Introduced by: Vice-Mayor Maczynski
Date: September 27, 2016
Action: Passed
Vote: 7-0

CITY OF BETHEL, ALASKA

Resolution #16-28

A RESOLUTION BY THE BETHEL CITY COUNCIL SUPPORTING A NON-EXCLUSIVE EASEMENT ACROSS US SURVEY 4117, LOT 15 IN BETHEL FOR ACCESS TO PROPOSED ONC SUBDIVISION

WHEREAS, ONC desires to develop a subdivision for low-income residents within the City of Bethel;

WHEREAS, in May of 2016, ONC and the City of Bethel held a Joint Task Force Meeting and discussed the need for access to the proposed subdivision;

WHEREAS; in order for the subdivision to become a reality, ONC needs an easement across a portion of land owned by the City of Bethel;

WHEREAS, the land in question was issued to the City via a patent and has restrictions requiring Bureau of Land Management approval before an easement can be granted;

WHEREAS, the City of Bethel applied for the approval in late May of 2016;

WHEREAS, in an effort to move the process along, the City has conferred with the BLM and it has been determined that a resolution officially showing the City's support of the easement would significantly help in the effort to secure the non-exclusive easement;

WHEREAS, the City of Bethel does in fact support the granting of the non-exclusive easement across Lot 15, located in US Survey 4117, within Sec 18 of T. 8 N., R 71 W., Seward Meridian;

WHEREAS, a map demonstrating the location of the proposed non-exclusive easement is attached to this Resolution;

WHEREAS, the reason for the non-exclusive easement is to allow all persons in the City of Bethel to access the land and the subdivision without restriction;

WHEREAS, while the purpose of the requested easement is for a road to a subdivision, it is hoped that in the future the lot can serve other recreational purposes for which the road may be of assistance and value to a greater portion of the citizens of Bethel;

Introduced by: Vice-Mayor Maczynski
Date: September 27, 2016
Action: Passed
Vote: 7-0

WHEREAS, the City of Bethel encourages the BLM Solicitor General to approve the easement request.

NOW, THEREFORE, BE IT RESOLVED THAT the City of Bethel supports the grant of a non-exclusive easement across a portion of Lot 15 located on US Survey 4117 within Sec 18 of T. 8 No., R 71 W., Seward Meridian and encourages the BLM to approve the easement request as expeditiously as possible.

PASSED AND APPROVED THIS 27th DAY OF SEPTEMBER 2016, BY A 7 VOTE IN FAVOR AND 0 VOTE IN OPPOSITION.

Richard Robb, Mayor

ATTEST:

Lori Strickler, City Clerk

Introduced by:	Mayor Robb
Date:	August 23, 2016
Public Hearing:	September 13, 2016
	September 27, 2016
Action:	Passed
Vote:	6-1

CITY OF BETHEL, ALASKA

Ordinance #16-26

AN ORDINANCE BY THE BETHEL CITY COUNCIL CREATING CHAPTER 2.45 OF THE BETHEL MUNICIPAL CODE - ADMINISTRATIVE ADJUDICATION

WHEREAS, the Bethel Municipal Code (BMC) currently contains sections that allow for the review of decisions made by department heads, committees, commissions and/or the City Manager;

WHEREAS, over the last three (3) years the BMC has been undergoing a review and updates have been proposed to correct outdated language or to simplify areas that have gotten confusing or become inapplicable with the passage of time;

WHEREAS, as the BMC is updated, the need for a stronger review process has become apparent;

WHEREAS, in order to provide citizens and those doing business with the City of Bethel better opportunity to have a grievance heard, it is necessary that a mechanism be in place that allows both sides to have as much information as possible about the nature of an allegation or accusation so that they may properly respond;

WHEREAS, since that time, applications for additional licenses within the City of Bethel have been submitted to the Alcohol and Marijuana Control Office (formerly the Alcohol Beverage Control Board); and

WHEREAS, the proposed language is intended to be a starting point making it clear to all that decisions are reviewable but that both sides have a right to know what is being alleged and both sides have a right to be fully prepared to respond;

THEREFORE, BE IT ORDAINED by the City Council of Bethel, Alaska, that: section 2.45 Administrative Adjudication is hereby added to the BMC.

SECTION 1. Classification. This ordinance is of a permanent nature and shall be codified in the Bethel Municipal Code.

Introduced by: Mayor Robb
Date: August 23, 2016
Public Hearing: September 13, 2016
September 27, 2016
Action: Passed
Vote: 6-1

SECTION 2. Amendment. Section 18.61 of the Bethel Municipal Code is created as follows (new language is underlined and old language is stricken):

2.45 Administrative Adjudication

Sections

2.45.010 Applicability of Section
2.45.020 Definitions
2.45.030 Accusation
2.45.040 Application for Administrative Decision
2.45.050 Notice of Appeal
2.45.060 Date of Hearing
2.45.070 Hearing Procedures
2.45.080 Scope of Review
2.45.090 Decisions
2.45.100 Reconsideration
2.45.110 Ex Parte Contacts Prohibited
2.45.120 Conflicts of Interest
2.45.130 Transition Measures
2.45.140 Appeals from Administrative Decision

2.45.010 Applicability of Section

Except as otherwise provided by this Code or by law, the provisions of this chapter apply to all quasi-judicial proceedings and administrative hearings conducted by City officials, agencies, boards and commissions and the City Council. Where the provisions of this chapter are in conflict with the specific provisions of another law, statute or ordinance, the provisions of that law, statute or ordinance shall govern.

2.45.020 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Administrative hearing" means any hearing, formal conference or other proceeding before a City board, agency, commission or official which is required by law or by this Code as a condition precedent to the determination by such board, agency, commission or official of any matter relating to the rights, privileges, duties, obligations or remedies of an identified individual.

2. "Agency, board and commission" mean any elected or appointed body, department, division or other administrative organ of the City having any legislative, quasi-judicial or administrative functions.
3. "Official" means any person elected, appointed, named or employed by the City to conduct as part of his duties quasi-judicial proceedings or administrative hearings.
4. "Quasi-judicial proceeding" means any hearing, formal conference or other proceeding before a City board, commission or official, to review the legality, appropriateness or wisdom of official actions taken on behalf of the City as they relate to the particular legal rights, privileges, duties, obligations or remedies of identified individuals.

2.45.030 Accusation

An administrative hearing permitted under this Code to determine whether a right, authority, license, privilege or permit should be suspended, revoked, limited or conditioned shall be initiated by the filing of an accusation on behalf of the official, board or commission empowered to take such action. The accusation:

A. Shall set forth in writing, in ordinary and concise language, the acts or omissions with which the respondent is charged so that a defense may be prepared;
B. Shall specify the ordinance, statute or regulation which the respondent is alleged to have violated, but may not consist merely of charges phrased in the language of the statute and rule; and
C. Must be served personally on the respondent, or in compliance with the Alaska Rules of Court.

2.45.040 Application for Administrative Decision

An administrative hearing permitted under this Code to determine whether a right, authority, license, permit or privilege shall be granted, issued or reviewed is initiated by the filing of a written application for such administrative action with the official, board or commission empowered by law to take such action. The written application must identify the applicant, specify the nature of the right, authority, license, permit or privilege desired by the applicant, explain the reasons for such application, and recite the legal authority for such application. The application shall be served personally on the official, agency, board or commission empowered to make the decision.

2.45.050 Notice of Appeal

Where, under the provisions of this Code, a quasi-judicial proceeding is permitted to review an administrative action, the appellant shall apply in writing to the official, board or commission empowered to hear such appeal and shall identify himself, cite the administrative decision from which the appeal is taken, and in a succinct and coherent manner state the reasons for such appeal.

2.45.060 Date of Hearing

Unless otherwise provided in this Code, the following shall apply:

A. Where an administrative hearing is allowed following an accusation as described in section 2.45.030, such hearing shall take place no less than thirty (30) calendar days and no more than sixty (60) calendar days following the date of service of such accusation on the respondent unless the parties agree to extend or reduce the time for a hearing. Any changes in scheduling are subject to approval of the hearing officer.

B. Where an administrative hearing is permitted upon formal application by one seeking any right, authority, license, permit or privilege, such hearing shall take place no less than forty-five (45) calendar days and no more than ninety (90) calendar days following date of actual receipt of such application by the administrative official, agency, board or commission empowered to conduct such administrative hearing unless the parties agree to extend or reduce the time for a hearing. Any changes in scheduling are subject to approval of the hearing officer.

C. Where a quasi-judicial proceeding is permitted to review any administrative action taken on behalf of the City, such proceeding shall take place no more than sixty (60) calendar days following the date a written notice of appeal as provided by section 2.45.050 is filed with the official, board or commission empowered to hear such appeal unless the parties agree to extend the time for a hearing. Any changes in scheduling are subject to approval of the hearing officer.

2.45.070 Hearing Procedures

Administrative hearings and quasi-judicial proceedings shall be conducted informally and may be governed by such rules and procedures as the official board or commission empowered to conduct such hearings or proceedings may choose to establish, except that:

A. Parties may appear in person or through counsel.

B. Parties may present witnesses and evidence on their own behalf.

C. Parties or their counsel may cross examine opposing witnesses on matters relevant to the issues, impeach witnesses regardless of which party first called the witness to testify, and rebut evidence against the party.

D. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule which makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be considered provided there are guarantees of its trustworthiness and that it is more probative on the point for which it is offered than any other evidence which the proponent can procure by reasonable efforts.

E. All administrative hearings and quasi-judicial proceedings shall be open to the public, unless otherwise agreed by all parties to such hearings or proceedings.

F. All parties shall have the right to subpoena witnesses and documents using a form provided by the City clerk and submitted to the City clerk for issuance at least ten (10) business days before the date of the hearing.

G. All administrative hearings and quasi-judicial proceedings shall be memorialized by an electronic recording.

2.45.080 Scope of Review

Unless otherwise provided in this Code, officials, boards or commissions empowered to conduct quasi-judicial proceedings may hear and decide de novo all matters appealed and may exercise independent judgment as to the weight of evidence supporting or refuting the findings of the City official, board or commission from whose decision the appeal is taken, and may exercise independent judgment on legal issues raised by the parties. Decisions by Department Heads or city officials may be modified, remanded or affirmed by the reviewing official, board or commission.

2.45.090 Decisions

Unless otherwise provided in this Code, no later than thirty (30) calendar days following an administrative hearing or quasi-judicial proceeding conducted under this chapter, the official, agency, board or commission empowered to conduct an administrative hearing or proceeding shall issue a written decision based on findings and conclusions adopted by the official, agency, board or commission. Such findings must be in writing and must be reasonably specific so as to provide interested persons and, where appropriate, reviewing authorities, a clear and precise understanding of the reasons for the decision entered. The decision, findings of fact and conclusions of law shall be forwarded to all

parties to the appeal. A final appealable decision must indicate that it is a final order and that a party disputing the decision has thirty (30) calendar days to appeal.

2.45.100 Reconsideration

A decision of a board, commission or official reached at the conclusion of a quasi-judicial proceeding or administrative hearing may be reconsidered or reheard only if:

A. There was substantial procedural error in the original proceedings;
B. The official, board or commission acted without jurisdiction in the original proceeding; or
C. The original decision was based on fraud or misrepresentation.

Any person seeking reconsideration or rehearing must file a request with the City

Clerk together with the materials supporting one or more of the grounds stated in this section within fifteen (15) calendar days of the decision for which reconsideration or rehearing is requested. A rehearing shall be conducted in the same manner as the original proceeding.

2.45.110 Ex Parte Contacts Prohibited

Officials, boards or commissions while acting in their quasi-judicial capacity shall be impartial in all matters both in fact and in appearance. No member of any board, commission or any official shall receive or otherwise engage in ex parte communications with the appellant, applicant or other parties adversely affected by the appeal or application or members of the public concerning the appeal or application or issues specifically presented in the notice of appeal either before the appeal hearing or during the period of time the matter is subject to reconsideration. This section shall not be deemed to prevent those charged with conducting administrative hearings or quasi-judicial proceedings from discussing matters relating to the appeal among themselves or to prohibit communications between the City staff and such persons where staff members are themselves not named parties to an appeal or members of anybody which has in its own name become an active party to the appeal.

2.45.120 Conflicts of Interest

No person shall serve on any ~~board or commission or as an administrative official empowered to conduct an~~ administrative hearing or quasi-judicial proceeding if:

A. That person or a member of his immediate family has a ~~measurable~~ financial interest in any property affected by the application or appeal;

B. That person or a member of his immediate family could foreseeably profit in any material way through resolution of the matters before such official, agency, board or commission;

C. That person believes they could not be fair and impartial or due to the person's job, position or other reason, a reasonable person would believe the person serving could not be fair and impartial; or

D. That person would be faced with a violation of the code of ethics of the City by voting on or participating in the application or appeal.

2.45.130 Transition Measures

The provisions of this chapter shall apply only to those appeals or applications for administrative decisions filed on or after the effective date of the ordinance from which this chapter is derived.

2.45.140 Appeals from Administrative Decision

A final decision issued under section 2.45.090 may be appealed to the Superior Court, Fourth Judicial District, within thirty (30) calendar days of the date the decision was issued. For the purposes of this section the date of issuance is the date upon which the decision was mailed or delivered to the parties.

SECTION 2. Effective Date. This ordinance shall become effective ~~September 20, 2016.~~upon passage by the City Council.

ENACTED THIS 27 DAY OF SEPTEMBER 2016, BY A VOTE OF 6 IN FAVOR AND 1 OPPOSED.

Richard Robb, Mayor

ATTEST:

Lori Strickler, City Clerk