



## **CODE REVIEW COMMITTEE MEETING**

Thursday, November 10, 2022 at 5:30 PM

### **AGENDA**

*In compliance with the Americans with Disabilities Act, individuals needing special accommodations / during this meeting should notify the City of Dillingham at 907-842-5212 at least three working days before the meeting.*

#### **MEETING INFORMATION**

CODE REVIEW COMMITTEE MEETING  
CITY HALL COUNCIL CHAMBERS  
141 Main Street, Dillingham, AK 99576 (907) 842-5212

This meeting will also be available at the following online location:  
<https://us02web.zoom.us/j/89555281827?pwd=eWRDV0U4RGdXQ3FQWnZlBTdKR2lvQT09>  
Meeting ID: 895 5528 1827; passcode: 461111  
Or dial (346) 248-7799; or (669) 900-6833

#### **CALL TO ORDER**

#### **ROLL CALL**

#### **APPROVAL OF MINUTES**

1. Minutes of August 18, 2022, Code Review Committee

#### **APPROVAL OF AGENDA**

#### **COMMITTEE BUSINESS**

2. Dillingham Municipal Code 3.70 Election Results
3. Review To Do List

#### **PUBLIC COMMENT/COMMITTEE COMMENTS**

#### **ADJOURNMENT**



## CODE REVIEW COMMITTEE MEETING

Thursday, August 18, 2022 at 5:30 PM

### MINUTES

#### CALL TO ORDER

The Code Review Committee met on Thursday, August 18, 2022, in the Dillingham City Council Chambers, and via video conferencing, in Dillingham, AK. Council Member Chris Napoli chaired the meeting and called the meeting to order at 5:32 p.m.

#### ROLL CALL

Committee Members present and establishing a quorum (a quorum being four):

Mayor Alice Ruby  
Lori Goodell

Chris Napoli  
Michael Bennett

Kaleb Westfall  
Robert Mawson

#### APPROVAL OF MINUTES

1. Minutes of May 19, 2022; Code Review Committee Meeting

MOTION: Chris Napoli moved, and Robert Mawson seconded the motion to approve the May 19, 2022 minutes.

VOTING Yea: Unanimous

#### APPROVAL OF AGENDA

MOTION: Alice Ruby moved, and Michael Bennett seconded the motion to approve agenda.

VOTING Yea: Unanimous

#### COMMITTEE BUSINESS

2. Update Dillingham Municipal Code 3.70 Election Results

Update to Code to recount and contests. Attorney recommended changes to code.

- Committee Questions/Comments to be submitted to Attorney:
- 3.70.060(A) Can any recount be called for, regardless of margin?
- 3.70.060(D) How can we recover costs if deposit is insufficient?
- 3.70.110 Do we need the recount application in code? (3.70.050 has one for contests)
- 3.70.140(B) What if the canvass committee is not available, do we need a process in code to allow for alternates?
- What if 10 qualified voters are calling for a recount and the defeated candidate does not want a recount?
- Requested we define prohibited practices.

3. Task List

- DMC 4.20; waiting for Attorney remarks.
- Requested council consider an administrative process to address minor changes to code.

#### PUBLIC COMMENT/COMMITTEE COMMENTS

There were no comments.

**ADJOURNMENT**

The meeting adjourned at 6:16 p.m.

\_\_\_\_\_  
Chris Napoli, Chair

ATTEST:

\_\_\_\_\_  
Lori Goodell, City Clerk

Approval Date: \_\_\_\_\_

**3.10.050 Expenses.**

- A. The city shall pay all necessary election expenses, including those of securing places for polls and providing ballot boxes, ballots, voting booths, screens, supplies necessary for providing absentee voting and other supplies, and any wages due judges and clerks.
- B. Salaries for the election judges and clerks shall be set by the council.
- C. No official in this city may make any charge for services rendered to any voter under the provisions of this chapter.
- D. All expenses incurred in an election recount **and/or contestation of election results** shall be paid **in accordance with 3.70.060 or 3.70.160.** ~~by the candidate or voters contesting the election, unless the results of the election are changed by the recount, or the difference between the winning and a losing vote on the result contested is less than two percent.~~

**3.10.130 Preservation of election materials.**

The clerk shall preserve all precinct election certificates, petitions, and registers, all voted ballots filed for one year after the election. All declarations of candidacy shall be preserved until the term for which the declarations were filed expires. These election materials may be destroyed after their retention period has lapsed unless an application for a recount **or contestation of election results** has been filed and not completed, or unless their destruction is stayed by an order of the court. Certificates of the canvass committee are to be preserved as permanent records.

**Chapter 3.70**

**ELECTION RESULTS**

Sections:

- 3.70.010 Election board as canvassing committee.
- 3.70.020 Canvass to be made public—Procedure.
- 3.70.030 Record of canvass.
- 3.70.040 Certification of election results.
- 3.70.050 Contests.
- 3.70.060 ~~Recount expenses—Bond.~~ **Contests – Expenses and bond.**
- 3.70.070 **Contests - Investigation.**
- 3.70.080 **Contests - Ballot recount.**
- 3.70.090 **Contests - Prohibited practices alleged—Production of register books required.**
- 3.70.100 **Contests - Sustained charges—Recount.**
- 3.70.110 ~~Recount. Determination of tie votes.~~
- 3.70.120 **Recount. Form of application. Oath and affirmation.**
- 3.70.130 ~~Recount. Date. Definitions.~~
- 3.70.140** **Recount. Procedure and notice.**
- 3.70.150** **Recount – Certification of recount result**
- 3.70.160** **Recount – Return of deposit or apportionment of expenses.**

**3.70.170 Appeal or judicial review of recount or contest.**

**3.70.180 Determination of tie votes.**

**3.70.190 Oath and affirmation.**

**3.70.200 Definitions.**

**3.70.010 Election board as canvassing committee.**

**A.** The election board shall sit as the canvassing committee which will canvass all votes after the election judges have completed their tally of votes.

**B.** The canvassing committee will meet on the first Thursday following the election for which they are appointed and canvass all absentee and questioned ballots executed in the election. The canvass may be postponed from day to day for cause but not exceeding three postponements.

**C. The canvassing committee shall additionally meet for the purpose of a recount upon the notice and request of the city clerk in accordance with 3.70.140.B.**

**3.70.020 Canvass to be made public—Procedure.**

A. In full view of those present, the canvassing committee shall judge the applicability of absentee and questioned ballots, shall open and tally those accepted, and shall compile the total votes cast in the election. The canvass of the ballot vote counted by precinct election board shall be accomplished by reviewing the tallies of the recorded vote to check for mathematical error by comparing totals with the precinct's certificate of returns. All obvious errors found by the election canvass board in the transfer of totals from the precinct tally certificates to the precinct's certificate of returns shall be corrected in the canvassing committee's certificate of election returns. If, in the opinion of the canvassing committee, a mistake has been made in a precinct's certificate of returns which is not clearly an error in the transfer of results from the tally certificate to the certificate of returns, the canvassing board may order that a recount of the results of that precinct be made for that portion of the returns in question.

B. Questioned and absentee ballots shall be counted as follows: No ballot shall be counted if the voter has failed to properly execute the certificate or if the witness, officer or other person authorized by law to administer the oath fails to affix his/her signature. Any person present may question the name of an absentee voter when read from the voter's certificate on the back of the large envelope, if he has good reason to suspect that the voter is not qualified to vote, is disqualified or has voted at the same election. The person questioning the voter shall specify the basis of the question in writing. The canvassing committee, by a majority vote, may refuse to accept the question and count the ballot of a person properly questioned. If the ballot is refused, the clerk shall return a copy of the statement of the question to the voter by certified mail to the address contained in the voter certificate and shall enclose all rejected ballots in a separate envelope with the statements of question. The envelope shall be labeled "Rejected Ballots" and shall be preserved for one year with the empty absentee ballot envelopes or, in the case of questioned ballots, with the empty questioned ballot envelopes. If the ballot is not refused, the large envelope shall be opened, the small inner envelope shall be placed in a container and mixed with the other blank absentee and questioned ballot envelopes, the mixed small blank envelopes shall be drawn from the container, opened, and the ballots counted according to the rules of determining properly marked ballots found in Section 3.50.030.

**3.70.030 Record of canvass.**

The minutes of the canvassing committee meeting shall show the number of ballots cast in such election, the names of the persons voted for and the propositions voted upon at such election, the offices voted for, and the number of votes cast for each candidate and for and against each proposition voted at such election. The minutes shall also indicate the disposition of all questioned, absentee, write-in and voided ballots, as well as any other matters which the canvassing committee may determine to be necessary.

**3.70.040 Certification of election results.**

A. On the second Thursday following the election, the city council shall meet in public session to certify the election or order a recount or investigation of the election. The certificate shall consist of entering the results of the canvass upon the report of the canvassing committee, together with the total number of votes cast for each candidate, and for or against each proposition or question.

B. Upon certification of a valid election, the city council shall direct the clerk to deliver to each person elected to office a "certificate of election" signed by the mayor and the clerk and authenticated by the seal of the city.

C. If a contest **or a recount** is held and determined, the election results shall be publicly declared by the council and entered in the minutes of the special meeting of the council held within a week after the contest **or recount** is determined.

**3.70.050 Contests.**

A. Any candidate or any ten qualified voters may contest the election of any person and the approval or rejection of any question or proposition if it is believed that prohibited practices occurred at an election. An election may be contested before or during the first canvass of ballots by the canvassing committee pursuant to AS 29.26.070(b).

B. A candidate or elector who believes that prohibited practices occurred at an election will appear before the council at the meeting held on the **second Thursday** ~~first Monday~~ following the election. He will deliver a sworn written notice of contest, which will state with particularity the provisions of the law allegedly violated and the specific acts asserted as misconduct.

“NOTICE OF ELECTION CONTEST

The undersigned believes that prohibited practices occurred at the election held on:

\_\_\_\_\_

The undersigned states that the following provisions of law were violated:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The undersigned states that the above provisions of law were violated in the following manner:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature of Person Contesting

SUBSCRIBED AND SWORN to before me, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for Alaska

My commission expires: \_\_\_\_\_”

~~3.70.060 — Recount expenses — Bond.~~

**3.70.060 Contests - Expenses and bond.**

A. The contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant except if the recount fails to reverse any result of the election and except where the difference between the winning and a losing vote on the final result after the contest is less than two percent.

B. Unless the grounds for which the contest was brought are determined to be valid, the candidate or contestant shall be ~~individually~~ liable for all expenses incurred by the city in its investigation and deliberation of the election contest.

C. Any person or persons contesting an election as provided herein shall post a cash bond in the amount of three hundred dollars, guaranteeing payment of the cost of contest as surety for such cost. ~~If the contest is shown to be valid, this bond shall be refunded in full.~~

**D. If costs are assessed under this section, the city clerk shall refund any money remaining after the costs assessed under this section have been paid from the deposit. If the deposit is insufficient to cover the costs, the city may recover the excess costs from the contestant. If the contest is initiated by petition of 10 or more voters, each of them shall be jointly and severally liable for the whole amount of such expense.**

**3.70.070 Contests – Investigation.**

The city council will order an investigation to be made by the city attorney, city clerk, and city manager, if notice of contest is received. Investigation proceedings will be public.

**3.70.080 Contests – Ballot recount.**

If only a recount of ballots is demanded in the notice of contest, the recount shall be held in accordance with 3.70.140. ~~the election board shall recount the ballots.~~

**3.70.090 Contests – Prohibited practices alleged—Production of register books required.**

When the contestant alleges prohibited practices, the council will direct the city clerk to produce the original register books for the election.

**3.70.100 Contests – Sustained charges—Recount.**

If the charges alleged by the contest are sustained, the canvassing committee shall determine whether any illegally cast votes or prohibited practices could have affected the election results. If they could not have, the canvassing committee shall so declare. The council will then certify the correct election returns as provided in Section 3.70.040. If it is determined that the illegally cast votes or prohibited practices could have affected the election results, the canvassing committee shall so declare and the council shall order a new election. If the contest involved only a portion of the ballot issues and/or offices, only the affected portion shall be submitted to the voters in the new election.

**3.70.110 Recount. ~~Determination of tie votes.~~ (Moved to 3.70.180)**

**A defeated candidate, or 10 qualified voters who believe there has been a mistake made by an election official or by the canvass board in counting the votes in an election, may file an application for a recount with the city clerk no later than 9:00 a.m. on the day scheduled for the certification of the election results. The date and time on which the city clerk receives an application rather than the date of meeting or transmission determines whether the application was filed within the time allowed under this section.**

**3.70.120 Recount – Form of Application ~~Oath and affirmation.~~**

~~All officers elected before entering on the duties of office shall take and subscribe to the following and affirmation: “I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support the Constitution and laws of the United States, the laws of the State of Alaska, the ordinances of the City of Dillingham, and that I will faithfully and honestly perform the duties of \_\_\_\_\_, so help me God.”~~

**A. A recount application shall state in substance the basis of the belief that a mistake has been made and shall identify the particular precinct, office, proposition or question for which the recount is requested to be held and shall state that the person making the application is a candidate or that the 10 persons making the application are qualified voters. A recount application need not allege prohibited practices occurred at an**

election and need not comply with 3.70.050, so long as it complies with this section. An allegation only that a mistake has been made in counting votes, and demanding only a recount, will not be treated as a contest under 3.70.050 - 100 and will instead be treated as a recount application provided that the notice otherwise complies with 3.70.110 - 120.

**B.** The candidate or person making the application shall designate by full name and mailing address two persons who shall represent the applicant during the recount. Any person may be named representative, including the candidate or any person signing the application. Applications by 10 qualified persons shall also include the designation of one of the number as chairman. The candidate or persons making the application shall sign the application and shall print or type their full name and mailing address.

**C.** The application shall include a deposit in cash or by certified check for \$300.00. The deposit shall be applied against any costs incurred or refunded if there is no liability for recount costs.

**3.70.130** Recount – Date Definitions. (Moved to 3.70.200)

If the city clerk determines that the application is substantially in the required form, the city clerk shall fix the date of the recount to be held within three days after the receipt of an application requesting a recount of the votes in an election after it has been initiated under 3.70.110.

**3.70.140** Recount – Procedure and notice.

The following procedure will be used for recounts:

**A.** The city clerk shall give the recount applicant and other directly interested parties notice of the time and place of the recount by certified mail, by telephone or by electronic transmission.

**B.** The city clerk shall convene the canvassing board to conduct a recount of ballots for those precincts cited in the application for recount.

**C.** In conducting the recount, the canvassing board shall review all ballots to determine which ballots, or parts of ballots, were properly marked and which ballots are to be counted in the recount, and shall check the accuracy of the original count, the precinct certificate, and the review. For administrative convenience, the city clerk may join and include two or more applications in a single review and count of votes. The rules governing the counting of marked ballots shall be followed in the recount.

**D.** The ballots and other election materials shall remain in the custody of the city clerk during the recount and the highest degree of care shall be exercised to protect the ballots against alteration or mutilation. The recount shall be completed within 10 days.

**3.70.150** Recount - Certification of recount result.

Upon completion of the recount, the canvassing board shall meet and adopt a report of the results of the recount for submission to the council. The council shall abide by procedures for certifying the election as set forth in this title.

**3.70.160** Recount - Return of deposit or apportionment of expenses.

A recount applicant shall pay all costs and expenses incurred in a recount of an election demanded if the recount fails to reverse a result of the election, or the difference between the winning and losing vote on the result contested is more than two percent. If the deposit is insufficient to cover the costs, the city may recover the excess costs from the recount applicant. If the recount is obtained by petition of 10 or more voters, each of them shall be jointly and severally liable for the whole amount of such expense.

**3.70.170** Appeal or judicial review of recount or contest.



**There is no appeal of the certified results of a contest or recount, except to obtain judicial review in compliance with AS 29.26.070(e).**

**3.70.180 Determination of tie votes.**

If after a recount and appeal two or more candidates tie in having the highest number of votes for the same office, the mayor shall notify the candidates of a reasonably suitable time and place to determine the successful candidate by lot. After the determination has been made by lot, the mayor shall so certify.

**3.70.190 Oath and affirmation.**

All officers elected before entering on the duties of office shall take and subscribe to the following oath **of office as outlined in Section 2.03.030**, and affirmation: "I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support the Constitution and laws of the United States, the laws of the State of Alaska, the ordinances of the City of Dillingham, and that I will faithfully and honestly perform the duties of \_\_\_\_\_, so help me God."

**3.70.200 Definitions.**

In this chapter, unless the context requires otherwise:

- A. "Clerk" means the city clerk or any properly authorized assistant, deputy or designee.
- B. "Days" includes weekends and holidays.
- C. "Election" includes any regular or special election of the City of Dillingham.
- D. "Election officials" means the city clerk or his/her designee, election judges, election clerks and the canvass committee.
- E. "Oath" includes affirmation.
- F. "Precinct" means the territory established by the State of Alaska within which resident voters may cast ballots at one polling place.
- G. "Proposition" includes question.
- H. "Publication" means advertising in a newspaper of general circulation or posting in public places.
- I. "Qualified voter" is any voter who fulfills the qualifications as set forth in Section 3.10.020.
- J. "Regular election" means a general election to fill city offices as required by AS 29.28.015.
- K. "Special election" means any election held at a time other than when a regular election is held.
- L. "Swear" includes affirm.
- M. "Voter" means any person who presents himself for the purpose of voting, either in person or by absentee ballot.

Below are responses to the Code Committee's questions relating to election procedures. As noted below, we'll work on a definition of "prohibited practices."

- 3.70.060(A) Can any recount be called for, regardless of margin?

Yes. The relevance of the margin is who bears the costs. If the final margin is within 2%, the city absorbs the costs. If not, the person(s) demanding the recount absorbs the costs.

- 3.70.060(D) How can we recover costs if deposit is insufficient?

Same as any other debt: Demand followed by suit if necessary. The instances I'm aware of where costs have been recovered through the court is when the election result itself litigated. As a practical matter, where the deposit is insufficient and the person refuses to pay the municipality usually ends up absorbing the difference by default. A collections suit would be relatively straight forward, but still not worth pursuing for several thousand dollars. We *could* amend 4.40.010 to add this to the basis for inclusion in the denied services list.

- 3.70.110 Do we need the recount application in code? (3.70.050 has one for contests)

My opinion is no. Although the draft ordinance says "A defeated candidate, or 10 qualified voters who believe there has been a mistake . . . in counting the votes," they are not required to state the mistake. (Which would fundamentally be the same every time -- "You miscounted.") Thus, all that is required for the application is ten voters or a defeated candidate asking for it. They do not need to provide a reason. Given the simplify, the form of the application need not be stated in code. That said, it would be good for the city has a paper form available for simplicity. But if someone shows up with a letter or other document that meets the requirements of 3.70.110, I'd accept it.

- 3.70.140(B) What if the canvass committee is not available, do we need a method to allow for alternates?

Good question. Fortunately, we already have a method. Election board is the canvassing committee. DMC 3.30.030 provides a mechanism for filling vacancies that would apply in this situation.

- What if 10 qualified voters are calling for a recount the defeated candidate does not want a recount and?

The recount proceeds. Voters have as much interest in robust elections as candidates. The candidate may wish to persuade the voters not to pursue a recount, but either ten voters or the candidate have the right to demand it regardless of the opinions or desires of others.

- Requested we define prohibited practices.

Also a good idea. I will give some thought to a definition for chapter 3.70.

**CODE REVIEW COMMITTEE'S TO DO LIST**

Section . Item 3. <sup>2</sup>

<b>C#/YR</b>	<b>DATE ASSIGNED</b>	<b>TASK</b>	<b>STATUS Resolved?</b>	<b>Finance &amp; Code</b>
	11/4/2021	update election code DMC 3.70		
	3/5/2022	review DMC 4.20 Sales Tax		

**2.06.070 Standing committees.**

Standing committees of the city council will be code review, finance and budget, and public outreach. These committees will be advisory to the city council in their respective duties. Duties and composition for each committee will be as follows, and each chairperson or designee will report regularly to the city council at their regular meetings:

A. Code review committee will include but not limited to two city council members, mayor, city manager and city clerk. Their duties will be:

1. To review city ordinances as assigned;
2. To recommend revisions, and submit to council for action;
3. May recommend ordinances to be assigned;
4. To announce ordinances to be reviewed to the city council and public;
5. Work cooperatively and be supported administratively by the city clerk, and with the approval of the mayor, may request other administrative or legal advice or assistance when appropriate.

B. Finance and budget committee will include but not limited to two city council members, mayor, city manager, finance director or their designees. The goal of this committee will be to:

1. Guide the city of Dillingham toward long-term financial stability and promote fiscal responsibility;
2. Create and formulate fiscal policies, policy statements, and develop plans to achieve long-term goals for the city;
3. Complete tasks as assigned by the city council.

C. Public outreach committee will include but not limited to two city council members, and mayor. Their duties will be to:

1. Conduct informal meetings on neutral grounds to hear what the residents concerns are and to answer questions;
2. Partition areas in the community to deal with issues in that given area;
3. Meetings will be held between the months of September to May and are to be advertised publicly for maximum attendance;
4. Be responsible for meeting follow-up to those in attendance. (Ord. 04-02 § 1, 2004.)