



September 23, 2013

Final Investigative Report Concerning Ombudsman Complaints 2013-0334 & 2013-0349

COMPLAINT

Two Anchorage citizens contacted the Municipal Ombudsman alleging that the Municipality of Anchorage's Transportation Inspector had failed to "issue" 15 new taxi cab permits approved by the Anchorage Transportation Commission at their April 22, 2013 meeting within the 90 day timeframe mandated by Municipal Code. They further alleged that the Transportation Inspector had "willfully" failed to follow the "law" (Municipal Code).

FINDINGS

The allegation that the Transportation Inspector missed the 90 day timeframe mandated by Municipal Code is **JUSTIFIED**. The allegation that the Transportation Inspector "willfully" failed to follow Municipal Code is **UNSUPPORTED**.

ANALYSIS AND CONCLUSIONS

Two Anchorage citizens contacted the Ombudsman alleging that the Anchorage Transportation Inspector (TI) had failed to issue 15 new taxicab permits approved by the Anchorage Transportation Commission (ATC) at their April 22, 2013 meeting within the 90 day timeframe mandated by Anchorage Municipal Code, Chapter 11.20.030.D. The citizens further alleged that the TI had "willfully" done so.

The Ombudsman reviewed the relevant sections of Anchorage Municipal Code, Chapter 11.20.020, "Anchorage Transportation commission," including A.M.C. 11.20.030.C, which states, in part, that "If the Commission finds by a preponderance of the evidence presented at the hearing that the public convenience and necessity would be best served by the issuance of one or more additional limited or non-transferable taxicab permits of any type, such taxicab permit or permits shall be issued in the manner provided in subsection D of this section." The Ombudsman also reviewed A.M.C. 11.20.030.D, which states, in part, that "No later than ninety (90) days after the Commission determines that a new taxicab permit should be issued, the Transportation Inspector shall conduct a public auction as follows:"

Following his review of Title 11 the Ombudsman contacted the TI and obtained a copy of the minutes of the ATC's April 22, 2013 meeting. A review of the minutes revealed that following the TI's "status update and re-brief" to the Commission regarding their convenience and necessity study for issuing new taxicab permits, Commissioner Bradley motioned and Commissioner Rader seconded for the Commission to issue 10 new general taxicab permits and 5 new handicapped permits. Following discussion the motion was approved with 4 affirmative votes to 1 negative vote, with all five Commission members being present and voting. According to the Ombudsman's calculations the mandatory 90 day timeframe would expire on July 21, 2013.

The original complainant contacted the Ombudsman on July 12, 2013, prior to the expiration of the 90 day timeframe for the TI to conduct an "auction." The 90 day timeframe expired while the Ombudsman was conducting his original investigation. The second complainant contacted the Ombudsman on July 24, 2013 after the expiration of the 90 day timeframe, and the Ombudsman subsequently merged the investigations.

The complainants provided the Ombudsman with copies of emails from the TI in which he stated, in response to their inquiries, that the clock for the 90 day timeframe had not started until after the ATC had "formalized" its findings of fact regarding their public convenience and necessity study, in the form of a resolution passed at their June 24, 2013 meeting. If the TI's position was correct, this would mean that the 90 day timeframe would not expire until mid-September.

An Ombudsman review of Title 11, including A.M.C. 11.20.030, "Taxicabs—Issuance of permit", and referenced chapters of code, including A.M.C. 3.60, revealed no code requirement that the ATC's findings of fact be issued in written form, including a resolution. Under current Code the ATC's discussion of Commissioner Bradley's motion during their April 22, 2014 meeting is sufficient to put their findings on record. While there is case law which suggests that adjudicatory and regulatory bodies should issue their findings of fact in writing, there is currently no such requirement in Municipal Code, which the Ombudsman finds surprising considering the economic impacts that are often associated with ATC findings and decisions.

When the Ombudsman asked the TI why he believed that the ATC's findings of fact needed to be formalized in the form of a resolution, the TI referred the Ombudsman to A.M.C. 11.10.030.D: "The commission may provide for a hearing officer to conduct hearings, to make rulings regarding the admission of evidence and procedure, and to prepare a proposed decision, with findings of facts and conclusions of law, which may be adopted by the designated member of the commission charged with making such decisions under this section. The designated member of the commission may adopt the hearing officer's decision or decide the matter himself or herself based upon the record. Delegation of hearing officer responsibilities under this section may be to the administrative hearing officer created under AMC 14.20.010." This section of Code is applicable when the ATC is sitting as an adjudicatory body; when issuing new permits they are acting as a regulatory body, and this section of Code is not pertinent to that process.

The TI also referred the Ombudsman to A.M.C. 11.20.030: "A. ATC shall determine via an inquiry into the public convenience and necessity. B. The ATC shall conduct hearings pursuant to 3.60 to determine if the convenience and necessity warrants additional permits. C. If the ATC finds by a preponderance of the evidence additional permits would serve the community they shall be issued." In this instance the ATC conducted an inquiry into the public convenience and necessity, including multiple public hearings. At their April 22, 2013 meeting a motion to issue additional taxicab permits was introduced, seconded, discussed and approved. During discussion of the motion the majority of commissioners stated that they believed that their inquiry showed the need for additional permits. The reference to 3.60 is irrelevant, as it pertains to when the ATC is sitting as an adjudicatory body; in this instance they were sitting as a regulatory body. The ATC followed the requirements of this section of Code; nothing in this section requires that the ATC formalize their findings in writing.

Finally the TI referred the Ombudsman to the ATC's Rules of Procedure, Article III-Records, subpart Decision, Paragraph A: "Any decision approving or denying an application before the Commission shall be supported by statements and conclusions of the members of the Commission, which shall be sufficient to provide a reasonable basis for understanding the reasons for the decision. Where a

member relies on his/her personal knowledge, the particular knowledge on which the member relies shall be stated on the record. Upon request of any person made within seven days after the Commission acts on an application, the Commission shall, at the next regular meeting, adopt written findings and conclusions on the application. A written decision under this subsection is the decision of the Commission for the purposes of computing the time for appeal.”

This language in the ATC’s Rules of Procedure applies to Commission decisions regarding applications for new permits, which trigger a public convenience and necessity study. The TI believed that this subsection applied in this instance because the pertinent public convenience and necessity study was triggered by an application from E-Cab, LLC for the issuance of limited service taxicab permits to serve the Eagle River area, and by a verbal request from then Assembly Member Debbie Ossiander for a study to be conducted. Eventually the ATC declined to issue the limited service permits, and voted to issue 10 new general taxicab permits and 5 new handicapped permits. In the Ombudsman’s opinion the language in this subsection of the ATC’s Rules of Procedures only applies to the application by E-Cab, LLC, and not to the Commission’s decision to issue 15 new permits. While E-Cab, LLC’s application triggered the convenience and necessity study, their application is separate from the ATC’s decision to issue the 15 new permits, and this subsection does not apply.

After reviewing Title 11, relevant Code references and the ATC’s Rules of Procedure, the Ombudsman concludes that there is currently no statutory or procedural requirement that the Commission issue their findings of fact regarding issuance of new taxicab permits in writing. It is the Ombudsman’s opinion that the 90 day clock started ticking when the ATC voted to issue the new permits at their April 22, 2013 meeting. Discussion of the motion sufficed to put the Commission’s findings on the record. The Ombudsman further concludes that the 90 day timeframe ends when the Purchasing Department issues the Invitation to Bid to the public. In this case the ITB was issued to the public on Wednesday, July 31, 2013, which means that City missed the 90 day timeframe by ten days.

As to the allegation that the Transportation Inspector “willfully” failed to follow the requirements of A.M.C. 11.20.030.D, the Ombudsman **could find no evidence to support this allegation**, and to the contrary, the available documents demonstrate that the TI believed that the Code and the ATC’s Rules of Procedure require the Commission to “formalize” their findings in writing. Being assigned to staff a Municipal board or commission does not automatically make someone an expert regarding Municipal Code or Rules of Order. In this instance, based on a preponderance of the available evidence, the Ombudsman believes that the Transportation Inspector’s mistake occurred due to an honest misinterpretation of the relevant sections of Code and the ATC’s Rules of Procedure. *Absent any supporting evidence to the contrary, a mistake on the part of a Municipal employee does not mean that their actions were anything other than an honest misinterpretation of Municipal Code or policies and procedures.*

Because the Anchorage Transportation Commission approved the issuance of 15 new taxi cab permits during their April 22, 2013 meeting, and because Anchorage Municipal Code, Chapter 11 mandates that the Transportation Inspector “conduct an auction” within 90 days of the Commission approving the issuance of new permits, and because the Invitation to Bid (auction) was not released to the public within 90 days of the Commission’s vote, the complaint that the Transportation Inspector did not meet the mandated 90 day timeframe is JUSTIFIED.

Because there is no evidence to support the allegation that the Transportation Inspector “willfully” failed to follow A.M.C. 11, and because there is evidence which demonstrates that the Transportation

Inspector believed that he was following the requirements of the code (and Commission procedure), the complaint that the Transportation Inspector "willfully" failed to follow the Code is UNSUPPORTED.

A preliminary report regarding this matter was sent to the Transportation Inspector and Municipal Manager. Based on the investigation of these cases, the Municipal Ombudsman recommends the following:

(1) that Anchorage Municipal Code, Chapter 11.20.030.D be revised to clarify the actual Invitation to Bid process for the "public auction" conducted by the Transportation Inspector. *This recommendation has been addressed in a draft ordinance that will be introduced in September/October 2013.*

(2) that Anchorage Municipal Code, Chapter 11.20.030.D be revised to clarify when the 90 clock stops: when the Invitation to Bid is released to the public, or when the bids are opened. *This recommendation has been addressed in a draft ordinance that will be introduced in September/October 2013.*

(3) that Anchorage Municipal Code, Chapter 11.20.030.C be revised to require that findings of fact by the Transportation Commission must be issued in writing, and signed by the Commission Chair. *This recommendation has been addressed in a draft ordinance that will be introduced in September/October 2013.*

(4) that Anchorage Municipal Code, Chapter 4.40, Regulatory and Adjudicatory Boards and Commission be revised to require that findings of fact by any board or commission listed under A.M.C. 4.40 be issued in writing, preferably in the form of a resolution signed by the Commission Chair. *This recommendation has been forwarded to the Chair of the Assembly and the Mayor's Office.*

Based on these findings and these recommendations, this case is closed.

If you object to the Ombudsman's decision to decline or discontinue this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C.R. 2.60.006.



Darrel W. Hess
Municipal Ombudsman