

CITY OF DILLINGHAM, ALASKA

**ORDINANCE NO. 2016-10**

**AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING TITLE 4 TO ESTABLISH FEES AND COSTS TO BE PAID BY DELINQUENT TAXPAYERS IN ORDER TO REMOVE A PROPERTY FROM THE ANNUAL REAL PROPERTY FORECLOSURE LIST OR TO REDEEM SUCH A PROPERTY AFTER FORECLOSURE**

WHEREAS, city and state law require delinquent property tax payers to pay for the costs incurred by the City to initiate and carry out real property tax foreclosure cases; and

WHEREAS, the delinquent tax payer must pay some of these costs whether the property is ultimately foreclosed upon or not because the City incurs court, publication and attorney's costs just to initiate the foreclosure case; and

WHEREAS, taxpayers who pay delinquent taxes after the foreclosure case starts but before it concludes should not be required to pay as much of the costs as those who pay after the case concludes; and

WHEREAS, neither city nor state law prescribes a mechanism for determining the costs to be paid by each delinquent taxpayer; and

WHEREAS, it is often difficult or impossible to precisely calculate the amount owed by each delinquent taxpayer, especially at the time a particular taxpayer is ready to remit payment; and

WHEREAS, the City desires to establish a more consistent and easy to use system for both City staff and taxpayers to determine the foreclosure costs that a delinquent taxpayer owes by prescribing such costs by ordinance;

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

**Section 1. Amendment of Section 4.15.200.** Section 4.15.200 of the Dillingham Municipal Code is hereby amended as follows with new language underlined and deleted language displayed as ~~strikethrough~~.

**4.15.200 Foreclosure list.**

A. The clerk shall, after taxes have become delinquent and due prior to December 31st of each year, make up a roll of all property then subject to foreclosure and present the list to the city council. The city council shall direct that the city:

1. Annually present a petition for judgment and a certified copy of the foreclosure list for the previous year's delinquent taxes in the Superior Court for judgment;
2. Publish the foreclosure list for four consecutive weeks in a newspaper of general circulation distributed in the city, or if there is no newspaper of general circulation distributed in the city, post the list at three public places for at least thirty days;
3. Within ten days after the first publication or posting, mail to the last known owner of each property as the owner's name and address appear on the list a notice advising of the foreclosure proceeding, in which a petition for judgment of foreclosure has been filed, and describing the property and the amount due as stated on the list.

B. The list shall be arranged in alphabetical order~~[- as to]~~ by the last name and must include [;] the last known owner; the property description as stated on the assessment roll; year and amount of delinquency; penalty and interest due as of the date the list is prepared; the applicable foreclosure cost fee set forth in DMC 4.15.235(B); ~~[costs, which include publication and attorney fees];~~ a statement that the list is available for public inspection at the clerk's office; and a statement that the list has been presented to the Superior Court with a petition for judgment and decree.

C. Completion of the requirements of subsection A of this section constitutes, and has the same force and effect, as the filing of an individual and separate complaint and service of summons to foreclose a lien against each property described on the foreclosure list.

**Section 2. Amendment of Section 4.15.210.** Section 4.15.210 of the Dillingham Municipal Code is hereby amended as follows with new language underlined and deleted language displayed as ~~strikethrough~~.

#### **4.15.210 Clearing delinquencies.**

During the publication or posting of the foreclosure list, and up to the time of transfer to the municipality at the time judgment is entered, a person may pay the taxes, together with the penalty, interest, and the applicable foreclosure costs set forth in DMC 4.15.235(B). ~~[all costs such as publication, attorney fees and any other associated costs of foreclosure.]~~ The collector shall note payment on the foreclosure list.

**Section 3. Amendment of Section 4.15.230.** Section 4.15.230 of the Dillingham Municipal Code is hereby amended as follows with new language underlined and deleted language displayed as ~~strikethrough~~.

**4.15.230 [Real and p]Personal property—Collection, delinquency, remedies.**

A. A Demand for Payment of Personal Property Taxes. Prior to December 31st of each year the city clerk will work with the collections person and together shall mail, postage fully paid, to all persons whose personal property taxes are delinquent, demand payment of the taxes plus penalty and interest. This shall be the date of mailing of the notice of tax due referred to in subsections (C) (2) (a) and (b) of this section.

B. Methods of Collection of Personal Property Taxes. Personal property taxes together with the penalty and interest, may be collected, after the same become due, either by distraint or in a personal action brought in the name of the city against such owner in the courts of the state, or both such methods of collection may be used, in the discretion of the council. Neither of such methods shall be deemed exclusive remedies.

C. Collection by Distraint and Sale.

1. Persons Subject to Enforcement. If at any time a taxpayer is more than six months delinquent in any of the sales or personal property taxes levied by the city due the city, he/she shall be subject to the enforcement procedures provided in this chapter, which are in addition to any other enforcement procedures already provided for and are not exclusive.

2. Distraint. The lien of personal property taxes and other nonreal taxes may be enforced by distraint and sale of the personal property of the person assessed. The procedure shall be as follows:

a. Demand shall be made of the person assessed by sending him/her a notice of the amount of tax due, the penalty and interest and the total and notice to the effect that if the taxes and all penalty and interest are not paid by a date certain which date shall not be less than thirty days from the date of mailing, that his/her personal property shall be subject to distraint and sale. The notice shall be sent by certified mail, return receipt requested or may be served in person with return of the person making service. The notice shall be signed by the city clerk.

b. If no payment is made within the time specified or in accordance with any repayment plan authorized by this chapter, the city clerk shall issue a warrant directed to an enforcement officer of the city to be designated by the city manager, direct him to seize, levy upon, distraint, and sell by public auction such personal property of the person assessed as the tax may have been levied upon, and that if the same is not sufficient to satisfy the tax, penalty, interest, costs, and expenses of sale, such warrant may authorize seizure, levy, distraint and sale of such other personal property of the person against whom the tax was assessed as may be sufficient to satisfy such tax, penalty, interest, costs and expenses of sale.

i. No sale of any property may be made without at least fifteen days' notice being given by publishing a notice of the sale at least

two times in a newspaper of general circulation within the city, or if there is no such newspaper, by posting within the times stated a notice in seven public places within the city, and by mailing by certified first class prepaid mail a copy of the notice to the person assessed.

ii. Sale. The sale of such property shall be made at public auction and such personal property shall be sold to the highest bidder for cash. All sales of personal property shall be made at a time of day to be fixed by the city clerk in such notice, and the same shall be fixed between the hours of ten a.m. and five p.m. of the day of the sale, and the sale may be adjourned by the city clerk from day to day for want of purchasers of sufficient bids, or if for any valid reason the city clerk is prevented from attending at the time and place set for the sale, the sale may be adjourned and continued from day to day if necessary until all of such personal property has been sold to pay the costs and expenses provided in this chapter, and the tax, penalty and interest in full.

iii. From the proceeds of the sale which shall convey all the right title and interest of the person assessed, shall be paid, in the following order: the actual expenses of sale, tax, penalty, interest, and other costs including attorney's fees.

iv. Schedule of Costs. The following shall be the schedule of costs and attorney's fees applicable to all personal property tax delinquencies collected or sought to be collected using the provisions of this chapter:

(A) If redemption is made prior to sale:

(1) Actual costs of seizing and preserving the property;

(2) Actual costs of publication and giving notice;

(3) Attorney's fees in the amount of twenty percent of the first one hundred dollars, but with a minimum of ten dollars, fifteen percent of the next five hundred dollars and ten percent thereafter.

(B) If no redemption is made before the property is sold:

(1) All costs stated above plus any actual accruing costs;

(2) Attorney's fees in addition to those stated of fifteen percent of the first one hundred dollars but with a minimum of ten dollars, five percent of the balance.

v. Any remaining sums shall be returned to the person assessed, or if not claimed within six months shall become the property of the city, and sale is forever barred.

vi. The city clerk shall apply the proceeds of the sale in the manner set forth, and shall keep a record of all such sales and all such proceedings, and shall keep on file the returns of the city clerk relating thereto, and in all cases of sale of personal property, the city clerk shall, if requested, give the purchaser a bill of sale on behalf of the city under his/her hand.

~~[D.— General Foreclosure. The city shall bring one general foreclosure proceeding in rem against the property included in the foreclosure list. If the owner is unknown, the property is proceeded against as belonging to “unknown owner.”]~~

**Section 4. Amendment of Chapter 4.15.** Chapter 4.15 of the Dillingham Municipal Code is hereby amended by the addition of a new Section 4.15.235 to read as follows:

**4.15.235 General foreclosure of Real Property.**

A. The city shall bring one general foreclosure proceeding in rem against the real property included in the foreclosure list. If the owner is unknown, the property is proceeded against as belonging to “unknown owner.”

B. Costs of foreclosure. It is the intent of this chapter and AS 29.45.320-.480 that the costs of carrying out the foreclosure process shall ultimately be borne by the delinquent taxpayer, not the City of Dillingham.

1. In order to accomplish the intent of this chapter and AS 29.45.320-.480, the city hereby establishes the following foreclosure cost fees, which are intended to reimburse the city for the costs of foreclosure, including but not limited to costs of publication, mailing, attorney's fees, filing and recording fees, title search, and costs incurred to comply with DMC 4.15.310(a):

i. A flat fee of \$150 per property identified on the foreclosure list if the delinquent amount is paid after the first publication or posting of the foreclosure list pursuant to DMC 4.15.200.A.2 and before judgment is entered; and

ii. Actual costs incurred, including attorney's fees and mailing, will be prorated equally to each property, and the cost of the each title search will

be assigned to each owner as identified on the foreclosure list if the delinquent amount is paid after judgment is entered and before the first publication of the notice of the expiration of the redemption period; and, if applicable; and

iii. Actual costs incurred, including the costs of publication, mailing, attorney's fees, and filing and recording fees, prorated equally to each property identified on the foreclosure list if the delinquent amount is paid after the first publication of the notice of the expiration of the redemption period.

2. If the city incurs extraordinary costs of foreclosure significantly in excess of the applicable fee and costs set forth above, or if the court awards specific costs or attorney's fees against a particular property, the fee and costs stated above will be in addition to the extraordinary costs.

3. All applicable fees and costs assessed pursuant to this section shall be included in the lien authorized by this chapter and must be paid to redeem or repurchase the property or otherwise release the lien. Unless otherwise ordered by the court, the applicable fee and costs set forth in DMC 4.15.235.B.1 may not be waived or reduced.

**Section 5. Amendment of Section 4.15.260.** Section 4.15.260 of the Dillingham Municipal Code is hereby amended as follows with new language underlined and deleted language displayed as ~~strikethrough~~.

#### **4.15.260 Transfer and appeal.**

A. Foreclosed properties are transferred to the city for the lien amount. When answers are filed the court may enter judgment against and order the transfer to the city of all other properties on the list pending determination of the matters in controversy. If the city prevails over any answer and objection, it shall be entitled to an award of the attorney's fees incurred to defeat the answer and objection, which shall be included in the judgment and lien authorized by this chapter. ~~The court shall hear and determine the issues raised by the complaint and answers in the same manner and under the same rules as it hears and determines other actions.~~

B. The court clerk shall deliver a certified copy of the judgment and decree to the city clerk. The certified judgment and decree constitutes a transfer to the city.

C. The judgment and decree stops objections to it that could have been presented before judgment and decree. Appeal from a judgment and decree of foreclosure, or from a final order in the proceeding, may be taken in a manner provided for appeals in civil actions.

**Section 6. Amendment of Section 4.15.270.** Section 4.15.270 of the Dillingham Municipal Code is hereby amended as follows with new language underlined and deleted language displayed as ~~strikethrough~~.

**4.15.270 Redemption period.**

Properties transferred to the municipality are held by the city for at least one year. During the redemption period a party having an interest in the property may redeem it by paying the lien amount plus penalties, interest, and the applicable foreclosure fee/costs set forth in DMC 4.15.235(B). ~~[costs, including all costs incurred under AS 29.45.440(a).]~~ Property redeemed is subject to all accrued taxes, assessments, liens and claims as though it had continued in private ownership. Only the amount applicable under the judgment and decree, including the applicable fee and costs, must be paid in order to redeem the property.

**Section 7. Amendment of Section 4.15.310.** Section 4.15.310 of the Dillingham Municipal Code is hereby amended as follows with new language underlined and deleted language displayed as ~~strikethrough~~.

**4.15.310 Expiration.**

A. At least thirty days before the expiration of the redemption period the clerk or the clerk's designee shall publish a redemption period expiration notice. The notice must contain the date of judgment, the date of expiration of the period of redemption, and a warning that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the city immediately on expiration of the period of redemption, and that every right or interest of a person in the properties will be forfeited forever to the city. The notice appears once a week for four consecutive weeks in a newspaper of general circulation distributed in the city. If there is no newspaper of general circulation distributed in the city, the notice shall be posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken, and if the assessed value of the property is more than ten thousand dollars, to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days after the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record.

B. The right of redemption expires thirty days after the date of the first notice publication.

C. Costs incurred in the determination of holders of mortgages and other liens, if recorded, and costs of notice publication incurred by the city under subsection A of this section, are a lien on the property and may be recovered by the city as provided in DMC 4.15.235.

**Section 8. Amendment of Section 4.15.340.** Section 4.15.340 of the Dillingham Municipal Code is hereby amended as follows with new language underlined and deleted language displayed as ~~strikethrough~~.

**4.15.340 Repurchase by record owner.**

A. The record owner at the time of tax foreclosure of property acquired by the city, or the assigns of that record owner, may, within ten years and before the sale or contract of sale of the tax-foreclosed property by the city, repurchase the property. The city shall sell the property for the full amount applicable to the property under the judgment and decree plus: (1) interest not to exceed fifteen percent a year from the date of entry of the judgment of foreclosure to the date of repurchase; (2) delinquent taxes assessed and levied as though it had continued in private ownership; (3) costs of foreclosure and sale incurred by the city or the applicable foreclosure fee and costs set forth in DMC 4.15.235, whichever is greater; and (4) costs of maintaining and managing the property incurred by the city, including insurance, repairs, association dues and management fees, that exceed amounts received by the city for the use of the property.

B. After adoption of an ordinance providing for the retention of tax-foreclosed property by the city for a public purpose, the right of the former record owner to repurchase the property ceases.

**Section 9. Effective Date.** This ordinance is effective upon passage.

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

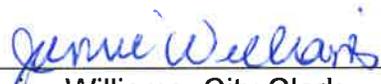
6/16/16



Alice Ruby, Mayor

[SEAL]

ATTEST:



Janice Williams, City Clerk

**City of Dillingham Information Memorandum**

Agenda of: June 16, 2016

Attachment to:

Ordinance No. 2016-10 / Resolution No. \_\_\_\_\_

**Subject:**

Amending Title 4 to establish fees and costs to be paid by delinquent taxpayers in order to remove a property from the annual real property foreclosure list or to redeem such a property after foreclosure

City Manager: Recommend Approval

Signature: Rose Dolera

Fiscal Note:  Yes  No

Funds Available:  Yes  No

**Other Attachments:**

-None

**Summary Statement:**

The Finance and Budget Committee was tasked with reviewing alternatives for allocating foreclosure costs to establish a more consistent and easy to use system for both City staff and taxpayers to determine the foreclosure costs that a delinquent taxpayer owes.

This ordinance was introduced at the June 2, 2016 Council meeting.

An advertisement for a Public Hearing on Ordinance No. 2016-08 is scheduled to be placed in the June 9, 2016, edition of the Bristol Bay Times as required to be advertised in a local newspaper five days in advance of the public hearing, which is scheduled for June 16, 2016.

Attachment to: 2016-10 / Resolution No. \_\_\_\_\_  
Ordinance No. \_\_\_\_\_

**Summary Statement continued:**

Route to	Department Head	Date
X	Finance Director	6/17/16
	Police Chief	
X	City Clerk	6/17/16