

Submitted by: ASSEMBLY MEMBER TRAINI
Assembly Member Honeman
Assembly Member Gray-Jackson

CLERK'S OFFICE

AMENDED AND APPROVED

Prepared by: Assembly Counsel

Date: 9-29-11 Substitute prepared for: September 27, 2011
AO 2011-91 Introduced: August 30, 2011

**ANCHORAGE, ALASKA
AO NO. 2011-91(S-2)**

1 **AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING**
2 **ANCHORAGE MUNICIPAL CODE TITLE 11 TO ADD PREVENTIVE AND PROTECTIVE**
3 **MEASURES IN RESPONSE TO CRIMINALLY OFFENSIVE SEXUAL BEHAVIOR BY AN**
4 **APPLICANT OR LICENSED CHAUFFEUR, PRESCRIBING RULES AND CONDITIONS TO**
5 **GUIDE ADMINISTRATIVE ACTION, AND PROVIDING FOR AN IMMEDIATE EFFECTIVE**
6 **DATE.**

7
8 WHEREAS, the high incidence of sexual assault in Alaska and in our community calls
9 for effective pretrial measures to protect victims and the public, as well as legislative action
10 and initiative to effectively address sexual assault, including support for increased public
11 awareness and sexual assault prevention measures, as recognized by the Anchorage
12 Assembly in AR 2010-114 and AR 2011-78; and

13
14 WHEREAS, the public must in part depend on municipal regulation of certain
15 businesses through licensing and permits, to preserve health, safety, and general welfare of
16 municipal residents and visitors, and to aid in crime prevention; and

17
18 WHEREAS, in the protection of health, safety, and general welfare, the Municipality of
19 Anchorage regulates taxicab service and vehicles for hire, requiring chauffeurs to be
20 licensed, vehicles to be regulated and numbered, and chauffeur conduct to be courteous,
21 prudent and safe in manner; and

22
23 WHEREAS, the Assembly finds availability and use of a regulated vehicle, chauffeur's
24 license, or uniform, to gain physical proximity or the trust of a victim for purposes of criminal
25 sexual assault warrants immediate protective action by the Transportation Inspector to
26 preserve public safety and trust through final adjudication, unless the Transportation
27 Inspector determines judicial restrictions are in place that best protect the public; and

28
29 WHEREAS, the Anchorage Taxicab Permit Owners Association (ATPOA), whose
30 members hold many of the taxicab permits issued by the Municipality of Anchorage, has
31 offered electronic written comment and has no objection to this ordinance; and

32
33 WHEREAS, the Mayor's Public Safety Advisory Commission has taken the
34 opportunity on September 21, 2011 to review proposed changes to AMC Title 11 to add
35 preventive and protective measures in the application and licensing process for
36 taxicab drivers; and

37
38 WHEREAS, Alaska Yellow Dispatch, LLC, has submitted a letter dated
39 September 20, 2011 to set the record straight and confirm Alaska Yellow Dispatch, LLC

1 support for any regulation which improves both driver and passenger safety; and
2

3 WHEREAS, ACLU of Alaska has offered written comment, and additional clarification
4 is incorporated below; now, therefore,
5

6 THE ANCHORAGE ASSEMBLY ORDAINS:
7

8 **Section 1.** Anchorage Municipal Code section 11.10.010 is hereby amended to read as
9 follows (*language indicating no amendment is included for context only and other definitions*
10 *not affected are not set out*):
11

12 **11.10.010 Definitions.**
13

14 When used in chapters 11.10—11.40:
15 *** **

16 F. *Criminally offensive sexual behavior* includes the offenses named in Article 4 of
17 AS 11.41 or identified by similar ~~[name-of]~~ elements under Anchorage municipal
18 code or the law of another jurisdiction, and offenses included as sexual
19 offenses under the law of another jurisdiction **within the United States** .
20

21 *** **

22 [*Code Revisor to re-letter remaining definitions to maintain alphabetical order.*]
23

24 (AO No. 57-75; AO No. 78-177; AO No. 80-19(S); AO No. 81-149; AO No. 84-18; AO
25 No. 87-8; AO No. 87-126(S); AO No. 94-21(S), § 1, 4-12-94; AO No. 97-134(S-1), § 1,
26 12-9-97; AO No. 98-51(S), § 1, 5-4-99)
27

28 **Section 2.** Anchorage Municipal Code section 11.10.100 is hereby amended to read as
29 follows (*language indicating no amendment is included for context only and other subsections*
30 *not affected are not set out*):
31

32 **11.10.100 Hearings--Appeals.**
33

34 *** **

35 C. A person aggrieved by the denial, suspension, or revocation of a chauffeur's
36 license by the Transportation Inspector pursuant to subsection A of this section,
37 Section 11.10.110.A., or Section 11.10.085 may, within 15 days of the denial,
38 suspension, or revocation decision, and upon payment of the filing fee
39 required by Section 11.10.160, appeal that decision to the chairman of the
40 Commission or his or her designee. After a hearing conducted pursuant to
41 Chapter 3.60 of this Code, the chairman of the Commission or his or her
42 designee may authorize the conditional or unconditional issuance or

1 reinstatement of a denied, suspended, or revoked license upon an affirmative
2 showing at a hearing by the appellant that he or she has been rehabilitated and
3 has the ability to assume the responsibilities of a chauffeur, or that the
4 Transportation Inspector exceeded his or her authority, or that continued
5 suspension of or refusal to issue or reinstate the license would otherwise work a
6 substantial injustice.
7

8 ***

9 (AO No. 57-75; AO No. 78-177; AO No. 79-58; AO No. 80-19(S); AO No. 81-149; AO
10 No. 84-18; AO No. 85-87; AO No. 87-126(S); AO No. 88-21; AO No. 93-220, § 5, 2-22-
11 94; AO No. 98-51(S), § 1, 5-4-99)
12

13 **Section 3.** Anchorage Municipal Code section 11.10.110 is hereby amended to read as
14 follows (*language indicating no amendment is included for context only and other subsections*
15 *not affected are not set out*):
16

17 **11.10.110 Denial, suspension, or revocation of license or permit.**
18

- 19 A. The Transportation Inspector shall have the power to suspend or revoke a
20 chauffeur's license.
21
- 22 1. The Transportation Inspector shall suspend or revoke a chauffeur's
23 license if a chauffeur is convicted by a court of competent jurisdiction of
24 an offense set forth in Section 11.30.040.
25
 - 26 2. The Transportation Inspector may suspend or revoke a chauffeur's
27 license upon receipt of evidence sufficient to cause the Transportation
28 Inspector to conclude by a preponderance of the evidence (i.e., that it is
29 more likely than not) that a chauffeur is incapable of controlling a motor
30 vehicle safely. Such evidence may include violation of this title, Title 9 of
31 this code, and/or any relevant medical or psychological evidence
32 presented.
33
 - 34 3. The Transportation Inspector shall deny, suspend, or revoke the
35 chauffeur's license of any chauffeur failing or refusing to take a drug
36 and/or alcohol test as authorized by Section 11.10.085.
37
 - 38 4. The Transportation Inspector may suspend or revoke the chauffeur's
39 license of a chronic violator. As used in this section, "chronic violator"
40 means a chauffeur for which four citations have been issued during a
41 period of 12 consecutive months, regardless of whether each of the four
42 citations concerns the same or different provisions of this title or

1 regulations enacted thereunder. Citations which have been dismissed on
2 appeal do not count towards the sum of the four citations.

- 3
4 5. The Transportation Inspector shall suspend the chauffeur's license upon
5 receipt of a criminal charging document or verifiable information
6 disclosing the circumstances of an arrest [evidence or complaint]
7 sufficient to cause the Transportation Inspector to conclude by a
8 preponderance of the evidence (i.e., that it is more likely than not) the
9 chauffeur used a regulated vehicle, chauffeur license, or uniform to gain
10 physical proximity or the trust of the victim for criminally offensive sexual
11 behavior by the chauffeur. [If the Transportation Inspector's conclusion
12 is supported by the circumstances of an arrest,] The suspension shall be
13 immediate. The suspension shall continue until final judicial adjudication
14 of the arrest, unless the Transportation Inspector makes a written finding
15 that restrictions have been judicially imposed on the chauffeur for the
16 period until final judicial adjudication of the arrest is complete, the public
17 is best protected by the judicially imposed restrictions, and the public
18 trust is preserved. For purposes of this subsection, final adjudication of
19 the arrest includes a dismissal or withdrawal of the criminal charges, with
20 or without prejudice.

21
22 ***

23 B. Actions against permits.

- 24
25 1. The Commission shall suspend or revoke a permit upon finding after a
26 hearing that:

27 *** **

- 28 d. A preponderance of the evidence supports the conclusion that the
29 permittee has failed to use the permit in a manner and fashion
30 consistent with the public safety and welfare.

31 *** **

- 32 ii. A determination to revoke a permit under this subsection
33 shall be based upon the total number of such civil citations
34 and criminal convictions during a period of twelve (12)
35 consecutive months. A conclusion that the permittee has
36 failed to use the permit in a manner and fashion consistent
37 with the public safety and welfare may further be supported
38 or ameliorated by:

39 *** **

- 40 (3) Evidence of remedial actions taken by a permittee in
41 response to a chauffeur's civil or criminal citation,
42 suspension of chauffeur's license, or criminal

conviction. For purposes of this section, the term "remedial action" means action reasonably calculated to prevent recurrence of the same or similar violations by chauffeurs operating under the permittee's permit, and may include actions taken by the permittee either before or after notification of a chauffeur citation or conviction.

*** **

3. Upon issuance of a civil citation or a criminal conviction against a chauffeur, the Transportation Inspector shall determine whether the citation or conviction demonstrates use of the permit contrary to public safety and welfare and, if so, shall notify the permittee of such determination, at the time the permittee is provided notice of the citation or conviction.

*** **

F. A chauffeur must surrender his or her chauffeur's license to the Transportation Inspector within three (3) days of any suspension or revocation.

(AO No. 57-75; AO No. 78-177; AO No. 80-19(S); AO No. 81-149; AO No. 84-18; AO No. 85-87; AO No. 87-8; AO No. 87-126(S); AO No. 88-21; AO No. 92-50; AO No. 93-220, § 6, 5-23-94; AO No. 93-220, § 7, 2-22-94; AO No. 93-220, §§ 8, 9, 8-21-94; AO No. 94-93(S), § 2, 5-16-94; AO No. 98-51(S), § 1, 5-4-99)

Section 4. Anchorage Municipal Code section 11.30.040 is hereby amended to read as follows (*language indicating no amendment is included for context only and other subsections not affected are not set out*):

11.30.040 Issuance of chauffeur's license.

The Transportation Inspector shall issue a Municipal chauffeur's license to an applicant only if:

*** **

C. The applicant has not had his or her driver's license suspended or revoked within one year prior to the application date;

D. **The Transportation Inspector finds** ~~[There are]~~ **no charges pending against the applicant for criminally offensive sexual behavior in any jurisdiction included within the Transportation Inspector's review** [PENDING AGAINST THE APPLICANT HAS NOT HAD HIS OR HER CHAUFFEUR'S LICENSE REVOKED UNDER SECTION 11.10.120 WITHIN ONE YEAR PRIOR TO THE APPLICATION DATE];

- 1 E. The applicant has not had a felony or misdemeanor conviction entered by a
2 court of competent jurisdiction within five (5) years for [OF]:
3
4 1. Assniation, prostitution, solicitation for the purpose of prostitution,
5 offering to secure another for the purpose of prostitution, maintaining a
6 vehicle for the purpose of prostitution or accepting money from a
7 prostitute for any of the aforementioned purposes;
8
9 2. Sale, transportation, possession or use of any controlled substance as
10 defined in AS 11.71 or any similar law of another jurisdiction;
11
12 3. Any felony or misdemeanor which includes as an element the use or
13 threat of force upon a person;
14
15 4. Burglary, larceny, fraud, theft or embezzlement; [OR]
16
17 5. Any offense which pertains to sexual abuse of a minor or sexual
18 exploitation of a minor; or [AND]
19
20 6. Criminally offensive sexual behavior [in any jurisdiction]; and
21
22 F. Each representation made in the application is correct. Any false or misleading
23 statement or misrepresentation as to a material matter in an application shall be
24 grounds for denial of the application or revocation of the license.
25
26 G. The applicant is not required to register as a sex offender or child kidnapper:
27
28 1. in the State of Alaska pursuant to AS 12.63.010; or
29
30 2. in another jurisdiction pursuant to the laws of that jurisdiction, if
31 the elements of the underlying offense are substantially similar to
32 the State of Alaska offenses for which registration is required
33 pursuant to AS 12.63.010.
34

35 (AO No. 57-75; AO No. 78-177; AO No. 79-58; AO No. 80-19(S); AO No. 84-18; AO
36 No. 85-87; AO No. 87-8; AO No. 87-126(S); AO No. 98-51(S), § 3, 5-4-99; AO No.
37 2006-117, § 1, 8-29-06)
38

39 Section 5. The amendment to AMC section 11.30.040G is effective retroactively to
40 July 1, 2011.

41
42 ~~Section 5. The amendment to AMC section 11.30.040G is effective retroactively to July 1,~~

1 | 2011.]
2

3 | **Section 6[5].** This ordinance shall become effective immediately upon passage and approval
4 | by the Assembly.
5

6 | PASSED AND APPROVED by the Anchorage Assembly this 27th day of
7 | September, 2011.
8
9

10
11
12 | Debbie Osceander
13 | Chair

14 | ATTEST:

15
16
17 | Salma S. Suen
18 | Municipal Clerk
19



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 476-2011

Meeting Date: August 30, 2011

1 From: ASSEMBLY MEMBER TRAINI

2 Subject: AO 2011-91—AN ORDINANCE OF THE ANCHORAGE MUNICIPAL
3 ASSEMBLY AMENDING AMC TITLE 11 TO ADD PREVENTIVE AND
4 PROTECTIVE MEASURES IN RESPONSE TO CRIMINALLY OFFENSIVE
5 SEXUAL BEHAVIOR BY AN APPLICANT OR LICENSED CHAUFFEUR,
6 PRESCRIBING RULES AND CONDITIONS TO GUIDE ADMINISTRATIVE
7 ACTION, AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.
8

9 The purpose of this ordinance is to provide licensing and regulatory legislation that vests in
10 the Transportation Inspector the ability to suspend a municipally issued chauffeur's license
11 when the Transportation Inspector concludes by a preponderance of the evidence (i.e. that it
12 is more likely than not) the chauffeur used a municipally regulated vehicle, municipally issued
13 chauffeur's license, or uniform to gain physical proximity or the trust of the victim for sexual
14 assault by the municipally licensed chauffeur.
15

16 Municipally issued licenses, permits and regulation of taxicabs and vehicles for hire create a
17 public trust. When these are used to gain criminal sexual advantage, public trust in municipal
18 oversight and the regulated industry suffers. While criminal conviction requires proof beyond
19 a reasonable doubt, suspension of a municipal license pending final judicial outcome of the
20 arrest does not.
21

22 The regulatory regime for taxicabs and vehicles for hire includes a comprehensive hearing
23 and appeal process. This proposed ordinance utilizes the appellate process in place. The
24 proposed ordinance uses the same definition adopted by the Assembly for sexual offences in
25 the licensing of ice cream vendors; provides for immediate suspension in certain
26 circumstances involving sexual assault; and incorporates sexual offenses into the existing list
27 of felony and misdemeanor convictions reviewed by the Transportation Inspector in the
28 application process.
29

30 Additional language from the existing ordinance is provided for context, and is not proposed
31 for amendment.
32
33

34 Respectfully submitted:

35
36 Dick Traini - Assembly Member, Section 4
37
38
39



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 553-2011

Meeting Date: September 27, 2011

1 **From:** ASSEMBLY MEMBER HONEMAN
2 **Subject:** AO 2011-91(S-2)—AN ORDINANCE OF THE ANCHORAGE MUNICIPAL
3 ASSEMBLY AMENDING AMC TITLE 11 TO ADD PREVENTIVE AND
4 PROTECTIVE MEASURES IN RESPONSE TO CRIMINALLY OFFENSIVE
5 SEXUAL BEHAVIOR BY AN APPLICANT OR LICENSED CHAUFFEUR,
6 PRESCRIBING RULES AND CONDITIONS TO GUIDE ADMINISTRATIVE
7 ACTION, AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.
8

9 Action on this ordinance was postponed to allow additional opportunity for comment.
10 Changes drafted by the Department of Law, presented in the prior S-1 Version, have been
11 retained. Additional revisions have been captured from discussion with the Mayor's Public
12 Safety Advisory Commission on Wednesday evening, September 21, 2011.
13

14 The concern that "sexual offenses" could be read to include convictions from foreign
15 countries that are similar in name, but not in elements, has been addressed. Revisions also
16 recognize that the Transportation Inspector is not expected to complete an exhaustive and
17 difficult review of all jurisdictions outside the state concerning pending charges. When
18 pending charges come to the attention of the Transportation Inspector during the application
19 process or after the license is issued, the Transportation Inspector may act on them.
20

21 The ordinance has been clarified to maintain the intended focus of the Transportation
22 Inspector's additional authority to temporarily suspend the license: The additional
23 suspension authority is triggered by verification of criminal charges, for criminally offensive
24 sexual behavior (as defined), in which the chauffeur used the taxicab (regulated vehicle),
25 chauffeur's license, or chauffeur's uniform to gain physical proximity or the trust of the victim.
26 Verification may be in the form of a criminal charging document or other verifiable
27 information. Drawing from the recent case, reported in the newspaper prior to introduction of
28 this ordinance, the expectation is that upon verifying the arrest and circumstances as
29 reported, the Transportation Inspector would suspend the license unless and until the
30 Transportation Inspector makes a written finding that restrictions have been judicially
31 imposed and the public is best protected by the judicial restrictions, and public trust is
32 preserved. The ordinance recognizes the concept of "substantial injustice" suggested by
33 ACLU of Alaska. A suspension is appealable to the Chair of the Transportation Commission
34 under the same appeal process in place for denial, revocation, or other suspensions. This
35 allows for the chauffeur under suspension to seek relief.
36

37 To assist in addressing the confusion concerning the alleged ability of the industry to protect
38 the public and the industry in such circumstances through "self-regulation", the manager and
39 co-owner of Alaska Yellow Dispatch, LLC has provided the attached letter of support for this
40 additional regulation, supplementing materials previously included with AM 476-2011.
41

42 Respectfully submitted:
43 Paul Honeman - Assembly Member, Section 5

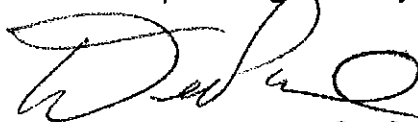
Setting the Record Straight

Recently local news agencies have published many news items and articles about accused and convicted cab drivers who drove taxicabs subscribing dispatch service from what is known as Alaska Yellow Cab. It is important to know that by far most taxicabs operating in Anchorage are subscribing to dispatch service from Alaska Yellow Dispatch LLC. The purpose of this letter is to help dispel any misunderstandings regarding the way the taxicab industry is managed and regulated in Anchorage.

Anchorage taxicab dispatch companies have no authority for approving or disapproving who is licensed and allowed to drive subscribing taxicabs. All taxicab drivers are independent contractors by state law and all Anchorage Yellow taxicabs are privately owned and operated by independent owners. Alaska Yellow Cab does not own any taxicabs, hire, employ or compensate taxicab drivers in any way, and furthermore only functions to dispatch trips to subscribing taxicabs in accordance with Municipality of Anchorage regulations.

Currently, when a driver holds a State of Alaska Department of Motor Vehicles license, possesses a Municipality of Anchorage Chauffer permit and has found a taxicab owner who is willing to contract him to drive their taxicab, the dispatch companies as per Municipal ordinance must allow him to drive. The Municipality of Anchorage solely decides whether or not a driver should be issued a chauffeurs license, and controls whether or not the license should be suspended or revoked.

Alaska Yellow Dispatch LLC is in favor of any regulation which improves both driver and passenger safety.



Dean Paul, Manager, Co-Owner
Alaska Yellow Dispatch, LLC

9-20-2011