



Alice Ruby, Mayor

City Council Members

- Elizabeth Pearch • Scott King • Bob Himschoot
- Keggie Tubbs • Chris Napoli • Tim Sands

**DILLINGHAM CITY COUNCIL
MEETING AGENDA**

David B. Carlson Council Chambers

Dillingham City Hall, 141 Main Street, Dillingham, AK 99576 (907) 842-5212

SPECIAL MEETING	7:00 P.M.	OCTOBER 13, 2011
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I. CALL TO ORDER

II. ROLL CALL

III. APPROVAL OF AGENDA

IV. SPECIAL BUSINESS

- A. Resolution No. 2011-79, A Resolution of the Dillingham City Council Accepting the Certification of the Canvassing Committee Results and Certifying the October 4, 2011 Regular City Election

V. CITIZEN'S DISCUSSION (Open to the Public)

VI. COUNCIL COMMENTS

VII. MAYOR'S COMMENTS

- A. Swearing in Ceremony of Newly Elected Council Members

VIII. ADJOURNMENT

CITY OF DILLINGHAM, ALASKA

RESOLUTION NO. 2011-79

A RESOLUTION OF THE DILLINGHAM CITY COUNCIL ACCEPTING THE CERTIFICATION OF THE CANVASSING COMMITTEE RESULTS AND CERTIFYING THE OCTOBER 4, 2011 ELECTION

WHEREAS, the Canvassing Committee of the City of Dillingham met on Election night and tallied the votes cast at the polls, and met on October 6, 2011, and tallied the votes of Absentee Voting in Person, Absentee Voting by Personal Representative, Absentee Voting by Mail, and Questioned ballots cast by voters; and

WHEREAS, the tallies recorded by the Canvassing Committee are as follows:

City Council Seat B; a two year term ending October 2013.			
Name	Poll Votes	Absentee/Questioned	Total
Write-in: Davis, Mike	6	1	7
Write-in: All Others	73	7	80

**Note: Mike Davis received the highest number of write-in votes.*

City Council Seat C; a three year term ending October 2014.			
Name	Poll Votes	Absentee/Questioned	Total
Himschoot, Bob	194	16	210
Write-ins	3	0	3

City Council Seat D; a three year term ending October 2014.			
Name	Poll Votes	Absentee/Questioned	Total
Tubbs, Keggie	181	14	195
Write-ins	10	0	10

City Council Seat E; a one year term ending October 2012.			
Name	Poll Votes	Absentee/Questioned	Total
Clavette, Andrew	75	4	79
Hightower, Tracy	102	11	113
Write-ins	7	0	7

School Board Seat B; a three year term ending October 2014.			
Name	Poll Votes	Absentee/Questioned	Total
Write-in: Luckhurst, Patty	7	0	7
Write-in: Venua, Bernina	5	2	7
Write-ins: All Others	60	3	63

**Tie vote will be determined by the Council by lot.*

School Board Seat C; a three year term ending October 2014.			
Name	Poll Votes	Absentee/Questioned	Total
Belleque, Kyle	198	15	213
Write-ins	3	0	3

School Board Seat E; a one year term ending October 2012.			
Name	Poll Votes	Absentee/Questioned	Total
Sands, Tim	194	16	210
Write-ins	4	0	4

Recap of All Ballots Issued	Total issued	Total counted (properly cast)
POLL BALLOTS	218	218
ABSENTEE VOTE IN PERSON BALLOTS	14	14
ABSENTEE VOTE BY PERSONAL REPRESENTATIVE	1	1
ABSENTEE VOTE BY MAIL	0	0
QUESTIONED	4	1
TOTAL BALLOTS	237	234

NOW, THEREFORE, BE IT RESOLVED by the Dillingham City Council, that the October 4, 2011, Regular City Election was held valid to the best of our knowledge; and

BE IT FURTHER RESOLVED that the results are certified as follows:

1. That Mike Davis was elected as a write-in to Council Seat B, a two-year term ending October 2013, having received the greatest number of votes cast for this seat, but has declined the seat. The Council will declare the seat vacant and advertise for letters of interest. The Council will have forty-five days to fill the seat.
2. That Bob Himschoot was elected to Council Seat C, a three-year term ending October 2014, having received the greatest number of votes cast for this seat.
3. That Keggie Tubbs as elected to Council Seat D, a three-year term ending October 2014, having received the greatest number of votes cast for this seat.
4. That Tracy Hightower was elected to Council Seat E, a one-year term ending October 2012, having received the greatest number of votes cast for this seat.
5. That _____ tied for the highest number of votes as a write-in to School Board Seat B, a three-year term ending October 2014, and won the seat after each person receiving the highest number of votes had their name typed on an identically sized piece of paper, the two pieces of paper were

placed into a hat or other receptacle and the Mayor drew _____ 's name in a random drawing.

6. That Kyle Belleque was elected to School Board Seat C, a three-year term ending October 2014, having received the greatest number of votes cast for this seat.
7. That Tim Sands as elected to School Board Seat E, a one-year term ending October 2012, having received the greatest number of votes cast for this seat.

PASSED and ADOPTED by the Dillingham City Council on _____.

SEAL:

Alice Ruby, Mayor

ATTEST:

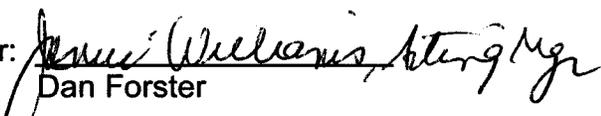
Janice Williams, City Clerk

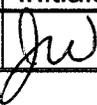
Subject: A Resolution of the Dillingham City Council supporting the Nutrition, Transportation, and Support Services Grant for the continuation of the Dillingham Senior Center Services

Agenda of: October 13, 2011 Special Meeting

City Council Action:

Manager: Recommend approval.

City Manager: 
Dan Forster

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

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

Other Attachment(s):

- Certificate of Canvassing Committee – Official Tally Report from Canvassing Committee Meeting of October 6, 2011
- Copy of Minutes of October 6, 2011 Canvassing Committee Meeting
- Memorandum from Atty. Chandler regarding write-in candidates
- Letters of acceptance/denial from Mike Davis, Patty Luckhurst, and Bernina Venua

Summary Statement.

Certifying the election is required by Code. The City council shall meet in a public session the 2nd Thursday following the election to certify the election or order a recount or investigation of the election. If the election is certified, a "certificate of election" will be delivered to each person elected to office.

Declare a Vacancy – Seat B, City Council

Mike Davis received the highest number of votes but declined in writing to accept the seat. The Council will need to declare a vacancy at the meeting, advertise for letters of interest, and must fill the vacancy 45 days from the day the vacancy is declared.

Tie Vote – Seat B, School Board

Patty Luckhurst and Bernina Venua tied for receiving the highest number of votes. Both write-ins accepted the seat in writing. The tie will be determined by the Council by lot. It needs to be some random selection. Tossing a coin is not considered a random selection. Drawing names out of a hat is only one suggestion – drawing straws with the longest straw winning would be another. Each person drawing cards from a 52 card deck with the highest card winning would be another "by lot" method.

CERTIFICATE OF CANVASSING COMMITTEE RESULTS

**CITY OF DILLINGHAM
OFFICIAL TALLY REPORT
October 6, 2011**

Municipal Election - October 4, 2011

Ballots Cast on Election Day	218	Ballots Counted on Election Day	218
Absentee in Person Ballots Received	14	Absentee in Person Ballots Counted	14
Absentee by Mail Ballots Received	0	Absentee by Mail Ballots Counted	0
Absentee by Personal Rep Ballots Recd	1	Absentee by Personal Rep Ballots Counted	1
Questioned Ballots Received	4	Questioned Ballots Counted	1
Total Ballots Issued	237	Total Ballots Counted	234

The absentee vote by personal representative ballots and questioned ballots were combined with the absentee votes to preserve their confidentiality since there was only one of each.

City Council Seat B; a two year term ending October 2013.			
Name	Poll Votes	Absentee/Questioned	Total
Write-in: Davis, Mike	6	1	7
Write-in: All Others	73	7	80

**Note: Mike Davis received the highest number of write-in votes.*

City Council Seat C; a three year term ending October 2014.			
Name	Poll Votes	Absentee/Questioned	Total
Himschoot, Bob	194	16	210
Write-ins	3	0	3

City Council Seat D; a three year term ending October 2014.			
Name	Poll Votes	Absentee/Questioned	Total
Tubbs, Keggie	181	14	195
Write-ins	10	0	10

CERTIFICATE OF CANVASSING COMMITTEE RESULTS

**CITY OF DILLINGHAM
OFFICIAL TALLY REPORT
October 6, 2011**

City Council Seat E; a one year term ending October 2012.			
Name	Poll Votes	Absentee/Questioned	Total
Clavette, Andrew	75	4	79
Hightower, Tracy	102	11	113
Write-ins	7	0	7

School Board Seat B; a three year term ending October 2014.			
Name	Poll Votes	Absentee/Questioned	Total
Write-in: Luckhurst, Patty	7	0	7
Write-in: Venua, Bernina	5	2	7
Write-ins: All Others	60	3	63

*Patty Luckhurst and Bernina Venua received the highest number of votes. The tie vote will be determined by the Council by lot.

School Board Seat C; a three year term ending October 2014.			
Name	Poll Votes	Absentee/Questioned	Total
Bellegue, Kyle	198	15	213
Write-ins	3	0	3

School Board Seat E; a one year term ending October 2012.			
Name	Poll Votes	Absentee/Questioned	Total
Sands, Tim	194	16	210
Write-ins	4	0	4

Paul Dumb Election Judge 10/11/11 Date

Neil C. Armistery Election Judge 10-11-11 Date

Perry R. Johnson Election Judge 10/11/11 Date

Dana Clark Election Judge 10/11/11 Date

Stephanie Election Judge 10/11/11 Date

CERTIFICATE OF CANVASSING COMMITTEE RESULTS

**CITY OF DILLINGHAM
OFFICIAL TALLY REPORT
October 6, 2011**

Attest:



Janice Williams, City Clerk

Canvassing Committee Report
 Poll Votes - October 4, 2011
 City Council - All Open Seats

Seat B	Write-in	10/4/2011 After Count	
1 Akelkok	Brenda	2	2
2 Andrew	Peter	1	1
3 Armstrong	Curt	2	2
4 Belleque	Kyle	1	1
5 Bowers	Ron	1	1
6 Braswell	VI	3	3
7 Capell	Lillian	1	1
8 Carpenter	Rob	2	2
9 Caudle	Todd	1	1
10 Chambers	Chet	1	1
11 Clark	Dana	1	1
12 Clark Sr	Richard	2	2
13 Clavette	Andrew	2	2
14 Clouse	Jon	1	1
15 Corbett	John	1	1
16 Davis	Mike	6	6 Highest No.of Votes
17 DeValpine	Andrew	1	1
18 Faith	Joe	1	1
19 Folsom	Diane	6	6 Highest No. of Votes
20 Fulton	Wanda	1	1
21 Graber	Noah	1	1
22 Haggblom	Lisa	1	1
23 Hoefflerle	Terry	1	1
24 Holt	Doug	1	1
25 Johnson	Fritz	1	1
26 Liboff	Jerry	1	1
27 Lind	Ricky	1	1
28 Lisac	Mark	1	1
29 Lopez	Deon	1	1
30 Luckhurst	Patty	1	1
31 Maines	Billy	2	2
32 Masey	Michelle	1	1
33 McCarr	Matfie	1	1
34 McCarr	Bobby	1	1
35 McClure	Dave	1	1
36 Moore	Abayo	1	1
37 Murphy	Rick	1	1
38 Nelson	Russell	1	1
39 Noonkesser	Steve	3	3
40 Nunn	Lance	1	1
41 Parker	Kim	1	1
42 Savo	Misty	1	1
43 Schlagel	Janet	1	1
44 Smeaton	Jj	1	1
45 Strub	Pearl	4	4

Canvassing Committee Report

Poll Votes - October 4, 2011

City Council - All Open Seats

46 Tilden	Tommy	1	1
47 Venua	Bernina	2	2
48 Wiley	Bill	1	1
49 Williams	Kim	1	1
	Manual Count	<u>73</u>	
Blank		0	2
Tubbs	Keggie	0	1 cannot be on ballot more than 1X
Hightower	Tracy	0	1 cannot be on ballot more than 1X
Obama		0	1
Trump	Donald	0	1
	Manual Count	<u>73</u>	<u>79</u> Agrees with Total Ballots Cast

* have not validated candidate qualifications for each write-in other than highest vote getters

Seat C

Himschoot	Bob	194
Write-ins		3

-6 Mike Davis
73

Seat D

Tubbs	Keggie	181
Write-ins		10

Seat E

Clavette	Andrew	75
Hightower	Tracy	102
Write-ins		7

Canvassing Committee Report
 Tally of Eligible Ballots - October 6, 2011 MANUAL COUNT
 Question and Absentee Ballots
 City Council

Seat B		Write-in	10/6/2011
1 Brito		Susan	1
2 Davis		Mike	1
3 Holt		Doug	2
4 Livermont		Joanne	1
5 Napoli		Chris	1
6 Radenbaugh		Todd	1
7 Tubbs		Keggie	1
Total			8
			<u>-1</u> <i>Mike Davis</i>
			7
Seat C			
Himschoot		Bob	16
Write-in			0
Seat D			
Tubbs		Keggie	14
Write-in			0
Seat E			
Clavette		Andrew	4
Hightower		Tracy G	11
Write-in			0
Total All			53

Canvassing Committee Report
 Poll Votes - October 4, 2011
 School Board - All Open Seats

Seat B	Write-in	10/4/2011 After Count	
1	Andrew Peter	1	1
2	Andrew LeAnn	1	1
3	Armstrong Joyce	1	1
4	Armstrong Neil	2	2
5	Barrett Jean	2	2
6	Blair Jasper	3	3
7	Clark Dana	4	4
8	Clark Angela	1	1
9	Clouse Jon	1	1
10	Darden Bo	1	1
11	Evans Corry	1	1
12	Folsom Diane	2	2
13	Ford Don	1	1
14	Foster Lance	1	1
15	Foy Steve	2	2
16	Graber Noah	1	1
17	Himschoot Bob	1	1
18	Hoefflerle Terry	2	2
19	Holt Doug	1	1
20	Hoseth Carolyn	2	2
21	Hurley Alannah	1	1
22	Johnson William	1	1
23	Lopez Deon	3	3
24	Luckhurst Patty	7	7 Highest No. of Votes
25	Masley Michelle	1	1
26	McCarr Bobby	1	1
27	Nelson Judy	4	4
28	Noonkesser Steve	3	3
29	Reamey Cathy	1	1
30	Samuelson H Robin	1	1
31	Savo Misty	2	2
32	Shade Annie	1	1
33	Stelling John	1	1
34	Tennyson Rick	1	1
35	Venua Bernina	5	5 Highest No. of Votes
36	Watland Arnie	1	1
	Manual Count	65	1 0
	Blank	0	2
	Williams Kim	0	1 Serves on School Board - Seat D
	anyone ...	0	1
	Mickey Mouse	0	1
	Belleque Kyle	0	1 cannot run on more than 1 seat
	Manual Count	65	72 Agrees with Total Ballots Cast

* have not validated candidate qualifications for each write-in other than highest vote getters

-7 Patty
 -5 Bernina
 60

Canvassing Committee Report
Poll Votes - October 4, 2011
School Board - All Open Seats

Seat C		
Belleque	Kyle	198
Write-ins		3
Seat E		
Sands	Tim	194
Write-ins		4

Canvassing Committee Report
Tally of Eligible Ballots - October 6, 2011 - MANUAL COUNT
Question and Absentee Ballots
School Board

Seat B	Write-in	10/6/2011	
1 Brito	Karen	1	
2 Dunaway	Marjory	1	
3 Venua	Bernina	2	
4 Hightower	Tracy	1	
Total		<u>5</u>	
		-2	Venua
		<u>3</u>	
Seat C			
Belleque	Kyle	15	
Write-in		0	
Seat E			
Sands	Tim	16	
Write-in		0	
Total All		36	

I. CALL TO ORDER

Election Chairperson Pearl Strub called the meeting to order at 12:14 p.m.

II. ROLL CALL

Canvass Committee Members Present:
Pearl Strub, Election Chairperson
Dana Clark, Election Judge
Sherry Christensen, Election Judge
Steve Foy, Election Judge
Curt Armstrong, Election Judge

Staff Present:
Janice Williams, City Clerk

Guest:
Attorney Brooks Chandler (*attended via teleconference*)
Attorney Patrick Munson (*attended via teleconference*)

III. SPECIAL BUSINESS

Chairperson Strub informed the committee that the eligible questioned ballots, and all the eligible absentee ballots would be counted together, since there was only one questioned ballot and one absentee voting by personal representative ballot. This would preserve the confidentiality of the votes.

A. Questioned Ballots**1. Tally Questioned Ballots**

City Clerk Williams reported that of the four (4) questioned ballots received all but one (1) of them had been determined to be ineligible per the Dillingham Municipal Code voter qualifications not being met. The information to support this determination was provided by the Nome Regional Election Office. The one questioned ballot was combined with the absentee voting ballot envelopes.

B. Absentee Ballots

- 1. Tally Qualified Absentee Voting in Person Ballots**
- 2. Tally Qualified Absentee Voting by Personal Representative Ballots**
- 3. Tally Qualified Absentee Voting by Mail Ballots**

Janice Williams informed the Committee that there were fourteen (14) absentee voting in person ballots and one (1) absentee voting by personal representative ballot for a total of fifteen. There was no absentee voting by mail ballots. Chairperson Strub confirmed the count at fifteen (15). The Committee confirmed that all fifteen absentee ballots received were eligible, the City Clerk having verified eligibility by confirming the name was on the precinct registration provided for the election.

The fifteen eligible absentee ballot envelopes and the one questioned ballot envelope were opened, privacy sleeves removed from the envelope, with ballot intact. A recount was made to verify there were sixteen privacy sleeves.

The Committee determined to make a hand count of the absentee ballots and the questioned ballot, with one member reading the ballot, one watching while the ballot was read, one member tallying the votes, and one watching the tally being made. Ballots were read aloud by Chairperson Strub.

C. Validate the Write-in Candidates

Pearl Strub reported there were two seats, one on council and one on school board, for which no one had filed for a declaration of candidacy, but there were write-ins. There were high voter getters, but it was not known if they wanted to serve, and what was the process that would be followed.

The City's Attorney, Brooks Chandler, advised the election judges to count the write-in votes that were cast in favor of people who had not previously filed a declaration of candidacy. He noted the Dillingham Municipal Code had a few sections that appeared to suggest that a person must have filed a declaration of candidacy in order to have votes counted in his or her favor, however, that rule was never explicitly stated. The City had provided room for write-ins on the ballot, so there would be an assumption that there would be write-in votes. Since there wasn't a 40% requirement, somebody would be the winner with a very small number of votes.

He suggested that the persons with the most votes after the ballots had been tallied be contacted in advance of the October 13 election certification to determine if they would decline to sign the oath. He noted if the top vote getter (Seat B, City Council) declined to take the seat, then the City would declare a vacancy. He noted the code provided language regarding a seat vacancy, and one of the criteria was if the person elected failed to qualify or take office.

Discussion:

- remembered in the past when there was no one running for a seat, no one had declared candidacy by the time the ballot was printed, there was a time to organize as a write-in, but now anyone can run, and felt those two seats should be declared as vacant.

Attorney Chandler noted the person elected had to be eligible to serve. His recollection was the practice in the past had been to count the write-in votes and identify who got how many votes.

He noted the State has a procedure where up to five days before the election somebody could file the equivalent of I'm a candidate for office paper work, otherwise the write-in vote

wouldn't be counted. This would make the rules more black and white, and would dovetail with the idea that the City was going to have a space on the ballot for a write-in candidate by allowing an extra window for someone to run as a write-in, and the window would be open to fairly close to the election.

D. Approve the Official Tally Report

Janice Williams advised that the tally report would need some reformatting work and would circulate a copy to the chairperson for her approval and then get the remaining signatures from the other election judges. The election judges proceeded to tally the absentee and question votes and confirmed the count between both teams.

ELECTION TALLY:

	<u>POLLS</u>	<u>ABSENTEE</u>	<u>TOTAL</u>
Seat B, Council			
Write-in: Mike Davis	<u>6</u>	<u>1</u>	<u>7</u>
Write-ins: All Other	<u>73</u>	<u>7</u>	<u>80</u>
Seat C, Council			
Bob Himschoot	<u>194</u>	<u>16</u>	<u>210</u>
Write-ins	<u>3</u>	<u>0</u>	<u>3</u>
Seat D, Council			
Keggie Tubbs	<u>181</u>	<u>14</u>	<u>195</u>
Write-ins	<u>10</u>	<u>0</u>	<u>10</u>
Seat E, Council			
Andrew Clavette	<u>75</u>	<u>4</u>	<u>79</u>
Tracy G. Hightower	<u>102</u>	<u>11</u>	<u>113</u>
Write-ins	<u>7</u>	<u>0</u>	<u>7</u>
Seat B, School Bd			
Write-in: P. Luckhurst	<u>7</u>	<u>0</u>	<u>7</u>
Write-in: B. Venua	<u>5</u>	<u>2</u>	<u>7</u>
Write-in: All Others	<u>60</u>	<u>3</u>	<u>63</u>
Seat C, School Bd			
Kyle Belleque	<u>198</u>	<u>15</u>	<u>213</u>
Write-ins	<u>3</u>	<u>0</u>	<u>3</u>
Seat E, School Bd			
Tim Sands	<u>194</u>	<u>16</u>	<u>210</u>
Write-ins	<u>4</u>	<u>0</u>	<u>4</u>

The City Clerk noted the minutes of the meeting would be presented to Election Chair Pearl Strub for her signature prior to being distributed to the Council at their October 13 meeting

to certify the election, along with a copy of the Official Tally Report and a list of the write-in candidates.

E. Approve the Question and Absentee Voter Statements

Janice Williams commented that the individual statements which noted whether the voter's absentee or questioned ballot had been accepted or rejected and the reason it had been rejected, had not been prepared in time for the meeting, but would be presented to Chairperson Strub for her signature.

IV. OTHER BUSINESS

Chairperson Strub suggested that the City Clerk inform the Council of the issues that were presented with the write-ins.

V. COMMITTEE COMMENTS

There were no committee comments.

VI. ADJOURNMENT

Election Chairperson Pearl Strub asked for a motion to adjourn.

MOTION: Steve Foy moved and Sherry Christensen seconded the motion to adjourn the meeting.

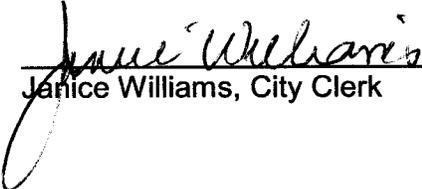
GENERAL CONSENT: The motion passed without objection.

The meeting adjourned at 1:21 p.m.



Pearl Strub, Election Chairperson

ATTEST:



Janice Williams, City Clerk

BOYD, CHANDLER & FALCONER, LLP
ATTORNEYS AT LAW
SUITE 302
911 WEST EIGHTH AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE: (907) 272-8401
FACSIMILE: (907) 274-3698
bcf@bcf.us.com

October 10, 2011

Ms. Janice Williams
City Clerk
City of Dillingham
P.O. Box 889
Dillingham, AK 99576

RE: 2011 Election

This letter confirms our phone conversation of October 6, 2011. We advised the election judges serving on the canvass committee to count write-in votes that were cast in favor of people who had not previously filed a declaration of candidacy. The legal analysis for this recommendation is set forth in greater detail below.

The Dillingham Municipal Code ("Code") does not address this precise question. There are a few sections that appear to suggest that a person must have filed a declaration of candidacy in order to have votes counted in his or her favor in the general election. However, that rule is never explicitly stated.

We believe a court would require accepting and counting the votes that have been cast in favor of undeclared candidates. There are several reasons for this. The Code does not specifically require that a ballot or vote be rejected if it is cast in favor of an unlisted candidate. Instead, it takes an inclusive approach that requires each vote to be counted as long as "the election board can determine from an inspection of the ballot the person for whom the voter intended to vote and the office intended to be designated by the voter." DMC 3.60.070. The Code uses the term "person" rather than "candidate" when discussing counting votes. It is also significant that the word "candidate" is not included in the definitions section of Chapter 3.60. This seems to indicate an intent that votes for "non-candidates" (*i.e.*, those eligible to hold office who have not submitted paper work by the required deadline) be counted.

Similarly, there is no explicit requirement that a person file a declaration of candidacy in order to be elected. The only requirements for serving in an elected office are contained in DMC 3.40.010 and relate to a person's citizenship and residency status, age, and voter eligibility. If Dillingham intended to prohibit a person from being elected because he or she failed to file the proper paperwork, it is our opinion that this would be explicitly stated, as it is in state statute. Under AS 15.25.105, a person who has not filed a declaration of candidacy at least five days prior to a general election will not receive credit for any votes cast in his or her favor. Such a restrictive rule is relatively uncommon in local elections, largely because it risks disenfranchising voters who chose to vote for an unlisted candidate. Dillingham appears to have intended to have

Ms. Janice Williams
October 10, 2011
Page 2 of 2

more inclusive elections. For example, DMC 3.20.030(b) requires that write-in spaces be provided on each ballot, an obligation that would be unnecessary if the spaces could only be used to vote for candidates who were already listed on the ballot.

Declaration of candidacy requirements in Dillingham seem to serve a somewhat different purpose from those in statewide elections. In Dillingham, declarations must be made a month prior to the election, and a person may withdraw his or her name from consideration until the same deadline. DMC 3.40.050. Alaska Statute 15.25.105(c) allows write-in candidates to file declarations until five days prior to the election. This probably indicates that Dillingham's early filing requirement is intended more to facilitate the logistics of printing and obtaining ballots in time for the election, rather than to prevent people from deciding to run for office soon before the election.

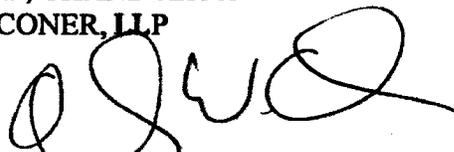
The Alaska Supreme Court has a tradition of fostering open and inclusive elections throughout Alaska and tends to rule in favor of counting votes. This preference was recently demonstrated in the Court's decision to count write-in votes for Lisa Murkowski. This tradition, combined with the absence of a specific prohibition on counting votes for undeclared candidates in the Code, is a major reason why we advise the election board to count the write in votes cast in the October 4, 2011 election for persons that meet the eligibility requirements of DMC 3.40.010. If you, the election judges, or the city council have any additional questions regarding this matter, please let us know.

We have not yet addressed in detail any of the scenarios that might arise in the event of a tie or if any of the candidates declines to accept a position to which he or she was elected. We did suggest that the persons with the most votes after the ballots have been tallied be contacted in advance of the October 13 election certification to determine if they will decline to sign the oath of office. We will help answer any questions as they arise.

Sincerely,

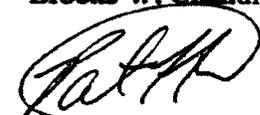
BOYD, CHANDLER &
FALCONER, LLP

BY:



Brooks W. Chandler

BY:



Patrick J. Munson