

Introduced by: City Manager Williams
Introduction Date: February 27, 2018
Public Hearing: March 13, 2018
Action: Passed
Vote: 6-0

CITY OF BETHEL, ALASKA

Ordinance #18-06

AN ORDINANCE AMENDING CHAPTER 1 OF THE BETHEL MUNICIPAL CODE, GENERAL PROVISIONS

WHEREAS, the Bethel Municipal Code was first adopted on February 25, 1985 via Ordinance 157;

WHEREAS, Title 1 of the Code has not been re-written since 2007;

WHEREAS, since being hired with the City, the City Attorney has been tasked with updating all of the Bethel Municipal Code;

WHEREAS, as part of the update, the City Attorney has gone back to the beginning and updated sections 1.01 and 1.02 (previously adopted);

WHEREAS, this is a continuation of Title One's update;

NOW, BE IT FURTHER ORDAINED, the City Council adopts Sections 1.03, 1.04, 1.05 and 1.06 of the Bethel Municipal Code as outlined in this Ordinance;

SECTION 1. Classification. This is a Codified Ordinance and shall become part of the Bethel Municipal Code.

SECTION 2. Amendments. Bethel Municipal Code Section 1.03, Form of Government and General Powers; Section 1.04 City Logo and City Seal; and Section 1.05 City Boundaries; and Section 1.06 Violations and Penalties amended as follows (old language is stricken, new language is underlined):

1.03 Form of Government and General Powers

<u>1.03.010</u>	<u>Form of Government</u>
<u>1.03.020</u>	<u>Powers of the City</u>
<u>1.03.030</u>	<u>Residual Powers</u>
<u>1.03.040</u>	<u>Construction</u>
<u>1.03.050</u>	<u>Intergovernmental Relations</u>
<u>1.03.060</u>	<u>Eminent Domain</u>
<u>1.03.070</u>	<u>Adverse Possession</u>
<u>1.03.080</u>	<u>Right of Entry and Inspection</u>
<u>1.03.090</u>	<u>Administrative Search Warrants</u>
<u>1.03.100</u>	<u>Controlling Chapter</u>

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1.03.010 Form of Government

A. The City of Bethel shall continue as a municipal corporation under the name “The City of Bethel, Alaska.”

B. The form of City government for the City of Bethel shall be known as the manager form of government as defined in AS 29.20.460 through 29.20.520.

C. The City is a general-law, second class City within the State’s unorganized borough.

1.03.020 Powers of the City

The City shall have all the powers, functions, rights, privileges, franchises and immunities of every name and nature whatsoever, which a general law, Second-Class City may have under the constitution and laws of the State of Alaska. The City may exercise all legislative powers not otherwise prohibited by law or by this Code.

1.03.030 Residual Powers

The enumeration or mention of particular powers by this Code shall not be deemed to be exclusive or limiting; and in addition to the powers enumerated or mentioned herein or implied hereby, the City shall have all powers which, under the State Constitution and law, it would be competent for this Code specifically to enumerate or mention.

1.03.040 Construction

The powers of the City shall be liberally construed. The specific enumeration of a particular power in this Code shall not be construed as limiting the powers of the City.

1.03.050 Intergovernmental Relations

The City may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by agreement with any one or more local governments, the State, or the United States, or any agency or instrumentality of these governments.

1.03.060 Eminent Domain

The city may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power of function of the city, in accordance with AS 09.55.240 through 09.55.460; provided, that the city may exercise the powers of eminent domain or declaration of taking to acquire property only if the city will own, or if the public will have the legal right to use, the property, and the city may not exercise the powers of eminent domain or declaration of taking to provide property for private economic development. The exercise of the power of eminent domain or declaration of taking shall be by resolution of the council.

1.03.070 Adverse Possession

The City cannot be divested of title to real property by adverse possession.

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1.03.080 Right of Entry and Inspection

- A. Any authorized official of the City may, upon presentation of proper credentials, enter any building, place, structure, vessel or premises within the City at all reasonable times to perform any duty or inspection necessary for enforcement of any ordinance, resolution or Code provision. Except in emergency situations, the official shall give the occupant, if such person can be located after reasonable effort, 24 hours' written notice of the official's intention to inspect. The notice given to such person shall state that the person has the right to refuse entry and that, in the event such entry is refused, inspection may only be made upon issuance of a search warrant by a court of competent jurisdiction. In the event the person refuses entry after such request has been made, or in the event that such persons cannot be located after reasonable efforts to locate the same, the official is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry. If, prior to requesting consent to enter, the official seeking entry has reason to know that the occupant of the property is not the owner or manager of the property, the official shall make a reasonable effort to notify the owner or manager of the property that the officer intends to inspect the property on a specific date.
- B. In circumstances where the official has reasonable cause to believe that a violation of a City ordinance, resolution or Code provision exists with respect to a particular building, place, structure, vessel or premises, or that the owner or authorized local agent is likely to refuse entry, assistance of the court may be sought without prior notice to such person.
- C. For purposes of this section, the owner or authorized local representative shall be deemed to be the occupant in circumstances where there appears to be no occupant.

1.03.090 Administrative search warrants

- A. Any court of competent jurisdiction may issue an administrative search warrant pursuant to this chapter commanding any authorized official of the City to conduct any search or inspection necessary for enforcement of any City ordinance, resolution or Code provision upon receipt of an affidavit or testimony under oath of any authorized official of the City. The affidavit or testimony must describe with particularity the place, structure, building, vessel or premises to be searched or inspected, the scope and purpose of the search or inspection, and the objects and places to be searched or inspected, and must show either that there is reason to believe that a violation of a City ordinance, resolution or Code provision exists with respect to the particular building, place, structure, vessel or premises to be searched or inspected or that:
 - 1. There exists a reasonable system of regular inspections which specifies the purpose, frequency, scope and manner of inspections, or that other standards for inspections exist; and
 - 2. The system or standards established are designed to enforce a City ordinance, resolution or Code provision; and
 - 3. The building, place, structure, vessel or premises to be searched or inspected comes within the system or standards.

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- B. A warrant issued under this section shall be valid for not more than five (5) days after issuance, and must be executed and returned to the court within seven (7) days after issuance. The warrant is valid only between the hours of 8:00 a.m. and 8:00 p.m. unless express authorization to serve the warrant at other times appears on the face of the warrant.
- C. An inspection or search pursuant to a warrant issued under this section shall not be made by means of forcible entry, except that the court may expressly authorize a forcible entry either where facts are shown sufficient to create a reasonable suspicion of a violation of a City ordinance, resolution or Code provision, which, if such violation exists, would be an immediate threat to health or safety or where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful.

1.03.100 Controlling Chapter

This chapter shall be controlling over any other ordinance or part of an ordinance on the same subject, whether heretofore or hereafter adopted, unless such ordinance or part of an ordinance provides differently by an express reference to this chapter. Notwithstanding any other ordinance of this city, whether heretofore or hereafter adopted, it shall not be a violation of this chapter to refuse or fail to consent to an entry for inspection.

1.04 CITY LOGO & CITY SEAL

- 1.04.010 City Logo
1.04.020 City Seal
1.04.030 Custody of City Seal
1.04.040 Use of City Seal
1.04.050 Use of City Logo without Permission

1.04.010 City Logo

The logo set forth in this section is adopted as the official logo of the City of Bethel, Alaska.



1.04.020 City Seal

The seal of the City of Bethel, Alaska is a metallic, circular device on which shall be engraved and embossed with the words: "City of Bethel, Alaska" "OFFICIAL". Such device shall be capable of making an impression of the words on paper.

1.04.030 Custody of City Seal

The City Clerk is the custodian of the official City Seal.

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1.04.040 Use of City Seal

- A. The official seal of the City of Bethel is a symbol of authority and jurisdiction of the City. As a valuable asset of the City and its citizens, the City Council seeks to insure that it is used only for appropriate purposes.
- B. The City Clerk shall have charge of the seal and shall affix the City Seal to all certificates required by law, by this Code, or by Ordinance of the City. The City Clerk may issue written permission for ceremonial or other permitted purposes as deemed appropriate by the City Clerk of the City Council.
- C. The record of any official proceeding of the City, or any ordinance, resolution or Code provision may be placed in any court or tribunal by introduction of a paper or electronic copy thereof certified by the City Clerk under the seal of the City of Bethel as a true and correct copy.
- D. The City Seal shall be affixed to all evidences of indebtedness of the City. The City Council may, by resolution, determine such other uses for the Seal as the Council may deem appropriate.
- E. City officers, employees, members of the Council, and members of City boards and commissions may use stationary and printed materials with the City Seal, or facsimile thereof, only while acting within the scope of their office or employment.

1.04.050 Use of City Logo without Permission

- A. Except as provided for in this section, no person other than the City Council, shall reproduce, use, give away, sell or distribute any logo or facsimile thereof purporting to represent to be the City Logo.
- B. A person may not use or make a die, impression, or electronic duplication of the municipal (City) logo for any advertising or commercial purpose, unless written permission has first been obtained from the City Manager or their designee.
 - 1. This section does not impair the authority of City staff from using the logo for official business without the consent of the City Manager.
 - 2. Licensing shall be upon terms and conditions approved by the City Attorney's office.
 - 3. For purposes of this section, advertising means:
 - 1. Communication used to encourage, persuade, or manipulate an audience to take or continue some action, and includes commercial offerings; or
 - 2. Non-commercial communications of any type made for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship or approval by the City or by any Department, agency, or instrumentality thereof.
 - 4. Use of the City Logo in violation of the provisions of this Chapter shall be a violation subject to the proceedings set out in Section 1.06 of this Code. The fine for a violation of this section is Five Hundred (\$500) Dollars.

1.05 City Boundaries

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1.05.010 Boundaries and Jurisdiction

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The Boundaries of the City are:

1. Beginning at latitude sixty (60°) degrees fifty minutes eight seconds North, longitude one-hundred sixty-one (161°) degrees, forty minutes West;
2. Thence 8.50 miles to latitude sixty (60°) degrees fifty minutes eight seconds North, longitude one-hundred sixty one (161°) degrees fifty-five minutes West;
3. Thence South 5.88 miles to latitude sixty (60°) degrees forty-five minutes North, longitude one-hundred sixty-one (161°) degrees fifty-five minutes West;
4. Thence East 8.50 miles to latitude sixty (60°) degrees forty-five minutes North, longitude one-hundred sixty-one (161°) degrees forty minutes West;
5. Thence North 5.88 miles to latitude sixty (60°) degrees fifty minutes eight seconds North, longitude one-hundred sixty-one (161°) degrees forty seconds West, the point of true beginning. A total of 49.98 square miles, more or less.

1.06 Violations and Penalties

1.06.010 Integration Into Other Enactments

1.06.020 Violation of Bethel Municipal Code

1.06.030 Procedure

1.06.040 Aiding or Abetting

1.06.050 Attempted Violation

1.06.060 Solicitation

1.06.070 Minor Offense Fine Schedule

1.06.080 Collection of Fines

1.06.090 Copies to Alaska Court System

1.06.010 Integration into other enactments

This penalty provision shall be considered as an integral and organic part of every ordinance, regulation and order that does not contain a specific penalty clause.

1.06.020 Violation of Bethel Municipal Code

- A. A person who violates any provision of the Bethel Municipal Code (BMC) or a regulation promulgated thereunder may be guilty of an infraction and may be issued a citation.
- B. A violation is a strict liability offense as to which no culpable mental state need be proved.
- C. A person charged with a violation under the BMC is not entitled to a trial by jury nor representation by counsel at public expense.
- D. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense.
- E. In addition to issuing citations for violation of any portion of the BMC, the City may bring a civil action to:

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1. Enjoin a violation of any portion of the BMC. On application for injunctive relief and a finding of a violation or threatened violation, the Superior Court shall enjoin the violation.
 2. Recover a civil penalty of up to One Thousand (\$1,000) Dollars per day for each violation of the BMC.
 3. Foreclose a recorded lien or judgment as provided by law.
- F. All remedies hereunder are cumulative and are in addition to those existing at law or equity.

1.06.030 Procedure

- A. A charge for the violation of a Code provision may be brought by any of the following: a City police officer, the City Manager, or that city official responsible for the administration and enforcement of the Code provision which has been violated.
- B. The City shall use the most current version of the Alaska Uniform Citation form to provide notice of an infraction to anyone accused of violating any provision of this code.

1.06.040 Aiding or Abetting

The prohibition of any act in this Code, and in any rule or regulation adopted this Code, shall include the causing, securing, aiding or abetting of another person to do such act.

1.06.050 Attempted Violation

- A. It is a violation for any person to attempt to disobey any provision of this Code or any rule, order or regulation issued thereunder.
- B. In a prosecution pursuant to this chapter, it is not a defense that it was factually or legally impossible to commit the violation which was the object of the attempt if the conduct engaged in by the defendant would be a violation had the circumstances been as defendant believed them to be.

1.06.060 Solicitation

It is a violation for any person to solicit another person to engage in conduct constituting a violation.

1.06.070 General Penalty

Unless another penalty is specifically provided by this Code for the violation of any particular provision, any person who violates any of the provisions or fails to comply with any of the mandatory requirements of this Code, upon conviction, shall be punished by a fine not to exceed Four Hundred (\$400) dollars and the violation shall be treated as an infraction.

1.06.080 Minor Offense Fine Schedule

- A. In accordance with AS 29.25.070(a), citations for which a fine has been clearly identified may be disposed of as provided in AS 12.25.195 through 12.25.230, without a court appearance, upon payment of the fine amounts listed plus the state surcharge required by AS 12.55.039 and AS 29.25.074. Fines must be paid to the court. The Rules of Minor Offense Procedure in the Alaska Rules of Court apply to all offenses. Citations charging these offenses must meet

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the requirements of Minor Offense Rule 3. If an offense is not listed on a fine schedule, or has no fine amount, the defendant must appear in court to answer to the charges. Fines may not be judicially reduced.

- B. If a person charged with one of these offenses appears in court and is found guilty, the penalty imposed for the offense may not exceed the fine amount for that offense plus surcharges.

1.06.90 Collection of Fines

- A. Fines and any other allowable costs and interest may be collected through any legal means including but not limited to:
1. Disqualification from use or receipt of City Services.
 2. Garnishment of Alaska Permanent Fund dividend payments.
 3. Civil suits.
 4. Garnishment of wages.
 5. Lien foreclosure.
- B. Actions for the collection of fines or assessments are independent of any other remedy available for resolution of violations of this code.
- C. Outstanding fines and assessments owed by the same person may be pursued in a single collection action.
- D. Interest on fines and assessments not paid within thirty days of the decision shall accrue at a rate of eight (8%) per year.

Chapter 1.08 GENERAL PENALTIES

Sections:

~~1.08.010 — General penalty.~~

~~1.08.020 — Penalty surcharge authorization and collection.~~

~~1.08.010 General penalty.~~

- ~~A. Penalty. Unless another penalty is specifically provided by this code for the violation of any particular provision, any person who violates any of the provisions or fails to comply with any of the mandatory requirements of this code, upon conviction, shall be punished by a fine not to exceed three hundred dollars (\$300) and the violation shall be treated as an infraction.~~
- ~~B. Procedure. The charge for the violation of a code provision may be brought by a city police officer, or that city official responsible for the administration and enforcement of the code provision which has been violated. A person charged may dispose of an infraction offense by correcting the violation, paying the fine charged and pleading "no contest" in person or by mail. If a person charged with an infraction chooses to contest the charge, the trial date shall be set by the court for a trial with no jury. The person charged for an infraction does not have the right to a court appointed defense council.~~
- ~~C. Separate Violations. Each day of a continuing violation of this code shall constitute a separate offense.~~

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~~D. Civil Penalties. In addition to any other remedies or penalties which may be provided in this code, or may otherwise be available, the city or any aggrieved person may institute a civil action against a person who violates any provision of the code. In addition to injunctive and compensatory relief, a civil penalty not to exceed one thousand dollars (\$1,000) may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. On application for injunctive relief and a finding of violation or threatened violation, the Superior Court shall grant the injunction.~~

~~1.08.020 Penalty surcharge authorization and collection.~~

~~The surcharge required to be imposed pursuant to AS 12.55.039 is authorized and shall be imposed as a surcharge on penalties imposed for the violation of an ordinance, code provision, or regulation of the city brought under citation or criminal complaint that would require a proceeding in the Alaska court system if the defendant were to enter a plea of not guilty. This surcharge is imposed in addition to any other fine or other penalty provided by law. The court may impose and collect the surcharge on all penalties imposed by the court or fines and bail forfeitures that are paid to the court. The surcharge shall be deposited into the general fund of the state of Alaska in accordance with AS 29.25.072.~~

Chapter 1.12
ISSUANCE OF CITATIONS

Sections:

- 1.12.010 — Authority of police.
- 1.12.020 — Failure to appear.
- 1.12.030 — Form.

1.12.010 Authority of police.

~~Any police officer within the city of Bethel, Alaska, may, rather than arrest a person, or persons, for the violation of a city ordinance committed in his presence, issue a citation or criminal summons requiring such person or persons to appear before the district court on a day certain to answer charges.~~

1.12.020 Failure to appear.

~~If any person or persons fails to appear before the district court as directed in the citation or summons, the city police officer issuing the same shall sign a complaint charging the person or persons involved with a misdemeanor, cause a warrant to be issued and forthwith place the offender under arrest.~~

1.12.030 Form.

~~The form of citation or summons issued may be in substantially the following form and completed in duplicate or triplicate:~~

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CRIMINAL SUMMONS

TO: _____

You are hereby commanded to appear before the District Court at Bethel, Alaska, on the _____ day of _____, 20_____, at the hour of _____ o'clock in the _____ M. of said day, then and there to answer to charges for the violation of Bethel Municipal Code, Section _____, wherein it is alleged that you did, contrary to law:

Failure to appear and answer this summons will result in your arrest under a warrant.

DATED This _____ day of _____, 20_____.

POLICE DEPARTMENT

CITY OF BETHEL

By: _____

Chapter 1.16

WORK FURLOUGHS FOR PRISONERS

Sections:

- 1.16.010 — Definitions.
- 1.16.020 — Authorization.
- 1.16.030 — Employment.
- 1.16.040 — Earnings.
- 1.16.050 — Violation of conditions.
- 1.16.060 — Failure to return.
- 1.16.070 — When prohibited.
- 1.16.080 — Rehabilitation furloughs.

1.16.010 Definitions.

In this chapter, unless the context otherwise requires:

- A. "Administrator" means the city manager of the city or his designee.
- B. "Court" means any court established by the state.
- C. "Prison facility" or "facility" means a building, camp, farm, place or area designated by the administrator for detention or confinement of persons accused or convicted of criminal violation or violations of an ordinance or ordinances of the city or held under authority of law by a police officer of the city and includes a facility owned by or leased, loaned or granted to the city by the United States or the state.
- D. "Prisoner" means a person detained or confined for any period of time in a prison facility, whether by arrest, conviction, order of court, or a person held as a witness, or otherwise.
- E. "Temporary commitment" means any detention of a person by authority of law, but does not include confinement upon conviction and judgment of a court of this state.

1.16.020 Authorization.

~~When a person is convicted of a violation of an ordinance of the city and is sentenced to a prison facility, or is imprisoned in the prison facility for nonpayment of a fine, for contempt, or as a condition of probation for a criminal offense, the city manager may, if he concludes that the person is a fit subject for a work furlough and is not prohibited from it under BMC 1.16.070, direct that the person be permitted to continue in his regular employment, if that is compatible with the requirements of BMC 1.16.070, or may authorize the person to secure employment for himself, unless the court at the time of sentencing has ordered that the person not be granted work furloughs.~~

~~1.16.030 Employment.~~

- ~~A. If the city manager directs that the prisoner be permitted to continue in his regular employment, the city manager shall arrange for a continuation of the employment so far as possible without interruption. If the prisoner does not have regular employment, and the city manager has authorized the prisoner to secure employment for himself, the prisoner may do so, and the city manager may assist him in doing so. Any employment secured must be suitable for the prisoner. The employment must be in accordance with the prevailing working conditions and wages in the area. No employment may be permitted where there is a labor dispute in the establishment of which the prisoner is, or is to be, employed.~~
- ~~B. Whenever the prisoner is not employed and between the hours or period of employment, he shall be confined to the prison facility unless the court directs otherwise.~~

~~1.16.040 Earnings.~~

~~The earnings of the prisoner shall be collected by the city manager and the prisoner's employer shall transmit the wages to the city manager at the request of the city manager. Earnings levied upon under a writ of attachment or execution or in other lawful manner may not be transmitted to the city manager. If the city manager has requested transmittal of earnings before the levy, the request shall have priority for those earnings due and payable at that time. When an employer transmits the earnings to the city manager, he has no liability to the prisoner for the earnings. From the earnings, the city manager shall pay the prisoner's board and personal expenses, both inside and outside the prison facility, and shall deduct so much of the costs of administration of this chapter as is allocatable to the prisoner, and, in an amount determined by the city manager, shall pay the support of the prisoner's dependents, if any. If sufficient funds are available after making the foregoing payments, the city manager may, with the consent of the prisoner, pay, in whole or in part, the pre-existing debts of the prisoner. Any balance shall be retained by the city manager and paid to the prisoner at the time of his discharge.~~

~~1.16.050 Violation of conditions.~~

~~If the prisoner violates the conditions established for his conduct, custody or employment, the city manager may order the balance of the prisoner's sentence to be spent in actual confinement.~~

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1.16.060 Failure to return.

The willful failure of a prisoner to return to the place of confinement not later than the expiration of any period during which he is authorized to be away from the place of confinement under this chapter, is an escape from the place of confinement and is punishable under the laws relating to escape.

1.16.070 When prohibited.

A work furlough may not be authorized for a prisoner:

- A. Identified with large-scale, organized criminal activity;
- B. With serious emotional or personality problems, as determined by the city manager;
- C. Whose presence in the community is likely to evoke adverse public reaction toward the inmate, the institution and the city.

1.16.080 Rehabilitation furloughs.

The city manager may authorize a prisoner to participate in educational, training, medical, psychiatric, or other rehabilitation programs approved by the city manager. When the prisoner is not participating in a rehabilitation program, he shall be confined in the jail unless the city manager directs otherwise. If the prisoner violates the conditions established for his conduct or custody, the city manager may order the balance of the prisoner's sentence be spent in actual confinement. The willful failure of a prisoner to return to the place of confinement not later than the expiration of any period during which he is authorized to be away from the place of confinement under this chapter, is an escape from the place of confinement and is punishable under the laws relating to escape.

SECTION 3. Effective Date. This ordinance shall become effective upon passage by the Bethel City Council.

ENACTED THIS 13 DAY OF MARCH 2018, BY A VOTE OF 6 IN FAVOR AND 0 OPPOSED.

ATTEST:


Richard Robb, Mayor
Lori Strickler, City Clerk