

ORDINANCE NO. 14-11

An Emergency Ordinance of the City Council of the City of Whitefish, Montana, pursuant to MCA Section 7-5-104, amending Whitefish City Code Title 4, Chapter 2, Section 4(A), and Title 12, Chapter 4, Section 21(D), regarding the City-wide preventative measures to avoid problems with animals.

WHEREAS, the Whitefish City Council enacted Ordinance Nos. 01-05 and 05-22 in response to residents' reports of bear sightings and problems with bears and other animals being attracted to garbage and waste stored outdoors or otherwise placed in solid waste containers in certain geographical areas of the City; and

WHEREAS, Ordinance No. 05-22 attempted to resolve the frequent encounters with bears and other animals by requiring animal resistant containers or compliance with the City's garbage container roll out limitations for businesses located north of the railroad tracks and for residents located north of Denver Street and Bay Point Drive because most of the incidents involving bears or other animals occur north of the Burlington Northern Santa Fe railroad tracks that bisect the City; and

WHEREAS, Erik Wenum, a wildlife management specialist with the Montana Fish, Wildlife & Parks (FWP), appeared before the May 20, 2013 Council Meeting and reported the City's bear problem is now City-wide and would only get worse unless the City's requirements for animal resistant containers or garbage container roll out limitations are extended City-wide. Mr. Wenum encouraged the City Council to consider a City-wide enactment of preventative measures with regular enforcement that will further restrict conflicts with bears and other animals; and

WHEREAS, trash management has been identified as a key issue in resolving the encounters with bears and other animals because garbage and other solid wastes attract bears and other animals, lead to conflicts between animals and humans, and frequently results in injury and/or death to such animals; and

WHEREAS, FWP mapping of bear sightings and incidents demonstrates bear and other animal encounters are now City-wide and not limited to certain geographical areas in the City as it had been in 2001 through 2005; and

WHEREAS, regular education of businesses and residents through newsletters, mailings, and other forms of information will improve the likelihood that businesses and residents will handle their solid waste in a manner to discourage conflicts with bears and other animals; and

WHEREAS, the number of reported bear and other animal sightings have continued City-wide and garbage container roll-out limitations are now necessary City-wide in the best interests of public health, safety and welfare of City residents and affected animals; and

WHEREAS, Section 7-5-104, MCA, authorizes the governing body to adopt an emergency ordinance in the event of an emergency by a two-thirds vote of the entire City Council for passage, effective immediately, but for no more than 90 days; and

WHEREAS, after first having provided public notice of the City Council's consideration of an emergency ordinance to amend Whitefish City Code Title 4, Chapter 2, Section 4(A), and Title 12, Chapter 4, Section 21(D), regarding the City-wide preventative measures to avoid problems with animals scheduled for the October 20, 2014 City Council meeting, the City Council discussed the emergency created by the City-wide sightings of bears and other animals, the need for City-wide preventative measures, and following its deliberation, the City Council determined the necessity to act immediately and extend garbage roll-out limitations as preventative measures City-wide as an emergency ordinance applicable within City limits to take effect upon passage, until such time as the City enacts an ordinance to amend its City Code for City-wide preventative measures or for 90 days following passage, whichever shall first occur; and

WHEREAS, at a public hearing held by the City Council on October 20, 2014, the Whitefish City Council received and considered oral and written reports by City staff, received public input, and considered the proposed amendments; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to adopt the proposed amendments to the Whitefish City Code to extend the garbage container preventative measures City-wide.

NOW, THEREFORE, be it ordained by the City Council of the City of Whitefish, Montana, as follows:

Section 1: Section 4-2-4(A) of the Whitefish City Code is hereby amended in its entirety to provide as follows:

- A. ~~Bear-Resistant Containers:~~—All businesses located north of the Burlington Northern Santa Fe Railroad tracks that produce food scraps and food byproducts as part of their solid waste, including, but not limited to, restaurants, bars, and grocery stores, shall deposit and store all solid wastes in ~~bear-animal~~ resistant containers throughout the year. Residents and associations of residents located north of Denver Street and Bay Point Drive shall either: 1) store their solid waste in securely latched ~~bear-animal~~ resistant containers or, alternatively, 2) store solid waste containers securely inside of a home, garage or other animal resistant enclosure until four o'clock (4:00) A.M. on the morning that such solid waste will be picked up by the city or other permitted hauler. ~~Bear Animal~~ resistant containers shall be set out on collection days with all latches in the open position. Solid waste will not be collected from latched containers. Any solid waste container placed outside of a home, garage, or other animal resistant enclosure for

pick up shall be returned to a secure location no later than seven o'clock (7:00) P.M. on the day that solid waste is picked up. Any ~~bear-animal~~ resistant container shall be relatched no later than seven o'clock (7:00) P.M. on the day that waste is picked up.

B. Residents and associations of residents located south of Denver Street and Bay Point Drive shall store their solid waste containers securely inside of a home, garage or other animal resistant enclosure until four o'clock (4:00) A.M. on the morning that such solid waste will be picked up by the city or other permitted hauler. ~~Bear-Animal~~ resistant containers shall be set out on collection days with all latches in the open position. Solid waste will not be collected from latched containers. Any solid waste container placed outside of a home, garage, or other animal resistant enclosure for pick up shall be returned to a secure location no later than seven o'clock (7:00) P.M. on the day that solid waste is picked up. Any ~~bear-animal~~ resistant container shall be relatched no later than seven o'clock (7:00) P.M. on the day that waste is picked up.

C. A business, resident, or association of residents convicted of violating this subsection shall be guilty of a misdemeanor and, upon conviction thereof, be subject to a fine and/or confinement as provided in the general penalty provisions in section 1-4-1 of this code. A business, resident, or association of residents who violates this subsection shall be deemed to have committed a municipal infraction, and shall be assessed the civil penalty described in section 1-4-4 of this code. For each separate incident, the city shall elect to treat the violation as a misdemeanor or a municipal infraction, but not both. If a violation is repeated, the city may treat the initial violation as a misdemeanor and the repeat violation as a municipal infraction, or vice versa. Each day that a violation remains shall constitute a separate violation.

Section 2: Section 12-4-21(D) of the Whitefish City Code is hereby amended to provide as follows:

D. Subdivisions ~~located on the north side of the railroad tracks~~ are subject to subsection 4-2-4(A), "~~Bear-Animal~~ Resistant Containers", of this code. In addition, a note shall be placed on the face of the plat (see appendix D, attached to the ordinance codified herein).

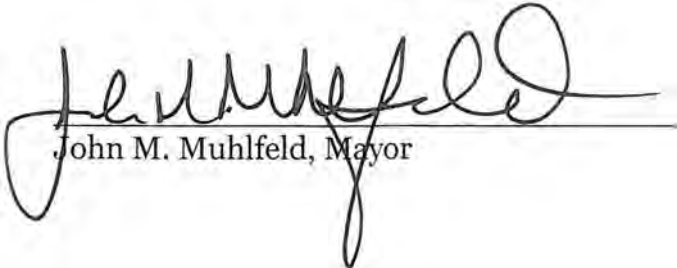
Section 3: All other provisions of Title 4, Chapter 2, and Title 12, Chapter 4, shall remain unmodified.

Section 4: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent

jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

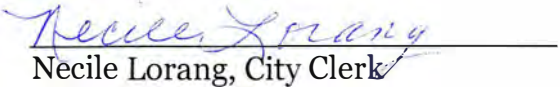
Section 5: Pursuant to Section 7-5-104, MCA, this Ordinance shall take effect immediately upon its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof, and shall be in full force and effect 90 days from final passage, but shall be of no further force and effect after such period.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 20TH DAY OF OCTOBER, 2014.



John M. Muhlfield, Mayor

ATTEST:



Necile Lorang, City Clerk