



MUNICIPALITY OF ANCHORAGE
Office of the Municipal Attorney

Memorandum

DATE: December 8, 2015

TO: Amanda K. Moser, Deputy Municipal Clerk
Barbara A. Jones, Municipal Clerk

THROUGH: William D. Falsey, Municipal Attorney *WDF*

THROUGH: Deitra L. Ennis, Deputy Municipal Attorney *DE*

FROM: Dean T. Gates, Assistant Municipal Attorney *DG*

SUBJECT: INITIATIVE 2015-4 – ANCHORAGE TRANSPORTATION NETWORK
COMPANY (TNC) INITIATIVE
Dept. of Law Matter No. 15-2783B

QUESTION: You have requested we address the following question:

Is Initiative Application number 2015-4, for an initiative petition entitled “Anchorage Transportation Network Company (TNC) Initiative,” legally sufficient?

BRIEF ANSWER: Subject to the following Background and Discussion, our Brief Answer is:

Yes. We recommend the application be certified and a master form of petition issued. But we further recommend that the Clerk’s Office issue a master petition form to the sponsors that: (1) includes clarifying revisions to the sponsors’ proposition language; (2) removes unnecessary legislative drafting marks from the sponsors’ proposed ordinance; and (3) incorporates into the proposed ordinance a “subsection C,” in accordance with the sponsors’ expressed intent.

BACKGROUND:

On November 25, 2015, sponsors submitted an application to the Municipal Clerk for an initiative petition titled “Anchorage Transportation Network Company (TNC) Initiative.” (hereafter “TNC Initiative Application”) It is clearly a resubmittal of two earlier rejected applications involving the same subject and purpose: Initiative Application 2015-2 and Initiative Application 2015-3. The deficiencies in each of those earlier applications noted by the Municipal Attorney’s office in opinions dated September 24, 2015 and November 13, 2015 have been remedied in this resubmittal.

The sponsors propose to put to voters the following proposition (verbatim):

SHOULD THE MUNICIPALITY OF ANCHORAGE ACCOMMODATE TECHNOLOGY INNOVATION USED IN PROVIDING PASSENGER TRANSPORTATION SERVICES, USING TRANSPORTATION NETWORK COMPANIES (TNC), WHICH CONNECT PASSENGERS WITH TNC AUTHORIZED DRIVERS USING ONLINE DIGITAL APPLICATIONS FOR SMARTPHONES, MOBILE DEVICES, AND COMPUTERS TO SUPPORT TRANSPORTATION SERVICES FOR HIRE IN ANCHORAGE.

Yes () No ()

Exhibit A, at 3. The pages attached to the TNC Initiative set forth amendments to Title 11 of the Anchorage Municipal Code that are almost identical to those proposed in AO 2014-135(S) (hereafter “TNC Ordinance”), which was postponed indefinitely by the Anchorage Assembly in May 2015.¹

DISCUSSION:

Applicable Law

Pursuant to Anchorage Municipal Code 2.50.030A., “[w]ithin ten business days after receiving a completed application, the municipal clerk shall verify the sponsors’ qualifications and, after consultation with the municipal attorney, determine and certify the legal sufficiency, or lack thereof, of the application and the proposed initiative or referendum.”

¹ Exhibit A, pp. 7-15; cf. AO 2014-135(S) (available at [http://www.muni.org/Departments/Assembly/Documents/AO%202014-135\(S\)%20-%20regulate%20TNCs%20S-version.pdf](http://www.muni.org/Departments/Assembly/Documents/AO%202014-135(S)%20-%20regulate%20TNCs%20S-version.pdf) , accessed December 7, 2015).

Pursuant to AMC 2.50.020B.3.:

The proposed petition shall:

- a. set out verbatim the ordinance or resolution sought to be enacted or repealed by the petition;
- b. have the required names, residence and mailing addresses, signatures, and dates of signatures of the initial contact persons and sponsors;
- c. meet constitutional, charter and other legal requirements or restrictions;
- d. include only a single subject; and
- e. be enforceable as a matter of law or be clearly denominated as advisory only.

Interpreting similar language applicable to municipalities without home rule powers, the Alaska Supreme Court held that a clerk's pre-election review of a proposed initiative or referendum petition "is limited to determining whether the initiative complies with the particular constitutional and statutory provisions regulating initiatives" and whether the proposed substantive ordinance is precluded by controlling authority as a matter of law.²

The Anchorage Municipal Charter provides that "[t]he powers of initiative and referendum do not apply to ordinances establishing budgets, fixing mill levies, authorizing the issuance of bonds, or appropriating funds."³

A provision of the Alaska Constitution, with which home rule municipalities must comply as a consequence of state law,⁴ further provides that "[t]he initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation."⁵

Further, the Alaska Supreme Court has held that the powers of initiative are restricted only to "enactments that are legislative rather than administrative or executive in

² *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 898 (Alaska 2003); *Brooks v. Wright*, 971 P.2d 1025, 1027 (Alaska 1999).

³ ANCHORAGE MUNICIPAL CHARTER § 3.02(a).

⁴ See AS 29.10.030 *Initiative and Referendum*, which provides:

(a) A home rule charter shall provide procedures for initiative and referendum.

...

(c) A charter may not permit the initiative and referendum to be used for a purpose prohibited by art. XI, § 7 of the state constitution.

⁵ ALASKA CONST. art. XI, § 7.

character,”⁶ and that, under state law, a municipal clerk may refuse to certify an initiative application that proposes a law which is “clearly unconstitutional.”⁷

Last, AMC 28.40.010D.1.b. requires that, when placed on a municipal ballot, “a summary description, including the question, of each proposition” presented to voters must be prepared in “a fair, true and impartial manner by the municipal attorney in consultation with the municipal clerk.”

Compliance with Applicable Law

We conclude that the TNC Initiative should be certified for three reasons. First, the initiative application is technically sufficient. Second, the TNC Initiative does not address a prohibited subject for the initiative. Third, the proposed ordinance to be initiated is not clearly unconstitutional or unenforceable as a matter of law. But to present the proposed initiative in a fair, true and impartial manner on the master form of petition, and eventually the ballot, we recommend some minor editing to the proposed language.

1. The TNC Initiative is technically sufficient.

In compliance with AMC 2.50.020B.3.b. and AMC 2.50.020B.3.d., the proposed petition includes the required names, residence and mailing addresses, signatures, and dates of signatures of the initial contact persons and sponsors,⁸ and includes only a single subject.

In compliance with AMC 2.50.020B.3.a., the TNC Initiative Application attaches several pages that set out in full the ordinance sections sought to be amended and enacted.⁹ The language includes some of the legislative drafting marks that are in AO 2014-135(S). While unnecessary to include such marks in the new sections to be added, the legislative drafting marks do not affect the comprehensibility of the measure or its validity. If the initiative passes, the instruction of the marks will be complied with upon codification in accordance with AMC 1.05.050, and are similar in content to other ordinances sent from the Anchorage Assembly that include marked edits in the same fashion.

An additional page submitted with the TNC Initiative Application is handwritten and includes a citation to “11.20.515” with a block quote of subsection “c)” followed by: “the

⁶ *Municipality of Anchorage v. Holleman*, 321 P.3d 378, 385 (Alaska 2014).

⁷ *Kodiak Island Borough*, 71 P.3d at 899.

⁸ The veracity of the submitted information is subject to verification by the Municipal Clerk.

⁹ Exhibit A at 7-15.

above reference (c) was omitted from the initiative. D. O'Malley.”¹⁰ The intent to insert subsection (c) set forth therein into section 11.20.515 of the TNC Initiative's Title 11 amendments at page 10 is clear and unambiguous. Although a subsection C already exists therein, section numbering can be corrected when approved ordinances are consolidated for publishing.¹¹ If the TNC Initiative is approved by the voters, such corrective action will occur as a matter of course when codifying the measure.¹²

2. The TNC Initiative does not address a prohibited subject.

In compliance with the requirements of the Anchorage Municipal Charter, the TNC Initiative Application does not propose to establish a budget, fix a mill levy, or authorize the issuance of bonds. In compliance with applicant Supreme Court precedent, the Application proposes a law that is legislative, and not administrative or executive in character.

In compliance with the requirements of the Alaska Constitution, the TNC Initiative Application does not propose to dedicate revenues, or to create courts or define their jurisdiction or prescribe their rules. Because the ordinance proposed by the Application would apply throughout the Municipality, and embraces a subject of “common interest” to the people of the Municipality,¹³ it does not propose local or special legislation.

We anticipate opponents to certification of the TNC Initiative Application may argue it would impermissibly “make or repeal an appropriation,” because it would affect taxicab permits already issued the Municipality. We do not agree.

The Alaska Supreme Court has resolved the question of whether an initiative affecting the value of regulated taxicab permits is an appropriation of public resources in violation of Art. XI, sec. 7 of the Alaska Constitution; it is not.¹⁴ The initiative reviewed in *Anchorage Citizens for Taxi Reform v. Municipality of Anchorage* would have amended the Anchorage Charter to require an open-entry system for new taxicab permits instead of the existing public convenience and necessity review requirement. The court determined taxicab permits are not public assets and therefore the initiative was not an appropriation of a public asset barred from the initiative process.¹⁵

¹⁰ Exhibit A at 2.

¹¹ AMC 1.05.070. Some spelling and punctuation errors in the TNC Initiative text, such as “Estalbish” in the title at p. 7, may be corrected when publishing.

¹² *Id.*

¹³ *Cf. Price v. Kenai Peninsula Borough*, 331 P.3d 356, 359-360 (Alaska 2014).

¹⁴ *Anchorage Citizens for Taxi Reform v. Municipality of Anchorage*, 151 P.3d 418 (Alaska 2006).

¹⁵ *Id.* at 424.

AO 2014-135(S), upon which the TNC Initiative Application was based, has been characterized as an open-entry scheme for a new type of transportation service, similar to the law addressed in *Anchorage Citizens for Taxi Reform*. As a matter of law, the TNC Initiative does not violate the constitution and charter restriction prohibiting the appropriation of funds by initiative.

3. The TNC Initiative is not clearly unconstitutional or unenforceable as a matter of law.

Certain opponents of the TNC Initiative may also argue that it should not be certified because it would require the Municipality to compensate current holders of taxicab permits for a “taking.”¹⁶ We do not believe certification of the Application should be denied on this ground. Even if it is the case that the TNC Initiative Application would, if passed, effectuate a taking of taxicab permits—a point upon which we express no opinion—that would not preclude enforcement of the ordinance proposed in the Application.

Further, the Alaska Supreme Court has held that questions regarding whether an initiative would result in a constitutional taking are not justiciable until after the initiative is approved by voters. In the memorandum from this office dated November 13, 2015, regarding Initiative Application 2015-3, we noted concerns around the country with constitutional infirmities in TNC ordinances being adopted similar to this one now proposed by the TNC Initiative. There we stated:

Some courts have found TNC ordinances similar to the initiative proposed here are constitutional and valid;¹⁷ others have found they violate Equal Protection.¹⁸ While there are some concerns with constitutional infirmities regarding Equal Protection among providers of for hire transportation services, under the legal standard for initiatives, we do not find “controlling

¹⁶ The attempted entry of the Uber transportation network company into the Anchorage market over the past year sparked discussion that enacting proposed AO 2014-135(S) would directly result in a regulatory takings claim under the Alaska Constitution for the diminished value of existing taxicab permits, and require an appropriation in excess of \$20 million dollars. See <http://www.adn.com/article/20141103/anchorage-municipality-has-no-duty-support-taxi-company-domination> , accessed December 7, 2015; and <http://www.adn.com/article/20141113/let-slip-drivers-uber-sure-if-were-willing-cough-20-million> , accessed December 7, 2015.

¹⁷ See, e.g., *Joe Sanfelippo Cabs Inc., v. City of Milwaukee*, 46 F.Supp.3d 888 (E.D. Wisc. 2014).

¹⁸ *Illinois Transp. Trade Ass’n, et al., v. City of Chicago*, Case No. 14-cv-827, 2015 WL 5610880 (N.D. Illinois 2015).

authority [that] precludes enforcement as a matter of law.”¹⁹ The issues and concerns are the kinds that “are justiciable only after the initiative has been enacted by the electorate.”²⁰

In sum, the TNC Initiative is not clearly unconstitutional or unenforceable as a matter of law.

4. Proposed edits to the TNC Initiative ballot language.

The Anchorage Municipal Code provides that the ballot proposition language, as it will appear to voters on a ballot, must be “fair, true and impartial,” and it entrusts the preparation of the language to the Municipal Attorney, in consultation with the Municipal Clerk.²¹ Here, we note that the ballot language suggested by the sponsors would not expressly put to voters the question of whether municipal law should be amended. While we advise that the application be certified, to ensure consistency between language contained in the circulated petition and that which may later be presented to voters on the ballot, we further recommend that the language to be included on the master form of the petition appear as follows:

SHALL THE ANCHORAGE MUNICIPAL CODE BE AMENDED TO ACCOMMODATE TECHNOLOGY INNOVATION USED IN PROVIDING PASSENGER TRANSPORTATION SERVICES, USING TRANSPORTATION NETWORK COMPANIES (TNC), WHICH CONNECT PASSENGERS WITH TNC AUTHORIZED DRIVERS USING ONLINE DIGITAL APPLICATIONS FOR SMARTPHONES, MOBILE DEVICES, AND COMPUTERS TO SUPPORT TRANSPORTATION SERVICES FOR HIRE IN ANCHORAGE.

A “yes” vote is a vote to amend the Anchorage Municipal Code as set forth in the ordinance proposed by Initiative Petition 2015-4. A “no” vote is a vote to not adopt the proposed code amendments.

Yes () No ()

¹⁹ *Kodiak Island Borough*, 71 P.3d at 898.

²⁰ *Id.* at 899.

²¹ AMC 28.20.010D.1.b

CONCLUSION:

We recommend the TNC Initiative Application be certified. In producing the master form of petition, we recommend that the Clerk's Office issue a master petition form to the applicant that: (1) includes clarifying revisions to the sponsors' proposition language; (2) removes unnecessary legislative drafting marks from the sponsors' proposed ordinance; and (3) incorporates into the proposed ordinance the "subsection C" requested by the sponsors.



Municipality of Anchorage

Office of the Municipal Clerk

632 West Sixth Avenue Anchorage, Alaska 99501 Suite 250
Mailing Address: P.O.Box 196650 Anchorage, AK 99519-6650

2015 - 4

M.O.A.

2015 NOV 25 PM 2:06

Phone: 343-4311 Fax: 343-4313

Municipal Clerk: Jones, Barbara A.

CLERK'S OFFICE

Initiative and Referenda Application

Anchorage Charter: Section 3.20 ~ Anchorage Municipal Code: Chapter 2.50

Anchorage Municipal Code: Chapter 2.50.020 Application for a petition

2.50.020.B Form and content. The application shall contain:

- 1) The name, residence and mailing address, signature and date of signature of two resident citizens who have not been convicted of a felony and who are the primary and alternate contact persons to whom all correspondence relating to the petition may be sent. The two contact persons shall be considered sponsors;
 - 2) The name, residence and mailing address, signature and date of signature of at least ten qualified voters not including the contact persons who will sponsor the petition. Additional qualified sponsors may be added not less than three days before the date of first circulation of the petition certified by the clerk;
- (AO No. 2002-162, § 1, 12-17-02)

Primary Petition Committee Sponsor

Print Name: David O'Malley

Phone Number: (907) 360-0119

e-mail Address: bigbigos2005@yahoo.com

Residence Address: 3705 Arctic Blvd #1544 99503

Mailing Address: [Redacted] 99507

Identifier: [Redacted]
(Voter #, Social Security #, or Date of Birth)

Signature of Requestor: [Redacted] Date: 11/16/2015

Alternate Petition Contact

Print Name: Daniel O'Malley

Phone Number: (907) 360-0119

e-mail Address: bigbigos2005@yahoo.com

Residence Address: [Redacted] 99507

Mailing Address: 3705 Arctic Blvd #1544 99503

Identifier: [Redacted]
(Voter #, Social Security #, or Date of Birth)

Signature of Requestor: [Redacted] Date: 11-16-15

11.20.515

2015-4

c) A TNC vehicle shall be no older than seven years, and have no more than 150,000 miles on its unaltered and untampered odometer

the above reference (c) was omitted from the initiative.

D. O'Malley

2015-4

Anchorage Transportation Network Company (TNC) Initiative

Therefore, we, the undersigned voters of the Municipality of Anchorage, request the following referendum be placed before the voters of the Municipality of Anchorage.

SHOULD THE MUNICIPALITY OF ANCHORAGE ACCOMMODATE TECHNOLOGY INNOVATION USED IN PROVIDING PASSENGER TRANSPORTATION SERVICES, USING TRANSPORTATION NETWORK COMPANIES (TNC), WHICH CONNECT PASSENGERS WITH TNC AUTHORIZED DRIVERS USING ONLINE DIGITAL APPLICATIONS FOR SMARTPHONES, MOBILE DEVICES AND COMPUTERS TO SUPPORT TRANSPORTATION SERVICES FOR HIRE IN ANCHORAGE.

Yes () No ()



Municipality of Anchorage Initiative and Referenda Application

2015 - 4

Anchorage Charter: Section 3.20 ~ Anchorage Municipal Code: Chapter 2.50

Phone: 343-4311 Fax: 343-4313

Municipal Clerk: Jones, Barbara A.

Anchorage Municipal Code: Chapter 2.50.020 Application for a petition

2.50.020.B Form and content. The application shall contain:

3)The petition proposed to be circulated. The proposed petition shall be submitted on the form provided by the municipal clerk in the application packet. The proposed petition shall:

- a.set out verbatim the ordinance or resolution sought to be enacted or repealed by the petition;
- b.have the required names, residence and mailing addresses, signatures, and dates of signatures of the initial contact persons and sponsors;
- c.meet constitutional, charter and other legal requirements or restrictions;
- d.include only a single subject; and
- e.be enforceable as a matter of law or be clearly denominated as advisory only.

(AO No. 2002-162, § 1, 12-17-02)

Proposed Petition

Petition Title: Anchorage Transportation Network Company Initiative

Proposed Petition: Therefore, we, the undersigned voters of the Municipality of Anchorage, request the following referendum be placed before the voters of the Municipality of Anchorage.

SHOULD THE MUNICIPALITY OF ANCHORAGE ACCOMMODATE TECHNOLOGY INNOVATION USE IN PROVIDING PASSENGER TRANSPORTATION SERVICES USING TRANSPORTATION NETWORK COMPANIES (TNC), WHICH CONNECT PASSENGERS WITH (TNC) AUTHORIZED DRIVERS USING ON LINE DIGITAL APPLICATIONS FOR SMARTPHONES, MOBILE DEVICES AND COMPUTERS TO SUPPORTATION SERVICES FOR HIRE IN ANCHORAGE

Yes () No ()

Unsworn falsification in the second degree. "A person commits the crime of unsworn falsification in the second degree if, with the intent to mislead a public servant in the performance of a duty, the person submits a false written or recorded statement that the person does not believe to be true... on a form bearing notice, authorized by law, that false statements made in it are punishable. Unsworn falsification in the second degree is a class A misdemeanor. A.S. 11.56.210(2) and (2)(b).



Municipality of Anchorage

Initiative and Referenda Application

Anchorage Charter: Section 3.20 ~ Anchorage Municipal Code: Chapter 2.50

2015 - 4

Phone: 343-4311 Fax: 343-4313

Municipal Clerk: Jones, Barbara A.

Anchorage Municipal Code: Chapter 2.50.020 Application for a petition

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- c. meet constitutional, charter and other legal requirements or restrictions;
- d. include only a single subject; and
- e. be enforceable as a matter of law or be clearly denominated as advisory only.

(AO No. 2002-162, § 1, 12-17-02)

Ten Qualified Voters

| Printed Name | Residence Address | Mailing Address | *Identifier: Voter#, Social, or DOB | Signature | Date |
|--------------------|-------------------|-----------------|--|------------|----------|
| Susynn Snyder | [Redacted] #A | SAME | [Redacted] | [Redacted] | 11/25/15 |
| Eva O'Malley | [Redacted] | same | [Redacted] | [Redacted] | 11/18/15 |
| Channen O'Malley | [Redacted] | same | [Redacted] | [Redacted] | 11/19/15 |
| G. William Merritt | [Redacted] | same | [Redacted] | [Redacted] | 11-20-15 |
| Kacie Hobson | [Redacted] AK | [Redacted] ne | [Redacted] | [Redacted] | 11/25/15 |
| | | | | | |
| | | | | | |



Municipality of Anchorage

Initiative and Referenda Application

Anchorage Charter: Section 3.20 ~ Anchorage Municipal Code: Chapter 2.50

2015 - 4

Phone: 343-4311 Fax: 343-4313

Municipal Clerk: Jones, Barbara A.

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- c. meet constitutional, charter and other legal requirements or restrictions;
- d. include only a single subject; and
- e. be enforceable as a matter of law or be clearly denominated as advisory only.

(AO No. 2002-162, § 1, 12-17-02)

Ten Qualified Voters

| Printed Name | Residence Address | Mailing Address | *Identifier: Voter#, Social, or DOB | Signature | Date |
|----------------------------------|-------------------|----------------------|--|------------|---------------------|
| Ryan Kennedy | [REDACTED] | Anchor RR SAME | [REDACTED] | [REDACTED] | 11-16-15 |
| Clark Bickford | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | 11-24 |
| David Daniel | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | 11-15-15 |
| Johnny R. Mann | [REDACTED] | Same as Residence | [REDACTED] | [REDACTED] | 11-16-15 |
| Jeanie Dolphino Devin Dolphin | [REDACTED] | Same | [REDACTED] | [REDACTED] | 11-5-15 11/22/15 |
| Mark A. Smund | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | 11/22/2015 |
| James R. Smund | [REDACTED] | SAME | [REDACTED] | [REDACTED] | 11/22/2015 |

2018-4

AN ORDINANCE OF THE CITIZENS OF ANCHORAGE AMENDING TITLE 11 TO ACCOMODATE TECHNOLOGICAL INNOVATION IN PROVIDING PASSENGER TRANSPORTATION SERVICES FOR HIRE; ADD AND MODIFY DEFINITIONS; ESTALBISH REGULATION OF TRANSPORTATION NETWORK COMPANIES (TNC); ESTABLISH REGULATION OF THE VEHICLES AND DRIVERS PROVIDING PASSENGER TRANSPORTATION FOR HIRE USING TNC APPS OR SERVICES; AND RELATED MATTERS INVOLVING THE REGULATORY FRAMEWORK FOR TRANSPORTATION SERVICES.

THE CITIZNS OF ANCHORAGE ORDAIN:

Section 1. Anchorage Municipal Code section 11.10.010 hereby is amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

11.10.010 Definitions.

When used in chapters 11.10—11.40:

*** **

G. *Digital dispatch* means a scheduling or rider-to-driver matching software application or service that enables prospective passengers to request on demand or pre-arranged transportation services offered or provided for compensation from qualified taxicab or vehicle for hire, using an internet-enabled application or digital platform to send or transmit an electronic, radio or telephonic communication through the use of a portable or handheld device, monitor, tablet, smartphone, or other electronic device or unit that indicates the location of the passenger which information is then relayed to a qualified taxicab or vehicle for hire by radio or data communication of any type.

*** **

R. *Personal vehicle* means a vehicle that is privately owned by a natural person and used to provide passenger transportation services via a transportation network company application dispatch system is a “transportation network company (TNC) vehicle” and subject to regulation under this chapter. A personal vehicle is not a taxicab or vehicle-for-hire vehicle that requires a permit under this chapter.

*** **

Y. *Transportation network company (TNC)* means an organization whether a corporation, limited liability company, partnership, sole proprietor, or other form, operating in the municipality that offers prearranged transportation services for compensation exclusively by providing a digital dispatch system provided through an network or online-enabled software application or platform to connect passengers to TNC Services provided by TNC Drivers using their personal vehicles. A TNC is a business that provides a digital dispatch application for use on services (technology that allows consumers to directly request dispatch of for-hire drivers for trips via the internet using mobile interfaces such as smartphone applications,) to connect drivers with passengers for transportation services.

Z. Transportation network company (TNC) driver means a person with a driver's license affiliated with and accepting prearranged trips from a licensed transportation network company's online app or digital dispatch system. For purposes of this chapter, at any time while a driver is active on the TNC dispatch system, the driver is considered a TNC driver.

AA. Transportation network company (TNC) endorsed vehicle means a personal motor vehicle used for the transportation of passengers for compensation that is affiliated with a licensed transportation network company and that has been certified by the TNC as having met the inspection and minimum operating requirements as set forth in chapter 11.20 and is authorized to provide the TNC's Services using the TNC's digital dispatch.

BB. Transportation network company (TNC) representative means the person or persons that a transportation network company has authorized to:

1. On behalf of the TNC, file documentation with and respond to requests from the Transportation Inspector and Anchorage Transportation Commission;
2. Receive, accept and respond to all correspondence and notices from the municipality pertaining to the TNC, or to affiliated drivers operating within the TNC; and
3. Forward any correspondence, notices or legal process received by the TNC and intended for a TNC driver or pertaining to a TNC vehicle.

CC.[W]. 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, and does not mean an 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 [PUBLIC] need for passenger transport by offering and providing limited purpose [AND SHARED] or exclusive passenger [PUBLIC] transportation services as may be authorized by the commission.

Section 2. Anchorage Municipal Code section 11.10.030 is hereby amended to read as follows *(the remainder of the section is not affected and therefore not set out)*:

11.10.030 Anchorage Transportation Commission—Powers and duties.

A. The commission shall regulate all [REGULATED] vehicles that are chauffeured and provide transportation services [TRANSPORT PERSONS] on request for a fee or charge for such transportation, chauffeurs, [AND] dispatch services, and transportation network companies (TNC) and their drivers and vehicles, in accordance with this title except for those vehicles for hire which the commission determines to be subject to a comprehensive regulatory program established by Alaska or federal law. No motorized vehicle may be offered for hire to transport passengers in the municipality [ANCHORAGE] without being a regulated vehicle, 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.

2015-4

The commission shall not regulate amusement or novelty rides; courtesy vehicles; buses or bus service; unless the operation of the vehicle is the same as or substantially similar to the operation of a limousine, a courtesy vehicle which derives its revenue from or on behalf of a passenger, or a taxicab, as those terms are defined in section 11.10.010, which shall be subject to regulation by the commission. Vehicles with a manufacturer's rated seating capacity of 16 or more persons, which capacity includes the driver, shall not be regulated by the commission. The purpose of the regulations set forth in [THIS] chapters 11.10 - 11.40 or adopted by the commission shall be to protect the public's interest with respect to the price, [AND] quality of service, and reasonable safety standards provided by regulated vehicles Such regulations may set maximum charges for service and minimum standards for service.

Section 3. Anchorage Municipal Code chapter 11.20 is hereby amended by adding new sections beginning with 11.20.500 to read as follows:

11.20.500 Transportation Network Company (TNC) vehicles: TNC endorsement required.

No person shall provide passenger transportation using a TNC service unless the vehicle the person uses to provide such transportation has a current endorsement from the TNC.

11.20.505 TNC vehicles: application for TNC endorsement.

A. The owner of a passenger vehicle or authorized owner shall apply to the TNC for a TNC Vehicle endorsement prior to the vehicle's use for TNC Services.

B. The information required for a TNC vehicle endorsement and to be supplied with an individual's application to the TNC to be an authorized driver includes, but is not limited to:

1. At least two photographs or images of the vehicle showing the front and one side, and the back and one side, with the license plate numbers and registration tags clearly visible in at least one of the photographs or images;
2. a copy of the motor vehicle's registration;
3. proof of automobile liability insurance coverage; and
4. other information required by the TNC.

C. A TNC shall not authorize a passenger vehicle as a TNC endorsed vehicle until the following requirements are satisfied:

1. The vehicle passes the inspection required by section 11.20.515.
2. The insurance coverage required by section 11.20.530 is obtained and effective.
3. The person whom is authorized to drive the TNC endorsed vehicle while in service has satisfied the TNC Driver requirements in chapter 11.40.

11.20.510 TNC vehicles: equipment[,] and markings [~~and consumer notices~~].

A TNC vehicle is subject to only to the equipment and mechanical standards set forth in sections 11.20.500 through 11.20.530. The other provisions of this chapter 11.20, and any equipment and mechanical standards in chapter 11.10, do not apply unless specifically made applicable to a TNC vehicle. Nothing in sections 11.20.500 through 11.20.530 shall require or imply that a TNC vehicle is required to post rates (as set forth in subsection 11.10.050D.) or have a video camera surveillance system (subsection 11.10.185A.1.)

11.20.515 TNC vehicles: inspection required.

A. A TNC shall not endorse or certify a TNC vehicle for provision of TNC Services until the TNC vehicle has been inspected by a licensed and certified mechanic, and certified in writing by the mechanic that the vehicle was inspected and complies with the requirements in this section. The mechanic's inspection certificate is valid for one year. A TNC endorsed vehicle shall be inspected annually for compliance with subsection B. and upon expiration of a mechanic's inspection certificate the vehicle's TNC endorsement expires and the TNC shall block the vehicle from the digital dispatch and provision of TNC services. The TNC or TNC representative shall retain records of the inspection and submit them to the transportation inspector upon request.

B. A TNC vehicle shall comply with the mechanical equipment standards set forth in section 11.10.080E., except the taximeter requirement in E.12. and the taxicab equipment and specialized equipment provisions 9 of E.21. to 23.

C. A TNC vehicle shall be subject to an inspection by the transportation inspector or a designee at all times the TNC vehicle is logged on to the digital dispatch as being available for service.

11.20.520 TNC vehicles: restrictions on service.

A. The TNC driver shall use a TNC endorsed vehicle only for passengers whom request prearranged transportation and are matched with the TNC driver through the use of the TNC's digital dispatch application.

B. The driver of a TNC endorsed vehicle while in service shall be prohibited from:

1. Soliciting or accepting cash or other in hand currency or commercial paper as payment for fares. Payment from passengers for TNC Services shall be payable only electronically using the passenger's electronic payment information on record with the TNC's digital dispatch system.

2. Offering passenger transportation in response to a streetside hail, flagging, telephone call, radio communication or any mode of communication other than through the use of the TNC's digital dispatch application.

11.20.525 TNC vehicles: records of service.

(Reserved)

11.20.530 TNC vehicles: insurance required.

A. Before any TNC endorsement for a passenger vehicle is issued for a personal vehicle, the TNC driver applicant shall furnish to the TNC one or more policies or certificates of liability insurance issued by an insurance company that is an authorized insurer within the meaning of AS 21.97.900.

B. The insurance required by this section shall be all times that the TNC endorsed vehicle is actively engaged in transporting a passenger. The insurance coverage required by this section shall be at least the coverage as follows:

1. For all bodily injury or property damage arising from one accident: Bodily injury \$100,000.00 per person, \$300,000.00 aggregate; property damage \$50,000.00 per occurrence; and

2. For all bodily injury or property damage in any one accident caused by an uninsured or underinsured motorist: Bodily injury \$100,000.00 per person, \$300,000.00 aggregate; property damage \$50,000.00 per occurrence.

C. The policy or policies of liability insurance shall be approved as to substance and form by the TNC and filed therewith. Insurance policies shall be issued for periods of not less than one year. The insurance coverage required by this section may be satisfied by a combination of insurance policies maintained by the TNC or TNC driver.

Section 4. Anchorage Municipal Code chapter 11.40 is hereby amended by adding new sections beginning with 11.40.500 ~~{200}~~ to read as follows:

11.40.500 Transportation Network Company (TNC): license required.

No person may provide TNC digital dispatch services unless the person has a current TNC license from the Commission.

11.40.505 TNC: application for license.

- A. An application for a TNC license shall be made to the Transportation Inspector.
- B. An application for a TNC license shall be submitted on a form approved by the Transportation Inspector and shall be accompanied by:
1. The fee specified in AMCR section 11.10.009;
 2. Proof that the applicant has obtained and possesses a functioning and capable digital dispatch system which the applicant has a right to use in the intended manner;
 3. A list of the name, address and telephone number of every person who will have a financial, proprietary, or security interest in the license;
 4. Proof that the applicant, or the principals if the applicant is a lawful business entity, is at least 18 years of age;

5. A signed acknowledgement and acceptance of the license requirement to maintain, and to provide to the transportation inspector, records of digital dispatches, complaints, and complaint response;
 6. A signed acknowledgement and acceptance of the requirement to have a zero tolerance drug and alcohol policy, to provide insurance coverage for TNC endorsed vehicles while in service on the TNC digital dispatch, to conduct a nationwide criminal background check, including a check of the national sex offender registry database, on each TNC Driver, and otherwise comply with all requirements of chapters 11.10 through 11.40 applicable to TNCs; and
 7. Proof the applicant has and maintains an agent for service of process
- C. A TNC license shall be issued by the transportation inspector if the applicant complies with this section and is certified as required by section 11.10.170.

11.40.510 TNC: restrictions and operation requirements.

- A. A TNC shall not own or lease any vehicle used to transport passengers. Only personal vehicles owned or leased by TNC drivers with a TNC endorsement may be used to provide TNC service.
- B. A TNC shall contract with a credit card processing company that meets the Payment Card Industry Data Security Standards.
- C. **A TNC is regulated by and shall comply with sections 11.40.500 through 11.40.550. The sections of this chapter regarding a dispatch service license do not apply to a TNC.**

11.40.515 TNC: information provided to a passenger.

- A. The TNC's digital dispatch application shall display to a prospective passenger before the passenger enters the TNC endorsed vehicle, at a minimum:
 1. the TNC driver's first and last name and rating by prior passengers; and
 2. the license plate number of the TNC endorsed vehicle, make and model.
- B. **A TNC may charge a fare for the services provided to passengers; provided that, if a fare is charged, the TNC shall disclose to passengers the fare calculation method on its website or within the software application service contemporaneously with the time the services are provided. The TNC shall also provide passengers with the applicable rates being charged and the option to receive an estimated fare before the passenger enters the TNC Driver's vehicle.**
- C. After a passenger transport is completed and the passenger has disembarked, the TNC digital dispatch shall send an electronic receipt to the passenger at the electronic contact destination selected by the passenger when registering for the TNCs digital dispatch services. The TNC digital dispatch shall also display to the passenger by an SMS alert, email, or other notification on the passenger's smartphone, tablet or other mobile device the actual time and distance of the trip, and itemization of the total fare paid. The electronic receipt shall include:

1. The origin and destination of the completed trip;
2. The total time and distance of the trip;
- ~~3-~~An itemization of the total fare paid, if any.

11.40.520 TNC: TNC Driver requirements.

- A. A TNC Driver is an individual who operates a TNC endorsed vehicle that is
 1. owned, leased or otherwise authorized for use by the individual;
 2. not a taxicab, limousine, or vehicle for hire; and
 3. used to provide TNC services to passengers when the vehicle is logged on to the TNC's digital dispatch as in service.
- B. A TNC shall not authorize a person to provide TNC services as a TNC driver unless:
 1. The person submits an application to the TNC which includes:
 - a. A photograph of the applicant, in a portrait or headshot style clearly showing the applicant from the shoulders up;
 - b. A copy or image of the applicant's driver's license issued by the State of Alaska and driving history;
 - c. Proof that the applicant is at least 19 years old; and
 - d. Information pertaining to the applicant's passenger vehicle intended for use as a TNC endorsed vehicle, which is required for such endorsement under section 11.20.505B.
 1. The TNC obtained and reviewed a driving record history research report for the applicant.
 2. The TNC has checked the applicant against the National Sex Offender Registry database.
 3. The driving record history and criminal background check indicate:
 - a. The applicant has not had a conviction entered by a court of competent jurisdiction within 12 months of:
 - i. A moving traffic violation which subjected the applicant's driver's license to suspension or revocation pursuant to AS 28.15.221—28.15.261, or a similar law of another jurisdiction;
 - ii. Reckless driving;
 - iii. Driving while license suspended or revoked; or

- iv. Driving while under the influence of intoxicating liquor, depressant, hallucinogenic, stimulant or narcotic drugs, or any controlled substance as defined in AS 28.35.030 or any similar law of another jurisdiction;
- b. The applicant has not had his or her driver's license suspended or revoked within one year prior to the application date, in Alaska or another jurisdiction;
- c. The TNC finds no charges pending against the applicant for criminally offensive sexual behavior in any jurisdiction included within the review;
- d. The applicant has not had a felony or misdemeanor conviction entered by a court of competent jurisdiction within five years for:
 - i. Assignment, prostitution, solicitation for the purpose of prostitution, offering to secure another for the purpose of prostitution, maintaining a vehicle for the purpose of prostitution or accepting money from a prostitute for any of the aforementioned purposes;
 - ii. Any offense which pertains to sexual abuse of a minor or sexual exploitation of a minor;

11.40.530 TNC:

(Reserved)

11.40.540 TNC: Records.

- A. A TNC shall maintain in a form readily accessible and retrievable in a readable form the following records:
 - 1. The name and address of the TNC Driver for each TNC endorsed vehicle digitally dispatched
 - 2. Daily digital dispatch activity, which shall include:
 - a. The TNC endorsed vehicle license number, make and model;
 - b. The name or identification and license number of the TNC Driver of the TNC endorsed vehicle;
 - c. The time of calls for service;
 - d. The service time requested by the passenger;
 - e. The time the request for service was fulfilled;
 - f. Whether the request was for service in the Girdwood or Chugiak-Eagle River areas.
 - g. The place of passenger pickup and location of drop off;
 - 3. The fare estimated for the passenger prior to the transport, and the fare charged after completion of the TNC service to the passenger; and

4. All complaints received from members of the public or passengers, with the investigation, resolution, referral, and follow-up for each complaint noted.

B. The records maintained pursuant to subsection A. of this section shall be retained by the TNC for at least two full calendar years.

C. The records shall be open for review by the administrative hearing officer, the commission, the transportation inspector, the municipal department of law, or a police officer.

D. The TNC shall forward records to the transportation inspector upon request and annually at license renewal. The Transportation Inspector may require that a TNC forward the records on a monthly or other periodic basis.

11.40.550 TNC:

(Reserved)

Section 5. Anchorage Municipal Code section 11.10.010 is hereby amended to read as follows *(the remainder of the section is not affected and therefore not set out)*:

11.40.053 Communication requirement between dispatchers and taxicab chauffeurs.

A. *Two-way radio communication.* Each dispatch company licensed under this title must operate and maintain a two-way communications system between dispatchers and taxicab chauffeurs. The two-way communications system shall allow each chauffeur on a dispatch company radio frequency to monitor dispatcher transmissions and transmissions from other chauffeurs on that dispatch company radio frequency unless they met requirements of subsection B.

B. *Computerized dispatch communication.* Any dispatch company which has installed and is using a GPS based electronic dispatch system which transmits digital communication to and from its taxicabs is not required to maintain continuous two-way voice communication between its taxicabs and dispatch service.

C. Digital dispatch system. In addition to the alternative requirements of two-way radio or computerized dispatch communication capability, a licensed dispatch service company may supplement its services with a digital dispatch system as defined in section 11.10.010.

D. Any dispatch company which has installed and is using a GPS based electronic dispatch system or digital dispatch system which transmits digital communications to and from its taxicabs is not required to have radio identifiers from the taxis to the dispatch when on voice.

E. This section shall not apply to a TNC regulated by sections 25 11.40.500 through 11.40.550.