Introduced by: Public Safety Commission
Date: August 13, 2013
Public Hearing:
Action: Ordinance not Introduced.
Vote:

CITY OF BETHEL, ALASKA

Ordinance #13-20

AN ORDINANCE BY THE BETHEL CITY COUNCIL ADDING SECTION 9.38 CHRONIC NUISANCES

THEREFORE BE IT ORDAINED by the City Council of Bethel, Alaska, that the Bethel Municipal Code shall be amended and revised as follows:

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

SECTION 2. Amending BMC Title 9 The Bethel Municipal Code is amended as follows (new language is underlined and ~~old language is stricken out~~):

09.38.010 Purpose
09.38.020 Definitions
09.38.030 Civil Penalties
09.38.040 Notice to Liable Persons
09.38.050 Appropriate Corrective Action
09.38.060 Lien on Property
09.38.070 Appeal

09.38.010 Purpose
Chronic nuisance properties present grave health, safety and welfare concerns where the persons or entities responsible for such properties have failed to take corrective action to abate the nuisance condition. Chronic nuisance properties have a tremendous negative impact upon the quality of life, safety and health of the neighborhoods where they are located. Chronic nuisance properties are also a financial burden to the city by the repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such property.

09.38.020 Definitions
1. Chronic Nuisance Property means:
    a. Any residential property on which twelve (12) or more nuisance activities have occurred during any twelve (12) month period;
    b. Any commercial property on which fifty (50) or more nuisance activities have occurred during any twelve (12) month period;

c. Any residential property on which or within two hundred (200) feet of which any person associated with the property has engaged in twelve (12) or more nuisance activity during any twelve (12) month period;
d. Any commercial property on which or within two hundred (200) feet of which any person associated with the property has engaged in fifty (50) or more nuisance activities during any twelve (12) month period.

2. Commercial Unit means an area within a commercial property that is readily identifiable by visual inspection as an area used by a single business or commercial enterprise.
3. Control means the ability to regulate, restrain, dominate, counteract or govern conduct that occurs on a property.
4. Excessive Police Response means:
   a. For residential property, each police response in excess of twelve (12) in a dwelling unit in any twelve (12) month period.
   b. For a commercial property, each police response in excess of fifty (50) in a commercial unit in any twelve (12) month period.
5. Dwelling Unit means a structure or portion thereof providing independent and complete cooking, living, sleeping and toilet facilities for a person or group of persons living as a single housekeeping unit.
6. False Information in this section means any untrue information delivered by any means, including but not limited to, telephone, cellular phone, e-mail, mail, radio, television, or written or oral communication.
7. Nuisance Activity means all calls for police or other City services which are not exempt (i.e., not for legitimate repair, a medical emergency, a response to an assault or rape, or another exemption as defined under Alaska Statute)
8. Permit means to suffer, allow, consent to or acquiesce by failure to prevent or expressly assent or agree to the doing of an act.
9. Person means any natural person, agent, association, firm, partnership or corporation capable of owning, occupying or using property in the City.
10. Person Associated With means any person, who, on the occasion of the nuisance activity, has entered, patronized, visited or attempted to enter, patronize or visit, or waited to enter, patronize or visit a property or person present on property, including without limitation any officer, director, customer, agent, employee, or any independent contractor of a property, person in charge, or owner.
11. Police Response means one or more police or peace officers goes to a property in response to a call for assistance, a complaint, an emergency, a potential emergency, or a reasonable suspicion of unlawful activity witnessed by a police officer, and any response determined by a sergeant or higher ranking police officer to be related to activities on the property premises and reasonably preventable; however, the term “police response” does not include a response to:

a. Receipt of false information as defined above unless the false information was provided by an occupant or owner of the property;
b. A call involving potential child neglect, potential domestic violence as defined in AS 18.66, or potential stalking as defined in AS 11.41;
c. A report of a sexual assault as defined in AS 11.41.260 or AS 11.41.270;
d. A medical emergency for serious bodily injury or death;
e. A call from the tenant or owner of a commercial property used as a retail store for police assistance with:
    i. Theft or attempted theft, or
    ii. A report of the presence or identification of a person under state or federal warrant;

12. Property means any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to any business or residential premises, room, house, parking area, loading area, landscaping, building or structure or any separate part, unit or portion, or any business equipment, whether or not permanent. For property consisting of more than one unit, property is limited to the unit or the portion of the property on which any nuisance activity has occurred or is occurring, but includes areas of property used in common by all units of property, including but without limitation other structures erected on the property and areas used for parking, loading and landscaping.

09.38.030 Civil Penalties

1. Subject to subsection 2 below, the owner of a property and the tenant thereon shall jointly and severally be liable to pay the City a fee of Three Hundred Fifty ($350) per excessive police response to the dwelling unit or commercial unit during any twelve (12) month period.
2. A person is exempt from liability for the fee established in subsection (1) if:
    a. The City has not provided notice to the person in writing as provided for in Section 09.38.040.
    b. Any person has taken appropriate corrective action, given written notice to the Chief of Police of the action as required by subsection 09.38.050 and such action has been approved by the Chief of Police or their designee.
3. If a property has more than one owner, all owners shall be jointly and severally liable with the tenant for any fee imposed under this section. Actual notice to one owner creates a rebuttable presumption of actual notice to all other owners.
4. A tenant shall not be liable for the fee if the tenant's conduct did not require the police response and the tenant's right to possession commenced on a date subsequent to the date of the first police response that is counted for purposes of the fee imposed under this chapter.
5. If the Chief of Police, or their designee, determines appropriate corrective action was taken with respect to a specific unit, the count of police responses to the unit

shall reset to zero, effective the date of the determination. After resetting, all provisions in this chapter referring to a "twelve (12) month period" shall mean beginning from the date the previous corrective action was taken.

6. The fee may be collected in any lawful manner, including bringing action in court for a personal judgment against any one or more of the persons liable.
7. An owner or tenant liable for a fee under this chapter may bring an action in court against a person whose conduct required the excessive police response to recover the amount of the fee and related costs. An owner or tenant shall not be granted any extension of time or continuance to pay the fee based on a pending action against a third party.

09.38.040 Notice to Liable Persons

1. Before penalties can be imposed, the City shall notify the owner and tenant of a property, in writing, when there have been significant nuisance responses in any twelve (12) month period to a single dwelling or commercial unit.
2. Notice under this section shall be given in a manner reasonably calculated, under all of the circumstances, to provide actual notice to the person of the potential liability for a fee. At a minimum, the notice shall be sent by certified mail, return receipt requested, to the mailing address of the person as shown on the City's or State Recorder's records. If the mailed notice is returned refused for signature by the recipient, actual notice shall be conclusively presumed on the date of the refusal. If the mailed notice is returned unclaimed or undeliverable, the City shall accomplish notice by another method and attest to the date notice is accomplished by affidavit or in a police report. Notice may be accomplished in any lawful manner.
3. The notice shall:
    a. Identify the property that is the subject of the notice by street address and description and identify the dwelling unit to which the police responses have been made if there is more than one dwelling unit on the property;
    b. State that there have been six (6) or more police responses to the property during any twelve (12) month period if the property is residential or that there have been twenty-five (25) or more police responses to the property during any twelve (12) month period if the property is commercial;
    c. Invite the owner or resident of the property to meet with the Chief of Police or their designee to discuss the situation and ways to address it;
    d. State that failure to meet with the Chief of Police or their designee shall be prima facie evidence of an unwillingness to address the situation;
    e. State the owner shall be liable for a fee for each excessive police response to the property during any twelve (12) month period, unless, within thirty (30) days, any person takes appropriate corrective action promptly and gives written notice to the Chief of Police, or their designee, of the action taken;

f. State the amount of the fee per excessive police response to the property; and
g. State the name and phone number of a representative of the City to contact concerning the notice.

09.38.050 Appropriate Corrective Action

1. An owner or tenant of a property shall have ten (10) days from the date the notice is accomplished, as required under BMC 09.38.040, to promptly contact the Chief of Police, or their stated designee to schedule an appointment;
2. An owner or tenant of a property shall have fifteen (15) days from the date the notice is accomplished, as required under BMC 09.38.040, to meet with the Chief of Police or their designee regarding the situation;
3. An owner or tenant of a property shall have thirty (30) days from the date of their meeting with the Chief of Police, or their designee, to begin appropriate corrective action. However, failure to contact the police department or to meet with the Chief of Police will not alleviate the need to take corrective action.
4. An owner or tenant of a property who fails to contact the Chief of Police or their designee as provided for in BMC 09.38.050 1 & 2 above, shall have thirty (30) days from the date the notice is accomplished pursuant to BMC 09.38.040 to undertake appropriate corrective action.
5. Appropriate corrective action is action reasonably expected to correct the cause of the police responses to the property. The Police Chief's determination shall be in writing and issued within ten (10) days of receipt of the person's written notice of the action taken. Should the officer determine the action taken is not appropriate corrective action, the officer Police Chief explain the reasons and the person shall have fifteen (15) days from the date of the determination to take appropriate corrective action. The fifteen (15) day extension shall be provided only once in a twelve (12) month period for each unit receiving excessive police responses. Examples of appropriate corrective action, subject to a police officer's determination whether it is appropriate, may include, without limitation:
    a. Written notice to quit under AS 09.45.100 – AS 09.45.110;
    b. Eviction notice served on the tenant or lessee requiring vacation of the premises within thirty (30) days or less;
    c. Obtaining a restraining order, if appropriate;
    d. Installation or implementation of new or additional security measures; or
    e. Action recommended by the Bethel Police Department in writing and implemented to the satisfaction of the Bethel Police Department.
6. Appropriate corrective action does not include:
    a. Relocating a tenant or lessee of a unit to a different unit on the same property, unless a police officer with the rank of sergeant or higher determines the relocation is appropriate. If a person is relocated, the City

may transfer the number of police responses from the former unit to the new unit.

b. Communicating orally with the person causing the police responses.

7. No fee may be imposed for additional police responses to the property that is the subject of the Notice during the fifteen (15) day period allowed under subsection (2) if any person takes appropriate corrective action and gives written notice to the Bethel Police Department of the action taken during the fifteen (15) day period. There is a conclusive presumption that appropriate corrective action was taken if there are no additional police responses to the property from the end of the fifteen (15) day period until the end of the earlier of:
   a. The end of the twelve (12) month period; or
   b. Ninety (90) days.

09.38.060 Lien on Property

1. A fee imposed under BMC 09.38.030 is a lien on the property to which there have been an excessive number of police responses.
2. The lien becomes effective upon the recording of a notice of lien that:
   a. Describes the property that is the subject of the lien;
   b. States the amount of fees accrued at the time of the recording; and
   c. States the lien has been recorded pursuant to this section.
3. When notice of a lien has been recorded under subsection 2 of this section, the lien has priority over all other liens except:
   a. Liens for property taxes, special assessments, and sales and use taxes;
   b. Liens that were perfected before the recording of the lien under this section; and
   c. Mechanics' and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the lien under this section.
4. A person determined liable for excessive police responses under this chapter may, within twenty (20) days or receiving notice of imposition of fees, file objections with the Chief of Police of the Bethel Police Department.
   a. If objections of either the property owner or tenant are received by the Chief of Police prior to the expiration of the twenty (20) day period, the Chief of Police shall refer the matter to the City Manager for administrative review.
   b. Upon conclusion of its administrative review, the City Manager shall make a written determination that the amount of the charges shall be canceled, reduced, or remain the same. A copy of this determination shall be furnished to the person making the objections together with the notice of such person's right to appeal to the Appeals Board.

a. If no appeal of a determination by the City Manager is filed within the time period allowed, a copy of the determination will be furnished to the Finance Director who shall cause a notice of the lien to be recorded as provided in subsection (2).

09.38.070 Appeal

1. Form of Appeal. Any person entitled to service under this chapter may appeal any final decision of the City Manager by submitting an application and the filing fee to the City Clerk at the City Offices. The appeal shall be filed within thirty (30) days from the date of the City Manager's final decision. The appeal must clearly state the issues being appealed and the basis for appeal.
2. Processing of Appeal. Upon receipt of any properly appeal filed pursuant to this section, the City Clerk shall present it a Hearing Officer.
3. Scheduling and Noticing for Hearings. As soon as practicable after receiving the written appeal, the Hearing Officer shall inform the appellant and the City of the appeal date and time. Such date shall be no less than ten (10) days or more than forty-five (45) days from the date the appeal was filed with the City Clerk. Written notice of the time and place of the hearing shall be given at least ten (10) days prior to the date of the hearing to each appellant by the City Clerk by causing a copy of such notice to be delivered to appellant personally or by mailing a copy thereof, postage prepaid, addressed to appellant at the address shown on the appeal.
4. Effect of Failure to Appeal. Failure of any person to file an appeal in accordance with the provisions of this chapter shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order or any portion thereof.
5. Scope of hearing of appeal. Only those matters or issues specifically raised in the notice and order or actions by persons with authority under this chapter shall be considered in the appeal hearing.

SECTION 5. Effective Date. This section shall become effective on September 1, 2013.

ENACTED THIS ____ DAY OF _____ 2013, BY A VOTE OF __IN FAVOR AND __OPPOSED.

_____
Joseph A. Klejka , Mayor

ATTEST:

_____
Lori Strickler, City Clerk