

CITY OF THORNE BAY
ORDINANCE 19-08-20-02

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF THORNE BAY, ALASKA, -
AMENDING TITLE 9 - PUBLIC PEACE, MORALS AND WELFARE, CHAPTER 9.16-
PROTECTION OF WATER LAKE WATERSHED PROTECTION, AND CHAPTER 9.20-LITTER
CONTROL

BE IT ENACTED BY THE CITY COUNCIL FOR THE CITY OF THORNE BAY, ALASKA

- Section 1. **Classification.** This ordinance is of a general and permanent nature, the chapter and section hereby amended shall be added to the Thorne Bay Municipal Code.
- Section 2. **Severability.** If any provisions of this ordinance or any application thereof to any person or circumstances is held invalid, the circumstances shall not be affected thereby.
- Section 3. **Amendment of Title, Chapter and Sections:** Title 9 - Public Peace, Morals Chapters 9.16-Water Lake Watershed Protection, and Chapter 9.20-Litter Control are hereby amended as set forth pages 2 through 10 of this ordinance (Ord. 19-08-20-02) and shall be added to the Thorne Bay Municipal Code upon adoption.
- Section 4. **Effective Date.** This ordinance shall become effective upon adoption.

PASSED AND APPROVED August 20, 2019



Harvey McDonald, Mayor

ATTEST:



Teri Feibel, CMC

[Introduction: August 6, 2019]
[Public Hearing: August 20, 2019]



ADDITIONS ARE IN BLUE AND CAPITALIZED

Deletions are stricken

THORNE BAY MUNICIPAL CODE (TBMC)
AMENDING TITLE 9-PUBLIC PEACE, MORALS AND WELFARE
CHAPTERS

Chapter and Sections shall read as follows:

CHAPTER 9.16 PROTECTION OF WATER LAKE WATERSHED

- 9.16.060 ENFORCEMENT.....
- 9.16.080 OBEDIENCE TO OFFICIALS REQUIRED.
- 9.16.090 EMERGENCY POWERS.....
- 9.16.100 COMPLIANCE ORDER.
- 9.16.110 PENALTY AND REMEDIES.

CHAPTER 9.20 LITTER CONTROL 6

- 9.20.010 DEFINITIONS.....
- 9.20.060 PRIVATE PREMISES.
- 9.20.150 COMMERCIAL HANDBILLS PROHIBITED.

ADDING SECTION 9.20.155:

9.20.155 JUNK VEHICLES UNLAWFUL..

- 9.20.160 ENFORCEMENT.....
- 9.20.180 OBEDIENCE TO OFFICIALS REQUIRED.
- 9.20.190 EMERGENCY POWERS.....
- 9.20.200 COMPLIANCE ORDER.

SUMMARY:

- This Title and Chapter are hereby amended by
- Removing "Department Chief" and replacing with "VPSO" and/or "Code Enforcement Officer"
- Replacing "Watershed Officer" to Code "Enforcement Officer"
- Adding definition for "Junk Vehicle" to Chapter 9.20-Litter Control, and adding section: 9.20.155-Junk Vehicles Unlawful

ADDITIONS ARE BLUE AND CAPITALIZED

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AMENDMENTS:

9.16-PROTECTIONS OF WATERSHED

9.20-LITTER CONTROL

CHAPTER 9.16 PROTECTION OF WATER LAKE WATERSHED

9.16.060 ENFORCEMENT.

It shall be the duty of the **VILLAGE PUBLIC SAFETY OFFICER OR CODE ENFORCEMENT OFFICER**, ~~village protection safety officer~~ (hereinafter called "~~city watershed~~ **CODE ENFORCEMENT officer**") to enforce the provisions of this chapter. (Ord. 89-19 § 5(part), 1989)

9.16.080 OBEDIENCE TO OFFICIALS REQUIRED.

The failure or refusal to comply with any lawful order or direction of the ~~city watershed~~ **CODE ENFORCEMENT officer** given in connection with this chapter shall be a violation of this chapter. (Ord. 89-19 § 5(part), 1989)

9.16.090 EMERGENCY POWERS.

- A. When it is found, after investigation, that a person is causing, engaging in or maintaining a condition or activity which, in the judgment of the ~~city watershed~~ **CODE ENFORCEMENT officer** presents an imminent or present danger to the health, safety, or welfare of the people of the municipality or would result in or be likely to result in irreversible or irreparable damage to the Water Lake watershed protection area, and it appears to be prejudicial to the interest of the people of the municipality to delay action until an opportunity for a hearing can be provided, the ~~city watershed~~ **CODE ENFORCEMENT officer**, without prior hearing, may order that person by notice to discontinue, abate, or alleviate the condition or activity. The proscribed condition or activity shall be immediately discontinued, abated or alleviated.
- B. Upon receipt of an order of the ~~city watershed~~ **CODE ENFORCEMENT officer** made under subsection A of this section, the person affected has the right to be heard and to present proof to the city council that the condition or activity does not constitute an actual or potential source of irreversible or irreparable damage to the public health, safety or welfare or to the Water Lake watershed protection area.
- C. In the chief executive officer's discretion or upon application made by the recipient of an order within fifteen days of receipt of the order, the chief executive officer shall schedule a hearing before the city council at the earliest possible time. The hearing shall be scheduled within five days after receipt of the application. The submission of an application or the scheduling of a hearing does not stay the operation of the ~~city watershed~~ **CODE ENFORCEMENT officer's** order made under subsection A of this section.

- D. After a hearing the city council may affirm, modify, or set aside the order. An order affirmed, modified, or set aside after a hearing is subject to judicial review. The order is not stayed pending judicial review unless the city council so directs. If an order is not immediately complied with, the city attorney, upon request of the chief executive officer, may seek enforcement of the order. (Ord. 89-19 § 5(part), 1989)

9.16.100 COMPLIANCE ORDER.

- A. When, in the opinion of the ~~city-watershed~~ CODE ENFORCEMENT officer, a person is violating or is about to violate a provision of this chapter, or a lawful order of the ~~city watershed~~ CODE ENFORCEMENT officer, the ~~city-watershed~~ CODE ENFORCEMENT officer may notify the person of his determination by personal service or certified mail.
- B. The recipient of the determination must file with the ~~city-watershed~~ CODE ENFORCEMENT officer, within ten days, a report stating what measures have been and are being taken, or are proposed to be taken, to correct or control the conditions outlined in the notice.
- C. After the report is filed under subsection B of this section, or the time period specified for it has elapsed, the ~~city-watershed~~ CODE ENFORCEMENT officer may issue a compliance order. A copy of the compliance order shall be served personally or sent by certified mail to the person affected. A compliance order is effective upon receipt.
- D. Within fifteen days after receipt the recipient may request a hearing before the city council to review the compliance order. Failure to request a hearing within fifteen days after the receipt of a compliance order constitutes a waiver of the recipient's right of review.
- E. The city council shall hold a hearing within twenty days after receipt of a request for one under subsection D of this section. After the hearing the city council may rescind, modify or affirm the compliance order.
- F. Appeal from a decision of the city council shall be to the superior court, provided notice of appeal is filed with the superior court no later than thirty days following the city council's issuance of its written decision (this time limit is jurisdictional) and the appellant pay the city, by depositing with the city clerk, the city's cost of preparing the entire record (including a transcript of hearings held below) no later than sixty days following the decision being appealed from. Transcripts of hearings shall be prepared by a certified court reporter, and preparation of the entire record is at the appellant's expense.
- G. All other procedures, on appeal to the superior court, are set forth in the Alaska Rules of Appellate Procedure. The appeal is an administrative appeal, heard solely on the record established in this chapter, pursuant to AS 29.40.060(b).
- H. The city attorney may seek enforcement of a compliance order. (Ord. 89-19 § 5(part), 1989)

9.16.110 PENALTY AND REMEDIES.

A. Civil Remedies.

- 1) Upon violation of any of the provisions of this chapter, or failure or refusal to comply with any lawful order or direction of the ~~city watershed~~ CODE ENFORCEMENT officer given in connection with this chapter, the ~~city watershed~~ CODE ENFORCEMENT officer on behalf of the city, or any aggrieved citizen, may institute or cause to be instituted an appropriate civil action to prevent, enjoin, abate, estop, remove or punish such violation and to obtain monetary damages suffered by such party.
- 2) In addition to injunctive and compensatory relief, each violation shall be subject to a civil penalty not to exceed one thousand dollars and attorney fees as provided by law.
- 3) Each day a violation continues shall constitute an additional violation for purposes of assessing civil penalties.
- 4) An action to enjoin a violation of this chapter may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and the finding of an existing or threatened violation, the court shall grant injunctive relief to restrain the violation.

- B. Criminal Remedies. Any violation of the provisions of this chapter, including failure or refusal to comply with any lawful order or direction of the ~~city watershed~~ CODE ENFORCEMENT officer given in connection with this chapter, is a misdemeanor. Every person convicted of such violation shall be subject to a fine not exceeding one thousand dollars, a jail term not exceeding thirty days, or both. Each unlawful act or condition, and every day upon which such continues, shall constitute a separate violation. (Ord. 89-19 § 5(part), 1989)

CHAPTER 9.20 LITTER CONTROL

9.20.010 DEFINITIONS.

The following terms, phrases, words and their derivations shall have the meaning given herein unless their use in the text clearly demonstrates a different meaning.

- A. "Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation or for flight in the air. "Aircraft" includes helicopters and lighter-than-air dirigibles and balloons.
- B. "City" means and includes all those lands located within the city limits of Thorne Bay, Alaska, as depicted on that certain map produced in 1984 by Northwest Cartography entitled Land Ownership Edition, segments 1 through 10, Thorne Bay, Alaska, one copy of which has been filed in the office of the city clerk for public use, inspection and examination, and which map is made a part of this section as if fully set forth herein.
- C. "Commercial handbill" means and includes any handbill which advertises for sale, or promotional gifts or prizes, any merchandise, product, commodity or thing; directs attention to any business for the purpose of either directly or indirectly promoting the interests thereof by sales or by other means; directs attention to or advertises any meeting, exhibition, theatrical or other performance or event of any kind for which an admission fee is charged; while containing reading or pictorial matter other than Advertising matter is predominantly and essentially an advertisement and is distributed or circulated for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser or distributor.
- D. "Construction sites" means and includes any private or public property upon which repairs to existing buildings, construction of new buildings, or demolition of existing structures is taking place.
- E. "Elements" means and includes any element whether created by nature or created by man, which with reasonable foresee ability could carry litter from one place to another. Elements shall include, but are not limited to, air current, rain, water current and animals.
- F. **"JUNK VEHICLE" MEANS A MOTOR VEHICLE THAT:**
 - 1. **IS NOT CURRENTLY REGISTERED UNDER AS 28.10, EXCEPT FOR A VEHICLE NOT CURRENTLY REGISTERED UNDER AS 28.10 AND USED EXCLUSIVELY FOR COMPETITIVE RACING;**
 - 2. **IS STRIPPED, WRECKED, OR OTHERWISE INOPERABLE DUE TO MECHANICAL FAILURE;**
 - 3. **HAS NOT BEEN REPAIRED BECAUSE OF MECHANICAL DIFFICULTIES OR BECAUSE THE COST OF REPAIRS REQUIRED TO MAKE IT OPERABLE EXCEEDS THE FAIR MARKET VALUE OF THE VEHICLE; OR**

4. IS IN A CONDITION THAT EXHIBITS MORE THAN ONE OF THE FOLLOWING ELEMENTS:
- a) **BROKEN GLASS;**
 - b) **MISSING WHEELS OR TIRES;**
 - c) **MISSING BODY PANELS OR PARTS; OR**
 - d) **MISSING DRIVE TRAIN PARTS.**

- G. "Litter" means and includes any non-containerized manmade or man-used waste which, if deposited within the city other than in a litter receptacle, tends to create a danger to public health, safety, and welfare or to impair the environment of the people of the city. Litter may include, but is not limited to, any garbage, trash, refuse, confetti, debris, grass clippings or other lawn or garden waste, newspaper, magazine, glass, metal, plastic or paper container or other construction material, motor vehicle part, furniture, oil, carcass of a dead animal, or nauseous or offensive matter of any kind, or any object likely to injure any person or create a traffic hazard.
- H. "Litter receptacles" means and includes any container which is designed to receive litter and to prevent the escape of litter deposited therein, which is of such size or sufficient capacity to hold all litter generated between collection periods.
- I. "Park" means and includes a public or private park, reservation, playground, beach, recreation center or any public or private area devoted to active or passive recreation, or any other area under the supervision of the department of public parks.
- J. "Parking lots" means and includes any private or public property with provisions for parking vehicles, to which the public is invited or which the public is permitted to use, or which is visible from any public place or private premises.
- K. "Private premises" means and includes any dwelling, use, building or other structure designed to be used, either wholly or in part, for private Residential purposes, whether uninhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule, mailbox, or other structure belonging or appurtenant to such dwelling house, building or other structure.
- L. "Public place" means and includes any and all streets, boulevards, avenues, lanes, alleys or other public ways, and parks, squares, plazas, grounds and buildings frequented by the general public, whether publicly or privately owned.
- M. "Vehicle" is every device in, upon or by which any person or property is or may be transported or drawn upon land or water, including devices used exclusively upon stationary rails or tracks. (Ord. 89-22 § 5(part), 1989)

9.20.060 PRIVATE PREMISES.

- A. The owner or person in control of private premises shall:
- 1. Maintain litter receptacles for collection of litter as necessary and in such a manner that litter will be prevented from being carried by the elements to adjoining premises. (Ord. 89-22 § 5(part), 1989)
 - 2. **KEEP PROPERTY CLEAR OF LARGE QUANTITIES OF JUNK (JUNK ACCUMULATION), AND/OR JUNK VEHICLES.**

9.20.155 JUNK VEHICLES UNLAWFUL.

- A. IT IS UNLAWFUL FOR THE OWNER OF RECORD OR OTHER PERSON WITH LEGAL RIGHT TO POSSESSION OF A JUNK VEHICLE TO PLACE OR ALLOW SUCH VEHICLE TO REMAIN IN PUBLIC VIEW ON ANY PROPERTY, PUBLIC OR PRIVATE, WITHIN THE CITY FOR MORE THAN 10 DAYS, THE SAME BEING DECLARED A PUBLIC NUISANCE. IT IS ALSO UNLAWFUL FOR THE OWNER, TENANT OR OTHER PERSON IN POSSESSION OR CONTROL OF ANY PROPERTY TO CAUSE OR ALLOW A JUNK VEHICLE TO BE PLACED OR REMAIN IN PUBLIC VIEW ON SUCH PROPERTY FOR MORE THAN 10 DAYS.
- B. NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION, IF THE VPSO OR CODE ENFORCEMENT OFFICER HAS REASONABLE GROUNDS TO BELIEVE THAT REPAIRS CAN BE MADE TO RENDER A JUNK VEHICLE OPERABLE, THAT THE OWNER OF RECORD OR OTHER PERSON ENTITLED TO POSSESSION OF THE VEHICLE IS WILLING TO UNDERTAKE OR HAVE PERFORMED SUCH REPAIRS, THAT THE VEHICLE DOES NOT POSE ANY HEALTH OR SAFETY HAZARD, AND THAT THERE IS NO REASONABLE MEANS FOR REMOVING THE VEHICLE FROM PUBLIC VIEW WHILE REPAIRS ARE BEING PERFORMED, THE VPSO OR CODE ENFORCEMENT OFFICER MAY AUTHORIZE A PERIOD OF NO MORE THAN 30 DAYS FOR THE PERFORMANCE OF SUCH REPAIRS. IN NO CASE, HOWEVER, MAY THIS SECTION BE CONSTRUED AS AUTHORIZING THE OPERATION OF A JUNKYARD OR OTHER SALVAGE OR REPAIR BUSINESS WHERE OTHER REQUIREMENTS OF THE LAW HAVE NOT BEEN MET.

9.20.160 ENFORCEMENT.

It shall be the duty of the ~~village protection safety officer~~ VILLAGE PUBLIC SAFETY OFFICER OR CODE ENFORCEMENT OFFICER, (hereinafter called "litter CODE enforcement officer") to enforce the provisions of this chapter. (Ord 18-01-02-01) (Prior Ord. 89-22 § 5(part), 1989)

9.20.180 OBEDIENCE TO OFFICIALS REQUIRED.

The failure or refusal to comply with any lawful order or direction of the litter CODE enforcement officer given in connection with this chapter shall be a violation of this chapter. (Ord. 89-22 § 5(part), 1989)

9.20.190 EMERGENCY POWERS.

- A. When it is found, after investigation, that a person is causing, engaging in or maintaining a condition or activity which, in the judgment of the litter CODE enforcement officer presents an imminent or present danger to the health, safety or welfare of the people of the municipality or would result in or be likely to result in irreversible or irreparable damage to adjoining property or premises, and it appears to be prejudicial to the interest of the people of the municipality to delay action until an opportunity for a hearing can be provided, the litter CODE enforcement officer, without prior hearing, may order that

- person by notice to discontinue, abate or alleviate the condition or activity. The proscribed condition or activity shall be immediately discontinued, abated or alleviated.
- B. Upon receipt of an order of the ~~litter~~ CODE enforcement officer made under subsection A of this section, the person affected has the right to be heard and to present proof to the city council that the condition or activity does not constitute an actual or potential source of irreversible or irreparable damage to the public health, safety or welfare.
 - C. In the chief executive officer's discretion or upon application made by the recipient of an order within fifteen days of receipt of the order, the chief executive officer shall schedule a hearing before the city council at the earliest possible time. The hearing shall be scheduled within five days after receipt of the application. The submission of an application or the scheduling of a hearing does not stay the operation of the city ~~litter~~ CODE enforcement officer's order made under subsection A of this section.
 - D. After a hearing the city council may affirm, modify or set aside the order. An order affirmed, modified or set aside after a hearing is subject to judicial review. The order is not stayed pending judicial review unless the city council so directs. If an order is not immediately complied with, the city attorney, upon request of the chief executive officer, may seek enforcement of the order. (Ord. 89-22 § 5(part), 1989)

9.20.200 COMPLIANCE ORDER.

- A. When, in the opinion of the city ~~litter~~ CODE enforcement officer, a person is violating or is about to violate a provision of this chapter, or a lawful order of the ~~litter~~ CODE enforcement officer, the ~~litter~~ CODE enforcement officer may notify the person of his determination by personal service or certified mail.
- B. The recipient of the determination must file with the ~~litter~~ CODE enforcement officer, within the five days, a report stating what measures have been and are being taken, or are proposed to be taken, to correct or control the conditions outlined in the notice.
- C. After the report is filed under subsection B of this section, or the time period specified for it has elapsed, the ~~litter~~ CODE enforcement officer may issue a compliance order. A copy of the compliance order shall be served personally or sent by certified mail to the person affected. A compliance order is effective upon receipt.
- D. Within fifteen days after receipt the recipient may request a hearing before the city council to review the compliance order. Failure to request a hearing within fifteen days after the receipt of a compliance order constitutes a waiver of the recipient's right of review.
- E. The city council shall hold a hearing within twenty days after receipt of a request for one under subsection D of this section. After the hearing the city council may rescind, modify or affirm the compliance order.
- F. Appeal from a decision of the city council shall be to the superior court, provided notice of appeal is filed with the superior court no later than thirty days following the city council's issuance of its written decision (this time limit is jurisdictional) and the appellant pay the city, by depositing with the city clerk, the city's cost of preparing the entire record (including a transcript of hearings held below) no later than sixty days following the decision being appealed from. Transcripts of hearings shall be prepared by a certified court reporter, and preparation of the entire record is at the appellant's expense.

- G. All other procedures, on appeal to the superior court, are set forth in the Alaska Rules of Appellate Procedure. The appeal is an administrative appeal, heard solely on the record established in this chapter, pursuant to AS 29.40.060(b).
- H. The city attorney may seek enforcement of a compliance order. (Ord. 89-22 § 5(part), 1989)