

Introduced by: Mayor Dymment &
Council Member
Williams
Date: October 11, 2005
Public Hearing: October 25, 2005
November 15, 2005
Action: Failed
Vote: 2-3

CITY OF BETHEL, ALASKA

ORDINANCE #05-16

AN ORDINANCE ADOPTING CHAPTER 8.17 ENTITLED "BETHEL ALCOHOL DELIVERY SITE," AMENDING SECTION 4.17.030(D) ENTITLED "PAYMENT AND COLLECTION," AND REPEALING SECTION 4.17.040 ENTITLED "COMMUNITY DELIVERY SITES" AND CHAPTER 5.08 ENTITLED "ALCOHOLIC BEVERAGES"

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

SECTION 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Bethel Municipal Code.

SECTION 2. Amendment to 4.17.030(D). Section 4.17.030(D) of the Bethel Municipal Code is amended as follows (deleted language is stricken out and added language is underlined):

4.17.040 Payment and Collection.

...

D. A common carrier doing business within the city shall collect any use tax not previously collected from the buyer before any alcoholic beverage is released to buyer by any common carrier from any ~~community delivery site.~~ Designated Delivery Site provided for under Chapter 8.17 of the Code.

...

SECTION 3. Adoption of Chapter 8.17. There is adopted chapter 8.17 of the Bethel Municipal Code entitled "Bethel Alcohol Delivery Site:"

Chapter 8.17

BETHEL ALCOHOL DELIVERY SITE

Sections:

- 8.17.010 Definitions.
- 8.17.020 Bethel Alcoholic Beverage Delivery Site--Establishment.
- 8.17.030 Notice of Establishment.
- 8.17.040 Delivery Site Operation Responsibility.
- 8.17.050 Delivery Site Hours of Operation.
- 8.17.060 Importation Limits.
- 8.17.070 Delivery to Alcohol Delivery Site.
- 8.17.080 Receipt and Processing--Package Store Shipments.
- 8.17.090 Receipt and Delivery--Other Shipments.
- 8.17.100 Redelivery of Alcoholic Beverages.
- 8.17.110 Destruction of Undelivered Alcoholic Beverages.
- 8.17.120 Permit.
- 8.17.130 Appeals to manager.
- 8.17.140 Use and Possession of Permit.
- 8.17.150 Permit Revocation or Suspension.
- 8.17.160 Fees and Charges.
- 8.17.170 Penalties for violations.
- 8.17.180 Reporting violations.

8.17.010 Definitions. A. When used in this chapter, the following words and phrases have the meanings given unless the context in which used clearly indicates a different meaning was intended.

B. "Alcoholic beverage" means a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage by a person who possesses or attempts to possess it and that contains alcohol in any amount if the liquid is produced privately, or that contains one-half of one percent or more of alcohol by volume, if the liquid is produced commercially.

C. "Board" means the Alaska Alcoholic Beverage Control Board.

D. "City Delivery Site" means a delivery site established and operated by the city or operated under a contract with the city.

E. "Common carrier" means a motor vehicle, watercraft, aircraft, or railroad car available for public hire to transport freight or passengers.

F. "Controlled substance" means a drug, substance or immediate precursor included in the schedules set out in Alaska Statutes 11.71.140—11.71.190 or any successor statutes.

G. "Delivery site," "alcohol delivery site," "site," and "alcoholic beverage delivery site" mean a Designated Delivery Site or a City Delivery Site.

H. "Designated Delivery Site" means a common carrier that has been designated as a delivery site pursuant to Section 8.17.020(c).

I. "Distilled spirits" shall have the same meaning as is applied to the phrase in Title 4 of the Alaska Statutes.

J. "Domicile" means the place that the person has established as his or her residence which is the person's only home and is the place to which the person intends to return whenever the person is away.

K. "Import" means to bring personal property into the city by any means of transportation, whether transported while in the possession or control of the owner or intended recipient or transported in response to the request or arrangements made by or for the owner or intended recipient, but does not include personal property brought into the city by a common carrier that remains in the control and possession of a common carrier until it is transported outside the city by a common carrier.

L. "Inhalant" means a material or substance that is readily vaporizable at room temperature and whose vapors or gases, when inhaled, pose an immediate threat to the life or health of the person, or are likely to have adverse delayed effects on the health of the person. Inhalant includes but is not limited to gasoline; materials and substances containing petroleum distillates; and common household materials and substances whose containers bear a notice warning that inhalation of vapors or gases may cause physical harm.

M. "Malt beverage" shall have the same meaning as is applied to the word in Title 4 of the Alaska Statutes.

N. "Manager" means the City Manager of the City of Bethel or the City Manager's designee.

O. "Minimum permitted delivery time" means the time between the day the delivery site mails or otherwise gives notice to a permittee of the arrival of alcoholic beverages for the permittee and the twenty-second day following the day of notice.

P. "Permit" means a permit issued under this chapter.

Q. "Permittee" means an individual holding a current, valid permit issued under this chapter.

R. "Unconditional discharge" means that a defendant is released from all disability arising under a sentence, including probation and parole.

S. "Under the influence" means when, as a result of the use of alcoholic beverages, controlled substances or inhalants, the person's physical or mental abilities are impaired so that the person no longer is able to act with the caution characteristic of a person of ordinary prudence who is not under the influence of alcoholic beverages, controlled substances or inhalants.

T. "Wine" shall have the same meaning as is applied to the word in Title 4 of the Alaska Statutes.

8.17.020 Bethel alcoholic beverage delivery site--Establishment. A. There is established the Bethel alcoholic beverage delivery site. The City Delivery Site shall be at such location or locations as the manager recommends and the council approves. Designated Delivery Sites shall be such common carriers as are offered and accept a designation pursuant to subsection C of this section. A site should be in a well lighted, developed, commercial or industrial area with reasonable public access and where it can be easily monitored. The proximity to a police or other public safety facility that is manned twenty-four hours a day is encouraged.

B. A delivery site shall be clean, heated and well secured against break-in or other unauthorized entry. Inside the delivery site there shall be an area adequate to securely store alcoholic beverages delivered to the delivery site. The manager, after consulting with such advisors, security professionals, law enforcement agencies and

other persons shall devise and have installed or constructed such security systems, areas or arrangements as may be appropriate to ensure the security and safekeeping of alcoholic beverages delivered to a City Delivery Site.

C. The manager shall examine the facilities of each common carrier serving the City of Bethel after receiving permission from the carrier. If the manager determines that the facilities and procedures of the carrier meet, or could meet, the requirements for a Designated Delivery Site, he or she shall submit to the city council a report on each carrier facility inspected. Each report shall contain:

1. A summary of how freight and checked luggage, if applicable, is received, processed and delivered or released to the addressee;
2. How alcoholic beverages are received, processed and delivered or released to the addressee;
3. How undelivered freight, including alcoholic beverages, are disposed of;
4. A description of the facilities and procedures of the carrier that exist or that could be used to ensure that shipments of alcoholic beverages received will be secure and that delivery is made only to an individual authorized to receive the shipment; and

5. Changes that would need to be made to the carrier's facilities and procedures for it to be able to satisfactorily serve as a Designated Delivery Site. The manager may discuss a preliminary draft report with the carrier and shall consider alternatives suggested by the carrier. The final report on each carrier that indicates an interest in being designated as a delivery site shall be submitted to the council. The report shall contain the recommendation of the manager as to whether the carrier should be offered a designation as a delivery site and the specific conditions that must be met by the carrier before the designation, if recommended by the manager, may become effective. The manager's recommendations may be implemented by the manager unless at the council meeting at which the manager's recommendations are scheduled for council consideration and action, the council affirmatively rejects or disapproves, the recommendations. The manager's recommendations shall be deemed approved unless there are four affirmative votes on a motion to reject the manager's recommendations. The vote on a motion to amend the recommendations is of no effect unless the manager concurs in the change before a vote or the motion is taken.

D. The manager may impose new requirements and may modify existing requirements applicable to a Designated Delivery Site to ensure effective operation of the delivery site system. The manager, following delivery of written notice of intent and reasons for revocation or other proposed action, and after an opportunity for the common carrier to be heard and to respond to the reasons set out in the notice, may take action the manager determines to be appropriate under the circumstances found. The action may be revocation of the designation of the common carrier as a delivery site or may be a lesser deprivation or burden on the common carrier.

8.17.030 Notice of establishment. A. Upon the establishment of an alcohol delivery site under this chapter the manager shall give notice of the establishment to the Alaska Alcoholic Beverage Control Board. The notice shall include:

1. The name by which the site is to be known if other than the "Bethel Alcoholic Beverage Delivery Site";
2. The address of the site;
3. A request that the Alcoholic Beverage Control Board notify all holders of package store licenses who are authorized to ship alcoholic beverages in response to a written solicitation that the delivery site has been established and that all orders sent to a person in Bethel must thereafter be sent shipping prepaid to the purchaser at the delivery site address, or to such other delivery sites as are approved by the city; and
4. A request that the Board provide to the delivery site current and updated lists of the names of persons who, under AS 04.16.200, are convicted of a violation of AS 04.11.010.

B. The manager shall provide to all common carriers, whether or not designated as a delivery site, copies of the notice required to be posted under subsection C of this section. The notice shall set out the delivery requirements of this chapter and the maximum penalty that may be imposed for violations. The notice shall be appropriate for the carrier with respect to whether Designated Delivery Sites are used and whether the carrier is or is not a Designated Delivery Site.

C. Common carriers shall post notice provided by the city under this section in one or more conspicuous places in each of the following locations:

1. Where cargo or baggage is handled;
2. On bulletin boards where notices to employees required by law are posted;
3. Where persons claiming baggage or receiving cargo shipments claim their baggage or shipments; and
4. Where baggage and cargo shipments are physically delivered to the traveler, shipper or claimant.

8.17.040 Delivery site operation responsibility. A. The operation of a City Delivery Site shall be the responsibility of the city administration and shall be supervised by the manager. The site may be operated by city employees or by a responsible, bonded person under contract with the city.

B. A Designated Delivery Site shall be operated by officers, employees or agents of the common carrier in accordance with this chapter and the conditions of the designation.

C. The manager shall prescribe rules, policies and procedures, not inconsistent with the provisions of this chapter, as he or she determines to be appropriate. If the delivery site is operated by a person under contract with the city, or is a Designated Delivery Site, the manager retains the authority to establish delivery site rules, policies and procedures, but shall consult with the contractor or carrier prior to establishing or modifying rules, policies and procedures.

D. A delivery site may not employ or otherwise use a person in the operation of the delivery site to handle or secure alcoholic beverages if the person is:

1. Under the influence of an alcoholic beverage, controlled substance or inhalant;

2. Under a court order or a condition of bail, probation or parole that prohibits the person from consuming or possessing alcoholic beverages;
3. Is under twenty-one years of age; or
4. Has a criminal record as described in Section 8.17.100(B)(10) of this chapter.

8.17.050 Delivery site hours of operation. A. The manager shall establish a schedule of days and hours of operation for a City Delivery Site. Unless otherwise required under conditions of a designation of a common carrier as a delivery site, the common carrier may establish its own days and hours of operation consistent with subsection B of this section. The schedule shall be posted at each entrance to the delivery site.

B. The delivery site shall be open for receipt and redelivery of alcoholic beverages at least once a week for not less than three hours between the hours of eight a.m. and eight p.m. The manager may establish a schedule for the receipt of alcoholic beverages at a City Delivery Site that is different from the schedule for redelivery of alcoholic beverages.

C. The manager may authorize additional, unscheduled hours of operation of a City Delivery Site, on a temporary basis to accommodate special situations.

8.17.060 Importation limits. A. Within any calendar month, a person may not import into the city more than twelve gallons of malt beverages, twenty-four liters of wine, or ten and one half liters of distilled spirits.

B. A person may not import any amount of alcoholic beverage containing more than the percentage of alcohol by volume that is permitted by state law.

8.17.070 Delivery to alcohol delivery site. A. All alcoholic beverages sent into the city by a package store shall be sent shipping prepaid and shall be addressed and delivered to a delivery site.

B. A person importing alcoholic beverages into the city in a quantity exceeding one liter of distilled spirits, or two liters of wine or one gallon of malt beverage in a single day or single shipment shall ship such alcoholic beverages into the city shipping prepaid, addressed to and for delivery to a delivery site. The person who has possession of alcoholic beverages subject to this subsection at the time they are imported into the city or who is a common carrier that is not a Designated Delivery Site and to which the shipment is transferred for delivery to the Bethel addressee, shall deliver or cause such alcoholic beverages to be delivered to a delivery site; provided, alcoholic beverages transported as checked baggage accompanying a traveler on a regularly scheduled air carrier that is not a Designated Delivery Site may not be claimed by the traveler at the air terminal, but shall be delivered to a delivery site by the air or other common carrier immediately or at the earliest time the delivery site is next open to receive alcoholic beverages if the alcoholic beverages exceed one liter of distilled spirits, two liters of wine or one gallon of beer; an amount that is at or below these limits is not required to be delivered to or processed through a delivery site.

C. A person may not open, consume or transfer to another any alcoholic beverage required to be delivered to a delivery site until after such alcoholic beverage has been delivered as required by this section and redelivered to the purchaser or owner.

8.17.080 Receipt and processing--Package store shipments. A. Upon the receipt of alcoholic beverages shipped from a package store, a delivery site shall:

1. Receive the container;
2. Note on the delivery site records and on any shipping document tendered at delivery any damage that appears to have occurred to the container or its contents;
3. Ensure that the date received, name of the purchaser and the invoice number are clearly marked on the container;
4. Remove the invoice from the container;
5. Record the quantities of each kind of alcoholic beverage contained in the container and enter the quantities on the purchaser's monthly record or on a log kept for the city;
6. Record sales or use tax and other information as may be required by the manager;
7. Determine whether the purchaser is authorized to receive the alcoholic beverages on the invoice;
8. Provide the purchaser with notice of receipt of the alcoholic beverages and the amount due for sales or use taxes, handling and storage fees and other charges, levies or taxes.

B. If the purchaser is not authorized to receive the alcoholic beverages, the alcoholic beverages may not be delivered to that person or to another person and the delivery site shall retain all alcoholic beverages that cannot be delivered until the earlier of the time they are lawfully delivered or until they are disposed of by the common carrier if held by a Designated Delivery Site or are destroyed under the provisions of this chapter if held by a City Delivery Site.

C. If the purchaser is authorized to receive the alcoholic beverages, they shall be delivered to the person at the delivery site after the person executes such certifications as are required by the Board and the manager and upon payment of all taxes, handling and storage fees and other charges, levies or taxes owing.

D. The records created or maintained by a delivery site concerning recipients and alcoholic beverages delivered to and released by the delivery site are confidential and are not public records, and shall not be disclosed except as provided in this section. Such records shall be disclosed only to those city and delivery site officials and employees who require access to such records for the purpose of operating the delivery site. Additionally, at reasonable times, such records may be made available to the Alaska State Troopers, the City of Bethel Police Department and the Alcoholic Beverage Control Board for inspection. No other disclosures shall be made unless required by court order.

8.17.090 Receipt and delivery--Other shipments. A. Alcoholic beverages required to be delivered to the delivery site that are not delivered under Section 8.17.080 shall be delivered at the earliest opportunity by the person importing the alcoholic beverages or the person otherwise required under Section 8.17.070(B) to deliver the alcoholic beverages to the delivery site. Upon delivery, the delivery site shall remove and examine the invoice and may require a container delivered to be opened for inspection. Based on the invoice or actual inspection, the delivery site shall make an inventory of the contents of each container and shall process the alcoholic beverages as provided in Section 8.17.080(A)(2)--(8) except the addressee or owner shall be substituted for the purchaser.

B. If the owner or the person to whom the alcoholic beverages are addressed is not authorized to receive the alcoholic beverages, the alcoholic beverages may not be delivered to that person or to any other person and the delivery site shall retain the alcoholic beverages that cannot be delivered until the earlier of the time they are lawfully delivered or until they are disposed of by the common carrier if held by a Designated Delivery Site or are destroyed under the provisions of this chapter if held by a City Delivery Site.

C. If the owner or addressee is authorized to receive the alcoholic beverages, the alcoholic beverages shall be delivered to the owner or addressee after the execution of any certification required by the Board or the manager and upon payment of all taxes, handling and storage fees and other charges, levies or taxes owing.

8.17.100 Redelivery of alcoholic beverages. A. Delivery of alcoholic beverages by the delivery site may occur only at the delivery site. Delivery at a City Delivery Site may be made only by an authorized officer or employee of the city or by an authorized officer or employee of the City Delivery Site contract operator if the site is operated under a contract with the city. Delivery at a Designated Delivery Site may be made only by an officer, employee or agent of the common carrier authorized by the common carrier to make such deliveries.

B. The following persons are not authorized to receive alcoholic beverages:

1. A person who is under the influence of an alcoholic beverage, controlled substance or inhalant;
2. A person who is unable to provide to the delivery site the person's current, valid permit;
3. A person who is unable to satisfy to the delivery site employee that they are the person to whom the permit was issued;
4. A person who has received during the current calendar month the maximum quantity of one or more of the types of alcoholic beverages permitted to the person under this chapter; or who, upon delivery of the alcoholic beverages would exceed a limit; provided, so much of the beverages sought may be delivered to the extent the delivery does not cause the person to exceed their monthly limit for the alcoholic beverage;
5. A person who fails or refuses to pay all amounts owing the city and delivery site with respect to the alcoholic beverages;

6. A person who fails or refuses to execute a certificate required by the Board or the manager;

7. For so long as a court order is in effect, a person who is the subject of a court order prohibiting the person from consuming alcohol, controlled substances or inhalants, or from possessing an alcoholic beverage, controlled substance or inhalant;

8. For so long as the condition is in effect, a person who has been released on bail, probation, parole or under similar circumstances, if a condition of the release is that the person not consume or possess alcoholic beverages, controlled substances or inhalants;

9. A person who is not able to satisfactorily prove that their domicile is the place shown on their permit;

10. A person who has a criminal record as provided for in this subsection;
a. Two years have not elapsed from the person's unconditional discharge due to a conviction, or adjudication as a delinquent, for any of the following offenses or a law or ordinance from another jurisdiction with similar elements:

(1) Driving while intoxicated under AS 28.35.030 or AS 28.33.030, or refusal to submit to a chemical test under AS 28.35.032;

(2) A crime involving domestic violence, as that term is defined under AS 18.66.990, or violating a protective order under AS 11.56.740; or

(3) Misconduct involving weapons under AS 11.61.190—.220.

b. Five years have not elapsed from the person's unconditional discharge due to a conviction, or adjudication as a delinquent, for any of the following offenses or a law or ordinance from another jurisdiction with similar elements:

(1) A felony violation or a felony attempt to commit a violation of AS 11.41; or

(2) A misdemeanor violation of, or a misdemeanor attempt to violate a provision of Title 4 of the Alaska Statutes; or

c. Ten years have not elapsed from the person's unconditional discharge due to a conviction, or adjudication as a delinquent, for a felony violation or a felony attempt to violate a provision of Title 4 of the Alaska Statutes or a law or ordinance from another jurisdiction with similar elements.

C. The authorized officer or employee of a delivery site may not deliver alcoholic beverages to a person who is not authorized to receive alcoholic beverages.

D. A person not authorized to receive alcoholic beverages may not receive alcoholic beverages at a delivery site.

E. The authorized officer or employee of a delivery site may not deliver alcoholic beverages to a person and a person is not authorized to receive alcoholic beverages at a delivery site if all of the requirements of this chapter have not been met. Additionally, the authorized officer or employee of a delivery site may not deliver alcoholic beverages to a person and a person is not authorized to receive alcoholic beverages at a delivery site if:

1. The package holding the alcoholic beverages is not clearly labeled with the name of the intended recipient or if the package displays the names of more than one recipient;

2. The identity of the recipient has not been confirmed by checking a government-issued identification card containing the person's photograph or establishing another means of positive identification;

3. The recipient is different than the person whose name appears on the container as the recipient;

4. The amount released to a recipient, in one calendar month is more than a package store is permitted to ship to a purchaser in one calendar month under AS 04.11.150(g) or more than the amount a person may import in one calendar month under Section 8.17.060, whichever is less;

5. The alcoholic beverage or its container violates AS 04.16.100, 04.16.110 or this chapter; or

6. The recipient has not paid any applicable taxes or fees.

F. Unless the shipper is a licensed package store and the shipping container complies with AS 04.16.175, the alcoholic beverages may not be released until the alcoholic beverages have been inspected to determine if release would be lawful under this subsection; the alcoholic beverages may only be inspected pursuant to a search warrant, or written consent to the opening and inspection by the intended recipient of the package.

G. If the delivery site refuses delivery to a person for reasons set out in subsections (B)(7), (B)(8), or (B)(10) of this section, the burden of showing that the court order, condition of release or criminal record is not in effect is upon the person that is the subject of the court order or condition of release, or who has or had the criminal record.

H. Alcoholic beverages not delivered to a permittee by a City Delivery Site for any reason shall be held at the delivery site for not less than twenty-one days from the date of notice of availability to the purchaser, addressee or permittee. After such time, the alcoholic beverages may be destroyed as provided in Section 8.17.110.

I. Alcoholic beverages not delivered to a permittee by a Designated Delivery Site shall be retained and disposed of under laws applicable to the common carrier, or, if the common carrier elects, as provided for undelivered alcoholic beverages at a City Delivery Site.

J. A person who is refused delivery shall be provided with a written statement from the delivery site employee refusing delivery clearly stating the reason for the refusal to deliver and stating the date, if applicable, after which the alcoholic beverages may be destroyed if not sooner delivered. If the delivery is refused at a City Delivery Site or a designated site that has elected under subsection I of this section to be bound by the City Delivery Site disposal procedures, the person shall be informed of their right to appeal to the manager the refusal to deliver.

8.17.110 Destruction of undelivered alcoholic beverages at a City Delivery Site.

A. Alcoholic beverages at a City Delivery Site that have not been delivered within the minimum permitted delivery time may be destroyed under the procedures set out in this section except alcoholic beverages that are:

1. The subject of an appeal to the manager or the court under this chapter; or

2. The subject of a decision of the manager or a court for which the time for appeal of the decision has yet to expire, if prepayment of storage fees required under this section have been paid.

B. At any time following the expiration of the minimum permitted delivery time, the City Delivery Site shall give notice to the purchaser or addressee of the alcoholic beverages for which the minimum permitted delivery time has expired. The notice shall identify the alcoholic beverages and shall inform the purchaser or addressee.

1. That the minimum permitted delivery time has expired, and

2. That after an additional seven days from the date the written notice is mailed, the City Delivery Site will take action to destroy the undelivered beverages unless the permittee picks up the beverages, if authorized, prepays storage fees, or files an appeal to the manager.

C. The permittee shall be notified that the permittee may file a written appeal at the City Delivery Site not later than the close of business on the seventh day following the date the notice is mailed and that the timely filing of such an appeal will stay the destruction of the alcoholic beverages during the pendency of the appeal. At any time before or after the filing of an appeal, and before the alcoholic beverages are destroyed, the owner may make arrangements to have the alcoholic beverages shipped back to the package store that originally shipped the beverages to the delivery site; provided, all handling, storage and other delivery site charges and city taxes must be paid before the delivery site may release the beverages for reshipment. The arrangements for reshipment must include prepayment of all shipping and handling charges and assurances that the beverages will be in the possession of common carriers from the time released by the delivery site until delivered to the package store.

D. Upon receipt of a timely filed appeal, or a late appeal regarding alcoholic beverages that have not yet been destroyed or removed from the City Delivery Site for destruction, the City Delivery Site shall segregate the undelivered alcoholic beverages subject to the appeal and note prominently on the container that the alcoholic beverages within the container are the subject of the appeal. The City Delivery Site shall note on the appeal the date and time received, shall retain a copy for its files and shall forward the original to the manager along with a copy of the records of the City Delivery Site showing all relevant activities relating to the alcoholic beverages and their nondelivery from the date of receipt of the alcoholic beverages through the date of receipt of the appeal.

E. Upon receipt of an appeal, the manager shall hear the appeal in the manner provided under Section 8.17.130.

F. Storage and applicable charges shall continue to accrue during the pendency of the appeal to the manager. If the manager determines that the alcoholic beverages should have been delivered when delivery was refused, storage and other related charges that accrued following the refusal to deliver shall be waived, provided the alcoholic beverages are delivered to the appellant within three City Delivery Site operating days of the date the manager's decision is mailed or delivered to the appellant; provided, further, the appellant must be qualified and authorized to receive the alcoholic beverages subject to the appeal at the time the appellant requests delivery of the alcoholic beverages at the delivery site.

G. If the manager determines that the refusal to deliver was appropriate, the appellant may appeal the manager's decision to the superior court as provided in the applicable Alaska Rules of Appellate Procedure. If the appellant intends to appeal the manager's decision to the superior court, the appellant may avoid the destruction of the alcoholic beverages by paying to the delivery site within three delivery site operating days of the date the manager's decision is mailed or delivered to the appellant all taxes and charges due on the alcoholic beverages from the date of the receipt through the thirty-third day following the mailing or delivery of the manager's written decision. If the appellant files a notice of appeal to the superior court of the manager's decision, and, in addition, serves a copy of the notice of appeal on the City Delivery Site, with a prepayment for storage and other charges that will come due within the six months that follow the date of the notice of appeal, the delivery site may not destroy the alcoholic beverages and shall continue to store them for the period covered by their prepayment or until they are lawfully delivered to the appellant, whichever occurs first. If the alcoholic beverages have not been delivered to the appellant and the final decision of the superior court on the appeal has not been issued before the expiration of the period covered by the prepayment, the appellant shall pay for an additional six-month period. Upon the issuance of a final, appealable decision by the superior court, the alcoholic beverages shall be subject to the same procedures and prepayment requirements as applied upon delivery of the manager's decision to the appellant. If the alcoholic beverages are delivered to the appellant at any time prior to the expiration of a prepayment, the amount of the prepayment attributable to the time beyond the date of delivery shall be refunded to the appellant.

H. Upon the failure of a permittee to timely appeal or to make a prepayment or take other required action under this section to preserve his or her right to have the delivery site continue to store his or her alcoholic beverages, the person thereby forfeits all his or her rights, titles and claims to such alcoholic beverages and the alcoholic beverages may be destroyed. Upon certification by an authorized City Delivery Site employee that there is no pending appeal of the delivery refusal decision, or that the period covered by the last storage prepayment has expired, and that written notice of the expiration of the prepayment or appeal period was mailed to the appellant at least seven days prior to the date of the certification, the alcoholic beverages may be destroyed.

I. The delivery site shall forward the certification to the City of Bethel chief of police. The chief of police or another peace officer designated by the chief of police shall witness and certify to the destruction of all alcoholic beverages destroyed pursuant to this section. The destruction shall be accomplished by a delivery site employee in the presence of the designated peace officer and any other persons required by the manager to witness all or any particular destruction of alcoholic beverages. The peace officer and the delivery site employee shall provide duplicate original inventories detailing the alcoholic beverages destroyed. The Police Department and the delivery site shall each maintain an executed original of the inventory of destroyed alcoholic beverages.

8.17.120 Permit. A. Upon receipt of a complete application and any application fee provided for in Section 8.17.160, the city clerk or other clerk designated by the manager shall issue an alcoholic beverage delivery permit to a person who meets the qualifications set out in this section. Permit applications must contain the physical address, mailing address, and phone number at which the applicant may be notified of the arrival of alcoholic beverages at a delivery site and receive other notices under this chapter. The application shall request the applicant's driver's license number, voter registration number and such other information as the manager may require as proof of domicile and for identification purposes. Upon review of an application, the clerk may request an applicant to provide additional information to prove domicile, including but not necessarily limited to a copy of the applicant's permanent fund dividend application, utility bills for the applicant's physical address shown on the alcohol beverage delivery permit application, or other proof that the applicant actually resides at the physical address provided on the alcohol beverage delivery permit application. The clerk may also request an applicant to provide additional information to verify the identity of the applicant. Permits shall be numbered sequentially and shall be valid for a period of one year or until revoked or suspended. The application is nonrefundable.

B. A permit may be renewed by a person who continues to meet the qualifications for a permit upon the filing of a renewal application accompanied by any nonrefundable renewal fee provided for in Section 8.17.160 and proof of the applicant's qualification for renewal. A lost, stolen or destroyed permit may be replaced under this renewal procedure.

C. To qualify for a permit, a person must:

1. Be at least twenty-one years of age;
2. Not have any amounts owing to the City of Bethel for delivery site handling, storage, other delivery site charges, or sales or use tax on alcoholic beverages;
3. Not have a delinquent account with the City of Bethel;
4. Not be the subject of a court order as described in Section 8.17.100(B)(7) or a condition of release as described in Section 8.17.100(B)(8), or have a criminal record as described in Section 8.17.100(B)(10); the burden of showing that the court order, condition of release or criminal record is not in effect is upon the person applying for the permit;
5. Not be a person who has been issued a permit under this chapter whose permit has been suspended or revoked unless the period of the revocation or suspension has expired and any conditions imposed have been met;
6. Be a person whose domicile is either the City of Bethel or a place where the importation or possession of alcohol has not been prohibited under any of the local options set out in AS 4.11.491 or its predecessor or a successor statute.

D. Upon receipt of a completed application and the required fee, the clerk shall undertake such investigation as may be necessary to verify statements and claims made in the application and separately provided proofs submitted by the applicant. If the clerk determines the applicant is qualified for a new permit or a renewal of an existing permit, the clerk shall issue the permit and provide a copy of the permit and application to the alcohol delivery site. Permits may be delivered by the clerk only to the

applicant in person and to no other person except to the designated agent of a physically disabled person who has been issued a disabled person's permit.

E. If the clerk determines that an applicant is not qualified or that an essential claim, statement or proof is doubtful and unsupported by adequate, reliable evidence or that believable contrary evidence exists, the clerk shall notify the applicant in writing of each defect. The applicant shall have fourteen calendar days from the date the clerk mails the notice within which to submit documentation or other proof to overcome the deficiencies set out in the clerk's notice. If the clerk is satisfied that the person is qualified for a permit, the clerk shall issue the permit as provided in subsection D of this section. If the clerk determines, based on the submissions by the applicant and the results of the clerk's investigation that the applicant has not satisfactorily shown that the applicant is qualified for a permit, the clerk shall deny the permit and shall notify the applicant in writing of the denial and of the reasons for the denial. The denial of the permit may be appealed to the manager who shall hear the appeal on the record established by the clerk. The notice of denial from the clerk shall contain a statement advising the applicant of the right to appeal the clerk's denial to the manager by filing a written notice of appeal to the manager within thirty days of the date the notice of denial is mailed by the clerk.

F. A person may not provide or make untrue or misleading statements or provide false, altered or misleading documents in connection with an application for a permit under this chapter.

8.17.130 Appeals to manager. A. In an appeal by a permit applicant from a decision of the clerk, the manager shall hear the appeal on the record made by the clerk. New evidence that could have been provided to the clerk during the application process may not be submitted as a part of the appeal to the manager. After receiving written arguments, or oral arguments if permitted by the manager, from the applicant and the clerk, the manager shall determine whether, upon the record before the clerk at the time the appealed decision was made, there was substantial evidence to support the decision of the clerk.

B. In an appeal from a decision of a delivery site to refuse delivery, confiscate a permit, or to take or refuse to take other action, the aggrieved person shall file a written notice of appeal with the delivery site within seven calendar days of the action unless a longer period of time is permitted under this chapter. The delivery site shall immediately forward the notice of the appeal to the manager.

C. In all appeals, the manager shall provide notice to the appellant whether oral arguments and testimony will be permitted and the date:

1. Upon which oral arguments and oral testimony will be heard, if permitted;
2. By which additional documents, if permitted, must be received; and
3. By which written arguments must be received.

The manager shall inform the appellant where the record on appeal may be reviewed and shall provide a copy to the appellant upon request and payment of any copying charges that apply.

D. The manager shall schedule the receipt of arguments, testimony and documents to ensure that the appellant has a reasonable time to prepare and make submission to the manager. The first request by the appellant to extend a submission date or to reschedule an oral argument or testimony date shall be freely granted unless doing so would create a hardship for the clerk or the delivery site. Any additional extensions for appellant must be fully justified.

E. The manager may retain a hearing officer to hear an appeal under this chapter. The hearing officer shall make scheduling and other procedural decisions and, after receipt of evidence and the written argument by the appellant and the clerk or delivery site, shall prepare a proposed decision for the manager. The proposed decision shall set out the evidence in the record and received upon which the decision is based, a conclusion, and an appropriate order. The manager may accept and sign the proposed decision, redraft or modify it before signing it, or refer it back to the hearing officer for further specified action. Upon signing the decision, it becomes the manager's decision.

F. If the manager hears and decides the appeal, he or she shall prepare a written decision setting out the evidence relied upon, conclusions and an appropriate order.

G. The manager's decision may be appealed to the Superior Court in accordance with the Rules of Appellate Procedure applicable to administrative decisions. The manager's decision shall contain such notice of the right of appeal as may be required by the Appellate Rules of the court.

8.17.140 Use and possession of permit. A. A permittee may not authorize, permit or acquiesce in the use or possession, for any purpose, by another person of the permit issued by the city to the permittee.

B. A permittee may not fail to prevent another person from possessing or using the city-issued permit of the permittee. It shall be a defense to prosecution of a violation of this subsection that the permittee, upon discovering the loss of the permit or that the permit is in the possession of another person, immediately notified the City Delivery Site and the City of Bethel Police Department of the loss of the permit and the name of the person possessing the permit, if known.

C. A person other than the permittee may not possess or use, or attempt to possess or use for any purpose, a permit issued under this chapter to another person.

D. The delivery site employee shall retain any city-issued permit displayed by a person who is not the permittee to whom the permit was issued.

E. Subsections A, B, C and D of this section do not apply when the permittee is a disabled person who has been issued a disabled person's permit and the permit is in the possession of the person designated on the permit as the permittee's agent.

F. A person may not alter in any way a permit issued under this chapter.

G. A person may not make by any means an imitation or copy of a permit issued, or authorized to be issued, under this chapter.

H. A person may not use or attempt to use for identification or any similar purpose a permit that has been altered or that is an imitation or copy of a permit issued or authorized to be issued under this chapter.

I. A delivery site employee shall confiscate and retain any altered, copy of or imitation permit displayed by the holder.

J. A delivery site employee, upon being shown the permit, shall confiscate and retain the permit of a person whose permit has been revoked or suspended by the city.

K. The manager shall be promptly notified of the confiscation or retention of a city-issued permit by the delivery site.

8.17.150 Permit revocation or suspension. A. The person's permit issued under this chapter shall be revoked or suspended upon a determination by the manager or his or her designee that any of the following have occurred:

1. The permittee has permitted another person to use the permittee's permit for any purpose;

2. The permittee's permit has been altered, copied or otherwise used as the basis for the making of a false or imitation permit;

3. The permittee is the subject of a court order described in Section 8.17.100(B)(7) or a condition of release described in Section 8.17.100(B)(8), or has a criminal record as described in Section 8.17.100(B)(10); the burden of showing that the court order, condition of release or criminal record is not in effect is upon the permittee; or if less than two years has elapsed from the person's unconditional discharge due to a conviction, or an adjudication as a delinquent, for any of the following crimes against the family: endangering the welfare of a child in the first or second degree (AS 11.51.100 or AS 11.51.110), criminal nonsupport (AS 11.51.170) or contributing to the delinquency of a minor (AS 11.51.130); with the burden of showing that two or more years have elapsed from the person's unconditional discharge due to a conviction, or an adjudication as a delinquent, upon the permittee;

4. The permittee has failed or refused to pay an amount owing the city for fees, charges or taxes due for alcoholic beverages received by the delivery site addressed to or for the permittee if such amount remains unpaid more than thirty days following the mailing to the permittee of an invoice for the amount owing;

5. The permittee has used the permit of another person for any purpose;

6. The permittee submitted untrue or misleading statements or false, altered or misleading documents in connection with the application for the permit;

7. The permittee is no longer domiciled in the city of Bethel or a place where the importation or possession of alcohol has not been prohibited under any of the local options set out in AS 4.11.491 or its predecessor or a successor statute.

B. Upon receiving notice from the City Delivery Site or a city officer or employee that any of the conditions set out in subsection A of this section exist, the manager or his or her designee shall immediately notify the permittee of the allegation and that the permit will be suspended or revoked ten days from the date the notice is mailed unless the permittee files an appeal to the manager. An appeal shall be processed as provided in Section 8.17.130.

C. Upon a finding that one or more of the conditions set out in Section 8.17.150(A) have occurred, the manager shall suspend or revoke the person's permit, as determined to be appropriate under the circumstances by the manager or his or her designee. The order of suspension or revocation shall state the length of time the

suspension or revocation shall remain in effect and any additional requirements the permittee must meet before the suspension ends or before a new permit may be issued to a person whose permit has been revoked. A suspended permit shall be retained by the manager and returned to the permittee when the period of suspension ends. A revoked permit shall be destroyed by the manager after the time for the appeal of the manager's decision has expired.

8.17.160 Fees and charges. The city council may by resolution, establish a schedule of fees and charges for permits, receipts, storage, handling, delivery, processing and other services or activities performed by delivery sites. The resolution shall designate the portion of specific fees and charges that may be retained by a Designated Delivery Site as compensation for acting as a delivery site.

8.17.170 Penalties for violations. Upon a conviction or entry of a plea of guilty or no contest to a violation of this chapter, the defendant shall be fined in accordance with the following table:

<u>Section Violated</u>	<u>Bail and Fine For First Conviction or Conviction More Than Two Years After a Prior Conviction of a Violation of This Chapter</u>	<u>Maximum Fine For Any Conviction Within Two Years Following a Prior Conviction of Any Violation of This Chapter; Mandatory Court Appearance</u>
8.17.060A	\$200.00	\$500.00
8.17.060B	\$200.00	\$500.00
8.17.070C	\$200.00	\$500.00
8.17.100B	\$200.00	\$500.00
8.17.100C	\$200.00	\$500.00
8.17.120F	\$200.00	\$500.00
8.17.140A	\$200.00	\$500.00
8.17.140B	\$50.00	\$100.00
8.17.140C	\$200.00	\$500.00
8.17.140F	\$200.00	\$500.00
8.17.140G	\$200.00	\$500.00
8.17.140H	\$200.00	\$500.00

8.17.180 Reporting violations. A delivery site officer or employee shall report any violations of Title 4 of the Alaska Statutes that he or she becomes aware of to the Alaska State Troopers and the City of Bethel Police Department.

SECTION 4. Repeal of Section 4.17.040 and Chapter 5.08. Section 4.17.040 of the Bethel Municipal Code and Chapter 5.08 of the Bethel Municipal Code are hereby repealed.

Section 5. Effective Date. This ordinance shall become effective ninety days after it is enacted.

ENACTED THIS ____ **DAY OF** _____, **2005**, by a vote of ____ in favor and ____ opposed.

Hugh Dymont, Mayor

ATTEST:

Sandra Modigh, City Clerk