

ORDINANCE #184

AN ORDINANCE OF THE CITY COUNCIL OF BETHEL, ALASKA AMENDING SECTIONS OF VEHICLE FOR HIRE CODIFIED ORDINANCE OF THE BETHEL CODE BOOK.

THE CITY COUNCIL OF BETHEL, ALASKA HEREBY ORDAINS THAT CHAPTERS 5.20.110 and 5.20.160 OF TITLE 5, VEHICLES FOR HIRE, OF THE BETHEL CODE OF ORDINANCES, AS CODIFIED, ARE AMENDED AS FOLLOWS:

Sections 5.20.110: Vehicle Permits Number - There shall be no limit on the number of vehicle permits issued for the operation of taxicabs, limousines or buses.

Sections 5.20.160: Fare Regulation - The City Council may regulate by ordinance the maximum fares for taxicabs, limousines and buses pursuant to this chapter. Before any of the regulations shall be effective, the City Council shall hold a public hearing. Notice of this hearing shall be given to all owners of vehicles affected by the regulations. Fares shall be at all times posted in a conspicuous place in the interior of the vehicle, and the fares shall be nondiscriminatory. Receipt for fare must be given upon request of the passenger. \*Ordinance effective January 1, 1989 upon passage.

PASSED AND APPROVED THIS 13<sup>th</sup> DAY OF <sup>December</sup> ~~NOVEMBER~~, 1988.

Clara Kelly  
Clara Kelly, Mayor

ATTEST:

Anna McGowan  
Anna McGowan, City Clerk

AMENDMENT #1  
TO  
ORDINANCE #184

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Whereas, the initiative election on the above question was held  
October 25, 1988, with 285 YES votes, and 235 NO votes; and

Whereas, a challenge to the initiative election has been filed with  
the Superior Court of the State of Alaska to nullify and  
void the special election of October 25, 1988; and

Whereas, the voters of Bethel, Alaska voted affirmatively to change  
the Vehicle for Hire Code, Sections 5.20.110 and Sections  
5.20.160 respectively.

NOW, THEREFORE BE IT RESOLVED, by the City Council of Bethel, Alaska,  
that this ordinance shall be effective, retroactive to January 1, 1989,  
if, and only if, the special election of October 25, 1988 be declared  
null and void by the Alaska Superior Court.

PASSED AND APPROVED THIS 13<sup>th</sup> DAY OF December, 1988.

Clara Kelly  
Clara Kelly, Mayor

ATTEST:

Anna McGowan  
Anna McGowan, City Clerk

HELLER, EHRMAN, WHITE & MCAULIFFE  
ATTORNEYS

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December 7, 1988

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BY FACSIMILE

Ms. Anna McGowan  
City Clerk, City of Bethel  
P.O. Box 388  
Bethel, Alaska 99559

CITY OF BETHEL  
RECEIVED  
DEC 9 1988  
BY AM

Re: Amendment to Ordinance 184

Dear Ms. McGowan:

Pursuant to your telephone request on December 6, I am writing this letter to explain the amendment to proposed Ordinance 184 suggested by this firm and other counsel.

In order to provide a clear explanation of our position, I should briefly restate the background to the situation. As you know, Bethel conducted an initiative election on October 25 on the issue of deregulating taxicabs. Pursuant to statutory requirements, the City Council canvassed the ballots after the election and determined that the electorate had voted to deregulate taxicabs.

After the City Council certified the results of the election, several voters filed suit challenging the notice procedures followed by the City in connection with the election. While we have advised the City that it may be able to defend the suit successfully, there is also a possibility that a court would agree with the challengers and would strike down the election.

I understand that members of the City Council introduced Ordinance 184 to ensure that the will of the voters as expressed in the October 25 election was carried out, even if the election was struck down as a result of the lawsuit. As you may recall, I discussed the possibility of enacting such an ordinance in my letter of November 3.

Our firm discussed the proposed ordinance with the City Manager and other City representatives, and we expressed concern regarding proposed Ordinance 184. This concern arises from the

Ms. Anna McGowan  
December 7, 1988  
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state policy in favor of the initiative process, as expressed through statutes and judicial decisions. While the City Council is ordinarily free to enact ordinances, state law favors the initiative process and places limits on a city council's authority in dealing with matters that are the subject of an initiative. Once an initiative has been certified to be placed on the ballot, a city council may enact the initiated matter before the election (AS 29.26.170), but if it does so the ordinance may not be changed for two years. AS 29.26.190. Once an initiated matter has been approved by the voters, a municipality may not repeal or substantively amend the initiated ordinance for a period of two years following the election. AS 29.26.190. In this manner, state law ensures that a matter that is the subject of an initiative will be in place for two years, whether it is approved by the voters or previously enacted by a city council.

State law does not discuss the steps that a city council may take after an initiated matter has been approved by the voters. Because the initiated matter becomes law for a period of two years upon certification of the ballots (subject to any effective date contained in the body of the ordinance), the City Council no longer has authority to act in the area that was the subject of the initiative. As I stated in my November 3 letter, the City Council could replace the initiative with its own ordinance only if it first invalidated the election. As long as the election has not been invalidated, the City Council's actions are without statutory authority and would, in effect, be a nullity. If the City Council enacts Ordinance 184 as introduced at the November 15 meeting without first invalidating the election, that ordinance may not be legally effective and would be subject to legal challenge.

If instead the City Council invalidates the election and then passes its own ordinance, it would arguably be "frustrating" the initiative process. By approving deregulation through the initiative process, the voters determined that taxicabs should be deregulated for a period of at least two years. By contrast, a city council ordinance is subject to amendment by Council members at any time. In this sense, the initiative process would be frustrated because the ordinance would be more subject to short-term political changes than it would be if the election was not invalidated. In addition, it is possible that the sponsors of the initiative would challenge the invalidation of the election. Finally, the City Council would be setting a precedent that would encourage challenges to elections on extremely technical grounds.

Based on our discussions with City representatives, we understand that the City Council's purpose is to give effect to the mandate as expressed in the October 25 election. With that

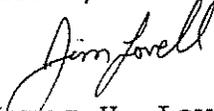
Ms. Anna McGowan  
December 7, 1988  
Page 3

purpose in mind, we believe the best course of action is to amend Ordinance 184 so that it will take effect only if the election is invalidated by judicial action. Because Ordinance 184 would not be immediately effective, there should be no challenge based on the Council's action being a "nullity." If the election is not invalidated, the ordinance approved by the voters will remain in effect for two years pursuant to state law governing initiative elections. If, however, the election is invalidated by judicial action, the City Council's ordinance would then become effective. While we have not found a precedent for this procedure, we think it more legally correct (and less subject to legal challenge) than passing Ordinance 184 in its original form without first invalidating the election.

I hope this letter adequately explains the reasoning behind the suggested amendment to Ordinance 184. Please feel free to call me if you have further questions.

Very truly yours,

HELLER, EHRLMAN, WHITE & MCAULIFFE

  
James H. Lovell

a:jhl\bethel.002



# CITY OF BETHEL

P.O. Box 388 • Bethel, Alaska 99559

## Memorandum

TO: Mr. Jim Lovell  
Heller, Ehrman, White & McAuliffe

DATE: November 23, 1988

FROM: ~~Anna McGowan~~, City Clerk

SUBJ: Amended Ord #184-Vehicle for Hire

Attached is a copy of the original and the amended copy of Ordinance 184 that was introduced at the last November 15th Council meeting, regarding the Vehicle for Hire Ordinance. The original Ordinance #184 was amended per the suggestion of Brooks Chandler with Hicks, Boyd, Chandler and Falconer.

Mr. Chinn had informed Mr. Chandler of the situation with the Council. Mr. Chandler than advised that since an ordinance was introduced already at the meeting, and a public hearing scheduled at the November 29th meeting, Mr. Chandler advised that we amend the ordinance with what you see underlined. But he said to check with you first. So, after Mr. Chinn and I drafted the amendment to the Ordinance #184, we are faxing it to you to double check on the wording.

Mr. Chinn specifically wanted that "retroactive to January 1, 1989" wording checked by you depending on when the hearing might be.

Please get back with us on this as soon as possible.

Thank you for your valued assistance.

\* Mr. Lovell called 11/28/88 -  
just add "...if, and only if..." The Special  
election of Oct. 25, '88 be declared  
null & void by the Al. Superior Court.

"PETITION FOR INITIATIVE ELECTION TO AMEND TITLE 5 CHAPTER 20 SECTIONS 5.20.110 AND 5.20.160 OF THE BETHEL MUNICIPAL CODE".

B-1

The undersigned registered voters residing at Bethel, Alaska, hereby petition the City Council of Bethel, Alaska, for an initiative election placing before the voters of Bethel, Alaska, the following question:

CITY OF BETHEL

AUG 9 1988

SHOULD TITLE 5 CHAPTER 20, SECTIONS 5.20.110 and 5.20.160, OF THE BETHEL CODE OF ORDINANCES BE AMENDED TO READ AS FOLLOWS:

BY AP

Section 5.20.110 Vehicle Permits Number: There shall be no limit on the number of vehicle permits issued for the operation of taxicabs, limousines or buses.

Section 5.20.160 Fare Regulation: The City Council may regulate by ordinance the maximum fares for taxicabs, limousines and buses pursuant to this chapter. Before any of the regulations shall be effective, the City Council shall hold a public hearing. Notice of this hearing shall be given to all owners of vehicles affected by the regulations. Fares shall be at all times posted in a conspicuous place in the interior of the vehicle, and the fares shall be nondiscriminatory. Receipt for fare must be given upon request of the passenger. \*THIS ORDINANCE TO BE EFFECTIVE JANUARY 1, 1989 UPON PASSAGE. (YES OR NO)

CURRENT BETHEL CODE SECTIONS 5.20.110 and 5.20.160 READ AS FOLLOWS:

5.20.110 Vehicle Permits Number: The Council shall have the power to determine from time to time the maximum number of taxicabs, limousines and buses required. The City Clerk, with the Council's approval, may issue taxicab, limousine and bus permits not to exceed the total number of permits permitted within the City. This number shall be set from time to time, as required, by resolution. Request for additional permits will be received as deemed necessary by the City Council. The City Council shall consider the public necessity and convenience and shall arrive at its decision after a public hearing and after notice to all taxicab permittees by the consideration of the following: a) demands for such service; b) the effect on traffic congestion; c) whether the safe use of streets for vehicular traffic will be impaired; d) any other facts which the City Council deems pertinent; e) Additionally, there shall be allowed two temporary taxicab permits which may be issued by the Council upon the same consideration as regular permits. The temporary permits shall be valid for a thirty-day period; f) there shall be two bus permits.

5.20.160 Fare Regulation: The City Council may regulate, by ordinance, the fares for taxicabs, limousines and buses pursuant to this chapter. Before any of the regulations shall be effective, the City Council shall hold a public hearing. Notice of this hearing shall be given to all owners of vehicles affected by the regulations. Fares shall be at all times posted in a conspicuous place in the interior of the vehicle, and the fares shall be nondiscriminatory. Receipt for fare must be given upon request of the passenger.

This Initiative, if passed, would eliminate the authority of the Bethel City Council to limit the number of cab, limousine, and bus permits. The Initiative, if passed, would also eliminate the ability of the Bethel City Council to regulate the minimum fare that may be charged by any taxi cab, limousine, or bus within the City of Bethel. Instead, the City Council could only regulate the maximum fare for taxi cabs, limousines, and buses.

Signatures of registered voters of Bethel, Alaska, must be obtained within 90 days from July 29, 88, 1988.

I, Marilyn A. Grace, do hereby swear that I personally circulated this petition; that the signatures were signed in my presence; and that I believe the signatures to be those of the persons whose names they claim they be.

Marilyn A. Grace 8-8-88  
 Sponsor Signature Date

| Printed Name                  | Signature          | Residence Address                    | Date          |
|-------------------------------|--------------------|--------------------------------------|---------------|
| <u>M. Patricia Hunt-Jones</u> | <u>[Signature]</u> | <u>Gettysburg Road P.O. Box 1-34</u> | <u>8-1-88</u> |
| <u>[Signature]</u>            | <u>[Signature]</u> | <u>Box 55</u>                        | <u>8/1/88</u> |