

Presented by:
City Manager
Action Taken:
Yes ___ No ___
Abstain ___

ORDINANCE NO. 06-10-02

**AN ORDINANCE REPEALING CHAPTER 10.20 OF
THE NOME CODE OF ORDINANCES AND
ADOPTING A REVISED CHAPTER 10.20 POTABLE WATER SUPPLY
AND SETTING THE EFFECTIVE DATE.**

WHEREAS, the citizens of Nome desire to protect its potable water supply including aquifers for what is commonly known as Moonlight Springs and Moonlight Wells, and

WHEREAS, the Nome Common Council and the Nome Planning Commission have deemed it necessary to revise the Nome Code of Ordinances Chapter 10.20 to provide for better protection of the City's water supply by developing Best Management Practices and refining the Moonlight Wells Permit process, and

WHEREAS, Bristol Environmental & Engineering has prepared a document identifying the Moonlight Wells Protection Area that is graphically depicted in Figure 2 of the Technical Memorandum, Moonlight Wells Protection Area, Bristol Environmental & Engineering Services, June 2005, and

WHEREAS, the Risk Ranking and Risk Reduction Process to estimate the level of the potential risk of adverse effects from various activities could have on the usability of the Moonlight Springs aquifer will be adopted by the Nome Common Council by Resolution.

NOW, THEREFORE, BE IT ORDAINED by the Nome Common Council as follows:

Section 1. Classification.

This is a code ordinance.

Section 2. Repeal.

Nome Code of Ordinances Chapter 10.20 is hereby repealed.

Section 3. Adoption of Revised Nome Code of Ordinances Chapter 10.20.

Chapter 10.20 Potable Water Supply is hereby adopted as follows:

Chapter 10.20 POTABLE WATER SUPPLY

10.20.010 Impure Water.

It is unlawful for any person to give, barter, sell, offer for sale or deliver for any domestic purposes or for any purposes where the same may be used for drink by or in preparation of food for human beings, any impure or unwholesome water. (Ord. O-93-6-6 § 1 (part), 1994)

10.20.020 Additives to Water.

Chlorine and fluoride shall be added to the municipal water supply to protect the health and safety of the public in accordance with acceptable public health standards. (Ord. O-93-6-6 § 1 (part), 1994)

10.20.030 Water Pollution Control.

- A. It is unlawful for any person to pollute, or diminish the City of Nome's municipal water supply, either directly or through contamination or alteration of the aquifer supplying these sources.
- B. It is unlawful for any person to excavate or otherwise alter the terrain, build structures, deposit materials, or engage in any activity having the potential to pollute or diminish the City of Nome's municipal water supply within the Moonlight Wells Protection Area without first obtaining a Moonlight Wells Permit. (Ord. O-04-07-1 § 2, 2004; Ord. O-93-6-6 § 1 (part), 1994)

10.20.40 Best Management Practices

The City shall identify and adopt Best Management Practices that may be applied to activities occurring within the Moonlight Wells Protection Area. The Best Management Practices will:

- a) Reduce the risk of polluting or diminishing the City of Nome's municipal water supply; and
- b) Provide the basis for determining the adequacy of a permit applicant's proposed project water supply protection measures.

10.20.050 Moonlight Wells Permit Application.

- A. Any person who plans to excavate or otherwise alter the terrain, build structures, deposit materials, or engage in any activity having the potential to pollute or diminish the City of Nome's municipal water supply within the Moonlight Wells Protection Area shall, before beginning such activities, complete an application form supplied by the city, and shall supply a detailed plan of the land use requested. In addition to any information required to be submitted on the form, the applicant shall include a description of proposed Best Management Practices or proposed alternative protection measures and permits or authorizations received from the State of Alaska or federal agencies that apply directly or indirectly to protection of groundwater resources.
- B. The city may require the applicant to pay the reasonable cost of any and all geological testing necessary to ensure that the proposed land use does not pollute or diminish the municipal water supply.
- C. The applicant shall provide the city with all additional information requested by the city to evaluate whether the proposed land use poses a significant risk of polluting or diminishing the municipal water supply. (Ord. O-04-07-1 § 3, 2004; Ord. O-93-6-6 § 1 (part), 1994)

10.20.060 Permitting Procedures.

- A. **Public Notice.** Public Notice of receipt of an application for a permit required by this Chapter and the time for submission of comments about the application to the city engineer shall be posted at City Hall and the Nome Post Office within three (3) working days after receipt of an application.
- B. **Engineer Review.** Within five (5) working days after receipt of an application, the city engineer will review the project and applicable Best Management Practices, other required existing and expected agency permits for the project, and other relevant information and determine whether the proposed activity is a Minor Activity or a Major Activity.
- C. **Minor Activity**
1. Within five (5) working days after receipt of an application for a Minor Activity, the city engineer will determine whether the application is complete.

2. Within fifteen (15) working days after receipt of a completed permit application for a Minor Activity, the city engineer will provide a written recommendation for the grant or denial of the Moonlight Wells Permit to the City Manager and Utility Manager. Prior to issuing any recommendation the city engineer will assess: (a) the proposed activity's degree of risk of polluting, adulterating or diminishing the municipal water supply and (b) whether and upon what conditions a Permit should be granted.

3. Within ten (10) working days after receipt of the recommendation, the City Manager and Utility Manager shall either grant or deny the Permit. The Permit may contain conditions for protection of the municipal water supply.

4. In making a decision on the grant or denial of a Moonlight Wells Permit the City Manager or Utility Manager shall set forth the reasons for the decision in writing and shall provide the applicant a copy thereof.

D. Major Activity

1. Within ten (10) working days after receipt of an application for a Major Activity, the city engineer will determine whether the application is complete. If the City Engineer determines the application is incomplete, the applicant shall be provided written notice of this determination. The notice shall identify the information needed to complete the application.

2. Unless the City Engineer has requested additional information to evaluate to risks associated with a proposed activity pursuant to NCO 10.20.050(c), within fifteen (15) working days after receipt of a completed application for a Major Activity, the city engineer will either recommend denial of the permit application or prepare a draft Permit. Such permit may contain conditions for protection of the municipal water supply. The draft denial recommendation or Permit shall be made available for public review by posting at Nome City Hall and at the United States Post Office.

3. If the City Engineer has requested additional information to evaluate the risks associated with a proposed activity, the city engineer shall have ten working days after receipt of the additional information to act on the application in accordance with subsection (2) above.

4. After completion of a fifteen-day public comment period, the city engineer will prepare final permit recommendations. Prior to issuing any recommendation the city engineer will assess: (a) the proposed activity's degree of risk of polluting, adulterating or diminishing the municipal water supply and (b) whether and upon what conditions a Permit should be granted.

5. Within forty five days of receipt of a completed application, and based upon the application review, draft permit comments and the final permit recommendations, and following a public hearing on the proposed land use, the city council shall, by resolution, grant or deny a Permit to the applicant. Such permit may contain conditions for protection of the municipal water supply.

6. In making its decision whether to issue a Permit for a Major Activity, the City Council shall set forth the reasons for the decision either orally at the time the vote on the matter is taken or in writing no later than fourteen (14) days after the vote on the matter is taken.

10.20.065 Violation—Penalty.

A. Any person who excavates or otherwise alters the terrain, builds structures, deposits materials or engages in any activity having the potential to pollute or diminish the municipal water supply within the Moonlight Wells Protection Area without first obtaining a Moonlight Wells Permit shall be guilty of a separate violation for each day the offense occurs, and, upon conviction, may be fined no more than three hundred dollars plus any surcharge required to be imposed by AS 12.55.039 for each offense.

B. A person who pollutes or diminishes the municipal water supply shall be guilty of a Class A misdemeanor for each day the pollution or diminution occurs, and upon conviction may be sentenced to imprisonment of not more than thirty days, or a fine of not more than five hundred dollars, or both, plus any surcharge required to be imposed by AS 12.55.039 for each such violation.

C. A person who fails to comply with any condition of a Moonlight Wells Permit or any existing State of Alaska or federal regulations, including but not limited to those regarding storage and disposal of petroleum products, solid waste disposal, hazardous materials storage or disposal, water use or other activities that may pollute or diminish the municipal water supply shall be guilty of a Class A misdemeanor for each day the failure occurs, and upon conviction may be sentenced to imprisonment of not more than thirty days, or a fine of not more than five hundred dollars, or both, plus any surcharge required to be imposed by AS 12.55.039 for each such violation.

D. The city may enjoin any violation of this chapter by appropriate legal action.

E. In addition to other remedies and penalties available to the city, any person who pollutes, adulterates or diminishes the municipal water supply shall be assessed a civil penalty equal to the full cost of restoring or replacing the municipal water supply plus any surcharge required to be imposed by AS 12.55.039. (Ord. O-04-07-1 §§ 6, 7, 2004; Ord. O-99-11-3 § 21, 1998; Ord. O-93-6-6 § 1 (part), 1994)

10.20.070 Definitions.

As used in this chapter:

“Aquifer” means a permeable body of rock or subsurface zone capable of yielding quantities of groundwater to wells or springs.

“Best Management Practices” means temporary or permanent construction, operating and maintenance policies and protective measures intended to reduce the risk of polluting or diminishing the Moonlight Springs and Moonlight Wells water supply to a level acceptable to the City.

“Diminish” means to engage in an activity that reduces the yield of Moonlight Springs below 400,000 gallons per day or reduces the yield of Moonlight Wells below 550,000 gallons per day.

“Minor Activity” means: any proposed residential use of less than 3 dwelling units.

“Major Activity” means: any proposed commercial use, industrial use, resource development use or a proposed residential use of more than 2 dwelling units or any other proposed use that in the judgment of the city engineer poses a substantial risk of pollution or diminution of the municipal water supply.

“Moonlight Wells Protection Area” means: The area graphically depicted in Figure 2 of the Technical Memorandum, Moonlight Wells Protection Area, Bristol Environmental & Engineering Services, June 2005, a copy of which is on file with the City Clerk.

“Municipal Water Supply” means the sources of groundwater, including aquifers for what is commonly known as Moonlight Springs and Moonlight Wells as more particularly shown and described in the Technical Memorandum, Moonlight Wells Protection Area, Bristol Environmental & Engineering Services, June 2005, a copy of which is on file with the City Clerk.

“Pollution” means the adulteration, contamination or altering of surface or subsurface waters in a manner which actually or potentially makes the city’s drinking water supply unclean, or noxious, or impure, or unfit so that said drinking water is actually or potentially harmful or detrimental or injurious to public health, safety or welfare. (Ord. O-04-07-1 § 8, 2004)

10.20.80 Appeals

A. Minor Activity

1. An applicant who is aggrieved by the decision of the city manager and utility manager may, by notice in writing given to the city clerk within five working days after receiving notice of the decision, appeal to the city council.

2. The city council shall hold a hearing on the appeal within thirty (30) days after the City receives the notice of appeal. The applicant may be represented by counsel and may introduce written or oral evidence to contradict the decision. The city manager and utility manager may submit written or oral evidence to support the decision. If the city council shall overrule the decision, the Moonlight Wells Permit shall be issued with or without additional conditions. If no appeal is taken or if the decision is sustained, the denial shall stand subject to appeal to the Superior Court.

B. Major Activity

Any person aggrieved by the decision of the city council may, by notice in writing given to the city clerk within thirty days after receiving notice of the date of said decision, appeal the decision of the city council to the Superior Court.

10.20.90 Tax Compliance Certification

No permit required by this chapter shall be issued if any of the following circumstances exist: (a) the applicant or contractor is delinquent in the payment of any sales tax to the city; (b) the property owner is delinquent in the payment of property tax on the tax parcel for which the permit is requested; or (c) the applicant or applicant's contractor is in violation of any business license provision of this code, unless contractor or applicant or property owner is in a good faith dispute with the city regarding property tax or sales tax liability. Before issuing a permit the City Manager or City Council shall receive a tax compliance certificate completed by the city clerk or the clerk's designee which either certifies that the property owner is current on all payments of property tax for the tax parcel for which the permit is requested, and that the contractor is in compliance with all city sales tax and business license provisions of this code or identifies exiting good faith disputes between city and contractor or property owner.

Section 4. Effective Date.

This ordinance shall be effective upon adoption.

PASSED AND ADOPTED this _____ day of _____, 2006.

DENISE MICHELS, Mayor

ATTEST:

LESLEE M. WESSEL, City Clerk/Treasurer