CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 2017-30

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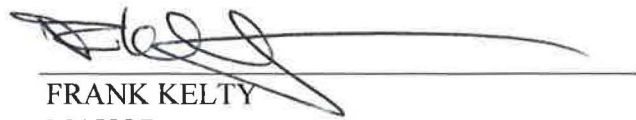
WHEREAS, the ability to provide for the creation, recording, and enforcement of liens has historically been an effective tool used by municipalities to recover unpaid costs incurred by the municipality in providing services such as public nuisance abatement and public utilities; and

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 Unalaska City Council that the City Council 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.

PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE UNALASKA CITY COUNCIL THIS 11th DAY OF APRIL, 2017.

FRANK KELTY
MAYOR

ATTEST:

CAT HAZEN
CITY CLERK

TO: MAYOR AND CITY COUNCIL MEMBERS

FROM: DAVID MARTINSON, CITY MANAGER

DATE: JANUARY 24, 2017

RE: SENATE BILL 100 AUTHORIZING MUNICIPAL LIENS

SUMMARY:

I received a note from our City Attorney who is involved in a pro bono project with other members of the Alaska Association of Municipal Attorneys with the intent to change state law to allow cities and boroughs the authority to create a municipal lien by ordinance as an additional collection tool for such things as unpaid utility charges and abatement costs. A 2012 Alaska Supreme Court decision currently prevents a city from using a local ordinance to create these liens. The bill the group collectively prepared has recently been introduced as SB 100 and can be viewed on the Legislature's web site. Passing the bill only authorizes such liens. It would remain up to each local government whether to then pass an ordinance creating the lien.

PREVIOUS COUNCIL ACTION: None

BACKGROUND:

Currently the City's main collection tool for delinquent utilities is disconnection of service until delinquent bills are paid. This tool is generally effective against property owners and current tenants, but is completely ineffective against former owners or tenants. The City currently has the option of filing a small claims case to collect delinquent receivables, but that option is only viable if the debtor is still in Alaska, and even with a judgement from the court it is not always possible to collect the amounts owed.

DISCUSSION:

Staff believes that the ability to lien for delinquent utility and abatement charges would be a valuable collection tool. This is particularly true in cases where a property that has associated delinquencies is sold. Under the current law a property could have thousands of dollars of unpaid utility charges outstanding, and if the seller chooses not to pay at the time of sale the City must reconnect services for the new owner and has few effective options to collect the debt from the seller.

ALTERNATIVES:

None

FINANCIAL IMPLICATIONS:

N/A

LEGAL:

N/A

STAFF RECOMMENDATION: Staff believes this is a good tool to have to recover costs that are left unpaid.

PROPOSED MOTION:

CITY MANAGER'S COMMENTS: I recommend Council approve this resolution.