

Presented by:  
City Manager  
Action Taken:  
Yes 5 No 0  
Abstain 0

CITY OF NOME, ALASKA

ORDINANCE NO. 0-19-06-09 (Amended)

AN ORDINANCE AUTHORIZING THE DISPOSAL OF MUNICIPAL  
PROPERTY BY LAND USE PERMIT TO NOME SPORTSMAN ASSOCIATION  
FOR SUNSET FIRING RANGE

Section 1. **Authority.** This ordinance is adopted pursuant to authority granted by NCO 2.10.030(b).

Section 2. **Classification.** This is a non-Code ordinance.

Section 3. **Authorization of Land Use Permit to Nome Sportsman Association.** The City Council hereby authorizes the disposal of a portion of its interest in City property located on Mile 9 of the Nome-Teller Highway described as Section 6, Township 11 South, Range 34 West and Section 1, Township 11 South, Range 35 West, MS 427: Sunrise Bench, Gold Beach Fraction and No. 2 Below Sunset Placers, containing approximately 43 acres to Nome Sportman Association, *substantially* upon the terms and conditions contained in the existing/expiring Land Use Permit ("Permit") attached hereto. *The Council hereby grants the city manager the authority to negotiate final terms and incorporate changes the manager finds to be in the interest of the City.*

Section 4. **Legal Description.** The permitted premises are shown on the attached map, Exhibit A-7: Sunset Firing Range.

Section 5. **Findings.** The City Council hereby finds that the use of the Property is in the public interest providing hunter safety training for the community, recreational and competitive shotgun, rifle, pistol and archery shooting activities.

Section 6. **Interest Conveyed and Identification of Disposal Instrument.** The City agrees to allow non-exclusive use conveyed by a written Land Use Permit for *a single term or multiple renewal* terms starting July 23, 2019 and expiring not later than June 30, 2049. This permit is revocable at the will of the City upon not less than thirty (30) days advance written notice to Permittee.

Section 7. **Value of City's Interest.** Because this is a non-exclusive, revocable land use permit the estimated value is less than \$5,000. The permittee shall pay one dollar during the entire term of this Permit.

Section 8. **Time Place and Manner in Which Disposal Shall Occur.** Disposal shall occur as soon after approval of this ordinance as practical.

Section 9. **Effective Date.** This ordinance is effective upon adoption.

**APPROVED** and **SIGNED** this 26<sup>th</sup> day of August, 2019.

  
\_\_\_\_\_  
**RICHARD BENEVILLE, Mayor**

**ATTEST:**

  
\_\_\_\_\_  
**BRYANT HAMMOND, City Clerk**

## LAND USE PERMIT

**THIS LAND USE PERMIT (“Permit”)** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **City of Nome**, a Municipal Corporation (**“the City”**), and the Nome Sportsmen’s Association, a non-profit corporation, (**“Permittee”**).

The parties agree as follows:

**1. Premises and Term.**

(a) **Permitted Premises.** The City agrees to allow Permittee non-exclusive use of that certain area in the Townsite of Nome, State of Alaska, Second Judicial District, Cape Nome Recording District commonly known as:

**Sunset Firing Range**

(**“Premises”**), together with such rights of ingress and egress which are reasonably necessary for Permittee’s use of the Premises. The Premises are depicted generally in the drawing attached hereto as Exhibit “A”. This Permit is subject to the terms and conditions in this agreement, and this Permit is contingent upon approval or approvals of the Nome Common Council and shall have no binding effect until such approval or approvals are granted.

(b) **Term.** The term of this Permit shall be from **July 1, 2019, through and including June 30, 2049** unless terminated earlier in accordance with this agreement. This permit is revocable at the will of the City upon not less than thirty (30) days advance written notice to Permittee.

**2. Fee.**

Permittee shall pay, during the entire term of this Permit and any extension thereof, One Dollar payable in full at the time of signing of this Permit.

**3. Compliance with Laws and Care of Premises/Indemnity.**

(a) Permittee shall comply with all applicable laws, ordinances and regulations of duly constituted public authorities now or hereafter enacted in any manner affecting the Premises, whether or not any such laws, ordinances or regulations which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same. Permittee agrees to defend, indemnify, and hold the City, its agents or employees, financially harmless (a) from the consequences of any violation of such laws, ordinances and/or regulations; (b) from all claims for damages on account of injuries, death or property damage resulting from such violation; and (c) from all claims for damages to the Permittee or a third-party arising out of Permittee’s use and operation of the Premises for a public shooting range provided that such damage is not caused by the City’s negligence.

(b) Permittee shall require all users of the Premises (“User”) to sign an individual release and hold harmless use agreement which shall release and hold City and Permittee harmless from any personal injury or death or property damage arising, in whole or in part from User’s use of the Premises..

(c) Permittee shall neither use, nor permit any User to use, the Premises for any purpose other than various forms of target and shooting practice.

(d) Permittee shall not allow any person to bring an alcoholic beverage on the Premises.

(e) Permittee shall not allow any person to bring a controlled substance, the use or possession of which is made criminal by Title 11 of the Alaska Statutes on the Premises.

(f) Permittee shall waive any membership fees or any requirement that a User pay fees for any person whose household income, assets, and financial resources fall within the eligibility standards for the Supplemental Nutrition Assistance program under 7 U.S.C. 2011 through 2025, as amended.

#### **4. Maintenance Obligations.**

(a) Permittee, at its own cost and expense, shall keep the Premises and all Permittee’s improvements which at any time during the term of this Permit may be situated thereon, clean and in good condition, and repair free of hazard or nuisance.

(b) Permittee shall operate and maintain the Premises in keeping with prudent shooting range injury prevention practices and consistent with “Best Management Practices Outdoor Shooting Ranges” as published by the State of Minnesota Department of Natural Resources.

(c) City shall provide a loader with operator for up to one eight hour day to use to feed backdrop material through a plant provided by Permittee and, as directed by Permittee to separate waste lead products. Permittee shall be responsible for disposal of any and all lead waste collected.

**5. Permittee’s Rights.** Permittee shall have the following rights during the term of this Permit:

(a) To construct and operate typical shooting range facilities on the Premises, subject to prior approval of the City Manager;

(b) To make all necessary repairs and replacements to the Premises and to any improvements constructed thereon at Permittee’s sole expense.

(c) All structures, fixtures and improvements, placed or attached on or about the Premises by Permittee, shall at the City's option become the property of the City at the expiration of the Permit or any extended term, unless removed by Permittee within three-hundred (300) days after the expiration or termination of the Permit.

**6. Discrimination Prohibited.** Permittee will not discriminate in the conduct of its permitted activities on the Premises on the grounds of race, color, religion, national origin, ancestry, marital status, age, or gender.

**7. Use of Premises.**

(a) The Premises may be used by Permittee, only to conduct operations reasonably necessary and incidental to the construction, operation and maintenance of a public shooting range and shall conduct such activity in furtherance of local needs of the community. Use of the Premises which is not reasonably necessary or incidental to a public shooting range is grounds for immediate termination of this Permit.

(b) Permittee shall coordinate its use of the Premises with the needs of the Nome Public Safety Department for training qualification and certification of public safety officers in the handling and discharge of firearms. The needs of the Nome Public Safety Department for firearms training and qualification shall take precedence over Permittee's use of the Premises. Nome retains the right to temporarily close the Premises to the public during times it is being actually used by the Department for firearms training and qualification.

**8. Hold Harmless/Indemnification/Insurance.**

(a) Permittee shall defend, indemnify and save harmless the City, its agents or employees from and against any and all claims, demands and causes of action of any nature whatsoever, and any expenses incident to defense of and by the City therefrom, for any injury to or death of persons or loss of or damage to property occurring on the Premises, or in any manner arising out of Permittee's use and occupation of the Premises or the condition thereof, during the term of this Permit or any extension period.

(b) Permittee shall secure and maintain the following insurance and shall provide to the City certificates of insurance and/or policies acceptable to the City evidencing compliance with the following insurance requirements:

(i) insurance in accordance with the applicable laws relating to workers' compensation and employers' liability insurance, regardless of whether such coverage or insurance is mandatory or merely elective under the law.

(ii) general liability insurance with limits of liability of not less than one million dollars per claim and with no exclusions related to the operation of a shooting range.

(c) Permittee shall maintain such insurance in full force and effect at all times

during the term hereof. The City of Nome shall be identified as an additional insured on the general liability policy. The liability policy shall include a waiver of the insurer's right of subrogation against the City of Nome. The liability policy shall require sixty (60) days written notice of cancellation, non-renewal, reduction, and/or material change addressed to: City Clerk, City of Nome P.O. Box 281 Nome, Alaska 99762.

(d) If the above coverage expires during the term of this Permit, Permittee shall deliver renewal certificates and/or policies to the City at least ten (10) days prior to the expiration date. Permittee shall neither commence nor continue use of the Premises until it has obtained the coverage required under the terms of this Permit. All coverage shall be with insurance carriers licensed and admitted to do business in the State of Alaska and acceptable to the City.

**9. Notices.** Any and all notices required or permitted under this Permit, unless otherwise specified in writing by the party whose address is changed, shall be addressed as follows:

**The City:** City of Nome  
P.O. Box 281  
Nome, AK 99762  
Attn: City Manager

**Permittee:** Nome Sportsmen's Association  
P.O. Box 1349  
Nome, Alaska 99762

**10. Rights or Remedies.** No right or remedy herein conferred upon or reserved to the City is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

**11. Waiver and Forbearance.** Except to the extent that such party may otherwise agree in writing, no waiver by such party of any breach by the other party of any of its obligations, agreements or covenants hereunder shall be deemed to be a waiver of any subsequent breach of the same or any other covenant, agreement or obligation. Nor shall any forbearance by such party to seek a remedy for any breach of the other party be deemed a waiver by such party of its rights or remedies with respect to such breach.

**12. Successors in Interest.** This Permit shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties hereto.

**13. Assignments.** Permittee shall not assign this permit without prior to written consent of the City. Permittee's request to assign must be in writing and must show the name

and address of the proposed assignee.

**14. Integration and Modification.** This document contains the entire agreement of the parties hereto. All negotiations, statements, representations, warranties, and assurances, whether oral or written, which are in any way related to the subject matter of this Permit or the performance of either party hereto are merged and integrated into the terms of this document. This Permit may not be modified or amended except by a writing signed by both parties hereto, and any purported amendment or modification is without effect until reduced to a writing signed by both parties hereto.

**15. Hazardous Substances.** Permittee shall strictly comply with all applicable laws, ordinances or regulations respecting the handling, containment and cleanup of discharges or release of lead, oil or hazardous substances, including petroleum fractions. In the event of a discharge or release of oil or a hazardous substance, including petroleum fractions, resulting from Permittee's activities on or about the Premises, Permittee shall (1) promptly and completely clean up the discharge or release, in strict compliance with applicable laws, ordinances or regulations, and (2) defend, indemnify and save the City harmless from the consequences thereof, including the costs of state or federal remedial or compliance actions, whether informal or formal, all clean up and remediation costs needed to restore the site to its previous condition, and attorney's fees. As used in the Permit, "Hazardous Substances" includes oil or petroleum fractions; asbestos; polychlorinated biphenyls (PCBs); any substance defined or listed by the State of Alaska or the Environmental Protection Agency as a hazardous substance under Title 46 of the Alaska Statutes or associated regulations or CERCLA, 42 U.S.C. 6901 *et seq.*, or associated regulations; and any substance listed by the U.S. Department of Transportation or Environmental Protection Agency under 33 U.S.C. 1317, 49 C.F.R 172.101 or 40 C.F.R. § 302.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF NOME**

BY: \_\_\_\_\_  
JOHN HANDELAND  
ITS: INTERIM CITY MANAGER

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**NOME SPORTSMEN'S ASSOCIATION**

BY: \_\_\_\_\_  
STEVE SMITH  
ITS: PRESIDENT





## SECOND JUDICIAL DISTRICT

of the Nome Sportsmen's Association and acknowledged this instrument to be a free and voluntary act and deed of the named Permittee for the uses and purposes herein mentioned, and on oath stated that he/she was authorized to execute this instrument.

WITNESS my hand and official seal the and year last above written.

Notary Public for Alaska

My commission expires:\_\_\_\_\_

SECOND JUDICIAL DISTRICT

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared John Handeland, to me known to be the Interim City Manager of the City of Nome, and known to me to be the person who executed this instrument on behalf of the City of Nome.

WITNESS my hand and official seal the day and year last above written.

Notary Public for Alaska

My commission expires:\_\_\_\_\_