

ORDINANCE NO. 2013-02 (SUB-1)

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING SECTIONS ~~4.15.140~~ 4.15.070 THROUGH 4.15.170 OF THE DILLINGHAM MUNICIPAL CODE TO AMEND THE PROCEDURES FOR APPEAL HEARINGS BEFORE THE BOARD OF EQUALIZATION AND TO DELETE REPETITIVE LANGUAGE IN THESE SECTIONS

WHEREAS, Chapter 4.15, Sections 4.15.110 through 4.15.170, of the Dillingham Municipal Code was difficult to follow, because the sections were out of order, and in some cases the language was a duplication of another section; and

WHEREAS, through the process of reviewing these sections other errors, mostly minor, were discovered; and

WHEREAS, the City Council believes cleaning up these sections would be appropriate;

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

Section 1. Classification. This is a code ordinance.

Section 2. Amendment of Section 4.15.070. Section 4.15.070 of the Dillingham Municipal Code is hereby amended to read as follows: (Additions are underlined and emboldened and deletions are shown as strikethrough.)

4.15.070 Assessment roll and notice – ~~Assessor~~ City to prepare and mail.

A. Annually, the city ~~assessor~~ shall prepare the assessment roll pursuant to AS 29.45.160. The roll shall be prepared in duplicate and shall include particulars on delinquent taxes owing by any persons.

B. The city ~~assessor~~ shall mail each person named in the roll a notice of assessment by March 15th or the next business day should the fifteenth fall on a weekend or holiday, pursuant to the provisions of AS 29.45.170.

C. Corrections to the assessment notice may be made pursuant to AS 29.45.180.

D. The notice shall include the deadline for filing an appeal, which shall be established pursuant to Section 4.15.130(C) and shall be thirty days from the date the notice is mailed.

Section 3. Amendment of Section 4.15.110. Section 4.15.110 of the Dillingham Municipal Code is hereby amended to read as follows: (Additions are underlined and emboldened and deletions are shown as strikethrough.)

4.15.110 Posting required.

(Items highlighted in gray shading are being introduced as SUB-1)

When valuation notices have been mailed, the assessor city shall cause notice that the assessment rolls have been completed to be posted at two public places for a period of two weeks. Such notice shall also state the time and location of the board of equalization's organizational meeting when and where the equalization hearings shall be heard and that an appeal may be taken to the board of equalization upon the by filing of notice in writing with the board specifying the grounds of the appeal.

Section 4. Amendment of Chapter 4.15. Chapter 4.15 is hereby amended by repealing and re-enacting Sections 4.15.120, 4.15.125, 4.15.130 to read as follows: (Additions are underlined and emboldened and deletions are shown as strikethrough.)

4.15.120 Membership and procedures of board of equalization.

A. Membership Duties.

1. ~~Membership. The board of equalization shall be composed of three city council members and the mayor, who will preside. Members shall not be in default with the city for taxes.~~

2. ~~Duties. The board may determine equalization on properties brought before the board by appellants or by one or more members of the board. The board may alter an assessment of a lot only pursuant to an appeal filed as to the particular lot.~~

B. Duties of Municipal Assessor. ~~The municipal assessor shall furnish the board of equalization with copies of the appellant's appeal and a short narrative of the assessor's position. The assessor shall certify that material furnished to the board under Section 4.15.125 is true and correct, and such material shall be considered as part of the official testimony the board may hear. The assessor or his representative may supplement the record by additional testimony, documentation and exhibits in accordance with subsection (D)(7) of this section.~~

C. Quorum and Voting.

1. ~~Quorum. A quorum shall consist of three members.~~

2. ~~Voting. The granting of any appeal or part thereof shall require the concurring vote of all board members. Any appeal or part thereof that is not granted by the board may be presented to the city council by the second meeting in May.~~

D. Conduct of Hearings Decisions. ~~Except as otherwise provided in this chapter, hearings shall be conducted by the board in accordance with Robert's Rules of Order, Newly Revised, subject to the following standards:~~

1. ~~Record. The city clerk shall keep verbatim stenographic records or electronic recordings of the board's proceedings, showing the vote of each member on every question and all of the evidence presented. The city clerk shall prepare written minutes for all board proceedings and the chairperson of the board and the city clerk shall sign such minutes.~~

2. ~~Counsel. All parties may be represented by counsel during hearings before the board. The municipal attorney may offer legal counsel to the board in the course of its proceedings.~~

3. ~~Case Number. Every appeal shall be assigned a case number which shall be read into the record along with the name of the appellant before the hearing on that appeal commences.~~

4. ~~Burden of Proof. The burden of proof rests with the appellant. The only grounds for adjustment of an assessment are unequal, excessive, improper or under valuation based on the facts that are stated in a valid written appeal or provided at the appeal hearings in accordance with subsection (D)(7) of this section. If the valuation is found to be too low, the board of equalization may raise the assessment. The municipality shall make available to the appellant all reasonably pertinent documents requested for presentation of the appeal.~~

5. ~~Rules of Evidence. The board shall not be restricted by the formal rules of evidence; however, the chairperson may exclude evidence irrelevant to the issues appealed. Hearsay~~
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evidence may be considered provided that there are adequate guarantees of its trustworthiness and that it is more probative on the point for which it is offered than any other evidence which the proponent can procure by reasonable efforts.

6. ~~Order of Presentation.~~ The appellant may present his appeal in person, in writing, or by authorized representative and shall present his argument first. Following the appellant, the assessor shall present the municipality's argument. The appellant may, at the discretion of the chairperson, make rebuttal presentations directed solely to the issues raised by the assessor. The municipal attorney may question the appellant or the assessor on matters relating to the appeal. The members of the board may ask questions, through the chairperson, of either the appellant or the assessor at any time during the hearing. After both the appellant and the assessor have presented their arguments, each may question the other through the chairperson.

7. ~~Witnesses and Exhibits.~~ The appellant and the assessor may offer oral testimony of witnesses and documentary evidence during the hearing. Any documents presented to the board by either party must be provided to the opposing party at least seven days before the hearing. Documents to be submitted as evidence to the board must be filed with the city clerk no later than seven days before the board hearing to be admitted. All testimony before the board shall be under oath.

8. ~~Decisions.~~ At the conclusion of the hearing the boards shall determine whether the assessment is proper. The board shall issue findings of fact and conclusions of law clearly stating the grounds upon which the board relied to reach its decision.

9. ~~Certification.~~ The board shall certify its decision for an appeal to the assessor within seven days following its issuance.

10. ~~Approval of Value Agreed Upon Between Assessor and Appellant.~~ After an appeal has been filed to the board of equalization, the assessor will prepare a memorandum to the board of equalization for any new value which has been tentatively agreed to by the assessor and appellant, requesting the approval of the new value. If the board of equalization does not approve the value, the assessor shall schedule the appeal for a hearing and the city clerk shall properly notify the appellant.

F. ~~Appeal to Superior Court.~~ The appellant or the assessor may appeal a decision of the board to the superior court within thirty days in accordance with the rules of appellate procedure of the state. (Ord. 01-12 § 1 (part), 2001.)

4.15.125 Appeals to board of equalization.

A. ~~A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation.~~

B. ~~No appeal may be taken unless the applicant files with the city clerk written notice of appeal specifying grounds for such appeal within thirty days from the date the assessment notice was mailed.~~

C. ~~The city clerk shall acknowledge the written appeal by sending the appellant a notice, and notify the appellant by mail of the time and place for the hearing before the board and assign a case number to the appeal.~~

D. ~~A taxpayer who requests to appeal his valuation after the thirty day filing period has closed shall file a letter with the city clerk stating the reasons why the taxpayer was unable to comply within the thirty day period. The board of equalization shall consider each letter. The board's determination shall be based on the letter and any supporting documents. A taxpayer may not make an oral presentation at this hearing. The board shall interpret the term "unable to comply"~~

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~~as meaning that a taxpayer must demonstrate compelling reasons or circumstances which would prevent a reasonable person under the circumstances from filing an appeal. If the request is granted, the taxpayer shall have thirty days from the date of notification by the city clerk to file an appeal. If the request is denied, the city clerk shall notify the taxpayer of the board's decision. (Ord. 01-12 § 1 (part), 2001.)~~

4.15.130 Assessment roll—Appeal and hearing.

~~A. Pursuant to AS 29.45.190, a person whose name appears on the assessment roll or the agent or assigns of that person may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction. In addition to the appeal procedures set forth therein, whenever it appears to the board that there are overcharges or errors or invalidities in the assessment roll, or in any of the proceedings leading up to or subsequent to the preparation of the roll, and there is no appeal before the board by which the same may be dealt with, or where the name of any person is ordered by the board to be entered on the assessment roll, by way of addition or substitution, for the purpose of assessment, the board shall cause notice of assessment to be mailed to that person or his agent giving him a least thirty days from the date of such mailing within which to appeal to the board against the assessment.~~

~~B. In compliance with the provisions of AS 29.45.210, at the time appointed for the hearing of the appeal or as soon thereafter as the appeal may be heard, the board shall hear the appellant, the assessor, other parties to the appeal and their witnesses, and consider the testimony and evidence adduced, and shall determine the matters in question on the merits and render its decision accordingly. If any party to whom notice was mailed, as above set forth, fails to appear, the board may proceed with the hearing in his/her absence. The burden of proof in all cases shall be upon the party appealing. The board shall from time to time enter in the appeal record its decision upon appeals brought before it, and shall certify to the same. (Ord. 01-12 § 1 (part), 2001.)~~

4.15.120 Membership of the board of equalization.

A. Membership—Duties.

1. Membership. The board of equalization shall be composed of three city council members and the mayor, who will preside. Members shall not be in default with the city for taxes.

2. Duties. The board may determine equalization on properties brought before the board by appellants or by one or more members of the board. The board may alter an assessment of a lot only pursuant to an appeal filed as to the particular lot.

B. Duties of Municipal Assessor. The municipal assessor shall furnish the board of equalization with copies of the appellant's appeal and a short narrative of the assessor's position. The assessor shall certify that material furnished to the board under Section 4.15.125 is true and correct, and such material shall be considered as part of the official **record** testimony the board may **consider**. ~~hear~~. The assessor or his representative may supplement the record by additional testimony, documentation and exhibits in accordance with **DMC 4.15.130(10)**. ~~subsection (D)(7) of this section.~~

4.15.125 Appeals to board of equalization.

A. A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation.

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B. No appeal may be taken unless the applicant files with the city clerk written notice of appeal specifying grounds for such appeal within thirty days from the date the assessment notice was mailed.

C. The city clerk shall acknowledge the written appeal by sending the appellant a notice indicating the time and location of the board's organizational meeting, and shall refer all appeals to the assessor, including transmitting to the assessor any documents submitted by the appellant., and notify the appellant by mail of the time and place for the hearing before the board and assign a case number to the appeal.

D. Prior to the hearing, the appellant taxpayer may present relevant information directly to the assessor, who may revise the original assessment if the information indicates that the original assessment was unequal, excessive, improper or under valued. If the assessor and the appellant taxpayer tentatively agree upon a revised assessment value prior to the hearing, the assessor will prepare a memorandum to the board of equalization stating the reasons for the revised assessment, the amount thereof, and requesting approval of the new value. The board shall consider the memo at the organizational meeting described in subsection E. If the board of equalization does not approve the value, the assessor shall schedule the appeal for a hearing and the city clerk shall properly notify the appellant.

E. As soon as practicable after the deadline for filing appeals expires, the board shall convene an organizational meeting to determine the number of outstanding appeals and schedule hearings. No more appeals shall be accepted.

~~F. A taxpayer who requests to appeal his valuation after the thirty-day filing period has closed shall file a letter with the city clerk stating the reasons why the taxpayer was unable to comply within the thirty-day period. The board of equalization shall consider each letter. The board's determination shall be based on the letter and any supporting documents. A taxpayer may not make an oral presentation at this hearing. The board shall interpret the term "unable to comply" as meaning that a taxpayer must demonstrate compelling reasons or circumstances which would prevent a reasonable person under the circumstances from filing an appeal. If the request is granted, the taxpayer shall have thirty days from the date of notification by the city clerk to file an appeal. If the request is denied, the city clerk shall notify the taxpayer of the board's decision.~~

G. Hearings for all outstanding appeals shall be held prior to May 15 of the tax year for which the assessment is appealed, unless the board determines at its organizational meeting that additional time is necessary to conduct all the hearings. All hearings and assessments must be complete before the council considers the resolution required by DMC 4.15.020(B).

4.15.130 Board of equalization hearing.

The following procedures shall govern the hearing:

1. Quorum. A quorum shall consist of three members.
2. Voting. The board shall act by simple majority vote, and may decide to reject, approve, or partially approve or reject an adjustment requested by either party by a majority vote of the board members present at the hearing. ~~granting of any appeal or part thereof shall require the concurring vote of all board members.~~

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3. Conduct of Hearings. Except as otherwise provided in this chapter, hearings shall be conducted by the board in accordance with Robert's Rules of Order, Newly Revised.
4. Record. The city clerk shall keep verbatim stenographic records or electronic recordings of the board's proceedings, showing the vote of each member on every question and all of the evidence presented. The city clerk shall prepare written minutes for all board proceedings and the chairperson of the board and the city clerk shall sign such minutes.
5. Counsel. All parties may be represented by counsel during hearings before the board. The municipal attorney may offer legal counsel to the board in the course of its proceedings.
6. Case Number. Every appeal shall be assigned a case number which shall be read into the record along with the name of the appellant before the hearing on that appeal commences.
7. Burden of Proof. The burden of proof rests with the appellant. The only grounds for adjustment of an assessment are unequal, excessive, improper or under valuation based on the facts that are stated in a valid written appeal or provided at the appeal hearings in accordance with subsection (F)(10) of this section. If the valuation is found to be too low, the board of equalization may raise the assessment. The municipality shall make available to the appellant all reasonably pertinent documents requested for presentation of the appeal.
8. Rules of Evidence. The board shall not be restricted by the formal rules of evidence; however, the chairperson may exclude evidence irrelevant to the issues appealed. Hearsay evidence may be considered provided that there are adequate guarantees of its trustworthiness and that it is more probative on the point for which it is offered than any other evidence which the proponent can procure by reasonable efforts.
9. Order of Presentation. The appellant may present his appeal in person, in writing, or by authorized representative and shall present his argument first. **If any party to whom notice of the hearing was mailed fails to appear, the board may proceed with the hearing in his/her absence.** Following the appellant, the assessor shall present the municipality's argument. The appellant may, at the discretion of the chairperson, make rebuttal presentations directed solely to the issues raised by the assessor. The municipal attorney may question the appellant or the assessor on matters relating to the appeal. The members of the board may ask questions, ~~through the chairperson,~~ of either the appellant or the assessor at any time during the hearing. ~~After both the appellant and the assessor have presented their arguments, each may question the other through the chairperson.~~
10. Witnesses and Exhibits. The appellant and the assessor may offer oral testimony of witnesses and documentary evidence during the hearing. Any documents presented to the board by either party must be provided to the opposing party **and to the city clerk** at least seven days before the hearing, **but failure to produce such documents prior to the hearing shall not prevent the board from accepting the documents as evidence unless doing so would substantially prejudice the other party.** ~~Documents to be submitted as evidence to the board must be filed with the city clerk no later than seven days before the board hearing to be admitted.~~ All testimony before the board shall be under oath.

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11. **Decisions.** At the conclusion of the hearing, the boards shall determine the correct valuation and shall clearly state the reason for the its decision on the record. ~~whether the assessment is proper. The board shall issue findings of fact and conclusions of law clearly stating the grounds upon which the board relied to reach its decision.~~

12. **Certification.** The city clerk shall transmit the results of the hearings to the parties and the city finance department within three days of the hearings in accordance with DMC 4.15.140. ~~board shall certify its decision for an appeal to the assessor within seven days following its issuance.~~ **Except as to supplementary assessments, the city council shall certify the final assessment roll by June 15.**

Section 5. Amend Section 4.15.170 to the correct information. (Additions are underlined and emboldened and deletions are shown as strikethrough.)

4.15.170 Assessor to mMail tax statements.

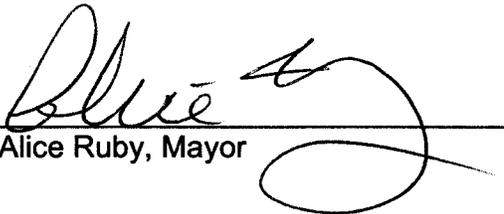
Following adoption of the council resolution provided in AS- DMC 14.15.160.C. and by July 1st, the ~~assessor~~ **the city** shall mail tax statements by July 1st, setting out the levy and the dates when taxes are due and delinquent, and the penalties and interest.

Section 6. Effective Date. This ordinance shall be made as of July 1, 2013.

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

April 25, 2013

SEAL:



Alice Ruby, Mayor

ATTEST:



~~Janice Williams, City Clerk~~
Lillian Capell, Recorder