

CITY OF DILLINGHAM, ALASKA

RESOLUTION NO. 2013-17

A RESOLUTION OF THE DILLINGHAM CITY COUNCIL AUTHORIZING FORECLOSURE PROCEEDINGS ON DELINQUENT PROPERTY TAXES FOR THE YEARS 2007 - 2012

WHEREAS, AS 29.45.320-330 allows the City of Dillingham to collect unpaid real property taxes through in rem foreclosure proceedings against all real property for which the property tax has not been paid in full; and

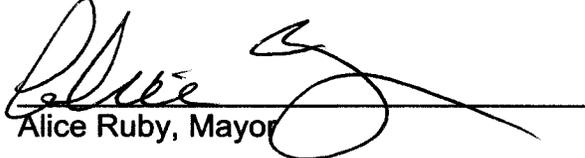
WHEREAS, the City's Finance Department has prepared a foreclosure list identifying properties for which the tax has not been paid in accordance with AS 29.45.330;

NOW, THEREFORE, BE IT RESOLVED by the Dillingham City Council that:

1. The City Attorney is hereby authorized to file a foreclosure action against all property identified in the foreclosure list.
2. The City Clerk is hereby directed to certify and publish the foreclosure list and provide notice of the commencement of the foreclosure action in accordance with AS 29.45.330 and DMC Chapter 4.15.

PASSED and ADOPTED by the Dillingham City Council on April 11, 2013.

SEAL:


Alice Ruby, Mayor

ATTEST:


Janice Williams, City Clerk
Lillian Capell Recorder

City of Dillingham Information Memorandum No. R2013-17

Subject: A Resolution of the Dillingham City Council authorizing foreclosure proceedings on delinquent property taxes for the years 2007-2012

Agenda of: April 25, 2013

Council Action: This resolution was introduced at the April 11, 2013, but postponed for additional information regarding the foreclosure process.

Manager: Recommend approval.

City Manager: Rose Loera
Rose Loera, City Manager

Route To:	Department / Individual	Initials	Remarks
X	Finance / Carol Shade	CS	
X	City Clerk / Janice Williams	JW	

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

Other Attachment(s):

- Foreclosure List covering the period 2007 – 2012 (Revised 4.19.2013)
- SOP# 14-001 – Bill Rendering and Collection – Real Property Tax

Summary Statement.

At the April 11, 2013, concern was voiced regarding filing the properties as a block in lieu of filing individually with the court, because of the concern if they paid early they would still be anchored to the same body of paperwork as it made its way through the court process. Staff had confirmed that once the list was sent to the court there was a period when the list was advertised for four weeks in a row, and then an adjusted list would go back to the court, but would bring back the process of foreclosing to the next Council meeting, and to postpone adoption of the resolution.

Moving through the foreclosure steps can be a very lengthy process. During that time, property owners are encouraged to work with the City to make payment arrangements through a repayment plan if they are financially unable to pay off the debt in a lump sum. The repayment plan allows the owner to pay off their account over a reasonable period of time.

Step 15 – Staff prepares a resolution for Council to adopt the foreclosure list.

Step 16 – Attorney files a lawsuit.

Step 17 – Within 10 days of filing the lawsuit, list is publicized for 4 weeks in a row.

Step 18 – Within 10 days after the first publication, notice to each property owner.

Step 19 – 30 days after the last date of publication, Attorney will forward an updated list.

Definition of in rem (first paragraph of the resolution, “allows the City of Dillingham to collect unpaid real property taxes through in rem foreclosure proceedings”) – the power of the court to exercise proceedings over property.

From Attorney Patrick Munson:

- If the property owner defaults on their repayment plan, can we add the name to an existing foreclosure list that is already going through the court process?
No.

- Once we add someone's name to the foreclosure list and it makes its way through the two year foreclosure process, can we ask the court to eliminate the name if the owner pays the balance in full or enters into a repayment plan? (This assumes they have not been in default on a repayment plan within the last years.) The concern is this will show up on their credit record or some financial record if they are applying for a bank loan, for example.

You cannot eliminate the name entirely – i.e., there will be a record that the foreclosure process occurred—but every property that is paid off gets issued a certificate of redemption which is filed in the same place as the foreclosure action, so there is always a record indicating that the person paid off their taxes. This is standard and happens in every instance regardless of whether the debt is paid off through a payment plan or lump sum at any time during the foreclosure process or even after the process is complete in those cases where the former owner retains the right to pay off the old debt and does so. I do not know the exact credit implications, but a person's name doesn't appear on the foreclosure list unless they did not pay their taxes on time, so it is not inappropriate for their credit history to reflect that. The foreclosure list says they fell behind, and the certificate of redemption says they paid it off, so the record is pretty clear as to what happened in these cases.

- Would the court process be less challenging if we filed each case separately instead of in a group?

No, it would be vastly more complicated and expensive. This entire process is basically mandated by AS 29.45.320 --.480. There simply is not a lot of flexibility in this area. Just the filing fee for individual lawsuits would be \$150 per lawsuit in superior court, and the attorney's fees would be much higher than they are to bring one action against all the properties. All of the suits would be appealable as a matter of right to the Supreme Court so you would potentially be waiting up to three years for a judgment against the person. Even then you would have only a judgment that the person can choose to pay or not, and if they don't pay it then you have to levy on the PFD or seize assets. In other words, you spend two to three years and thousands of dollars getting to the same place you would have been under the foreclosure process. That is really the whole point of the foreclosure process established under state law -- to make it easy and cheap for cities to enforce the property tax laws.

- What other option is available to us besides foreclosing on a property? If someone has a \$100 debt on their real property account and it is comprised of penalty and interest only, can the City use small claims court instead?

That is allowed under AS 29.45.300 and DMC 4.20.200. You can always sue a person to collect the debt owed for their real property taxes, in any amount. In all but small claims cases it would cost the City far more to do so than it does to foreclose, as described in the previous answer. If the matter could be handled through small claims then the City could do it relatively cheaply. That would be the only time it makes sense to pursue the matter outside of the foreclosure list process.

City of Dillingham Foreclosure List 2012 (for 2007-2012)

Acct No	Acct Name	2007	2008	2009	2010	2011	2012	Penalties	Interest	Grand Total
101122	Adkison, Sharren					1,017.90	900.90	90.09	36.30	2,045.19
101132	Angasan Val & Cecelia						2,242.50	224.25	40.35	2,507.10
101150	Bingman, James Sr						18,029.70	1,802.97	633.84	20,466.51
101152	Bingman, Lester & Jill						4,447.30	444.73	89.62	4,981.65
101496	Estate of Lucy Roehl		67.48	1,055.54	1,003.73	816.26	942.50	362.00	74.40	4,321.91
101500	Estate of Alexandra Backford					630.73	956.80	191.36	31.50	1,810.39
101257	Ishnook, Anuska					1,221.98	1,355.90	135.59	51.22	2,764.69
100915	Jackson, Hope						977.60	97.76	2.85	1,112.44
101294	Libby, Jack						4,447.30	444.73	1,503.79	6,395.82
101298	Lindenau, David						486.20	48.62	19.60	554.42
101322	McLinn, Kathy						1,917.50	191.75	103.84	2,213.09
101329	Estate of Myron Moran						690.30	69.03	320.33	1,079.66
101340	Nelson, Yolanda						4,209.40	420.94	84.82	4,715.16
100981	Nichols, Carla					3,997.50	3,997.50	799.50	1,445.59	10,240.09
101344	Nielsen, Robert						942.50	94.25	18.99	1,055.74
100965	Nunn, Larry E Sr.					434.74	1,223.30	122.33	34.54	1,814.91
101380	Rolf, Russell & Julie						1,835.60	183.56	36.99	2,056.15
100989	Sampson, Eileen						924.30	92.43	20.41	1,037.14
100993	Savo, Jack						1,444.30	144.43	29.10	1,617.83
101394	Smith, H. Sally						3,586.70	358.67	53.06	3,998.43
101403	Straley, Andrew						257.40	25.74	12.96	296.10
101416	Tilden, Anuska					2,362.61	2,700.10	270.01	172.87	5,505.59
101010	Timmerman, Valerie			926.90	926.90		926.90	278.07	1,885.24	4,944.01
101019	Wassily, Steve						994.50	99.45	39.04	1,132.99
101440	Whittington, David & Kathy						2,535.00	253.50	51.09	2,839.59
101456	Wren, John						1,371.50	137.15	87.30	1,595.95
101460	York, Jessica						939.25	93.93	92.39	1,125.57
Grand Total		-	67.48	1,982.44	1,930.63	10,481.72	65,282.75	7,476.84	6,972.03	94,228.12
										94,193.89

Policy:

The Finance Department is responsible for the timely preparation of invoices to optimize cash flow and payment promptness by customers. The Finance Department will also maintain accurate records over accounts receivable and abide by proper internal controls.

Procedures:

Reference DMC 4.15 Real and Personal Property

Assignment of Duty		Duty and Explanation	Due Date	Completed
1	Finance/Collections	Update real property values following City Assessor's visit in the fall to review properties newly constructed and/or renovated since the beginning of the year or as the result of a city-wide review of all properties.	By March 1	
2	City Clerk	Contact City Assessor and schedule a meeting of the Board of Equalization for the first week in May. Calendar the BOE meeting date.	By March 1	
3	Finance/Collections	Real Property Assessment statement is mailed to property owners. This is not a bill. Property values are those in place as of January 1.	By March 15	
4	City Clerk	Accept written appeals from property owners within 30 days requesting that the Board of Equalization provide relief from an alleged error in valuation.	April 15	
5	Finance/Collections	Review and amend records to include BOE approved adjustments to valuations.	June 1	
6	Finance/Collections	Bills cannot be finalized until the Council sets the mill rate and certifies the tax rolls usually in mid June.	June 15	
7	Finance/Collections	Mail bills to property owners.	By July 1	
8	Finance/Collections	Mail out reminder of tax due dates and advertise locally, including a PSA with KDLG.	By Sept. 5	
9	Finance/Collections	Mail out reminder of tax due dates and advertise locally, including a PSA with KDLG.	By Oct. 5	
10	Finance/Collections	Mail out reminder of tax due dates and advertise locally, including a PSA with KDLG.	By Nov. 5	
11	Finance/Collections	Inform Mgr., City Clerk, Finance Director and Asst. Finance Director that a statement will be mailed out to all delinquent property owners prior to December 31. Formally meet.	Dec. 1	
12	Finance/Collections	Mail notice to each delinquent property owner notifying taxes are delinquent and subject to the foreclosure process. Suggest printing on pink paper.	Prior to Dec. 31	

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Assignment of Duty		Duty and Explanation	Due Date	Completed
			By 1st working day each month	
13	Finance/Collections	Distribute the Denied Services List to each department head to post and monitor.		
14	Finance/Collections	Prepare foreclosure list for March Council meeting and forward to City Clerk.	By Feb. 20	
15	City Clerk	Prepare resolution for Council approval to adopt foreclosure list.	By last Wed. in February	
16	City Clerk/Attorney	File Lawsuit: This is also known as the Petition for Judgment and Decree with court, and attorney accomplishes with information provided by City Clerk including affidavit and foreclosure list.		
17	City Clerk	Within 10 days after filing lawsuit: City Clerk has newspaper begin publication for 4 consecutive weeks the notice of foreclosure and list (this is usually timed and communicated between City Clerk and newspaper and Clerk and attorney before filing suit due to strict time lines).		
18	City Clerk	Within 10 days after the first publication: City Clerk sends notice of the foreclosure proceeding and list to record owners.		
19	Attorney	30 days after last date of publication: Attorney requests Court to issue Judgment of Foreclosure (requires affidavit and updated foreclosure list from City Clerk and original affidavit of publication of notice of foreclosures).		
20	Judge	Record Judgment with District Recorder: Attorney usually does this. Period begins on the date the court issues.		
21	Attorney	Judge signs Judgment and Decree of Foreclosure: One-year redemption		
22	Clerk/Collections	Monthly communications on payments to delinquent accounts.		
23	City Clerk	Issue Certificates of Redemption: City Clerk issues at any time after owners pay off taxes and costs entirely within redemption period.		
24	City Clerk/Attorney	Obtain Title reports: Clerk should do this 11 months after the issuance of the judgment in conjunction with attorney to assure adequate timing.		
25	City Clerk	Publish Notice of Expiration of End of Redemption Period and updated List.		
26	City Clerk	Within 5 days of first publication of End of Redemption Period: City Clerk send notice of end of redemption period and updated list to former record owners.		

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Assignment of Duty	Duty and Explanation	Due Date	Completed
27 City Clerk	Within 5 days of first publication of End of Redemption Period: City Clerk send notice of end of redemption period and updated list to lienholders of record (identified from title reports).		
28 City Clerk/Attorney	File for Tax Deed with Court: Attorney accomplishes (requires affidavit & updated list from City Clerk).		
29 Judge	Court issues Tax Deeds.		
30 City Clerk	Record Tax Deeds with District Recorder.		
31 City Clerk	Send copy of list to City Planner and Finance. Finance to contact AML.		