

**McCALL CITY COUNCIL
AGENDA BILL**

216 East Park Street
McCall, Idaho 83638

Number

AB 23-186

Meeting Date

September 14, 2023

AGENDA ITEM INFORMATION				
SUBJECT: <i>Request to review the Wildlife Feeding Ordinance – Amending 5.7.010 and Enacting 5.7.400 and Direction to Staff</i>		<i>Department Approvals</i>	<i>Initials</i>	<i>Originator or Supporter</i>
		Mayor / Council		
		City Manager	ABS	
		Clerk		
		Treasurer		
		Community Development		
		Police Department		Originator
		Public Works		
		Golf Course		
COST IMPACT:	N/A	Parks and Recreation		
FUNDING SOURCE:	N/A	Airport		
		Library		
TIMELINE:	N/A	Information Systems		
		Grant Coordinator		
SUMMARY STATEMENT: On August 3, 2023, Council directed staff to reevaluate the proposed draft Wildlife Feeding Ordinance with City Attorneys, White Peterson, while considering recommendations from Idaho Conservation League Wildlife Program Associate Jeff Abrams and Washington State University Department of Veterinary Microbiology and Pathology Professor Dr. Margaret Wild. Staff completed the reevaluation and has now produced an updated draft Wildlife Feeding Ordinance for Council's consideration as attached.				
RECOMMENDED ACTION: Direction to staff for final review and adoption on 09/28/2023.				
RECORD OF COUNCIL ACTION				
MEETING DATE	ACTION			
June 8, 2023	Council directed staff to bring back a draft Wildlife Feeding Ordinance at a future meeting.			
August 3, 2023	Council directed staff to bring back an updated draft Wildlife Feeding Ordinance at a future meeting.			

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF McCALL, VALLEY COUNTY, IDAHO, AMENDING TITLE 5, *PUBLIC SAFETY*, CHAPTER 7, *ANIMAL CONTROL*, OF THE McCALL CITY CODE, TO-WIT: AMENDING SECTION 5.7.010, *DEFINITIONS*, TO ADD THE FOLLOWING DEFINITIONS: *ATTRACTING/ATTRACTANT, BIRDS, EDIBLE MATERIAL, FEEDING/FEED, HABITUATED, PUBLIC EMPLOYEE, SQUIRRELS, WATERFOWL, WILD TURKEY, WILDLIFE* AND AMEND THE DEFINITION FOR *IMPOUNDED*; ENACTING SECTION 5.7.400, *FEEDING/ATTRACTING WILDLIFE PROHIBITION*, TO PROHIBIT THE FEEDING OR ATTRACTING OF WILDLIFE WITHIN THE McCALL CITY LIMITS AND PROVIDING PENALTIES FOR VIOLATION.

WHEREAS, the intentional feeding of wildlife can cause animals to congregate in areas hazardous to public safety, such as sidewalks and roadways; and

WHEREAS, the intentional feeding of wildlife can attract an increased number of predators to urban areas, resulting in conflict with humans and domestic animals.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF McCALL, IDAHO:

Section 1: That Section 5.7.010, *Definitions*, of the McCall City Code is hereby AMENDED as follows, to-wit:

See Exhibit "A" attached hereto and, by this reference, incorporated herein as if set forth in full.

Section 2: That there is hereby ENACTED Section 5.7.400, *Feeding/Attracting Wildlife Prohibition*, to Chapter 7, *Animal Control*, Title 5, *Public Safety*, of the McCall City Code, to-wit:

See Exhibit "B" attached hereto and, by this reference, incorporated herein as if set forth in full.

PASSED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF McCALL, IDAHO, THIS ____ DAY OF _____, 2023.

Approved:

By _____
Robert S. Giles, Mayor

Attest:

By _____
BessieJo Wagner, City Clerk

EXHIBIT "A"

5.7.010: DEFINITIONS:

As used in this chapter, each of the terms defined has the meaning given in this section unless a different meaning is clearly required by the context. The word "shall" is mandatory, not directory.

ABUSE: Any case in which an animal has been the victim of intentional or negligent conduct resulting in the animal's bruising, bleeding, malnutrition, dehydration, burns, fractures or breaks of any bones, subdural hematoma, soft tissue swelling, prolonged exposure to the weather elements to the detriment of the animal's health, or death.

ANIMAL: Any organism, other than human being, needing food to maintain and sustain its life and which generally has mobility and a developed central nervous system.

AT LARGE: Off the premises of the owner and not under the control of the owner or person having control or custody either by leash, cord or chain.

ATTRACTING/ATTRACTANT/ATTRACT: When used as a noun, any substance, including but not limited to food, garbage, or salt/mineral/protein lick, which draws wildlife (except those birds and squirrels as identified in this Chapter); When used as a verb, the act of using edible material, attractant, and/or feed in a way that solicits consumption.

BIRDS: Any non-domesticated species belonging to the Order Aves other than Waterfowl and Wild Turkeys.

BITTEN: Seized, pierced, or cut with the teeth or with the jaws, other than when done by a canine puppy less than four (4) months old, in play; and "seized" in this regard means with sufficient force to scratch or bruise, or to pierce, cut or tear clothing.

DEPARTMENT: The McCall police department.

DOG: Either a male or a female member of the biological family Canidae, including Canis familiaris, and including also any other member of that family at any time owned, possessed or harbored, whether neutered or spayed.

DOMESTIC ANIMAL: An animal of a species of vertebrates that has been domesticated by humans so as to live and breed in a tame condition and depend on humankind for survival.

EDIBLE MATERIAL: Any human or animal food, food bi-product, salt/mineral/protein lick, organic material, refuse, or garbage.

ENCLOSURE: A fence or structure of at least six feet (6') in height, forming or causing containment suitable to prevent the unauthorized entry of a person and suitable to confine an animal in conjunction with other measures which may be taken by the owner, such as tethering of the animal. Such enclosure shall be securely enclosed and locked and designed with secure sides, top and bottom and shall be designed to prevent the animal from escaping.

FEEDING/FEED: When used as a noun, Aa substance composed of grain, mineral, protein, salt, fruit, vegetable, hay, or any other food material or combination of these edible materials, whether natural or manufactured, tended, deposited, or distributed in an area frequented and consumed by wildlife (except those birds and squirrels as identified in this Chapter); When used as a verb, the act of providing edible material, attractant, and/or feed.

FIERCE OR DANGEROUS DOG: A dog (other than a dog belonging to a law enforcement agency and acting pursuant to direction of its law enforcement handler) as described below:

(A) Fierce: Any dog which bites, inflicts injury, assaults or otherwise attacks a human being or domestic animal without provocation; for purposes of this definition, it is not justification that the human being when bitten was interfering with the dog's attack upon another human being or animal, or has menaced a human being which human being was not on the property of the dog's owner;

(B) Dangerous Dog: A dog, which was previously declared a "threatening dog" and has displayed repeated violations of potentially dangerous behaviors including, but not limited to, a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animal without provocation.

Notwithstanding the definition of "fierce or dangerous dog" herein, no dog may be declared fierce or dangerous if an injury or damage is sustained by a person who, at the time such injury or damage was sustained, was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was teasing, tormenting, abusing or assaulting the dog or was committing or attempting to commit a crime. No dog may be declared fierce or dangerous if the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified battery or assault.

HABITUATED: Any wildlife relatively accustomed to eating, resting, birthing, defecating, and otherwise living within city limits - outside of their normally wild habitat. Habituated wildlife may actually cease exhibiting some typical behaviors for that species (e.g. resident deer which do not migrate, mountain lions which den under human structures like porches, etc.).

IMPOUNDED: Taken into the custody of the department's ~~city pound~~ animal shelter.

MENACE: The threat of harm, confinement or personal injury of a human by an animal.

MISUSE: The intentional causing of an animal to perform a noncustomary task, which could be dangerous or harmful to the animal.

NUISANCE DOG: A dog which barks or creates noise in an excessive, continuous or untimely manner, molests passersby, chases vehicles, habitually attacks other domestic animals, or trespasses upon public or private property in such a manner as to damage the property.

OWNER: Any person owning, possessing, harboring, caring for or having any custodial duties over any dog in his or her control within the city. "Own" means owning, possessing, harboring, caring for, or having in his or her custodial control.

PRIVATE PROPERTY OPEN TO ENFORCEMENT: Includes private property open to the public; condominium or planned unit development (PUD) common area; condominium limited common area which is not reserved for the use of the owner; the common use areas of a mobile home park, or travel trailer court or park; and any other premises with respect to which a person with a right of possession superior to the owner's has invited the department to attend to a matter involving an owner's dog.

PUBLIC EMPLOYEE: Any State or City Employee or certified Peace Officer appointed to carry out and enforce each entity's respective laws and/or ordinances.

RECKLESS/RECKLESSLY: Engaging in conduct with a conscious disregard for the consequences, wherein the person has knowledge of the likely outcome of said conduct.

RESIDENT: An individual who has their primary residence within the McCall city limits.

SQUIRRELS: Any of the commonly found squirrel species (native or non-native) within McCall City limits which are typically associated with native habitats or urban landscapes. E.g., Red Squirrel, Eastern Fox Squirrel, Eastern Gray Squirrel, Chipmunks etc.

THREATENING DOG: A dog, while at large found to menace, chase, display aggressive behavior, or require defensive action by any person to prevent or discourage bodily injury; any dog which unprovoked, has killed, inflicted injury or otherwise caused injury by attacking another domestic animal off the property of the owner or keeper of the dog or upon streets, sidewalks or public grounds. Growling or barking or both together are not grounds upon which a dog can be found to be threatening.

WATERFOWL: Any wild or habituated migratory bird species of the taxonomic Order Anseriformes, Family Anatidae (ducks, geese, swans).

WILD TURKEY: Those species or subspecies of turkey as identified in the *Upland Game, Furbearer, and Turkey Seasons and Rules* published by the Idaho Department of Fish and Game.

WILDLIFE: Any species of non-domesticated animals as defined in Idaho Code 36-202(g), including, but not limited to: deer, moose, elk, pronghorn, black bear, mountain lion, wolf, coyote, fox, raccoon, skunk, wild turkey, waterfowl, etc. Provided, however, that birds (other than Wild Turkeys and Waterfowl) and squirrels are not considered wildlife under this Chapter.

EXHIBIT “B”

5.7.400 FEEDING/ATTRACTING WILDLIFE PROHIBITION

- A. It is unlawful for any person to intentionally and knowingly feed or attract wildlife (including habituated wildlife) except birds and squirrels, by placing, depositing, distributing, storing, or scattering food, edible material, garbage, feed, or other attractants, with the intent to lure, attract, entice, or feed wildlife on public or private land within the City of McCall.
- B. It is unlawful for any person to recklessly feed or attract wildlife (including habituated wildlife) except birds and squirrels, by allowing access to food, edible material, garbage, feed, or other attractants, which has the effect of luring, attracting, enticing, or feeding wildlife on public or private land within the City of McCall.
- C. Exceptions: This ordinance does not apply to:
 - 1. Public employees or their authorized agents acting pursuant to State of Idaho wildlife management plans or acting within the scope of their authority for wildlife management purposes, or carrying out authorized emergency winter feeding operations, or otherwise carrying out authorized baiting, feeding, or trapping activities in accordance with government authorized wildlife management practices.
 - 2. Any authorized facilities/individuals acting pursuant to State of Idaho and City of McCall permits and licenses responsible or charged with the care of wildlife (i.e. rehabilitation facilities, or authorized and licensed wildlife rehabilitators).
 - 3. Edible material located in a residence, closed vehicle, fully enclosed storage structure, or in an enclosed trash container, where the owner or person in charge has taken reasonable measures to restrict access by wildlife. Full compliance with McCall City Code 5.8.050 shall constitute prima facie evidence that reasonable measures have been taken.
 - 4. A person feeding their own domestic animals as allowed by city ordinances, provided that such food is not left in the open for wildlife to access.
 - 5. Seeds, nectar, and other material to attract birds (other than wild turkey and waterfowl) or squirrels in a feeder placed in such a manner as to make it inaccessible to other wildlife. Feeders shall not be placed in locations in which snow accumulation makes it possible for other wildlife to reach the feeder during the winter months.
 - 6. Compost piles that are fully contained and/or made inaccessible to wildlife.
 - 7. Persons who are engaged in a lawful trapping activity allowing edible bait with all appropriate licenses and/or permits from Idaho Department of Fish and Game and according to both State of Idaho and City of McCall rules and regulations for such trapping activity; and activities that include lawful recreational trapping of wildlife and lawful trapping of nuisance wildlife by both the public and authorized agents of the

State of Idaho, the City of McCall, and the U.S. Department of Agriculture Wildlife Services.

8. Persons engaged in lawful fishing activities as authorized by the Idaho Department of Fish and Game.
 9. Native ornamental plants, vegetable gardens, fruit-bearing trees, flower gardens, lawn, naturally growing vegetation, native vegetation species intentionally cultivated, and the part of those plants or trees and the fruit/berries that fall to the ground from them. Non-native ornamental and fruit bearing trees shall not be planted, and do not qualify as an exception. Existing ornamental, non-native fruit bearing trees shall be managed to prohibit wildlife (including habituated wildlife) from obtaining the trees' fruit, and therefore, shall be either adequately fenced or maintained with complete harvesting as soon as fruit is available.
 10. The normal feeding of livestock and/or the practice of raising crops and crop aftermath, including hay, alfalfa and grains, produced, harvested, stored or fed to domestic livestock in accordance with approved agricultural practices within the City of McCall. There is a presumption that on land zoned for agriculture, as defined in Section 3.6.01(A), that the alleged feeding and attraction is exempt from the prohibitions contained in this Section.
- D. Enforcement: A City of McCall Animal Control or Code Enforcement officer, a McCall Police Officer, or any other State of Idaho certified Peace Officer may investigate and issue a warning or citation for a violation of this ordinance. In the event any property shall be found to contain any wildlife or habituated wildlife feed or attractant(s), the feed and attractant(s) shall be removed or secured within two (2) days' notice, unless an alternate time frame is provided by the Officer.
- E. Penalties: Any person found violating this section shall be guilty of an infraction and fined one hundred dollars (\$100.00); provided further, that any person who violates this section for a second or subsequent offense within twelve (12) months after a prior violation of this section shall be subject to the general penalty found in section 1.3.1 of this Code.



A SUMMARY OF ORDINANCE NO. _____
PASSED BY THE CITY OF McCALL, IDAHO

AN ORDINANCE OF THE CITY OF McCALL, VALLEY COUNTY, IDAHO, AMENDING TITLE 5, *PUBLIC SAFETY*, CHAPTER 7, *ANIMAL CONTROL*, OF THE McCALL CITY CODE, TO-WIT: AMENDING SECTION 5.7.010, *DEFINITIONS*, ADDING AND SUPPLEMENTING DEFINITIONS; ENACTING SECTION 5.7.400, *FEEDING/ATTRACTING WILDLIFE PROHIBITION*, PROHIBITING THE FEEDING OR ATTRACTING OF WILDLIFE WITHIN THE McCALL CITY LIMITS AND PROVIDING PENALTIES FOR VIOLATIONS.

The principal provisions of the Ordinance are as follows:

- Section 5.7.010 adds additional definitions for *Attracting/Attractant, Birds, Edible Material, Feeding/Feed, Habituated, Public Employee, Reckless/Recklessly, Squirrels, Waterfowl, Wild Turkey*, and *Wildlife* and amends the definition for *Impounded*;
- Section 5.7.400, a newly enacted provision, prohibits intentionally and knowingly feeding or attracting of wildlife within the City of McCall. Such prohibitions include the placing, depositing, distributing, storing, or scattering of food, edible material, garbage, feed, or other attractants– with the intent to lure, attract, entice, or feed wildlife. The Ordinance further prohibits reckless actions that have the effect of luring, attracting, enticing, or feeding wildlife.

The Ordinance allows for certain exceptions such as: feeding domestic animals; feeding certain birds and squirrels with specific placements; fully secured compost piles; edible materials stored in secure places; native plants, vegetable gardens, and specific tree types, with certain conditions for existing non-native trees; feeding livestock and practicing approved agricultural activities; licensed trapping and fishing activities; government wildlife management actions; and authorized and licensed facilities or individuals for wildlife care.

If any property is found with wildlife feed or attractants, it must be removed or secured within two (2) days unless the enforcement officer specifies otherwise. Violations constitute an infraction with a penalty of a fine of one-hundred dollars (\$100). Subsequent offenses within twelve (12) months shall be enforced as misdemeanors pursuant to Section 1.3.1 of McCall City Code.

Together, the new amendments and additions to City Code reflect the importance of safeguarding wildlife as a part of McCall’s historical and cultural heritage. The new prohibitions are further supported by expert assessments that confirm the act of feeding wildlife is directly associated with adverse consequences, including health deficiencies, disturbances in migratory patterns, and an elevated incidence of disease outbreaks among wildlife. As such, the City has enacted these prohibitions to ensure the maintenance of a balanced ecosystem for the well-being of all.

Summary of Ordinance No. _____
_____, _____

The Ordinance shall take effect upon its passage, approval, and publication according to law. The full text of the Ordinance is available for review at City Hall and will be provided by the City Clerk to any citizen upon personal request, or can be viewed on the City website at www.mccall.id.us.

APPROVED BY THE COUNCIL OF THE CITY OF McCall, IDAHO, THIS _____ DAY OF _____, 2023.

Approved:

By _____
Robert Giles, Mayor

ATTEST:

By _____
BessieJo Wagner, City Clerk

Summary of Ordinance No. _____
_____, _____

