

Introduced by: City Manager Herron
Date: February 12, 2002
Public Hearing: February 26, 2002
Public Hearing: March 12, 2002
Public Hearing: March 26, 2002
Action: Enacted
Vote:

CITY OF BETHEL, ALASKA

ORDINANCE #02-06

AN ORDINANCE AMENDING TITLE 9 OF THE BETHEL MUNICIPAL CODE BY ENACTING A CIVIL NUISANCE ABATEMENT PROGRAM

BE IT ORDAINED by the City Council of Bethel, Alaska, that:

Section 1. Classification. This ordinance is permanent in nature and shall be placed in the Bethel Municipal Code.

Section 2. Amendment of Title 9. Title 9 of the Bethel Municipal Code is amended by adding the following Chapter 9.36, entitled "Public Nuisance Abatement."

9.36 Public Nuisance Abatement

- 9.36.010 Purpose
- 9.36.020 Definitions
- 9.36.030 Prevention and Abatement of Nuisances
- 9.36.040 Notice and Order
- 9.36.050 Hearing Regarding Notice and Order; Decision; Appeal
- 9.36.060 Conduct of the Hearing
- 9.36.070 Effect of Abatement Efforts: Defenses
- 9.36.080 Abatement Orders
- 9.36.090 Penalties and Remedies
- 9.36.100 Remedies Under Other Laws Unaffected
- 9.36.110 Effect of Property Conveyance
- 9.36.120 Nature of Remedies
- 9.36.130 Civil Enforcement Remedies
- 9.36.140 Liens

9.36.010 Purpose

Various laws are directed towards the conduct of persons on private property, and are intended to insure that neither the conduct of such persons, nor the physical condition of such properties, constitutes a nuisance to other residents in the vicinity of the properties or passers-by on the public rights of way. These laws are generally enforced against the persons immediately responsible for the violations. Notwithstanding these enforcement efforts,

recurring violations of such laws on private property where individuals immediately responsible for such violations congregate can result in the creation of public nuisances which seriously threaten the peace and safety of neighboring residents and undermine the quality of life of the residents of the city. The purposes of this chapter are to enact a local public nuisance law in order to: make property owners where such individuals congregate vigilant in preventing public nuisances on their property; make such property owners responsible for the use of their property by tenants, guests, occupants, and others on their property; provide locally enforceable remedies for violations of local public nuisance laws; and otherwise to deter public nuisances.

9.36.020 Definitions

The following words used in this chapter shall have the following meanings unless the context clearly requires otherwise:

1. "Abate" means to bring to a halt, eliminate, or where that is not possible or feasible, to suppress, reduce and minimize.
2. "Leasehold interest" means a lessor's or lessee's interest in a parcel under a verbal or written lease agreement.
3. "Legal or equitable interest" means every legal and equitable interest, title, estate, tenancy and right of possession recognized by law or equity in a parcel, including but not limited to, freeholds, life estates, future interests, condominium rights, time-share rights, leasehold interests, ownership interests, easements, licenses, liens, deeds of trust, contractual rights, and any right or obligation to manage or act as agent or trustee for any person holding any of the foregoing interests in a parcel.
4. "Notice and Order" means a Notice of Violation of Public Nuisance Ordinance and Order To Abate and Otherwise Comply With Public Nuisance Ordinance issued in accordance with this Chapter.
5. "Ownership" or "Ownership Interest" means a fee interest in title to a parcel.
6. "Parcel" means any lot or other unit of real property upon which hotels or lodges are located. This term does not include real property upon which government offices, jails, courthouses, hospitals or drug or alcohol treatment facilities are located.
7. "Public nuisance" means the occurrence of two or more separate violations within a ninety (90) day period even if the persons accused of such violations are not convicted, have not entered no contest pleas, or entered default judgments within the ninety (90) day period in which the separate violations occurred.
8. "Separate violation" means any violation of any provision of Chapters 9.08, 9.12, 9.16, or 9.24 of the Bethel Municipal Code or AS 11.41.200 through AS 11.41.230 (assault); AS 11.46.320, AS 11.46.330 (criminal trespass); AS 11.61.110, AS 11.61.120 (offenses against

public order), or AS 11.71.010 through 11.71.090 (controlled substances), provided that such violation has resulted in a conviction, a no contest plea or a default judgment, and has occurred on a parcel. Multiple separate violations committed within any twenty-four hour period of time by the same person shall be considered a single separate violation for purposes of this chapter.

9.36.030 Prevention and Abatement of Public Nuisances

A. No person having a legal or equitable interest in any parcel shall commit, conduct, promote, facilitate, permit, fail to prevent or otherwise let happen, any public nuisance. Such person shall abate and prevent any such public nuisance.

B. The city manager may issue a Notice and Order in accordance with section 9.36.040 of this chapter that would require the person upon whom the Notice and Order is served to abate or prevent a public nuisance, pay penalties, or otherwise comply with this chapter.

9.36.040 Notice and Order

A. The city manager may issue a Notice and Order by personal service or by certified mail service on the person with a legal or equitable interest in the parcel that is the subject of the Notice and Order. If the identity and address of the person with a legal or equitable interest in the parcel cannot be ascertained through the Bethel District Recording Office or another reasonable method, then the Notice and Order shall be sent by certified mail to the last known person with a legal or equitable interest in the parcel at his or her last known address, and posted at or on the parcel that is the subject of the Notice and Order. Employees or agents of the city are authorized to enter upon the parcel for the purpose of serving or posting a Notice and Order. Certified mail service is complete upon mailing. Personal service is complete upon handing the Notice and Order to the person being served.

B. The Notice and Order shall set forth the reasons for its issuance, contain a brief description of the five or more separate violations which serve as the basis for the issuance of the Notice and Order, identify the resultant penalties or other required actions, including but not limited to any abatement orders, and the Notice and Order shall otherwise comply with the provisions of this chapter.

C. Person(s) served with a Notice and Order shall fully comply with the Notice and Order within fifteen (15) days or such longer time as may be required in the Notice and Order for compliance. Failure to comply with a Notice and Order shall constitute a separate violation of this chapter. Each day following the deadline for compliance that a person fails to fully comply with a Notice and Order constitutes a separate violation of this chapter unless the person has contested the Notice and Order in strict accordance with the provisions of this chapter.

D. The Notice and Order shall inform the person served with it that he or she may contest it by filing a written request with the city manager for review of the Notice and Order by

the city council in accordance with the procedures provided for in this chapter, and that the written request must be filed no later than fifteen (15) days after the Notice and Order was served.

9.36.050 Hearing Regarding Notice and Order; Decision; Appeal

A. A person served with a Notice and Order may contest it by filing a written request with the city manager for review of the Notice and Order by the city council in accordance with the procedures provided for in this chapter. The written request for such review must be filed no later than fifteen (15) days after service of the Notice of Public Nuisance.

B. If the city manager timely receives a written request for review, a hearing shall be conducted by a hearing officer, appointed by the city council at its next regularly scheduled meeting which occurs ten (10) or more days following the timely filed written request. The hearing officer shall be an attorney licensed to practice law in Alaska who is not the City Attorney. In addition to conducting the hearing, the hearing officer shall make rulings regarding the admission of evidence and procedure, and prepare a proposed written decision for the city council to consider, upholding or denying in whole or in part the Notice and Order, including but not limited to any penalties, abatement order, or other remedies provided for in the Notice and Order. The decision shall contain findings of fact and conclusions of law.

C. The city council may adopt the hearing officer's decision or decide the matter itself based on the record created before the hearing officer. The record shall include an audio tape recording or transcript of the hearing before the hearing officer. The hearing officer shall be present at the city council's consideration of the hearing officer's proposed decision to assist and advise the city council.

D. An appeal from any final decision of the city council shall be filed in Superior Court, Fourth Judicial District, Bethel, Alaska, no later than thirty (30) days following service of the final decision upon the parties. Review of the decision by the Superior Court shall be limited to determining whether it is supported by substantial evidence in the record and whether the abatement order, penalties and other remedies imposed are authorized under this chapter.

9.36.060 Conduct of the Hearing

A. After the city council appoints a hearing officer, the city clerk shall inform the city manager and the person served with the Notice and Order of the appointment of the hearing officer. The hearing officer shall set a time and place for the hearing to be conducted within thirty (30) days of his or her appointment as the hearing officer unless the hearing officer orders that the hearing shall be conducted at a later date, which shall not exceed ninety (90) days following the appointment of the hearing officer.

B. The hearing officer shall prescribe rules for the conduct of the proceeding. In developing such rules, the hearing officer shall be guided by the procedural rules established in

AS 44.62.430 through 44.62.540 (state administrative procedures for the conduct of administrative hearings by hearing officers) and this chapter. In the event of a conflict between the provisions of this chapter and AS 44.62.430 through AS 44.62.540, the provisions of this chapter shall apply.

C. The hearing officer's proposed decision shall be issued within fifteen (15) days of the close of the record in the hearing.

D. The city shall have the burden to prove by clear and convincing evidence the facts that form the basis for the public nuisance. The city shall be afforded substantial deference in fashioning an appropriate abatement order, penalties, and/or other remedies as long as such orders, penalties and remedies are provided for in this chapter.

E. A hearing officer may be appointed to conduct appeals without complying with Section 4.20.170 of this Code.

9.36.070 Effect of Abatement Efforts: Defenses

A. It shall be a defense to a Notice and Order that, before the service of the Notice and Order, the person served has:

1. Evicted, or attempted to evict by commencing and pursuing with due diligence appropriate court proceedings, all of the tenants and occupants of the parcel that committed each of the separate violations that constitute the alleged public nuisance; and

2. Undertaken and pursued with due diligence, considering the nature and extent of the separate violations, reasonable means to avoid a recurrence of similar violations on the parcel by the present and future tenants or occupants of the parcel.

B. Steps taken to abate the public nuisance after receiving a Notice and Order do not constitute a defense to penalties or other required actions provided for in a Notice and Order but may be taken into account by the hearing officer and the city council in upholding or denying, in whole or in part, any abatement order included in the Notice and Order.

9.36.080 Abatement Orders

A. Every abatement order issued under this chapter shall set forth the reasons for its issuance; shall be reasonably specific in its terms; shall describe in reasonable detail the acts and conditions authorized, required or prohibited; and shall be binding upon the parcel, the person issued the Notice and Order, all persons with a legal or equitable interest in the parcel, and their agents, employees or other representatives.

B. Abatement orders shall be narrowly tailored to address the particular kinds of separate violations that form the basis of the alleged public nuisance. Such orders may:

1. Require those bound by the order to take specified steps to abate the public nuisance;
2. Require those bound by the order to require certain named individuals to stay away from the parcel at all times or for some specified reasonable period of time;
3. Allow city officials and employees access to the parcel to inspect it for compliance with an abatement order; and
4. Require all actions which are necessary for the purposes of abating the public nuisance or preventing the public nuisance from occurring or recurring; provided, however, that no such order shall require the seizure of, the forfeiture of title to, or the temporary or permanent closure of, a parcel, or the appointment of a special receiver to protect, possess, maintain or operate a parcel.

9.36.090 Penalties and Remedies

A. A person who violates any provision of this Chapter shall be subject to a civil penalty of:

1. Three hundred dollars for the first violation;
2. Seven hundred dollars for the second violation;
3. One thousand dollars for the third and all subsequent violations.

B. An abatement order may be issued in accordance with the provisions of this chapter.

C. Penalties shall be paid within fifteen (15) days of service of the Notice and Order or within ten (10) days after the city council's final decision if a party served with a Notice and Order timely requests a hearing to contest it in accordance with the provisions of this chapter. If the city council's decision is timely appealed to Superior Court in accordance with the provisions of this chapter, the penalty shall be paid within ten (10) days after an appellate decision upholding the city council's decision to impose penalties.

D. Each day that a person fails to comply with the provisions of this chapter shall constitute a separate violation of this chapter, including but not limited to each day that a person fails to comply with any abatement order issued under this chapter.

E. In addition to other penalties and remedies provided for in this chapter, a person who was previously issued a Notice and Order that was not contested or was upheld by the hearing officer and city council, shall be required to pay all fees and costs, including but not limited to full reasonable attorney fees and costs, incurred by the City

in bringing about compliance with any subsequent Notice and Order that is not contested or is upheld by the hearing officer and the city council.

9.36.100 Remedies Under Other Laws Unaffected

Nothing in this chapter shall be construed as limiting or otherwise prohibiting the city or any other person from pursuing any other remedies available at law or in equity, or requiring that evidence or property seized, confiscated, closed, forfeited or destroyed under other provisions of law be subjected to the special remedies and procedures provided in this chapter.

9.36.110 Effect of Property Conveyance

When any legal or equitable interest to a parcel is conveyed from one person to another, any separate violation existing at the time of the conveyance which could be used under this chapter to prove that a public nuisance exists with respect to such parcel, shall not be so used unless a reason for the conveyance was to avoid the parcel being declared a public nuisance pursuant to the provisions of this chapter. It shall be a rebuttable presumption that a reason for conveyance of the parcel was to avoid the parcel from being declared a public nuisance pursuant to the provisions of this chapter if: (1) the parcel was conveyed for less than fair market value; (2) the parcel was conveyed to an entity or entities controlled directly or indirectly by the person conveying the parcel; or (3) the parcel was conveyed to a relative of the person conveying the parcel.

9.36.120 Nature of Remedies

The remedies provided in this chapter shall be civil and remedial in nature.

9.36.130 Civil Enforcement Remedies

A. The city may enforce any order or decision issued in accordance with this chapter that is not complied with by the person to whom the order or decision is issued by any method available in law, including but not limited to lien, foreclosure, sale of real and personal property, or a civil action. In addition to seeking enforcement of an order or decision, a civil action may be instituted for injunctive and compensatory relief.

9.36.140 Liens

A. The fines, fees and other costs due and owing the city under this chapter constitute a lien in favor of the city upon the assets and property of all persons liable for the payment of the fines, fees and other costs.

B. The lien imposed by this section arises and attaches at the time that payment becomes delinquent and continues until the entire amount due is paid.

C. If delinquent fines, fees and other costs are not paid within thirty (30) days of service of an order or decision, a notice of lien may be recorded in the office of the district recorder in any recording district where the person liable has assets or property, and upon recordation, a lien arising under this section has priority over any other liens except those for special assessments or those granted priority by state or federal law.

D. An action to foreclose the lien created by this section shall be commenced and pursued in the manner provided for the foreclosure of liens in AS 09.45.170 through AS 09.45.220, or other applicable state law.

E. The remedy provided in this section is not exclusive and shall be in addition to all other remedies available to the city to collect the fines, fees and other costs due under this chapter.

F. The failure to record a lien does not constitute a waiver or abrogation of any priorities, rights or interests of the city in law or equity.

G. Upon full satisfaction of payment of all fines, fees and other costs, the city manager shall file a certificate discharging the lien.

Section 3. Effective Date. This ordinance shall become effective thirty (30) days after its adoption.

ENACTED THIS 26th DAY OF MARCH 2002, by a vote of 7 in favor and 0 opposed.

ATTEST:

Stanley "Tundy" Rodgers, Mayor

Colleen Soberay, City Clerk