

**CITY OF UNALASKA
UNALASKA, ALASKA**

ORDINANCE 2017- 10

AN ORDINANCE AMENDING UNALASKA CODE OF ORDINANCES CHAPTERS 10.04 AND 11.12 TO CREATE LIENS FOR UTILITY SERVICES AND COSTS OF ABATEMENT

WHEREAS, Chapter 9 SLA 17, amending AS 09.45.160, AS 11.46.560, and 29.35.010 to authorize municipal liens was signed into law and effective as of June 13, 2017;

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 proceed for by ordinance; and

WHEREAS, AS 09.45.160 and AS 11.46.560 recognize liens provide for by a specific municipal ordinance as valid, lawful liens;

BE IT ENACTED BY THE UNALASKA CITY COUNCIL:

Section 1: **Classification.** This is a code ordinance.

Section 2: **Amendment of UCO §10.04.** Chapter 10.04 of the Unalaska Code of Ordinances is hereby amended by the addition of a new Section 10.04.090 to read as follow:

10.04.090 – Liens.

- (A) Upon any delinquency, the monthly charges, connect and disconnect fees, other charges, penalties, and interest due and owing under this chapter shall constitute a lien of the city upon the subject property.
- (B) Upon any delinquency, monthly charges, connect and disconnect fees, other charges, penalties, and interest due and owing under this chapter shall constitute a lien of the city upon the personal property of consumer.
- (C) A notice of lien for amounts described in this section may be recorded in the office of the district recorder, Aleutian Islands Recording District, Third 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 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.

Section 2: **Amendment of UCO §11.12.130.** Section 11.12.130 of the Unalaska Code of Ordinances is hereby amended by to read as follows (struck-through language is deleted; underlined language is added):

11.12.130 – Recovery of Cost

- (A) The abatement official shall keep an account of the costs, including incidental expenses, of abating each public nuisance, and shall render an itemized report in writing to the City Council showing the costs of abatement and manner of abatement and manner of abatement of each public nuisance, including any salvage value relating thereto.
- (B) Upon the completion of the abatement work, the abatement official shall prepare and file with the City Clerk a report specifying the work done, itemizing the total cost of the work, the description of the property affected by the public nuisance and the names and addresses of the persons entitled to notice pursuant to § 11.12.040. Before the report is submitted to the City Council, a copy of a report shall be posted for at least five days upon the affected premises, together with a notice of the time when the report shall be heard by the City Council.
- (C) “Incidental expenses” including, but are not limited to, the actual expense and cost of the city in the preparation of notices, specifications and contracts, overhead and inspection of the work and the cost of printing and mailing required hereunder.
- (D) The costs, including incidental expenses, of abating each public nuisance shall constitute a lien upon the affected property, and a notice of lien for amounts described in this section may be recorded in the office of the district recorder, Aleutian Islands Recording District, Third Judicial District; 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 file a certificate discharging the lien. 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.
- ~~(D)~~(E) The costs shall be recovered by the city in a civil action, or the city may assess such costs to each and every separate property affected by the abatement as a tax, which shall then be collected as other taxes are collected.
- ~~(E)~~(F) All moneys recovered for the cost of abatement shall be paid into the general fund.

Section 3: Effective Date. This ordinance is effective upon passage.

PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE UNALASKA CITY COUNCIL THIS 8th DAY OF Aug., 2017.


HON. FRANK KELTY
MAYOR

ATTEST:


CAT HAZEN, CITY CLERK



MEMORANDUM TO COUNCIL

TO: MAYOR AND CITY COUNCIL MEMBERS
FROM: CAT HAZEN, CITY CLERK
THRU: DAVID MARTINSON, CITY MANAGER
DATE: JULY 25, 2017
RE: ORDINANCE 2017-10, AMENDING THE UNALASKA CODE OF ORDINANCES CHAPTERS 10.04 AND 11.12 TO CREATE LIENS FOR UTILITY SERVICES AND COSTS OF ABATEMENT

SUMMARY:

Ordinance 2017-10 authorizes the City to create, record and notice liens on real or personal property to secure past due utility fees and costs incurred by the City in the abatement of public nuisances.

PREVIOUS COUNCIL ACTION: On April 11, 2017 the Council passed Resolution 2017-30, supporting the passage of SB100 authorizing municipal liens.

BACKGROUND: On June 13, 2017 Chapter 9 SLA 17, amending AS 09.45.160, AS 11.46.560, and AS 29.35.010 was signed into law to authorize municipal liens.

DISCUSSION:

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.

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: Ordinance drafted by City Attorney.

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

PROPOSED MOTION: Motion to move Ordinance 2017-10 to second reading and public hearing on August 8th.

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

**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

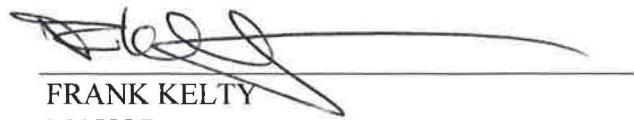
WHEREAS, the ability to provide for the creation, recording, and enforcement of liens has historically been an effective tool used by municipalities to recover unpaid costs incurred by the municipality in providing services such as public nuisance abatement and public utilities; and

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

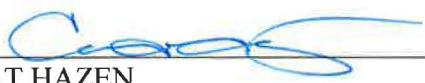
WHEREAS, SB 100 would return to municipalities the ability to use liens to secure payment for services rendered and costs incurred in addressing public nuisances and in providing utility services by giving liens arising solely under municipal law the same authority state and federal law liens hold under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



MEMORANDUM TO COUNCIL

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.