Introduced by: City Manager Herron
Date June 22, 1999
Public Hearing: July 13, 1999
Action: Enacted
Vote: Unanimous

CITY OF BETHEL, ALASKA

ORDINANCE #99-13

AN ORDINANCE ESTABLISHING THE BRAUND BUILDING ENTERPRISE; AUTHORIZING, CONFIRMING AND RATIFYING LEASES OF BRAUND BUILDING SPACE; APPROVING THE ESSENTIAL TERMS AND CONDITIONS OF A LOAN FROM NATIONAL BANK OF ALASKA TO THE CITY IN AN AMOUNT NOT TO EXCEED $1,700,000 FOR THE PURPOSE OF PAYING A PART OF THE COSTS OF REMODELING THE BRAUND BUILDING; AUTHORIZING THE ASSIGNMENT OF BRAUND BUILDING RENTS AND THE EXECUTION OF A DEED OF TRUST OR OTHER INTEREST IN THE BRAUND BUILDING TO SECURE THE LOAN; AND AUTHORIZING THE MANAGER TO EXECUTE SUCH ASSIGNMENTS, NOTES, LEASES, BONDS AND OTHER DOCUMENTS AS MAY BE NECESSARY TO COMPLETE THE LOAN

WHEREAS, the City of Bethel has long planned for the remodeling of the Braund Building; and

WHEREAS, the City has accumulated sufficient funds from local, state and federal sources which, with the proceeds of a loan in the amount of not to exceed $1,700,000 is sufficient to complete the planned remodeling, and

WHEREAS, the revenue from the lease of the space in the remodeled Braun Building will be sufficient to pay all operating costs of the building and debt service on the loan, and

WHEREAS, the National Bank of Alaska has made a commitment to buy the City's revenue bond in an amount not to exceed $1,700,00 under terms that are acceptable to the City, and

WHEREAS, it is now necessary for the City to borrow the amount of the loan and issue its revenue bond as evidence of the City's obligation under the loan and to authorize and approve various real property interest transfers in connection with the borrowing.

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

SECTION 1. Classification. Section 2 of this Ordinance is permanent in nature and of ongoing effect and shall be incorporated into the Bethel Code of Ordinances. Sections 3 through 8 are non-code provisions.

SECTION 2. Adoption of New Chapter. There is adopted as a part of the Bethel Municipal Code a new Chapter 4.19 reading.

Chapter 4.19.
Enterprise Funds.

4.19.010 Purpose, application and exceptions.

A. It is the purpose of this chapter to formally recognize or establish certain enterprise operations of the City and to set out generally applicable procedures governing the funds of such enterprises. This chapter 4.19 applies only to enterprise funds set out in BMC 4.19.020.

B. Enterprise operations not specifically identified or described under this chapter are not subject to the provisions of this chapter. The restrictions set out in this chapter do not apply as limitations on the authority of the council to transfer the fund balance, or of the council or the manager to restructure the fund or operation, of a city enterprise that is not specifically set out and identified in this chapter.

4.19.020 Enterprise funds established. There is established the following enterprise fund of the City of Bethel:

Braund Building Enterprise Fund. The Braund Building Enterprise Fund consists of Lot 1 of the Court House Subdivision, according to Plat 99-____ filed in the Bethel Recording District, including all improvements thereto, and all revenues derived from the leasing, licensing, other revenue-producing use of the property, including the disposal of fixtures and improvements to the property and monies transferred to the Fund by the council from other sources.

4.19.030 Fund accounting. Expenses, assets, liabilities, revenues, expenditures, and other financial matters shall be accounted for in accordance with generally accepted accounting principles applicable to governmental enterprises.

4.19.040 Fund balance transfers.

A. No part of the unappropriated, unreserved and unobligated part of the fund balance of an enterprise fund may be transferred to the general fund or appropriated for a use other than for the benefit of the property or operation of the enterprise so long as there remain outstanding any bonds, notes or similar debt secured by the pledge of the enterprise fund unless the City has obtained the concurrence of all holders of the bonds or other debt instruments to such appropriation or other transfer of the funds. A transfer or appropriation authorized under this subsection A is subject to the limitations of subsection B.

B. By an appropriation or other ordinance, the council may transfer a part of the unappropriated, unobligated and unreserved fund balance of an enterprise so long as there remains in the unappropriated, unobligated and unreserved part of the fund balance an amount equal to the greater of either 20% of the total actual expenses for the preceding fiscal year or 20% of the budgeted expenses for the current fiscal year.

4.19.050 Modification of enterprise funds. For so long as there are outstanding bonds, notes or similar debt obligations secured by the pledge of the revenues of an enterprise fund, the council may not dissolve, divide or take such other action with respect to the enterprise operation or fund if such action would clearly have an adverse effect on the security interest of the bond, note or other debt holders unless the consent of such debt holders has been obtained.

SECTION 3. Approval and Ratification of Court System Lease. The lease of space within the Braund Building (State Court System Lease No. 1885) effective September 1, 1998 and Amendment No. 1 thereto executed by the City on October 27, 1998 are ratified and approved.

SECTION 4. Approval of Leasing of Remaining Space in Braund Building.

A. The City Manager is authorized to lease to governmental agencies the leasable space within the Braund Building that is not leased for the exclusive use of the Alaska Court System. Such leases shall be upon such terms and for such rental rates as the manager determines are just and fair but should be within a reasonable range of fair market value for such space.

B. If the manager is unable to lease such space to governmental agencies, the manager may lease such space to nongovernmental persons at market rates, as determined by the manager, and on such other reasonable terms and conditions as are appropriate, so long as such lease or leases to nongovernmental persons do not affect the tax exempt status of the interest on bonds, notes or other debt secured by the pledge of the revenues of the Braund Building Enterprise. The City shall obtain the opinion of recognized bond counsel with respect to the effect of a proposed lease to a nongovernmental party on the tax-exempt bonds secured by Braund Building revenues before the City becomes obligated to such a lease.

C. Leases of the additional Braund Building space authorized under this section may be negotiated and executed by the manager without further notice or council action until July 1, 2000. For so long as the revenues of the Braund Building Enterprise are pledged to the payment of principal or interest on bonds or other debt obligations issued for the benefit of the Braund Building Enterprise, all leases of Braund Building space shall be subject to assignment to the purchaser of such bonds or other debt obligations.

SECTION 5. Approval of Loan.

A. The loan agreement dated November 3, 1998 from National Bank of Alaska (the "Bank"), accepted by the City Administration on November 10, 1998 and attached hereto as Exhibit A, is approved and the City Manager is authorized and directed to execute on behalf of the City such assignments, bonds, certificates, deeds of trust and other documents and instruments as may be necessary or appropriate to issue to the Bank the City's revenue bond in the principal amount not to exceed $1,700,000 (the "Bond") under the terms and conditions set out in this Ordinance and Exhibit A hereto. The Bond shall be dated as of the date of issuance and shall bear interest at the rate of 6.250% per annum on the unpaid balance. Interest shall accrue beginning with the date of the first draw under the loan and shall be paid monthly on the first day of each calendar month thereafter. The first principal payment shall be made, with interest due, on January 1, 2000; principal and interest payments based on level debt service shall be made thereafter on the first day of each calendar month until all principal and interest has been paid. The Bond shall mature on December 1, 2014, at which time all unpaid principal and interest shall be paid.

B. The City of Bethel does not anticipate issuing or intend to issue more than $5,000,000 in tax exempt bonds (other than private activity bonds) during calendar year 1999 and hereby designates the Bond authorized under this Ordinance as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended, including regulations issued pursuant thereto (the "Code").

C. All actions taken by the manager, the finance director and other officials, employees and agents of the City in the furtherance of the loan and Bond authorized under this Ordinance are hereby ratified and approved. The manager, finance director and other officers, employees and agents of the City are hereby authorized and directed to take such further actions as are necessary or appropriate to issue the Bond authorized under this Ordinance. The manager, with the advice of the finance director and approval of bond counsel may agree to such modifications of the terms and conditions set out in the November 3, 1998 commitment letter from the Bank as are determined by the manager to be in the best interest of the City; provided, the $1,700,000 maximum principal amount of the bond, the 6.250% interest rate on the bond, and the 15-year term may not be increased unless approved by the City Council by resolution.

D. There is established within the Braund Building Enterprise Fund, a reserve fund that may be pledged for the payment of principal and interest on the Bond in the event sufficient funds are otherwise unavailable within the Braund Building Enterprise Fund for the payment of principal and interest on the Bond when due. The maximum amount of the reserve fund is the least of (1), 10 percent of the stated principal amount of the Bond or (2), the maximum annual principal and interest requirements on the Bond or (3), 125% of the average annual principal and interest requirements on the Bond, or such lesser amount as may be maintained in such fund under applicable provisions of the Code. There is authorized, appropriated and directed to be transferred to the reserve fund from any appropriate source on the first day of fiscal years 2000, 2001 and 2002 one-third of the total amount required to be placed in the fund, or such lesser or greater amount in fiscal year 2002 as is necessary to bring the reserve fund to the level required by the Bank. Monies transferred to the reserve fund are assets of the Braund Building Enterprise for so long as required in the reserve fund. Notwithstanding any provisions of the Bethel Municipal Code, the finance director shall manage the income, earnings and principal amount of the reserve fund in such a manner as to ensure the fund meets all requirements of the applicable provisions of the Code for an exception from yield restrictions, including transfers of income, earnings or principal from the reserve fund to the general or other fund or account of the City.

E. The full faith and credit of the City of Bethel is NOT pledged to the payment of the principal and interest on the Bond. The City pledges only the net revenues of the Braund Building Enterprise to the payment of the principal and interest on the Bond. The manager is authorized and directed to execute such assignment of leases and rents from the Braund Building as are required by the Bank to secure the payment of principal and interest on the Bond.

SECTION 6. Deed of Trust. The manager may execute a deed of trust in favor of National Bank of Alaska covering Lot 1 of the Court House Subdivision if required by the Bank.

SECTION 7. Real Property Interest Transfers. Because of the special conditions and needs arising out of financing requirements for the Braund Building Project, the approval, ratification and authorization for the lease, conveyance or other transfer of real property interests under this Ordinance are complete as to each such interest and no other procedures or approvals are applicable.

SECTION 8. Effective date. This Ordinance becomes effective immediately upon adoption.

ENACTED THIS 13th DAY OF JULY 1999, by a vote of 6 in favor and 0 opposed.

Agnes L. Phillips, Mayor

ATTEST:

Gaye J. Vaughan, City Clerk