

Requested by: City Council
Introduced: September 6, 2012
Public Hearing Scheduled for: November 1, 2012
Ord. No. 2012-17 (SUB 1) Presented: November 1, 2012
Postponed to: December 6, 2012
Public Hearing Scheduled for: December 6, 2012
Ord. No. 2012-17 (SUB 2) Presented: December 6, 2012
Ord. No. 2012-17 (SUB 2) Adopted: December 6, 2012

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2012-17 (SUB 2)

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING SECTION 3.40.015 DESIGNATED SEATS, AMENDING SECTION 3.60.050 BALLOTS – MARKING, VALIDITY-REMOVAL PROHIBITED, AND ADDING SECTION 3.60.055 WRITE-IN CANDIDATES

WHEREAS, the City of Dillingham (City) is recommending adding language to Section 3.40.015 to clarify that a candidate can serve simultaneously for the office of city council and school board;

WHEREAS, the City is recommending changes to Section 3.60.050, Ballots – Marking, Validity – Removal, to be in line with State law and to separate out hand counted ballots from ballots processed by a vote tabulation system; and

WHEREAS, the City is recommending adding a new section 3.60.055, Write-in Candidates, to require a letter of intent be on file in order for votes for a write-in candidate for elective office to be counted;

WHEREAS, in newly proposed Subsection 3.60.055 A, the City is adding a reference after the term "elective municipal office" to Section 3.40.015 in order to clarify municipal office refers to both the office of city council and school board;

NOW, THEREFORE, BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Classification. This is a code ordinance.

Section 2. Amend Section 3.40.015 to add new text. Section 3.40.015 of the Dillingham Municipal Code is hereby amended as follows with new text displayed in underlined font and deleted text displayed in strike out font.

3.40.015 Designated Seats

Candidates for city council or school board shall file for election day by the municipal voters at large for seats designated alphabetically commencing with the seats vacated in October 1997 and continuing thereafter. No person may file for more than one seat within the same office. However, a candidate can file for office on both the city council and the school board.

Section 3. Amendment of Section 3.60.050, Ballots--Marking, validity--Removal prohibited. Section 3.60.050 of the Dillingham Municipal Code is hereby amended as follows with new text displayed as underlined font and deleted text displayed as strike out font.

3.60.050 Ballots – Marking, validity – Removal prohibited.

A. The ballots shall be counted by the vote tabulation system.

(New text is in underlined font; deleted text is in strike out font)
(Items highlighted in gray shading are being introduced as SUB 2)

B. At no time during the tallying of votes may anyone but the election officials handle the ballots. The ballots shall not be marked in any way by anyone during the tallying.

C. The following rules apply to hand-counted ballots:

~~A. 1. A voter may mark his or her ballot a ballot only by marking in the oval space the use of cross marks, "X" marks, diagonal, horizontal or vertical marks, solid marks, stars, circles, asterisks, checks, or plus signs that are substantially inside the oval opposite the name of the candidate or proposition the voter desires to designate.~~

~~B.2. A failure to properly mark a ballot as to one or more candidates or propositions does not itself invalidate the entire ballot.~~

~~C.3. If a voter marks fewer names than there are persons to be elected to the office, a vote shall be counted for each candidate properly marked.~~

~~D.4. If a voter marks more names than there are persons to be elected to the office, the Accu-Vote system will return the ballot to the voter for the voter to determine their wish to vote correctly votes for that office will not be counted.~~

~~E. The mark specified in Subsection A of this section, shall be counted only if it is substantially inside the oval provided, or touching the oval so as to indicate clearly that the voter intended the particular oval marked.~~

~~F. Improper marks on the ballot will be returned to the voter by the Accu-Vote system and a new ballot shall be issued.~~

~~G. An erasure or correction invalidates only that section of the ballot in which it appears on the ballot.~~

5. H. Write-in votes are not invalidated by writing in the name of the candidate whose name is printed on the ballot. unless the election board determines, on the basis of other evidence, that the ballot was so marked for the purpose of identifying the ballot.

~~6. J. In order to vote for a write-in candidate, the voter must write in the candidate's name in the space provided, or use a sticker as allowed under subsection i of this section and, in addition, fill in mark the oval opposite the candidate's name, in accordance with subsection a of this section~~

7. I. Affixing stickers on a ballot in an election to vote for a write-in candidate is prohibited. [Stickers bearing a candidate's name may be affixed to the ballot in lieu of writing in a candidate's name if write-in votes or ballots are otherwise permitted. Stickers shall not be issued by members off the election board while serving at the polls. Stickers shall not be offered to voters within two hundred feet of the polling place.]

8. Write-in votes shall only be tabulated by person if the total number of write-in votes for an office exceeds the smallest number of votes cast for a candidate for that office whose name is printed on the ballot. No votes for a write-in candidate may be counted unless that candidate has filed a letter of intent with the city clerk in accordance with Section 3.60.055 Write-in Candidates.

(New text is in underlined font; deleted text is in strike out font)
(Items highlighted in gray shading are being introduced as SUB 2)

K. D. No voter may leave the polling place with the official ballot that he/she received to mark.

Section 4. Add a new Section 3.60.055, Write-in Candidates. Section 3.60.055 of the Dillingham Municipal Code is hereby added to read as follows:

3.60.055 Write-in Candidates.

A. Votes for a write-in candidate for elective city municipal office (city council and school board) will not be counted unless the candidate has filed a letter of intent. The letter of intent shall be executed under oath before and on a form provided by the city clerk. The letter of intent shall state in substance:

1. The full name of the candidate;
2. The full residence and mailing addresses of the candidate;
3. A contact phone number;
4. The office and seat to which the candidate seeks election;
5. The name of the candidate as the candidate wishes it to be written in on the ballot by the voter;
6. The date of the election at which the candidate seeks election;
7. A certification by the candidate that the candidate:
 - a. is a qualified voter;
 - b. is a resident of the city;
 - c. qualifies, or shall qualify as of the date of election, for the office to which the candidate seeks election;
 - d. shall serve if elected; and
 - e. is not a candidate for any other office to be voted on at the election ~~has not~~ filed for more than one seat within the same office as noted in Section 3.40.015;
8. A certification by the candidate that the information in the letter of intent is true and accurate.
9. The date and signature of the candidate seeking office.

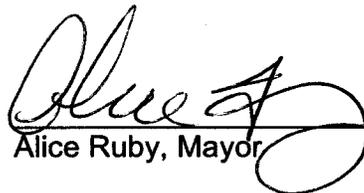
B. A letter of intent under subsection A of this section must be filed with the city clerk not earlier than the first business day following the last day of the filing period for declarations of candidacy for the election under Section 3.40.020, and not later than one p.m. on the day before the election.

Section 5. Effective Date. This ordinance is effective upon passage.

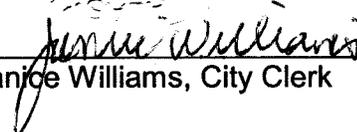
PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on

Dec 6, 2012

SEAL:


Alice Ruby, Mayor

ATTEST:


Janice Williams, City Clerk

(New text is in underlined font; deleted text is in ~~strike out~~ font)
(Items highlighted in gray shading are being introduced as SUB 2)

City of Dillingham Information Memorandum No. O2012-17 (SUB 2)

Subject: An ordinance of the Dillingham City Council amending Section 3.40.015 Designated Seats, amending Section 3.60.050, Ballots – Marking, validity – Removal prohibited, and adding Chapter 3.60.055, Write-in candidates

Agenda of: December 6, 2012

Council Action: At the November 1 Council meeting, the Council moved to adopt Ordinance No. 2012-17 (SUB 1) and then moved to postpone until December 6. The Council officially has "on the table" Ordinance No. 2012-17 (SUB 1) for a public hearing.

Manager: Recommend approval.

City Manager: Rose Loera
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	City Clerk / Janice Williams		

Fiscal Note: Yes _____ No X Funds Available: Yes _____ No _____

Other Attachment(s):

- Notice of Public Hearing is scheduled to be advertised in the November 29, 2012 edition of Bristol Bay Times as required to be advertised in a local newspaper five days in advance of the public hearing, and was posted in three public places.

Summary Statement.

At the November 1 Council meeting, Council questioned whether the term "city office" used in newly proposed section 3.60.055 covered both school board and city council.

The following is a summary of action thus far pertaining to Ordinance No. 2012-17, information regarding Ordinance No. 2012-17 (SUB 1) and information regarding Ordinance No. 2012-17 (SUB 2).

Summary of Ordinance No. 2012-17 (original ordinance) introduced September 6, 2012, and scheduled for a public hearing November 1, 2012.

- disallow stickers on the ballot bearing the write-in's name (State law);
- adopt language write-in votes shall only be tabulated by person if the total number of write-in votes exceeds the smallest number of votes cast for a candidate for that office whose name is printed on the ballot (similar language as the Wasilla and North Pole code regarding tallying votes for write-ins);
- require a letter of intent be on file for all write-ins (Wasilla code);
- adopt language for type of marks that will be allowed in filling in the oval on the ballot including X's, check marks, etc. (State law).

Information regarding substitute Ordinance No. 2012-17 (SUB 1)

In an effort to capture suggestions made by the Code Review Committee and staff, the following amendments were incorporated into Ordinance No. 2012-17 (SUB 1), presented November 1, 2012, adopted, and postponed for a public hearing December 6, 2012:

- Section 3.60.055 separated out rules affiliated with hand counted ballots from tabulating votes using an automated vote tabulation system by adding Subsection 3.60.050 A “ The ballots shall be counted by the vote tabulation system” and adding Subsection 3.60.055 C “The following rules apply to hand-counted ballots”;
- Subsection 3.60.050 B “at no time during the tallying of votes may anyone but the election officials handle the ballots. The ballots shall not be marked in any way by anyone during the tallying” was added; and
- Subsections 3.60.055 E, F, and G were removed because they refer to the automated vote tabulation system which is preprogrammed.

Information regarding substitute Ordinance No. 2012-17 (SUB 2)

SUB 2 addresses a concern made by the Council at their November 1 meeting does elective city office mean city council and school board. The following amendments were incorporated into Ordinance No. 2012-17 (SUB 2).

- Subsection 3.40.015 was amended to add “However a candidate can file for both a city council and a school board seat, following “Candidates for city council or school board shall file for election by the municipal voters at large for seats designated alphabetically commencing with the seats vacated in October 1997 and continuing thereafter. No person may file for more than one seat within the same office”.
- Proposed Subsection 3.60.055 A “elective city office” was changed to elective municipal office (Section 3.40.015, Designated Seats) to mirror *municipal offices* as used in Section 3.10.030, which reads “A regular election shall be held annually on the first Tuesday in October for the election of *vacant municipal offices* and the determination of such other matters as may be placed on the ballot”; and
- Proposed Subsection 3.60.055 A, 7.e. was amended to strike “is not a candidate for any other office to be voted on at the election” and replaced with “has not filed for more than one seat within the same office”, which mirrors Section 3.40.015.

The City’s Attorney has reviewed Ordinance No. 2012-17 (SUB 2). It is his opinion that municipal and city office refers to both the offices of City Council and School Board. The City will need to get a preclearance review from the Dept. of Justice after this ordinance is adopted and prior to the October 2013 election.

Summary information regarding the motion to substitute SUB 1 for SUB 2 at the December 6 meeting.

At the beginning of the public hearing, the public should be advised that copies of Ordinance No. 2012-17 (SUB 2) are on the table and that comments on that version of the ordinance will also be welcomed during the public hearing on Ordinance No. 2012-17 (SUB 1).

The Code Review Committee is recommending that the ordinance last read (Ordinance No. 2012-17 (SUB 1) be substituted for the referred ordinance (Ordinance No. 2012-17 (SUB 2), noting the substitute text is highlighted in gray coloring.

The adoption process should then go as follows:

“I move to amend Ordinance No. 2012-17 (SUB 1) by substituting Ordinance No. 2012-17 (SUB 2). “

If the amendment is approved, the Council then votes on whether to adopt Ordinance No. 2012-17 (SUB 2).



PUBLIC NOTICE

**Public Hearing on Ordinance No. 2012-17 (SUB 1)
and Ordinance No. 2012-18**

The City Of Dillingham will hold a **Public Hearing on Thursday, December 6, 2012, at 7:00 P.M. in the City Council Chambers** for the purpose of taking comment from the public on Ordinance No. 2012-17 (SUB 1), and Ordinance No. 2012-18 as follows:

Ordinance No. 2012-17 (SUB 1), An Ordinance of the Dillingham City Council Amending Section 3.60.050, Ballots-Marking, Validity-Removal Prohibited, and Adding Section 3.60.055, Write-In Candidates

Ordinance No. 2012-18, An Ordinance of the Dillingham City Council Amending Chapter 4.20 of the Dillingham Municipal Code to Limit the Penalty Assessed for Failure to File Sales Tax Returns or Remit Sales Tax to Fifteen Percent, Eliminate Interest Accrual on Penalty Amounts and Provide Authority for Repayment Plans for Unpaid tax.

From the City Clerk's Office, 842-5212, cityclerk@dillinghamak.us.

11/29