

To: Assembly Members

From: Carl Johnson and Michelle Turner, Owners, Alaska Photo Treks

Subject: Municipality of Anchorage Regulation of Tour Vehicles

As the owner of a small tourism business based in Anchorage, we wanted to reach out to you about an issue that significantly impacts our ability to run a financially viable business: Municipality of Anchorage (MOA) regulation of “for hire” vehicles.

My company, Through the Lens Alaska, LLC doing business as Alaska Photo Treks, conducts year-round day tours and photo workshops using passenger vans incidental to our operations – the van is used to pick up guests from their hotels and transport them to areas where we can instruct them in photography. The MOA requires vehicles with fewer than 16 seats, such as ours, to obtain permits as a Vehicle for Hire (VFH), at an annual cost of \$1,450 per vehicle. This is the same provision of the municipal code that regulates taxi cabs in Title 11. Taxi cabs pay \$1,457 for their annual permit; only \$7 more. This requirement is onerous and directly impacts the financial viability of my business and similarly-situated small businesses. Additionally, in my research I discovered that other businesses that transport passengers with vehicles that meet the MOA definition of “vehicle for hire” (e.g., shuttle buses for hotels and airport parking) seem to be informally exempt from the provision.<sup>1</sup>

I along with several similarly situated tour operators are requesting a change to the permitting scheme for tour companies that operate vehicles with fewer than 16 seats. I propose an exemption for USDOT-regulated vehicles and a new permit category for those that are not.

### **Inconsistent Definition of “For Hire”**

#### *MOA Definitions*

Anchorage Municipal Code Title 11 – Transportation, which regulates taxicabs, limousines, and “vehicles for hire,” defines a “vehicle for hire” as “any form of motorized chauffeured passenger transportation offered for hire having a manufacturer’s stated seating capacity of 15 or fewer persons, which capacity includes the driver ... A vehicle for hire is intended to satisfy a demonstrated, specific need for passenger transport by offering and providing limited purpose or exclusive transportation services as may be authorized by the commission.”<sup>2</sup> The regulations do not define “passenger transport” or “transportation services.”

#### *U.S. DOT Regulations and Definitions*

The U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA), defines a “for-hire carrier” as “a person engaged in the transportation of goods or passengers for

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<sup>1</sup> There are many vehicles that operate in a manner that meets the code’s definition of a vehicle for hire but are not listed as permitted businesses. Not a single Anchorage hotel held a “vehicle for hire” permit in 2022, despite several operating complimentary shuttle services that fall within the scope of the permit requirement. The same goes for airport parking lots with shuttle service (with vans that hold fewer than 16 seats).

<sup>2</sup> 11 AMC 10.010

compensation.”<sup>3</sup> The FMCSA regulations define “direct compensation” as “payment made to the motor carrier by the passengers or a person acting on behalf of the passengers for the transportation services provided, and *not included in a total package charge* or other assessment for highway transportation services”<sup>4</sup> (emphasis added).

Based upon this definition, operators who provide transportation incidental to providing other services, such as tour operators, are not “for hire.” While our company vehicles are regulated by the FMCSA, they are specifically not considered a “vehicle for hire” under federal regulations.

FMCSA has a registration process and associated requirements that are protective of public safety for vehicles that are involved in interstate commerce, including access to the Port of Alaska.<sup>5</sup> The regulations exempt vehicles that are “designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation, provided the vehicle does not otherwise meet the definition of a commercial motor vehicle, except for the provisions of §§391.15(e) and (f), 392.80, and 392.82, and except that motor carriers operating such vehicles are required to comply with §§390.15, 390.21(a) and (b)(2), 390.201 and 390.205.” The operating requirements set forth in these provisions include:

- Filing a motor carrier identification report MCS-150 biennially or when there is an address or name change;
- Mark commercial motor vehicles with the USDOT identification number;
- Maintain an accident register up to 3 years following each accident;
- Comply with the prohibition against drivers texting while driving;
- Comply with the driver’s restriction of hand-held cellular phone use;
- File UCR annually (\$69);
- File BOC-3 insurance annually (proof of insurance);<sup>6</sup>
- Interstate Authority - Process agent for filing BOC-3 annual (\$75)
- Annual Vehicle inspection (\$200)

The regulations specifically treat such vehicles differently than those which transport passengers for direct compensation, such as limousine or cab services. Operators that receive direct compensation are subject to greater regulatory requirements.

### **Cost of the Permit is Onerous**

The cost of the VFH permit is onerous. For example, in 2022, Alaska Photo Treks operated one 12-seat van under the permit and conducted 166 tours with that van involving a total of 972 participants. This resulted in a daily average of 0.45 runs with an average of 5.85 passengers per run over the year. This was a cost of \$8.73 per trip or \$1.51 per passenger. We also operated a Toyota Highlander in 2023 under the VFH permit for smaller tour groups (maximum of 3 people). We conducted 49 tours with the Highlander with 83 participants. The cost of the permit averaged \$29.59 per trip or \$17.46 per passenger. Given that the average cost of the tours used by the Highlander in 2023 was \$279, the cost of the permit is significant – nearly 11% of the

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<sup>3</sup> 49 C.F.R. §390.5.

<sup>4</sup> 49 C.F.R. §390.5.

<sup>5</sup> 49 C.F.R. §390.3.

<sup>6</sup> With four vehicles, this expense is approximately \$16,000.00 annually. Combined with the VFH permit costs of \$5,800.00 annually, these amount to a significant portion of our annual operating expenses.

average gross revenue per tour. Now in 2024, we are operating four vehicles, for a total annual permitting cost of \$5,800.00.

Based upon 2022 data, Alaska Photo Treks was one of 24 permit holders<sup>7</sup> in this category of “vehicle for hire” that is not a taxi or a limousine. I consulted with eight other tour companies<sup>8</sup> in Anchorage that operated under this permit. Those other companies operated as much or less than our company did in 2022.

### **What is the Purpose of the Permit System?**

The purpose of the permit requirement is unclear. Is it to make sure that vehicles transporting the general public are in good condition and driven by qualified personnel? It is to recoup costs associated with wear and tear on the city’s roadways? Each of these is a legitimate concern of the MOA. However, it is unclear if the current VFH regulatory system accomplishes either goal or if the requirement is applied fairly.

#### *Safety of Operations*

The MOA has a vested interest in ensuring that commercial vehicles operating on roads within the municipality are in good condition and operated in a safe manner. It does not explain, however, why tour operators with 16 seats or more in their vehicles are exempt from regulation as a VFH, even if they perform the same function as a vehicle with fewer than 16 seats. If the rationale is that larger vehicles are regulated by another agency and deemed safe through that regulation, then it suggests that FMCSA regulation should be sufficient to ensure that operators are safe and responsible. Yet vehicles that have fewer than 16 seats and are subject to FMCSA regulation are still regulated as a VFH under MOA regulations. Requiring a chauffeur’s license for VFH drivers also adds no additional level of protection, as a tour company must provide driving history of all drivers covered by a commercial auto insurance policy. Such insurance policies are required by FMCSA.

#### *Comparing Volume of Road Use*

The volume of use of municipal roads by tour operators using 15-passenger or smaller vehicles, such as Alaska Photo Treks, is de minimis when compared to taxis. As stated above, Alaska Photo Treks in 2022 conducted a total of 166 tours (or “trips”). The 23 other tour operators who are permit holder operate at similar or less frequency. Therefore, a total of (23 x APT trips) is a good approximation of the number of trips by tour operators – 3,818 in 2022 for all tour operators in Anchorage regulated under this permit.

According to the MOA Transportation Inspection Division, there were three regulated taxi companies in Anchorage in 2022 that operated under 229 permits, for a total of 1,253,027 trips

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<sup>7</sup> The following businesses have been identified by the Transportation Inspection Division as permit holders in this category for 2022: Downtown Bicycle Rentals, Alaska Latin Tours, Shuttle Services of Alaska, Turnagain Ventures, Alaska Photo Treks, PicTours Alaska, Alaska Trail Guides, AK Travel & Tours, Adventurous Winos, Pedal Anchorage, Turnagain Enterprises, Alaska Exquisite Travel, BAC Transportation, ASAP Transportation, United NEMT, GT Summit Group, Independent Life Transportation, Sala, Greenwood Lodge Adult Daycare, Turnagain Social Club, Northern Light Adult Day Services, Hearts & Hands, Happy Day Transportation, Waymakers Transportation.

<sup>8</sup> Downtown Bicycle Rentals, Alaska Latin Tours, PicTours Alaska, Alaska Trail Guides, AK Travel & Tours, Adventurous Winos, Pedal Anchorage, and Alaska Exquisite Travel.

for the 2022 calendar year (through December 2022<sup>9</sup>). That totals 5,471 trips on average *per taxi* annually – more than all permitted tour operators combined. Viewed another way, compare those 5,471 trips per taxi to the fewer than 200 annually per tour operator. This is conservatively 27 times the number of trips by an individual taxi than all permit-holding tour operators combined.

#### *Tour Operators are not “For Hire”*

The total number of vehicles operated and how often they ran is only part of the analysis in comparing tour operator with taxi operations. The very nature of the operations is important to consider.

Tour operators provide transportation as a complimentary part of the tour. The tour goes at a time and to a place of the tour operator’s choosing, not the customer’s. When customers call, they are not requesting to be transported from Point A to Point B. Those customers are not seeking “exclusive transportation services,”<sup>10</sup> nor are the tour operators providing it.<sup>11</sup>

In contrast, when a customer calls a taxi, the customer tells the taxi where to pick up the customer and where the customer wishes to be taken. The sole purpose of the relationship is the “exclusive transportation” of the customer. A taxi for hire will not then proceed to pick up other passengers in addition to the one who called. Nor will the taxi then take the passengers on an itinerary of the taxi’s choosing.

#### *Role of Anchorage Transportation Commission*

The Municipal regulations governing the Anchorage Transportation Commission (ATC) also seem to suggest that tour vehicles should not be regulated as a vehicle for hire at all. First, the ATC only has the authority to regulate vehicles that “are chauffeured and provide transportation services on request for a fee” or “charge for such transportation, chauffeurs, dispatch services.” The first category clearly does not apply to tour operators – we do not provide transportation services on request for a fee. Statutory construction suggests that the second category also does not apply. By placing the words “transportation,” “chauffeurs” and “dispatch services” together in the same provision, the canon of *ejusdem generis* applies – these terms placed together indicate this provision only applies to companies that have dispatch services to send out chauffeured drivers to provide a transportation service.

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<sup>9</sup> Emails from Nica Lozano dated January 10, 2023, and October 16, 2023, in response to public records requests. Taxis are not required to report the number of passengers moved, only the number of runs. Thus, there is no way to know how many passengers have been distributed throughout the Municipality by taxi operators.

<sup>10</sup> This is part of the definition for “vehicle for hire” under Title 11.

<sup>11</sup> It is important to note that several of the Vehicle for Hire permit holders are exclusively transportation companies: BAC Transportation, ASAP Transportation, United NEMT, Independent Life Transportation, Sala, Happy Day Transportation, Shuttle Services of Alaska, and Waymakers Transportation. When these companies are hired, their vehicles are used for the sole purpose of transporting a customer from Point A to Point B. It is confusing, though, that companies like BAC are lumped into this category, as limousines (which BAC is) are also explicitly exempted from the definition found in 11 AMC 1.010. As our company and other tour operators are not similar in nature to these companies, we do not include them in the request outlined in this memorandum.

Additionally, the regulation requires that the ATC conduct one public hearing biennially to “investigate the quality of services rendered by regulated vehicles and their permittees.”<sup>12</sup> As a permitted company with vehicles subject to regulation, basic due process requires that we would have received a notice of any such public hearing to participate. We never have. This suggests that in fact we are not truly subject to the regulation, despite being required by the Transportation Inspection Division to comply with the VFH regulatory requirements.

### **Proposal to Address Issues Identified**

The issues outlined above and summarized here can be addressed by a couple of simple amendments to Anchorage Municipal Code:

- Complete exemption for those vehicles subject to USDOT regulation
- Alternatively, the creation of a new category that honestly addresses tour company vehicle operations
- Consistent enforcement of the requirements

#### *Exemption for USDOT Vehicles*

If the concern expressed in the current municipal permitting scheme is to regulate those businesses who would transport passengers, but are not taxis or limousine services,<sup>13</sup> then this is already accomplished by vehicles that are registered under the FMCSA. As noted previously, vehicles regulated under that authority undergo annual inspections, require insurance, and are subject to other requirements to ensure safe operations.

Title 11 could simply be amended to exempt those operators who are currently subject to FMCSA regulation. Such operators could file a simple form with the MOA Transportation Inspection Division showing that they have undergone an annual USDOT inspection and are current in all required filings. It is important to note that any FMCSA-regulated vehicle that also requires a vehicle for hire permit must undergo two inspections: that required by USDOT and the MOA inspection. The Transportation Inspection Division does not accept as valid the USDOT inspection form, instead requiring a separate inspection form for MOA compliance.

This is the current approach taken by Fairbanks, a city whose economy benefits greatly from tourism.<sup>14</sup> Under the Fairbanks municipal code, a “vehicle for hire” is defined as:

any motor vehicle used to transport passengers to any specified destination, upon request and for a fee, to or from a location within the city limits and includes, but is not limited to: taxis, cabs, shuttles, and limousines. Specifically excluded from regulation under this chapter are: school buses, church buses, vehicles used for the primary purpose of sightseeing and tours outside of the city, vehicles operated by a business where transportation is incidental to the primary line of business, vehicles of a business that operate on a charter or reservation-only basis, vehicles owned or

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<sup>12</sup> 11 AMC 10.030(B).

<sup>13</sup> If this is the case, it begs the question as to why hotels that operate airport shuttles or airport parking shuttles are currently exempt (by practice).

<sup>14</sup> See

[https://assets.simpleviewinc.com/simpleview/image/upload/v1/clients/fairbanks/Tourism\\_Works\\_for\\_Fairbanks\\_September\\_2021\\_a837c841-a39c-4afc-8030-61dfb040b8da.pdf](https://assets.simpleviewinc.com/simpleview/image/upload/v1/clients/fairbanks/Tourism_Works_for_Fairbanks_September_2021_a837c841-a39c-4afc-8030-61dfb040b8da.pdf).

operated by the state or a political subdivision of the state, and commercial vehicles regulated by state or federal law.<sup>15</sup>

However, not all tour operator vehicles are subject to FMCSA regulation. Such regulation is not applicable if no transportation to the airport or any ports is involved in operations. Those are the only opportunities for an Anchorage-based tour operator to enter the stream of interstate commerce. Hence, the creation of a new category could ensure that all operators are regulated.

#### *New Category: Incidental Operators*

After exempting vehicles subject to state and federal regulation, the MOA should create a separate category for commercial vehicles that incidentally provide transportation services as part of another product. This category would be called “Incidental Operators” and would include tour companies or other businesses that provide complimentary shuttles not otherwise subject to regulation. This definition more appropriately describes our use of transportation than the term “vehicle for hire,” which as noted previously is not applicable to tour operators.

We also propose a permit fee that is more appropriate to the lower volume of traffic that tour operators inflict on municipal roads. A recommended fee would be \$300 for a year-round permit, and \$150 for a six-month permit. Only one permit should be required per operator, like the commercial use permits issued by the State of Alaska, Department of Natural Resources for commercial operations at state parks. And like the DNR, the same permit sticker could be issued for any number of vehicles. There would be no need to create a special permit for this category, as the VFH permit merely states “Regulated Vehicle” with “Municipality of Anchorage,” the year, and “Permit.” It does not contain a permit number or other unique identifier.

#### *Removal of Chauffeur’s License Requirement*

As an “incidental operator” would be distinguished from a limousine or vehicle for hire service, the requirement for each driver to possess a chauffeur’s license should be discontinued. This requirement serves absolutely no purpose for a company that is not a taxi or limousine service and adds unnecessary cost and administrative burden to permit holders like a tour operator. It is also likely that the requirement for a holder of a MOA chauffeur’s license possess an Alaska driver’s license is also unconstitutional.<sup>16</sup>

While the code does require all regulated vehicles to have drivers with a chauffeur’s license,<sup>17</sup> none of the code provisions relating to the operation of that license are applicable to companies other than taxis. For example, the provisions of 11 AMC 10.085 (Drug and alcohol testing) are only applicable to taxi drivers. According to staff at the Transportation Inspection Division, the

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<sup>15</sup> Fairbanks Code of Ordinances, Sec. 86-31.

<sup>16</sup> Current printed chauffeur license requirements specifically demand production of a three-year driving history from the Alaska DMV, and my staff have been told by personal at the Transportation Inspection Division that an Alaska driver’s license is required. This presents two separate restrictions that are potentially unconstitutional. First, it requires permit holders to only hire personnel with an Alaska driving record. Second, it forces people who may wish to work here only seasonally to forfeit the driver’s license of their home state to work for a summer in Alaska. This presents an unconstitutional restriction on travel between the states in violation of the Privileges and Immunities Clause of the U.S. Constitution. *See generally Shapiro v. Thompson*, 394 U.S. 618 (1969).

<sup>17</sup> *See* 11 AMC 10.010 (definition of “Chauffeur”).

extra \$7 that taxi permit operators pay for their annual permit fee is to pay for the drug and alcohol testing required in that provision. It is not enforced against a “vehicle for hire” permit holder. The only other provisions in the code simply refer to the procedures for suspending, revoking, or renewing a chauffeur’s license. Upon contact with a VFH driver by law enforcement, a state driver’s license is requested to review, not a chauffeur’s license.

There are no meaningful requirements for earning and keeping a Municipal chauffeur’s license. At present, it only requires fingerprinting (with no associated background check), a three-year Alaska driving history, and an application (along with \$130).<sup>18</sup> It would be interesting for the Assembly to inquire with the Transportation Inspection Division and ask if any chauffeur’s license has ever been rejected due the results of a driving history review. If not, then granting a license is purely pro forma and truly serves no purpose.

### *Consistent Enforcement*

While the reduced cost per permit would result in a loss of some revenue due to the fee reduction, that loss in revenue would easily be made up or even overcome by enforcement. The Transportation Inspection Division could easily compile a list of companies that operate vehicles as “incidental operators” and compare that list to current permit holders. A letter could be sent to all non-compliant operators with information about the permit requirement, an application, and a timeline for seeking a permit. Initial contact should not be in the form of a cease-and-desist letter. Full compliance by all applicable operators would increase revenue over that being realized now. Compliance could be enforced by a system of fines after sufficient notification.

But let us make one point clear: the non-compliance is most likely due to poor education on the part of the Municipality. We have spoken to tour operators who received threatening notifications of non-compliance, having never been notified that such a permit requirement exists. Within the tourism community the requirement is not well known. It is fair to assume that no such requirement exists if they are already regulated by FMCSA. Other cities like Fairbanks have complete exemptions for otherwise-regulated tour operators.

## **Proposed Municipal Code Language**

### *Exemption*

To provide a complete exemption, amend the definition of “vehicle for hire” in 11 AMC 10.010 as follows:

*Vehicle for hire* means any form of motorized chauffeured passenger transportation offered for hire having a manufacturer's stated seating capacity of 15 or fewer persons, which capacity includes the driver. ***A vehicle for hire is intended to satisfy a demonstrated, specific need for passenger transport by offering and providing limited purpose or exclusive passenger transportation services as may be authorized by the commission.*** ~~and does not mean an~~

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<sup>18</sup> It is worth noting that in the past, passing a training course and a doctor’s physical were requirements for obtaining a chauffeur’s permit. These requirements were eliminated several years ago – at least prior to 2019 when we assumed ownership and operation of Alaska Photo Treks.

~~ambulance, a horse-drawn vehicle, a taxicab, a limousine, or a vehicle owned or leased by the municipality and used to transport passengers for hire in connection with the municipality's operation of its mass transit system. A vehicle for hire is intended to satisfy a demonstrated, specific need for passenger transport by offering and providing limited purpose or exclusive passenger transportation services as may be authorized by the commission.~~ ***Specifically excluded from regulation under this provision are: ambulance, horse-drawn vehicles, taxicabs, limousines, or vehicles owned or leased by the municipality and used to transport passengers for hire in connection with the municipality's operation of its mass transit system, vehicles used for the primary purpose of sightseeing and tours outside of the city, vehicles operated by a business where transportation is incidental to the primary line of business, and commercial vehicles regulated by state or federal law.***

### *Creation of New Category for “Incidental Operators”*

For those vehicles that are neither a “vehicle for hire” as that term is normally used or specifically exempt, a new category will need to be added. This revision would require a few changes to MOA regulations. First, amend the definition of “vehicle for hire” as outlined above.

The same definition section would be amended to add a new definition:

**Incidental operator means any form of transportation that is incidental to the primary line of the business, such as a tour operator, where payment for the transportation service is included in a total package and not paid for separately. A driver for an incidental operator is not a chauffeur.**

Then, several sections would need to be amended to insert the new term “incidental operator” as follows:

1. Amend the second sentence of 11 AMC 10.050(G) as follows: “Each vehicle operated as **an incidental operator or** a vehicle for hire shall conspicuously post a sign on each side of the vehicle, such sign stating the full name of the **incidental operator or** vehicle for hire service and, if required by the transportation inspector, the fare to be charged.”
2. Amend 11 AMC 10.140(B), (C) & (D) to insert “incidental operator”: “taxicab, limousine, **incidental operator**, or vehicle for hire.”

### **Other Recommended Change**

Currently, requiring a vehicle for hire permit offers no value to the permit holder. In contrast, the State of Alaska requirement of possessing a commercial permit to operate within the Alaska State Park system offers access to that park unit. Rather than simply regulating tour operators with no added value, the Municipal commercial permit should give some access to the tour operator. We recommend that such value would include after-hours access to un gated municipal parking lots that close to the public at 11:00 p.m. (i.e., Point Woronzof).

Additionally, the permit should grant the holder access to any designated passenger loading



zone in Anchorage without additional permit requirements. Thus, even some exempt vehicles may wish to obtain the new permit in order to have the additional access.

**Summary**

In closing we recommend revisions to the existing Anchorage Municipal Code to provide an exemption for vehicles otherwise regulated by state and federal agencies and to include a new definition of “incidental operator” separate from that of “vehicle for hire.” These actions will remove a barrier to small businesses in Anchorage, helping us all thrive in the great city of Anchorage.

We would be happy to meet with you in person or virtually to discuss this matter and the recommendations at your convenience. Please feel free to contact us at 907-748-7040 / [carl@alaskaphototreks.com](mailto:carl@alaskaphototreks.com) (Carl) or 907-351-6342 / [michelle@alaskaphototreks.com](mailto:michelle@alaskaphototreks.com) (Michelle).

Thank you for considering these proposals.

October 15, 2024