

Presented By:
Utility Manager

Action Taken:
Yes 5
No 0
Abstain 0

CITY OF NOME, ALASKA

ORDINANCE NO. O-18-09-02

**AN ORDINANCE AMENDING NCO CHAPTER 15.20
TO AUTHORIZE LIENS SECURING UTILITY CHARGES**

WHEREAS, the Alaska Legislature amended AS 09.45.160, AS 11.46.560, and AS 29.35.010 to authorize municipal liens;

WHEREAS, AS 29.35.010 now states the general powers of a municipality include providing by ordination for the creation, recording, and notice of a lien on real or personal property to secure past due utility fees, costs incurred by the municipality in the abatement of an unsafe or dangerous building, and other fees and charges provided for by ordinance;

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

SECTION 1. Classification

This is a Code ordinance.

SECTION 2. Amendment of NCO Chapter 15.20. Chapter 15.20 of the Nome Code of Ordinances is hereby amended with the addition of a new Section 15.20.050 Liens to read as follows:

15.20.050 Liens

(a) Upon any delinquency, all rates, fees, charges, assessments, penalties, and interest due and owing under this title shall constitute a lien of the city upon the real property receiving the benefit of the service or utility.

(b) Upon any delinquency, all rates, fees, charges, assessments, penalties, and interest due and owing under this title shall constitute a lien of the city upon the personal property of person who requested service.

(c) A notice of lien for amounts described in this section may be recorded in the office of the district recorder, Cape Nome Recording District, Second Judicial District and in the State Recorder's Office UCC Central File System; however failure to so record said interests shall not be construed as a waiver or abrogation of any and all priorities, rights and interests of the city at law and in equity. Upon full satisfaction of payment of all charges, interest, penalties and costs due and owing to the city, the city shall record or file a certificate discharging the lien.

(d) In an action to enforce a lien, the court shall allow as part of the costs all money paid for drawing the lien and for filing and recording the lien claim, and a reasonable attorney fee for the foreclosure of the lien.

(e) The lien remedies provided by this section shall be cumulative with any other remedies.

SECTION 3. **Effective Date.** This ordinance shall be effective upon adoption.

APPROVED and **SIGNED** the 24th day of September 2018.



RICHARD BENEVILLE,
Mayor

ATTEST:



BRYANT HAMMOND,
Clerk



LIENS ON REAL AND PERSONAL PROPERTY TO SECURE PAST DUE UTILITY FEES

The Legislature enacted Senate Bill 100, enabling legislation codifying the ability for municipalities to adopt Ordinances that allow liens to be placed on real and personal property for unpaid debts to municipalities, including utilities. The City Council passed a Resolution in support of SB100, and the Nome City Attorney was instrumental in working with the Municipal League's Alaska Municipal Attorneys' Group in the drafting of language resulting in amendment of the Alaska Statutes.

The Utility utilizes small claims procedures through the Alaska Court System, but the ability to file liens will enhance collection efforts and provides another opportunity to collect for services rendered.

Per discussions with the City Attorney, the proposed Ordinance can allow for a lien against the real property without subjecting the owner to personal liability. (Example, real property tax: the debt is essentially owed by the property itself because the property receives the benefit of the services.)

While the Ordinance is proposed to cover both real and personal property, the real property lien tends to be the better of the two because (1) liens on real property are often satisfied without any enforcement action upon sale of the property or because the lien is an event of default under an existing mortgage; and (2) many consumers who do not pay their utility bills do not have any personal property worth liening. Still, it is an additional enforcement mechanism, which has already proven its value in connection with commercial entities.

RECOMMENDED ACTION:

That the Utility Board adopt Resolution 18-09 which forwards a recommendation to the City Council proposing an amendment to the Nome Code of Ordinances (NCO) 15.20 to Authorize Liens Securing Utility Charges.

J. Handeland
08/19/18



NOME JOINT UTILITY SYSTEM

NOME JOINT UTILITY BOARD

RESOLUTION 18-09

**A RESOLUTION OF THE NOME JOINT UTILITY BOARD RECOMMENDING
THE NOME COMMON COUNCIL AUTHORIZE ESTABLISHMENT OF LIENS
ON REAL AND PERSONAL PROPERTY TO SECURE PAST DUE UTILITY FEES**

- WHEREAS, During the 2017 session, Senate Bill 100 was introduced in the Alaska Legislature which would restore the opportunity for a municipality to create, record and notice a lien on real or personal property to secure payment of past due utility fees; and,
- WHEREAS, The Nome Common Council expressed support for the passage of the legislation as evidenced in Resolution No. R-17-04-02; and,
- WHEREAS, SB100 amending provisions of Alaska Statutes was enacted by the Legislature and signed in to law by the Governor; and,
- WHEREAS, a Municipality must affirmatively codify provision within City Ordinance to allow utilization of liens to aid in collection of delinquent fees; and,
- WHEREAS, the City Attorney was requested to draft "An Ordinance Amending NCO Chapter 15.20 to Authorize Liens Securing Utility Charges"; and,
- WHEREAS, the Nome Joint Utility System's past-due bill collection effort can be enhanced by the ability to utilize liens as provided for by SB100; and,
- WHEREAS, NJUS management recommends the Utility Board concur and forward a request to the City Council to amend the Nome Code of Ordinances incorporating the required change allowing the Utility to pursue liens to secure past due utility fees on accounts.

NOW THEREFORE BE IT RESOLVED that the Nome Joint Utility Board recommends the Nome Common Council adopt the proposed Ordinance drafted by the City Attorney, adding NCO Section 15.20.050, providing a mechanism to aid the Utility in recovering utility fees on past due accounts.

SIGNED THIS 21st DAY OF August, 2018 AT NOME, ALASKA.

ATTEST:

David Barron, Secretary
NOME JOINT UTILITY BOARD

Carl Emmons, Chairman
NOME JOINT UTILITY BOARD

Presented by:
City Attorney

Action taken:
Yes 5
No 0
Abstain 0

CITY OF NOME, ALASKA

RESOLUTION NO. R-17-04-02

A RESOLUTION SUPPORTING PASSAGE OF SB 100 AUTHORIZING MUNICIPAL LIENS

WHEREAS, in 1998, in an effort to discredit unauthorized common law liens recorded against public servants when those individuals disagreed with government action, the legislature passed legislation unintentionally rendering municipal liens unenforceable while preserving the enforceability of state law liens; and

WHEREAS, the ability to provide for the creation, recording, and enforcement of liens has historically been an effective tool used by municipalities to recover unpaid costs incurred by the municipality in providing services such as public nuisance abatement and public utilities; and

WHEREAS, in 2012, the Alaska Supreme Court, in *Cutler v. Kodiak Island Borough*, 290 P.3d 415 (Alaska 2012), held that as liens solely based on municipal law were not recognized as an exception to the definition of nonconsensual liens embodied in AS 09.45.169(2), liens provided for solely by municipal code were unenforceable; and

WHEREAS, SB 100 would return to municipalities the ability to use liens to secure payment for services rendered and costs incurred in addressing public nuisances and in providing utility services by giving liens arising solely under municipal law the same authority state and federal law liens hold under AS 09.45.169(2).

NOW, THEREFORE, BE IT RESOLVED by the Nome Common Council that:

1. The City of Nome fully supports the passage of SB 100 or similar legislation which authorizes a local government to provide for the creating and recording of municipal liens by ordinance.

APPROVED and SIGNED this 10th day of April, 2017.



RICHARD BENEVILLE, Mayor

ATTEST:



THOMAS MORAN, Manager



CITY OF NOME
City Manager's Office
P.O. Box 281
Nome, Alaska 99762
907.443.6600
tmoran@nomealaska.org

AGENDA STATEMENT

Meeting Date: April 10, 2017
From: Brooks Chandler, City Attorney
Subject: Resolution Supporting Passage of SB 100

Background & Justification:

SB 100 would provide authority for the City of Nome to adopt an ordinance allowing the city to file liens against real property owned by persons delinquent in payment of utility bills. Liens could also be filed in order to recover the costs of abatement of run down or abandoned buildings.

The change in state law is necessary because of a 2012 Alaska Supreme Court decision. The court in a case originating in Kodiak ruled that cities and boroughs do not have this authority without a specific state law.

At the 2016 annual meeting of municipal attorneys I volunteered to be part of a group that would seek to change state law. We did not expect to have a bill introduced until 2018 but the Anchorage lobbyist was able to find a sponsor who has introduced SB 100.

Part of the plan to have the bill adopted is to show it is not just a bunch of lawyers sitting around thinking about how to make the world a better place. No one cares about that but they would care about elected local officials saying they want the law changed. This resolution is one way to do that. Other communities are considering similar resolutions or writing letters of support.

SB 100 is a grant of authority. Whether Nome believes we should add liens as an alternative to small claims cases to collect utility charges or abatement costs is something the council would decide later. It would take an ordinance amending city code to allow the City or NJUS to file liens.

We believe liens are an efficient collection tool. It is much less expensive to file a lien than to go to court and obtain a judgment. A lien may be recorded and then the City or NJUS just waits for the property to be sold at which time the new owner will demand the seller use the proceeds to pay off the lien.

Recommendation:

That the Nome Common Council adopts the resolution supporting passage of SB 100.