



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 18, 2014

AGENDA TITLE: Consideration of a motion to adopt on third reading Ordinance No. 7962 amending Chapter 6-3, “Trash, Recyclables and Compostables,” B.R.C. 1981, by adding a new section 6-3-12 requiring bear resistant containers in a designated area of the city; amending section 6-3-2, by adding new definitions; adding administrative penalties for violations and setting forth related details.

PRESENTERS:

Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
Paul J. Fetherston, Deputy City Manager
David Driskell, Executive Director of Community Planning & Sustainability
Mark Beckner, Police Chief
Susan Richstone, Deputy Director of Community Planning & Sustainability
Lesli Ellis, Comprehensive Planning Manager
Valerie Matheson, Urban Wildlife Conservation Coordinator
Kara Mertz, Environmental Action Project Manager

EXECUTIVE SUMMARY:

The purpose of this memo is third reading and consideration of an ordinance that would: 1) require trash be secured in bear resistant containers; 2) apply initially only to certain neighborhoods west of Broadway (see Bear Zone One map at www.boulderwildlifepan.net); 3) increase the penalty to \$250 for violations of B.R.C. 6-3-12 Bear Resistant Containers Required and 4) allow for notification of violations by posting a notice at the offending property, by telephone, email, or by mail to the property owner. The proposed ordinance (*Attachment A*) reflects council’s direction on options to secure trash and curbside compost from bears provided at its Jan. 21 meeting, and incorporates feedback provided during the first and second reading council discussions on Feb. 18, and March 5, respectively. This ordinance responds to community concerns for four bears that had come to depend on trash in urban areas for food and were euthanized in Boulder last year.

STAFF RECOMMENDATION:

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt on third reading ordinance No. 7962 amending Chapter 6-3, “Trash, Recyclables and Compostables,” B.R.C. 1981, by adding a new section 6-3-12 requiring bear resistant containers in a designated area of the city; amending section 6-3-2, by adding new definitions; adding administrative penalties for violations and setting forth related details.

BACKGROUND:

On Jan. 21, 2014 staff presented options to council and were directed to develop an ordinance to require trash and compost containers to be secure from bears at all times in most of the city west of Broadway. First reading of the ordinance was on Feb. 18, 2014 and on March 5, 2014, City Council amended and unanimously approved second reading of Ordinance No. 7962. Amendments included: language to clarify the nature of the city manager’s rule and attending unsecured refuse attractants; and removing the minimum fine requirement for 6-3-12 Bear Resistant Containers Required. Council considered but did not include an amendment to the definition of “refuse attractant.”

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic - Proper storage of trash and preventing it from being strewn by animals supports the aesthetic character and economic vitality of Boulder.
- Environmental - Unsecured trash is harmful to native wildlife. Trash that is easily accessible invites bears to forage in town as opposed to adjacent natural areas. Trash consumption by bears results in cellophane, foil, and other non-digestible materials to be ingested by bears with food waste. Ingesting these materials is harmful to bears. In addition, bears in town that are repeatedly a nuisance, or pose a threat to public safety, are destroyed.
- Social - Though there have been no attacks on humans by black bears in the City of Boulder, the presence of these large predators in the urban area poses a safety threat to the community. Bear activity has been reported near areas where children congregate and along streets and alleys where children walk to school. In addition, bears that access trash often drag and spread household waste on streets, lawns and alleys, compromising basic neighborhood sanitation and aesthetics. Euthanizing bears compromises the civic value of living in harmony with the natural surroundings.

OTHER IMPACTS

- Fiscal - Staff’s plan includes hiring additional code enforcement officers and

developing a fund to assist low income residents with acquiring or leasing trash containers to offset their costs. The fiscal impact of the additional staffing, and the fund to assist low-income residents will be addressed in a budget supplemental ordinance.

- Staff time - Current activities are covered by existing department work plans. Additional enforcement or introduction of bear proof trash containers will require additional staff time.

PUBLIC FEEDBACK

One speaker provided comments during the public hearing at the March 5, 2014 second reading, expressing support for the ordinance.

ANALYSIS

Proposed Ordinance

The proposed ordinance is intended to implement council's policy direction. The major features of the proposed ordinance are as follows:

A. Area

The proposed ordinance would apply initially in an area bounded by the city's southern¹ and western borders, Broadway and a line through Wonderland Lake Park as if Sumac Avenue extended across Broadway to the city border (see Bear Zone One map at www.boulderwildlifeplan.net). The ordinance authorizes the city manager to adopt a rule extending the applicable area when necessary.

B. Requirement to Secure Trash.

The proposed ordinance requires that all trash in the area be secured at all times. Trash can be secured by being stored in a bear resistant container or enclosure. In addition, trash may be secured by storage in a garage or shed. If trash is stored securely in a garage or shed, it need not be stored in a bear resistant container. In such cases, the trash may be transported in a non-bear resistant container for pickup, but must at all times be attended by a person within fifteen feet of the container. This provision is intended to fulfill council's direction to allow for trash services that will collect trash directly from a garage or other storage area. The language would also allow for a resident to move the trash from a garage to the curb and wait with the trash for pickup. During second reading of the ordinance council amended language to clarify refuse attractants that are not contained in a bear resistant container must be attended by a person.

¹ At the January 24, 2014 update, staff suggested that the southern boundary be Greenbriar Boulevard. Greenbriar Boulevard ends at Lehigh Street. To avoid confusion, staff recommends that the southern boundary extend to the city's southern border.

C. Definition of Bear Resistant Container, Dumpster or Enclosure.

The proposed ordinance delegates to the city manager the authority to define “bear resistant.” Some cities, such as Aspen, have included such language in an ordinance. Aspen’s definition of “Wildlife Resistant Container” is as follows:

Wildlife-resistant refuse container means a fully enclosed container that can be constructed of pliable materials, but must be reinforced to deter access by wildlife. The container must employ a sturdy lid that has a latching mechanism preventing access to its contents by wildlife. Wildlife Resistant Containers must meet the standards of testing by the Living With Wildlife Foundation and a “passing” rating by the Interagency Grizzly Bear Committee (IGBC) as bear resistant for 60 minutes or otherwise be approved by a City-designated official.

Aspen Municipal Code § 12.08.010(2). Technology and organizations change. While the city’s definition may be similar to that adopted by Aspen, it is better practice to include such definitions in rules that can be adjusted to address such changes. During second reading of the ordinance council amended language to clarify the nature of the city manager’s rule, modifying the definition of bear resistant from “certified by” to “established by” the city manager.

D. Administrative Remedy.

Staff recommends that the proposed ordinance include an administrative remedy in addition to existing criminal penalties. This is the model employed for both rental licenses and snow removal. The principal reason for this recommendation is to facilitate service by posting rather than personal service. A criminal summons must be served pursuant to state court rules, which require either personal service or service upon a person at the residence of the offending party. An administrative remedy does not have similar requirements.

E. Fine amounts.

The proposed ordinance includes a fine of \$250 for the first violation, \$500 for the second violation and \$1,000 for a third violation. During second reading of the ordinance council amended the fine schedule to allow for penalties to be adjusted based on evidence presented at a hearing.

NEXT STEPS

Staff is developing a program of city assistance for members of the community who cannot afford the increased cost of bear-resistant containers; and an ordinance implementation timeline which will begin with alleys west of Broadway (see Zone Three map at www.boulderwildlifeplan.net) in the spring of 2014.

Attachments:

A: Ordinance No. 7962

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ORDINANCE NO. 7962

AN ORDINANCE AMENDING CHAPTER 6-3, "TRASH, RECYCLABLES AND COMPOSTABLES," B.R.C. 1981, BY ADDING A NEW SECTION 6-3-12 REQUIRING BEAR RESISTANT CONTAINERS IN A DESIGNATED AREA OF THE CITY; AMENDING SECTION 6-3-2, BY ADDING NEW DEFINITIONS; ADDING ADMINISTRATIVE PENALTIES FOR VIOLATIONS, AMENDING SECTION 6-12-5, "CONTAINERS FOR RECYCLING OR COMPOSTING COLLECTION," AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 6-3-2, B.R.C. 1981, is amended to read:

6-3-2 Definitions.

The definitions in chapter 1-2, "Definitions," B.R.C. 1981, shall apply to this chapter, including, without limitation, the definitions of "Compostables," "Hauler," "Recyclable materials," "Trash," "Trash container," "Visible to the public" and "Wildlife-resistant container."

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Bear Resistant Container" shall mean a container that meets the requirements for such a container established by the city manager in a rule adopted pursuant to section 6-3-11 "City Manager Authorized to Issue Rules," B.R.C. 1981

"Bear Resistant Dumpster" shall mean a dumpster that meets the requirements for such a container established by the city manager in a rule adopted pursuant to section 6-3-11 "City Manager Authorized to Issue Rules," B.R.C. 1981

"Bear Resistant Enclosure" shall mean a fully enclosed structure meets the requirements for such a container established by the city manager in a rule adopted pursuant to section 6-3-11 "City Manager Authorized to Issue Rules," B.R.C. 1981

"Person" shall have the meaning set forth in chapter 1-2, "Definitions," B.R.C., and shall also include, without limitation, owner of any property or vacant land; occupant, owner, operator or manager of any single unit dwelling, multi unit dwelling, mobile home, mobile home park, private club or other similar property; or owner, operator, manager or employee of any business or business property.

1 “Refuse Attractant” shall mean any trash or other substance which could
 2 reasonably be expected to attract wildlife or does attract wildlife, including, but not
 3 limited to, soiled diapers, sanitary pads, food products, pet food, feed, kitchen
 4 organic waste, food, food packaging, toothpaste, deodorant, cosmetics, spices,
 5 seasonings or grease. Attractants do not include recyclable materials properly
 6 enclosed in a recycling container, or materials that do not meet the definition of
 7 trash in section 1-2-1, “Definitions,” B.R.C. 1981 and is fruit associated with a
 8 fruit tree or bush, produce associated with a garden, or a bird feeder.

9 Section 2. Chapter 6-3, “Trash, Recyclables and Compostables,” B.R.C. 1981 is
 10 amended by the addition of a **new section 6-3-12** to read:

11 **6-3-12 Bear Resistant Containers Required.**

- 12 (a) No private owner, agent appointed pursuant to section 10-3-14, "Local Agent
 13 Required," B.R.C. 1981, or manager of any property, lessee leasing the entire
 14 premises, or adult occupant of a single-family dwelling, a duplex, a triplex, or a
 15 fourplex shall fail to keep all refuse attractants in bear resistant enclosures, in bear
 16 resistant containers, bear resistant dumpsters or securely stored within a house,
 17 garage, shed or other structure at least as secure as a bear resistant enclosure at all
 18 times, except when being transported from a house, garage or bear resistant
 19 enclosure for pickup. Refuse attractants transported for pickup **not in a bear**
 20 **resistant container** shall be attended, by a person remaining within 15 feet of the
 21 container at all times.
- 22 (b) This section shall apply to the area bounded by Broadway Street, the City’s
 23 southern boundary, the city’s western boundary and a line extended from Sumac
 24 Avenue due west through Wonderland Lake Park. Provided that the city manager
 25 may extend the area by rule adopted pursuant to section 6-3-11 “City Manager
 Authorized to Issue Rules,” B.R.C. 1981.
- (c) If a container or enclosure is damaged, allowing access by wildlife, repairs must be
 made within 72 hours after written notification by any city official, or such other
 time designated in the notice by the city official.
- (d) If the city manager finds that a violation of any provision of this section, the
 manager, after notice and an opportunity for hearing under the procedures
 prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, may impose a
 civil penalty according to the following schedule:
- (1) For the first violation of the provision, \$250.00;
 - (2) For the second violation of the same provision, \$500.00;
 - (3) For the third violation of the same provision, \$1,000.00; and
 - (4) **The Hearing Officer may adjust the penalty, based on evidence presented at a hearing.**

- 1 (e) The city manager's authority under this section is in addition to any other authority
2 the manager has to enforce this chapter, including but not limited to section 5-2-4,
3 General Penalties, and election of one remedy by the manager shall not preclude
4 resorting to any other remedy as well.
- 5 (f) The city manager may, in addition to taking other collection remedies, certify due
6 and unpaid charges to the Boulder County Treasurer for collection as provided by
7 section 2-2-12, "City Manager May Certify Taxes, Charges and Assessments to
8 County Treasurer for Collection," B.R.C. 1981.
- 9 (g) Notice under this subsection is sufficient if hand delivered, emailed, mailed or
10 telephoned to such person, or by posting on the premises.

11 Section 3. Section 6-12-5, B.R.C. 1981, is amended to read:

12 **6-12-5 Containers for Recycling or Composting Collection.**

- 13 (a) Haulers providing trash collection service to multifamily customers through
14 centralized collection areas shall provide containers for recyclable materials at no
15 additional charge. Containers shall be of a sufficient size to accommodate the
16 regular accumulation of recyclables from that customer, but at a minimum, such
17 containers shall be of a volume equal to one-half of the volume of the trash
18 collection service. If the city manager requires the collection of compostables,
19 haulers shall provide containers for that service of a sufficient size to
20 accommodate the regular accumulation of compostables from that customer.
- 21 (b) Haulers providing trash collection service to residential customers are not required
22 to provide recyclables or compostables containers. However, if the hauler requires
23 a specific type of container, then the hauler shall deliver such container at no cost
24 to the residential customer. This provision does not apply to any container
25 required by the city pursuant to section 6-3-12 "Bear Resistant Containers," B.R.C.
1981.

26 Section 4. This ordinance is necessary to protect the public health, safety, and
27 welfare of the residents of the city, and covers matters of local concern.

28 Section 5. The City Council deems it appropriate that this ordinance be published
29 by title only and orders that copies of this ordinance be made available in the office of the
30 city clerk for public inspection and acquisition.

1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED

2 BY TITLE ONLY this 18th day of February, 2014.

4
5 _____
Mayor

5 Attest:

6
7 _____
City Clerk

8 READ ON SECOND READING, AMENDED, AND ORDERED PUBLISHED

9 BY TITLE ONLY this 5th day of March, 2014.

12
13 _____
Mayor

13 Attest:

14
15 _____
City Clerk

16
17 READ ON THIRD READING, PASSED, ADOPTED, AND ORDERED

18 PUBLISHED BY TITLE ONLY this 18th day of March, 2014.

20
21 _____
Mayor

21 Attest:

22
23 _____
City Clerk