



**City of Missoula, Montana
City Council Committee Agenda item**

Committee: Public Safety, Health and Operations

Item: Ordinance revising MMC 8.02 adopting the Missoula City-County Health Code by reference to incorporate revisions to Regulation 3 “Solid Waste Management as approved by the Missoula City-County Board of Health and amending 8.28 to repeal the Bear Buffer Zone

Date: September 7, 2023

Sponsor(s): Amber Sherrill

Prepared by: Shannon Therriault, Environmental Health

Ward(s) Affected:

- Ward 1
- Ward 2
- Ward 3
- All Wards
- Ward 4
- Ward 5
- Ward 6
- N/A

Action Required:

Hold a public hearing and consider an ordinance.

Timeline and Recommended Motions:

Committee discussion: September 13, 2023

Council sets public hearing: September 18, 2023

Recommended motion: Set a public hearing on October 2, 2023 and preliminarily adopt an ordinance revising Chapter 8.02 Missoula Municipal Code entitled “Missoula City-County Health Code Adopted by Reference” to adopt the revised version of Regulation 3 “Solid Waste Management” as approved by the City County Health Board on August 17, 2023, and to amend the Missoula Municipal Code Section of 8.28 “Rubbish and Garbage” to repeal the Missoula Bear Buffer Zone requirements and to change the penalties for violations from criminal misdemeanours to civil infractions.

Public Hearing: October 2, 2023

Final Consideration: October 16, 2023

Recommended motion: Adopt/Deny an ordinance revising Chapter 8.02 Missoula Municipal Code entitled “Missoula City-County Health Code Adopted by Reference” to adopt the revised version of Regulation 3 “Solid Waste Management” as approved by the City County Health Board on August 17, 2023 and to amend the Missoula Municipal Code Section of 8.28 “Rubbish and Garbage” to repeal the Missoula Bear Buffer Zone requirements and to change the penalties for violations from criminal misdemeanors to civil infractions.

Deadline: n/a

Background and Alternatives Explored:

Regulation 3 “Solid Waste Management” of the Missoula City-County Health Code has not been updated since 1996. Staff proposed changes to incorporate allowances for automated garbage

containers, make small word edits to conform with the Montana legislative style guide, and, most significantly, create an expanded bear buffer zone around the Missoula valley, with a requirement for bear-resistant containers or enclosures throughout. Based on public and Health Board comment, staff also proposed a definition and allowance for recycling, cleaned up antiquated text and created a Potomac Bear Mitigation Zone to deal with an increasing garbage and bear problem in the Potomac valley.

The new Missoula Bear Buffer Zone rules would go into effect over three years. This phased implementation gives commercial garbage collection providers time to acquire adequate bear-resistant containers and prioritizes areas with more bear activity and issues for initial bear-resistant container placement.

After two public hearings and two public comment periods, the Health Board approved the proposed rules on August 17, 2023. In keeping with changes the 2021 Montana Legislature made to the Health Board's authority, which now requires adoption of health board rules by the local governing body, the Health Board approved a motion to recommend that the City Council and Board of County Commissioners each adopt the rules. The interlocal agreement between the city and county designated both the City Council and Board of County Commissioners as the local governing body for this purpose.

The current Health Code, which includes Regulation 3 "Solid Waste Management" from 1996, was adopted by the City Council, and can be found in MMC Section 8.02 "Missoula City-County Health Code Adopted by Reference." We are asking the city council to replace the older version of Regulation 3 with the version approved by the Health Board on August 17, 2023.

The Missoula Municipal Code Section 8.28.085 establishes the current bear buffer zone, but that zone does not extend past the city limits. Those regulations require residents to either have a bear-resistant container OR put their garbage out the day of service. Because a bear-resistant container costs more than a regular garbage container, most people have chosen the latter, but do not comply with the requirement to wait until the day of service to put their garbage out for collection. This is in part due to how early Republic Services begins collection, which in some portions of the Bear Buffer Zone is before 6 a.m.

As a result, this regulatory scheme has not worked; people are not following the requirements, and enforcement is time intensive and outstrips available resources. The current rule does not meet the goal of keeping garbage away from bears. In fact, more bears are accessing garbage regularly.

The proposed rules are an outcome of the work of the Bear Smart Working Group, which is a public-private partnership of bear experts, agency representatives, and concerned citizens. In 2022, the working group assembled a Bear Hazard Assessment for the Missoula Area, followed by a Missoula Human-Bear Conflict Management plan. The management plan notes that from 2018 to 2021, 49% of the recorded bear-human interactions centered around bears and garbage.

In Fall 2022, the Missoula City Council and the Missoula Board of County Commissioners adopted a joint resolution committing Missoula to addressing the root causes of human-bear conflicts, in part through local rules. The goals are to reduce the risks to human safety and private property, as well as the number of bears that have to be killed or relocated.

The issue of bears in Missoula is becoming more critical. Montana Fish Wildlife and Parks responded to approximately 1000 black bear incidents in the Missoula valley in 2022, most of which centered on garbage that was not secured from bears. In addition to increased interactions with black bears in 2022, grizzly bears are now part of the picture. Grizzly bears tore up structures in the north hills in quest for food and were sighted in the Bonner and Lolo areas in 2022. Grizzly bears have been documented in Butler Creek, Grant Creek, and the Rattlesnake as well as in the Potomac Valley, Clinton, the Bitterroot, East Missoula and the Sapphire

Mountains. Grizzly bears have walked through the lower Rattlesnake in Missoula. The presence of grizzly bears makes our community's efforts to secure attractants from bears even more important.

We also recommend changes to the Missoula Municipal Code, Chapter 8.28 "Garbage and Rubbish." To ensure that the Missoula Municipal Code and the Health Code do not contain conflicting requirements for a bear buffer zone, we ask that the City Council repeal MMC Section 8.28.085 "Special provisions for the accumulation and storage of garbage within the Bear Buffer Zone" along with associated definitions.

Further, based on recommendations from the Missoula City Attorney's Office, we propose changes to the penalty section, 8.28.150, to change violations of this chapter from criminal misdemeanors to municipal civic infractions.

Financial Implications:

Bear-resistant containers can typically be purchased for \$300-\$400 or leased from one of the area's garbage haulers for \$5 - \$10/quarter. The Health Department is not requesting any additional resources to implement the rule changes.

Links to external websites:

Missoula County Voice: <https://missoulacountyvoice.com/>

Missoula City-County Health Department:

<https://www.missoulacounty.us/government/health/health-department/administration/regulations-ordinances/proposed-rule-changes>