Introduced by: Vice-Mayor Middlebrook
Date: February 9, 2010
Action: Passed
Vote: 7-0

CITY OF BETHEL, ALASKA

Resolution # 10-18

A RESOLUTION BY THE CITY OF BETHEL REQUESTING THE STATE OF ALASKA LEGISLATURE CONSIDER MODIFICATIONS TO ALASKA STATUTE TITLE 4 CREATING NEW OPTIONS WITHIN AS 4.11.491 (a) AND (b) ; RESTRICTING OR BANNING THE SALES OF ALCOHOL WITHOUT THE PROVISIONS OUTLINED UNDER AS 04.06.095, 04.11.010 AND 04.16.125-DATABASE,LIMITS AND LABELING

WHEREAS, The local option section of Title 4 gives the voters of a community the opportunity to place restrictions of alcohol within their own community

WHEREAS, since the adoption of a local option, communities have seen further restrictions placed upon them by the legislature without a vote of the community

WHEREAS, the majority of the voters who voted in the City of Bethel Regular Election October 6, 2009 voted out of the local option prohibiting the sale of alcoholic beverages within the City of Bethel;

WHEREAS, the majority of the voters who voted in the City of Bethel Special Election January 19, 2010 were opposed to the issuance of any liquor licenses within the City of Bethel;

WHEREAS, communities falling under local option face more restrictions than the rules outlines in Alaska Statute 4.11.491 prohibiting:

(a) If a majority of the persons voting on the question vote to approve the option, a municipality shall adopt a local option to prohibit
- **(1)** the sale of alcoholic beverages;
- **(2)** the sale of alcoholic beverages except by one or more of the following listed on the ballot:
  - **(A)** a restaurant or eating place licensee;
  - **(B)** a beverage dispensary licensee;
  - **(C)** a package store licensee;
  - **(D)** a caterer holding a permit under AS 04.11.230 to sell alcoholic beverages at a site within the municipality who is also

licensed under a beverage dispensary license for premises outside of the municipality;
(E) a winery licensee; or
(F) a winery licensee, except that sales may occur only to a person licensed under this title or in another state or country;
(3) the sale of alcoholic beverages except on premises operated by the municipality and under a type of licensed premises listed on the ballot, that may include one or more of the following:
(A) a restaurant or eating place license;
(B) a beverage dispensary license; or
(C) a package store license;
(4) the sale and importation of alcoholic beverages; or
(5) the sale, importation, and possession of alcoholic beverages.

WHEREAS, if a community falls under one of the above mentioned local options they are also forced to follow the restriction under:

AS 4.06.095 Statewide database. The board, after consulting with package store licensees, shall create and maintain a statewide database that contains a monthly record of the alcohol purchased by, and shipped to, a person who resides in a municipality or established village that has restricted the sale of alcoholic beverages under AS 04.11.491 (a)(1), (2), or (3) or (b)(1) or (2). Except as otherwise specifically provided in this section, the information contained in the database is confidential and is not subject to inspection or copying under AS 40.25.110 - 40.25.220. Information in the database shall be purged one year after entry unless it is needed for criminal investigation or prosecution. Information in the database is available only to
(1)) a package store licensee, agent, or employee to consult before shipping alcohol to a purchaser in a restricted area as provided in AS 04.11.150(g);
(2) a law enforcement officer;
(3) a probation or parole officer; and
(4) the board.

AS 4.11.010 License or permit required; presumption concerning possession for sale.
(c): Unless a municipality or established village has adopted a more restrictive local option under AS 04.11.491 (g), in a criminal prosecution for possession of alcoholic beverages for sale in violation of (a) of this section, the fact that a person

(1) possessed more than 10 1/2 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages in an area where the sale of alcoholic beverages is restricted or prohibited under AS 04.11.491 creates a presumption that the person possessed the alcoholic beverages for sale;
(2) sends, transports, or brings more than 10 1/2 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages to an area where the sale of alcoholic beverages is restricted or prohibited under AS 04.11.491 creates a presumption that the person sent, transported, or brought the alcoholic beverages for sale in the area;

AS 04.16.125. Alcoholic Beverages Transported By Common Carrier.

(a) A person may not use a common carrier to transport alcoholic beverages into an area that has restricted the sale of alcoholic beverages under AS 04.11.491 (a)(1), (2), or (3) or (b)(1) or (2) unless:
(1) the shipping container holding the alcoholic beverages is clearly labeled as containing alcoholic beverages with letters that contrast in color to the shipping container and that are at least two inches in height; and
(2) an itemized invoice showing the quantity and purchase value of distilled spirits, of wine, and of malt beverages is attached to the outside of the shipping container.
(b) This section does not apply to
(1) a person transporting not more than
(A) two liters of wine;
(B) one gallon of malt beverages; or
(C) one liter of distilled spirits; or
(2) the transportation of alcoholic beverages for use on premises allowed under AS 04.11.491 (a)(2) - (3) or (b)(2) or for use under a permit allowed under AS 04.11.491 (a)(2).
(c) In this section,
(1) "common carrier" means a motor vehicle, watercraft, aircraft, or railroad car available for public hire to transport freight or passengers;
(2) "transport" has the meaning given in AS 04.11.499;

WHEREAS, AS 04.11.491 authorizes municipal voters to enact "local option" ordinance that restrict or prohibit the sale, importation or possession of alcohol;

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WHEREAS, AS 29.35.080 expressly recognizes the authority of municipalities to regulate the possession, barter, sale, importation, and consumption of alcoholic beverages;

WHEREAS, the restrictions established under AS Title 4 are already too restrictive, therefore preventing the municipality the possibility to regulate the possession, barter, sale, importation, and consumption of alcoholic beverages;

WHEREAS, the Bethel City Council would like a modification of Title 4, to include an option under local option which only prohibit the items spelled out under 4.11.491, which does not limit the amount of alcohol an individual can possess; which does not require the marking of packaging when delivered or brought in to a local option community and does not require the information of the individual order to go into a state wide database;

WHEREAS, by establishing a new options which provides a question to the voters, that do not impose the requirements of AS 4.06.095, 4.11.010 and 4.16.125 will provide the majority of the voters who voted in the last City of Bethel Elections their rights and wishes as voters.

NOW, THEREFORE, BE IT RESOLVED the Bethel City Council requests the State of Alaska Legislature to consider modification to Alaska Statute Title 4 to contain language that creates new options under AS 04.11.491 allowing communities to restrict or ban sales without imposing the restrictions outlined in AS 04.06.095 Statewide database., 04.11.010 License or permit required; presumption concerning possession for sale (limits) or 04.16.125. Alcoholic beverages transported by common carrier. This would allow communities to choose not to participate in:

a) Statewide database;
b) presumption of sale and related penalties for possession of more than stated limits;
c) limits for importation and possession;
d) special packaging and marking of alcohol shipments.

BE IT FURTHER RESOLVED THAT the City of Bethel requests the legislature to adopt changes to local option provisions in AS Title 4 to the effect that, no further restrictions of a local option adopted by a community will be imposed by the legislature without a vote of the affected community.

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ENACTED THIS 9 DAY OF FEBRUARY 2010 BY A VOTE OF 7 IN FAVOR AND 0 OPPOSED.

Joseph Klejka, Mayor

ATTEST:

Lori Strickler, City Clerk