine not to exceed five hundred dollars for each offense. A person who is found guilty of a violation of this section 8.25.085 one year after the effective date of this ordinance shall be fined not less than twenty five dollars which may not be suspended or deferred. During the first year this ordinance is in effect, warnings of noncompliance in lieu of citations will be issued for violations of section 8.28.085. Each day any violation of any provisions of this chapter shall continue shall constitute a separate offense. There shall be no penalty of imprisonment for any violation of this chapter.

Effective date: The effective date of this ordinance shall be thirty days after the date of adoption of this ordinance.

Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

PASSED by a vote 9 Ayes, 3 Nays, 0 Abstain, and 0 Absent and

APPROVED on this 8th day of February, 2010.

ATTEST:

APPROVED:

/s/ Martha L. Rehbein
Martha L. Rehbein, CMC
City Clerk

/s/ John Engen
John Engen
Mayor

(SEAL)