
City of Bethel, Alaska

City Council Minutes

August 29, 2000

Regular Meeting

Bethel, Alaska

CALL TO ORDER

A regular meeting of the Bethel City Council was held on August 29, 2000, at 6:30 p.m. in the Council Chambers, Bethel, Alaska.

Mayor O'Brien called the meeting to order at 6:30 p.m.

ROLL CALL

Comprising a quorum of the Council, the following were present:

Mayor O'Brien	Dario Notti	Karol Sanchez-Pobrislo
Jerry Drake	Joerene Hout	

Also in attendance were the following:

Bob Herron, City Manager
Colleen Soberay, City Clerk

Council Member Rogers arrived at 7:30 p.m. and Council Member Phillips arrived at 9:00 p.m.

PEOPLE TO BE HEARD

MR. STEVE HAMLIN, President of United Companies and affiliates United Utilities and Unicom, announced United KUC—a company formed under United Companies to acquire GTE properties in Bethel through consortium. These GTE properties will be acquired by United KUC September 1, 2000. Mr. Hamlin also outlined current projects that United Companies is undertaking. Additionally, Mr. Hamlin gave a brief presentation on fiber-optic cable, as it relates to current projects in Bethel.

MR. LARRY SHELVER, president of Yukon Fuel Company, announced Yukon Fuel Company, as of August 1, 2000, owns Bethel Fuel. He spoke on providing fuel service to the community of Bethel and the restructuring of Yukon Fuel Company with respect to Bethel Fuel Co. On behalf of Yukon Fuel Company, Mr. Shelver asked the City Manager and the Council to extend the company's use agreement on the dock in front of the plant. Mr. Shelver also addressed questions raised by Council concerning fuel prices in Bethel and questions concerning bypassing tariffs.

MR. DOMINIC MALAJ, spoke regarding his appeal for a taxi permit/dispatch service permit. He asked the Council to make a decision to vote on whether or not he is entitled to a taxi permit because he claims he does not fall into the same category as other taxicab operators. Mr. Malaj explained to the Council that he believes he can run his own dispatch service—using a cellular phone—out of his cab, thus not having to subscribe to a Bethel dispatch service as required by law [5 BMC § 50.040].

The Mayor said that the Council would discuss the issue as scheduled—Item D on the agenda—and that Mr. Malaj was welcome to wait until then to speak to the Council again and answer any questions the Council may have at that time.

MR. BRIAN KAY, spoke on behalf of his client, Mr. Miller, stating that Mr. Miller deserves to have his taxicab permit re-issued immediately. Mr. Kay said the Public Safety and Transportation Commission ruled in Mr. Miller's favor 5 to 1 to re-issue Mr. Miller's taxicab permit. He said the City should not appeal this ruling. Mr. Kay gave a brief background on the revocation of Mr. Miller's permit. Mr. Kay asked the Council to order Transportation to issue Mr. Miller a permit immediately. He also said, rather than issue his permit immediately at the last Council meeting, there was discussion of whether or not the findings of the hearing should be reduced to writing for possible appeal, thus causing a delay in re-issuing Mr. Miller's permit. Mr. Kay said the Codes relating to Mr. Miller's issue are vague.

Council discussed the vagueness of the City's Code [5 BMC 20 *et seq.* and 5 BMC § 30.050]. Council agreed that it should be re-written to be more concise.

Ms. Pobrislo recommended someone follow-up on the re-issuing of Mr. Miller's permit, so that this is not drawn out any further.

The Mayor said that Council will follow through with the decision it made at the previous City Council meeting to re-issue a permit to Mr. Miller, but the decision of the Council to re-issue Mr. Miller a permit does not restrict the City, Transportation Inspector or City Administration from appealing the Council's decision. The Council directed that Mr. Miller's permit be re-issued to him the following morning.

APPROVAL OF MINUTES

MOVED BY:	Drake	To approve the minutes of the regular meeting of August 8, 2000.
SECONDED BY:	Pobrislo	

VOTE ON MOTION	Motion carried by unanimous voice vote.
-----------------------	---

APPROVAL OF AGENDA

City Manager Herron added a new business item—Draft Resolution #00-20: Against State Tax Cap—to the agenda. Additionally, on behalf of Larry and Janet Athanas, City Manager Herron requested an executive session with the Council regarding the laundromat issue. The Mayor asked, because of contract negotiations with the City Clerk, if the Athanas could wait until the next regularly scheduled meeting to speak to the Council in executive session, unless it was an urgent matter. If need be, the agenda could be amended after City Manager Herron spoke with the Athanas. City Manager Herron said he would speak to the Athanas during the break.

MOVED BY:	Drake	To approve the agenda with the addition of new business item J—Resolution #00-20.
SECONDED BY:	Notti	

VOTE ON MOTION	Motion carried by unanimous voice vote.
-----------------------	---

MAYOR'S REPORT

Mayor O'Brien announced the following:

- A. Governor's Talking Points for the weeks of August 14 and August 21, 2000
- B. Hewlett-Packard Co. Funds Digital Village Programs—Based on RFP process
The Mayor asked the Council to take a serious look at this program, which may be something the Council would consider.
- C. Alaska Housing Finance Corp.—Notice of funding availability for affordable rental housing
- D. AK Dept. of Community and Economic Development—Grant Workshops offered in October
- E. AK Dept. of Community and Economic Development—FY02 Capital Project Matching Grant Program application packet
- F. Letter from BUC—Preliminary Plat for Venes Subdivision
- G. AK Dept. of Environmental Conservation—Bethel Heights Water System; Opportunity to comment on proposed Arsenic MCL. The Mayor explained the State's current water system's allowable arsenic content and Bethel's arsenic content. He further said that if this agency is successful in lowering the arsenic rates allowed, as it is proposing, it will cost the City hundreds of thousands of dollars. He said this is an issue that needs to be followed closely.
- H. Pacific Ocean Division of the Army—Invitation to attend a Regional Listening session about future water resources challenges
- I. Letter from Senator Frank H. Murkowski regarding responsible development in Alaska—The Mayor commented on the letter, which hundreds of agencies outside of Alaska are funding environmental protection agencies in Alaska. Outside agencies are working to constrain responsible development in Alaska.
- J. Letter from Mayor Nelson supporting the proposed Alcohol Delivery Site

- K. Press Release—SBA to Open 11 Disaster Offices in Western Alaska
- L. The Mayor addressed the issue of an anonymous report of inappropriate behavior by Willy Keppel, member of the Planning Commission. An anonymous state employee reported to City Manager Herron that Mr. Keppel called, identified himself as a member of the Planning Commission and requested this state employee contact the Attorney General to investigate the City, as Mr. Keppel made accusations of wrong doings by the City, though unable to provide this state employee any specific instances of impropriety of the City. This state employee reported to City Manager Herron that Mr. Keppel carried on for a considerable amount of time making this state employee believe Mr. Keppel was intoxicated.

The Mayor referred to a similar situation with Mr. Keppel at the last City Council meeting, where Council commented and made suggestions to Mr. Keppel in regard to the manner which Mr. Keppel conducts City business. The Mayor noted this is now twice that Mr. Keppel has acted inappropriate as a member of a City commission, where it has been brought to the attention of the Council.

The Mayor requested a motion from any member of Council for removal of Mr. Keppel from the Planning Commission.

Council Member Drake moved for removal of Mr. Keppel from the Planning Commission.

After not hearing a second, the Mayor said there is not concurrence by the Council at this time to remove Mr. Keppel from the Planning Commission.

Council Member Notti asked if this issue could be discussed in executive session so that Council could hear more specifics. He also asked if the report given to City Manager Herron was verbal or written.

The Mayor said this anonymous person made a verbal report to the City Manager, which [The Mayor] then followed-up on with a personal conversation with this person. The Mayor said he would not argue the desires of the Council, but said not removing Mr. Keppel sets a bad precedence.

Council had further discussions on the report made against Mr. Keppel. Council agreed that they should discuss this in executive session. Mr. Notti said he could not second a motion for removal of Mr. Keppel without hearing all of the facts. Several Council members agreed they would need more details and findings before making a decision to remove someone from a commission.

City Manager Herron reminded Council of the rule requiring Council to receive permission from the individual they wish to discuss in executive session. If

permission is not granted to Council, the individual may not be discussed in executive session.

The Mayor assured Council that the person who reported Mr. Keppel was a reliable source. The Mayor said he understands the ramification behind removing someone from a commission and that he does not take this lightly. He said he understands Council's concerns, but has to look at this in terms of what kind of an example this sets for other members of committees and commissions. He also said this issue will be dealt with one way or another.

MANAGER'S REPORT

City Manager Bob Herron noted the management reports included in the packet, and reviewed the following items with Council:

1. Seawall—Major General Oates, Commissioner of the Department of Military and Veterans Affairs and City Manager Herron plan to meet with the Corps of Engineers at their office about the impacted section Thursday, August 31, 2000.
2. Relocation of Recycling Quonset—Contract negotiations still in discussion.
3. EPA's Notice of Violation (NOV)—The City's Engineer NOV response, dated August 21, 2000, includes an up-dated Spill Prevention Control & Countermeasure (SPCC) Plan for the U.S. EPA's review. The up-dated SPCC addresses the issues in the NOV.

City Manager Herron also reviewed the following new information with the Council:

1. Magnusen-Stevens Grant Dollars—City Manager Herron addressed an unsubstantiated rumor going around Bethel implying that the City of Bethel misused these grant monies. He stated that, in fact, the State of Alaska has closely monitored this project and the City of Bethel has met all of the State's guidelines. City Manager Herron also reviewed the guideline amounts and actual spending by the City.

REPORTS OF STANDING COMMITTEES

Senior Advisory Committee

Council Member Hout reported that the senior advisory committee has not met, that they are still on summer break.

Planning Commission

Council Member Notti announced that the Planning Commission is scheduled to meet the second Thursday of September, but has not met since the last City Council Meeting.

Port Commission

Council Member Rodgers was not present for reports of standing committees.

Public Works Committee

Council Member Drake reported that the Public Works committee has not met since the last City Council meeting.

Public Safety and Transportation Commission

Mayor O'Brien was not able to attend the meeting because he was out of town at the time the newly-scheduled meeting was announced. However, City Manager Herron reported that the Public Safety and Transportation Commission meeting was cancelled due to the lack of a quorum.

Finance Committee

Council Member Phillips was not present for reports of standing committees.

OLD BUSINESS

Item A — Public Hearing on Ordinance #00-22: Oil Spill Settlement Agreement

Mayor O'Brien opened the Public Hearing.

MOVED BY:	Pobrislo	To adopt Ordinance #00-22
SECONDED BY:	Hout	

Seeing no one to speak, he closed the Public Hearing.

VOTE ON MOTION	Motion carried by unanimous voice vote.
-----------------------	---

Item B — Public Hearing on Ordinance #00-23: Budget Modification

Mayor O'Brien opened the Public Hearing.

MOVED BY:	Drake	To adopt Ordinance #00-23
SECONDED BY:	Pobrislo	

Seeing no one to speak, he closed the Public Hearing.

VOTE ON MOTION	Motion carried by unanimous voice vote.
-----------------------	---

NEW BUSINESS

Item C — Introduction of Ordinance #00-24: Budget Modification

MOVED BY:	Drake	To introduce Ordinance #00-24 and set the public hearing date for September 26, 2000.
SECONDED BY:	Notti	

The Mayor set the public hearing for the next regularly scheduled City Council meeting on September 26, 2000.

VOTE ON MOTION	Motion carried by unanimous voice vote.
-----------------------	---

Item D — Discussion Item: Dominic Malaj, Chauffeur's License Issues

Mr. Malaj reiterated his desire to obtain a taxi permit/dispatch service permit. He stated that he was not being treated fairly by the Police Chief and that he should be able to operate a single-cab service. He said he spent a lot of money on application fees and that it was not fair. He further explained that he is capable of using his newly-purchased cellular phone to provide his own dispatch service. He said that because of this, he does not need to subscribe to a Bethel dispatch service.

The Mayor said the actual issue of not being able to obtain this permit is centered around the dispatch service rules in the City's Code [5 BMC 50 *et seq.*]. The Mayor also said, by city ordinance, there must have been a legal reason why Mr. Malaj's request for a permit was denied by the Transportation Committee and that it is a matter of law. He further explained to Mr. Malaj that he had a right to make a formal appeal to Council, but that council would not go against city ordinance.

Mr. Malaj did agree that the problem he was having with Transportation is that he could not obtain a dispatch permit to operate a dispatch service out of his cab, but also claimed it was not fair.

The Mayor said the dispatch service requirements are a matter of city ordinance and Council is not going to give Mr. Malaj permission to do something that is a direct violation of city ordinance. The Mayor said that Mr. Malaj's other alternative is to appeal to the Transportation Committee to make a change to that ordinance.

Council discussed this issue with Mr. Malaj. Although Council disagreed with Mr. Malaj in that he cannot operate his own dispatch service, they stated their concerns about the application process in that they hoped that Mr. Malaj was, in fact, told up-front by Transportation they he could not obtain a taxi permit without subscribing to a Bethel dispatch service.

Additionally, Council discussed the verbiage of the Code and that it may need to be rewritten to be more concise. Council Member Rodgers referred to Mr. Miller's case and said that Mr. Miller proved on paper that the city's ordinance is vague.

Mr. Malaj said he was not told up-front that he could not obtain a taxicab permit because of the dispatch service ordinance.

The Mayor said as the ordinance currently stands the decision rendered by the Transportation Commission was correct.

Item F — Ordinance #00-25: Changing Title 7—Elections

MOVED BY:	O'Brien	To introduce Ordinance #00-25 and set the public hearing date for September 8, 2000.
SECONDED BY:	Notti	

The Mayor explained Ordinance #00-25 was a matter of cleaning up the election code. City Manager Herron said these changes are only being added to last summer's preclearance changes. City Manager Herron also informed the Council that the City Attorney requested a special meeting take place in early September regarding Ordinance #00-25. September 8, 2000 at 12:00 was agreed on by Council. The City Clerk was directed to post a public notice.

VOTE ON MOTION	Motion carried by unanimous voice vote.
-----------------------	---

Item I — Discussion Item: Planning Code Ordinance

Laurie Walters, Assistant Finance Director, brought to the attention of the Council that in a previous meeting Council agreed further discussion should take place because of questions raised regarding a recommendation to suspend additional decision making by the Planning Commission until the planning ordinances could be reviewed to make sure everything is in order.

Council discussed various concerns with the current plat application process ordinance. It was said that the Planning Commission ordinance was currently being looked at by the City Attorney. However, City Manager Herron said he was unaware that the attorney was under any direct order to work on this ordinance, but that there is a need to review this ordinance for revision.

Council Member Hout said ever since the first bona fide subdivision has gone up in the city, Bethel has had problems.

Council Member Notti told Council that the original complaints were if decisions made by the Planning Commission in the spring were legal because of the way our Planning Commission code was written in regard to commission members.

Council had further discussion about the urgency to review the plat ordinance and the various considerations that should be noted when reviewing this ordinance.

Council Member Pobrislo said the planning ordinance governed the Commission and that the swearing in of commissioners was a muck. She also addressed the various issues of ordinances being vague. She said these ordinances need to be addressed

before more development takes place in Bethel. Council Member Hout agreed and said pressure needs to be put on Council to get this done.

MOVED BY:	Rodgers	To direct Planning administration not to approve any more plats until the ordinance is rewritten.
SECONDED BY:	Hout	

Council Member Drake raised the question of the legality of this motion—is it legal to put a hold on a current ordinance process. A vote was not taken on this motion.

VOTE ON MOTION	Council did not vote on this motion.
-----------------------	--------------------------------------

The Mayor asked a question to clarify this motion. He asked if someone is in the middle of a plat process, can we freeze the process and/or can we deny anyone else to start a plat process, but let anyone that is already in the process continue to proceed until the ordinance is reviewed?

City Manager Herron told the Council the City Attorney would be on the phone during executive session. He recommended that Council ask the City Attorney about the legality of this motion and any questions concerning this issue.

MOVED BY:	Drake	To suspend the previous motion on this issue until the City Attorney was on the phone and Council had discussed the issue with her.
SECONDED BY:	Pobrislo	

VOTE ON MOTION	Motion carried by unanimous voice vote.
-----------------------	---

The Mayor recessed for 10 minutes.

The Mayor called the meeting to back to order at 8:44 p.m.

COUNCIL MEMBER COMMENTS

Council Member Hout said that she was back driving a bus for the school year and washing dishes at the airport.

Council Member Pobrislo wished everyone a happy and safe Labor Day weekend.

Council member Notti announced the birth of his new grandson—born on the morning of August 29. He also said that he resigned with his current employer to go back to construction work.

Mayor O'Brien reiterated how important it is that people take a serious look at the property tax cap issue. He also reminded everyone who has boats in the small boat harbor to check on their boats—expressing concern about boats stacking up on one another.

Council Member Drake wished everyone a safe Labor Day weekend and welcomed the new City Clerk.

Council Member Rodgers welcomed the new City Clerk. He also offered a get well wish to his brother. Additionally, he said that he hoped the Seawall would hold and that

he would check on the water level after the meeting. He publicly commended Howard and the crew at the city dock. Mr. Rogers also asked if the Police Chief wanted to respond to Mr. Malaj's accusation made earlier in the meeting. The Mayor agreed to allow the Police Chief to speak.

Mr. Bob Petitt, Bethel Police Chief, opted to speak. He started off by saying he has been charged with the responsibility to enforce this transportation ordinance. He stated he has been criticized during his tenure for not enforcing this ordinance and now the Council is criticizing him for enforcing it. He also answered Ms. Pobrislo's question, responding that Mr. Malaj was, in fact, told several times that he was not allowed, under the ordinance, to operate a taxicab independently and Mr. Malaj knew he had to be under the control of a dispatch service. Mr. Petitt said perhaps Mr. Malaj misconstrued any comments of discrimination. Mr. Petitt gave examples of how comments made to Mr. Malaj may have been misconstrued.

Council Member Phillips wished her mother a happy birthday.

The City Manager said the City Attorney, Ms. Cutler, was standing by to answer any questions concerning the motion on the planning code ordinance. The Council agreed to call the Ms. Cutler.

The Mayor explained to Ms. Cutler the original motion, which was that all functions of the planning office dealing with plats, whether new plats or plats already in action, be suspended until such time as the ordinance has been reviewed and/or rewritten.

The first question asked was whether or not, dealing with an existing ordinance process, can Council suspend this process. The second question the Mayor asked was if it would make a difference if plat applications had not yet been brought before planning vs. plats that have already become part of the planning system.

Ms. Cutler repeated the question for clarity.

The Mayor said the actual question is directed wholly at the planning process ordinance under the BMC. The question is whether or not Council has the ability to supercede that ordinance—by simple motion—ruling that we will not receive any more plats into the system nor will we continue onward with plats already in the system until such time we have reviewed the ordinance.

Ms. Cutler said she does not have any of the ordinances in front of her to accurately answer the question. She said that if there is a process in the ordinance that needs to be followed, then, generally speaking, that process would need to be the one that the City continues to follow until that ordinance is amended. She added that she would need more specifics about the code that is being discussed.

The Mayor said the motion was actually turned into generalities and that it raised questions. He said Ms. Cutler had answered those questions and he recapped her answer.

Further discussion followed in regard to holding an ordinance in abeyance until it is rewritten. Council Member Rodgers referred to the taxicab ordinance recently being reviewed. Ms. Cutler explained the difference between the two ordinances. Ms. Cutler reiterated that an ordinance process needs to be followed until that ordinance has been amended by Council. Ms. Cutler further explained that the taxicab ordinance process was not in abeyance, it is being reviewed for a revision, only.

Council Member Pobrislo explained the end result to Ms. Cutler, in which the City does not have good ordinances in place to accommodate the growth of Bethel, so amending the current ordinance needs to take place in an effort to relieve the City of the burden of over development.

Ms. Cutler said John Malone is working on making a comprehensive set of suggestions for rewriting the ordinance. The first draft is almost complete. She recommended that Mr. Malone present these suggests to Council. She also said she would need to understand the issue better before giving direct recommendations.

Council agreed this issue was of the utmost importance and that it would be dealt with.

EXECUTIVE SESSION

MOVED BY:	Rodgers	To go into Executive Session.
SECONDED BY:	Hout	

VOTE ON MOTION	Motion carried by unanimous voice vote.
-----------------------	---

ADJOURNMENT

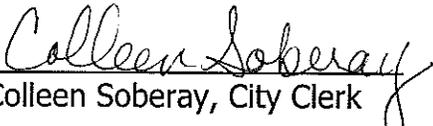
MOVED BY:	Phillips	To adjourn the meeting.
SECONDED BY:	Rodgers	

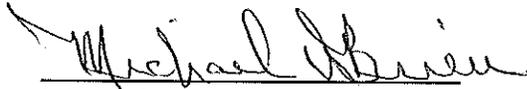
VOTE ON MOTION	Motion carried by unanimous voice vote.
-----------------------	---

With no further business before the Council, the meeting adjourned at 10:35 p.m.

APPROVED THIS 26TH DAY OF SEPTEMBER, 2000.

ATTEST:


Colleen Soberay, City Clerk


Mike O'Brien, Mayor