

Introduced by: City Manager Herron  
Date August 8, 2000  
Public Hearing: August 29, 2000  
Action: Enacted  
Vote: Unanimous

**CITY OF BETHEL, Alaska**

**ORDINANCE #00-22**

**AN ORDINANCE APPROVING THE SETTLEMENT  
AGREEMENT RESOLVING THE DIESEL SPILL LITIGATION  
WHICH REQUIRES PAYMENT BY THE CITY OF BETHEL OF \$22,839.43  
TO THE STATE OF ALASKA AND THE TRANSFER OF CERTAIN  
CITY OWNED PROPERTY TO BNC**

**WHEREAS**, on or about April 15, 1993, a release of diesel fuel was discovered at the Bureau of Indian Affairs Administrative Site near Bethel, Alaska; and

**WHEREAS**, it was subsequently determined that the released fuel had dispersed and migrated to and upon certain land owned by Bethel Native Corporation; and

**WHEREAS**, Bethel Native Corporation ("BNC") initiated the lawsuit defined below as the Diesel Spill Litigation, by filing a complaint against the United States seeking, among other things, several million dollars in damages for injury to its lands as well as other additional claims and remedies; and

**WHEREAS**, the United States thereafter filed third-party complaints in the Diesel Spill Litigation against the State of Alaska, the City of Bethel ("City"), Ben Dale, Michael Shantz, and Southwest Fuels, Inc., seeking, among other things, reimbursement for all or some of the approximately Six Million, Five Hundred Thousand Dollars (\$6,500,000) that the United States claimed to have already expended to respond to the fuel release and to reimburse the State of Alaska for administrative costs it claimed it had expended to oversee the response action; and

**WHEREAS**, the specific claims of the United States against the City of Bethel include the following allegations:

(a) That the City had acquired the right to remove the diesel oil from the BIA Tank Farm pursuant to a federal surplus property program which by its terms required the City to indemnify the United States for all past and present losses or damages that the United States had incurred arising out of the transaction;

(b) That the City negligently failed to train its contractors in the proper and safe means of withdrawing fuel from the BIA tanks and failed to monitor, gauge and record the tanks it was utilizing to store the fuel prior to removal and therefore it was liable for all or part of any damages BNC obtained from the United States based on the proportion of relative fault assessed against the City;

(c) That the City's negligence caused and/or exacerbated the harm from the Diesel Spill to the BIA Administrative Site and the City is liable for response costs incurred in cleaning up this federal property;

(d) That the City is strictly liable for damages as the alleged owner of the diesel oil discharged and de facto operator of the BIA tank farm; and

(e) That the City has been unjustly enriched since the United States has paid \$6,500,000 in response costs, all or part of which should have been paid by the City which is, at a minimum, alleged to be jointly liable with the United States; and

**WHEREAS**, the State of Alaska has alleged counterclaims against the United States and cross claims against the City of Bethel seeking civil penalties, further response costs and other damages including natural resource damages; and

**WHEREAS**, the specific claims of the State of Alaska against the City, include the following allegations:

(a) That the City is strictly liable under state law as owner of the fuel for response costs caused by the Diesel Spill;

(b) That the City is strictly liable for civil fines and other damages as a result of its ownership of the fuel;

(c) That the City is liable for its negligence in monitoring and handling the diesel fuel stored at the facility; and

(d) That any tort damages obtained by the United States against the State of Alaska should instead be apportioned to the City; and

**WHEREAS**, BNC subsequently amended its complaint and filed a direct claim against the City for trespass and for damages caused to its lands as a result of the contamination and response; and

**WHEREAS**, the City has denied any and all allegations of liability, asserted a number of affirmative defenses and has vigorously defended against all the claims brought by the various parties; and

**WHEREAS**, the Parties to the Diesel Spill Litigation have negotiated a Settlement Agreement which provides for a mutual release of all present and future claims arising out of the Diesel Spill, and requires the City to pay the State of Alaska \$22,839.43 and to convey certain property owned by it (defined below as Lot 1) to BNC; and

**WHEREAS**, Lot 1 is a lot in the Commercial Center Subdivision comprising approximately 83,037 square feet which is under long-term lease to BNC for the operation of a fish processing plant situated on the property; and

**WHEREAS**, the City has concluded that the value of Lot 1 for purposes of the settlement transaction is approximately \$330,000 and BNC has agreed with this valuation; and

**WHEREAS**, the Settlement Agreement which has been executed by the representatives of all Parties is contingent on the approval of its terms by the Bethel City Council; and

**WHEREAS**, the litigation cost to the City of a vigorous defense is likely to be very significant given the complexity of the case, and the multilateral claims involved; and

**WHEREAS**, in order to avoid the litigation risks and costs of litigation the City Council finds and determines that it is in the best interests of the City to compromise the pending multi-million dollar claims brought against the City in the Diesel Spill Litigation by the Bethel Native Corporation, the United States of America and the State of Alaska and to approve the Settlement Agreement that has been presented to it for approval,

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

**Section 1.** This ordinance is not permanent in nature and shall not be incorporated into the Bethel Municipal Code.

**Section 2.** The City Council approves the Settlement Agreement between and among the Bethel Native Corporation, the United States of America, the City of Bethel,

the State of Alaska, Michael Shantz, Southwest Fuels, Inc., and Ben Dale (collectively, "the Parties") in substantially the form attached hereto as Exhibit A which is incorporated by reference in this Ordinance.

**Section 3.** Pursuant to the terms of the Settlement Agreement, the City Manager is authorized to convey Lot 1 to Bethel Native Corporation by quitclaim deed and to make payment of up to \$22,839.43 to the State of Alaska.

**Section 4.** The Conveyance of Lot 1 pursuant to this Ordinance is exempt from the requirements of BMC 04.08.010 and .040. The adoption of this Ordinance constitutes the full authorization to dispose of Lot 1 in accordance with the provisions set out herein, notwithstanding different or additional procedures set out in BMC 04.08.010 through .040.

**Section 5.** The City Manager or other appropriate City officials are further authorized to execute all documents necessary to finalize the Settlement Agreement and bring the matter to a close including, without limitation the quitclaim deed and any further amendments to the language of the Settlement Agreement that the City Manager, in his discretion, determines to be necessary to finalize the agreement as long as it does not materially alter the economic substance of the Settlement Agreement.

**Section 6. Definitions.** For purposes of this ordinance, the following terms have the following meanings:

(a) "Diesel Spill" means that discharge discovered in April 1993 of approximately 110,000 gallons of diesel fuel from an oil storage tank owned by the Bureau of Indian Affairs ("BIA"), an agency of the United States, and located on the BIA Administrative Site in Bethel, Alaska. The discharge affected the Administrative Site and certain neighboring lands including those owned by BNC.

(b) "Diesel Spill Litigation" means the litigation captioned: *Bethel Native Corporation, Plaintiff v. United States of America, Defendant and Third Party Plaintiff, v. State of Alaska, City of Bethel, Southwest Fuels, Inc., Michael S. Shantz and Ben Dale, Third-Party Defendants*, Case No. A96-461 CV (JKS), filed in the United States District Court for the District of Alaska and includes all claims, cross-claims, counterclaims and appeals filed in that action.

(c) "Lot 1" means Lot 1 of the Commercial Center Subdivision as shown on Plat 96-15 recorded in the Bethel Recording District, comprising approximately 83,037 square feet more or less; said property is currently subject to long term leases from the City of Bethel by BNC and a fish processing plant is situated on the property; said property has the following legal description:

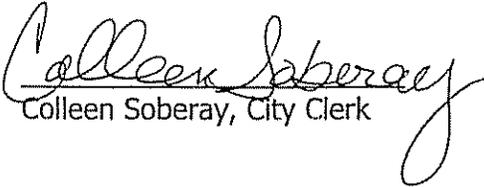
Lot 1, Commercial Center Subdivision, Bethel Recording District

**Section 7. Effective Date.** This ordinance shall become effective on

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ENACTED THIS 29<sup>th</sup> DAY OF AUGUST 2000, by vote of 5 in favor and 0 opposed.

ATTEST:

  
Colleen Soberay, City Clerk

  
Mike O'Brien, Mayor