

1 **IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**
2 **FIRST JUDICIAL DISTRICT AT SITKA**

3 **BARANOF TAXI & TOURS, LLC, and)**
4 **THADDEUS and MELISSA A. LARA,)**
 Plaintiffs,)
5 **v.)**
)
6 **ROBERT M. BATY,)**
7 **)**
 Defendant.)
8 _____)

Filed in the Trial Courts
State of Alaska First District
Sitka

SEP 20 2024

Clerk of the Trial Courts
By *ER* Deputy

Case No. 1SI-23-00045 CI

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10 **ORDER ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND**
11 **DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT**

12 **I. Introduction**

13 Baranof Taxi & Tours, LLC and Thaddeus and Melissa A. Lara (“Plaintiffs”) filed for a Motion
14 for Partial Summary Judgment, asking the Court to declare that the Chief of Police, Robert M.
15 Baty’s (“Defendant”) interpretation of Sitka General Code 11.56.070D (“SGC 11.56.070D” or
16 “the taxicab code”) is unenforceable.

17 In response, the Defendant filed an Opposition and Cross Motion for Summary Judgment
18 (“Cross Motion”), arguing that the Defendant’s interpretation of the law is both reasonable and
19 entitled to deference from the Court. The Defendant also filed a Motion for Summary Judgment
20 on the grounds that the Defendant is immune from liability under an official immunity theory
21 (“Immunity Motion”).

22 **II. Plaintiff’s Motion for Partial Summary Judgment and Defendant’s Cross-**
23 **Motion: Is the Defendant’s interpretation of SGC 11.56.070D permissible?**

24 The Plaintiff is moving for summary judgment on the issue that Defendant’s interpretation of
25 the taxicab code is impermissible. In particular, the Plaintiff asks the Court to declare that the

Order on Plaintiff’s Motion for Partial Summary Judgment and Defendant’s Cross-Motion for Summary Judgment

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D

1 Defendant inaccurately interpreted SGC 11.56.070D when he declared that the code requires the
2 Plaintiffs to: (1) stop conducting tours; (2) remove any reference to tour services on the insignia
3 of any vehicle providing taxi services; (3) use separate vehicles, besides a vehicle used as a taxicab,
4 if it ever provides tours; or (4) remove and/or cover the taxicab designations before using the motor
5 vehicle for tours.¹

6 At the crux of this ordinance interpretation issue is Defendant's interpretation of the phrase
7 "satellite business operations."² The Defendant included tour businesses within the meaning of
8 "satellite business operations", even though the phrase exists within a portion of the Sitka General
9 Code that deals exclusively with taxi businesses. The Plaintiffs argue that this interpretation of
10 "satellite business operations" is impermissible.

11
12 **A. Independent Judgment Standard of Review Applies**

13 Before addressing whether the Defendant's interpretation is permissible, the Court must
14 determine the appropriate standard of review to apply in this case.³ There are two articulated
15 standards under which a Court may review agency interpretation of statutory terms: reasonable
16 basis and independent judgment.⁴

17 The reasonable basis standard defers to the agency interpretation so long as it is reasonable.⁵
18 Reasonable means that "the agency decision is supported by facts and has a reasonable basis in
19 law, even if [the court] may not agree with the agency's ultimate determination."⁶ The reasonable
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22 ¹ Plaintiff's Motion for Partial Summary Judgment, *Baranof Taxi & Tours, LLC v. Robert M. Baty*, Case No. 1SI-23-00045 CI at 6 [hereinafter Plaintiff's Motion for PSJ].

23 ² See SGC 11.56.070D.

24 ³ The Plaintiffs did not provide a standard of review that the Court should apply. See Plaintiff's Motion for PSJ at 6 (merely stating that "ordinary principles of statutory interpretation apply to ordinances.") The Defendant argued that reasonable basis should apply. See Opposition to Motion for Partial Summary Judgment and Cross Motion for Summary Judgment, *Baty*, Case No. 1SI-23-00045CI at 11 [hereinafter Opp. to Motion for PSJ].

25 ⁴ *Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co.*, 746 P.2d 896, 902 (Alaska 1987).

⁵ *Tesoro*, 746 P.2d at 903.

⁶ *Id.*

1 basis standard applies generally in two circumstances: “(1) where the agency is making law by
2 creating standards to be used in evaluating the case before it and future cases... [or] (2) when a
3 case requires resolution of policy questions which lie within the agency's area of expertise and are
4 inseparable from the facts underlying the agency's decision.”⁷

5 The independent judgment standard does not defer to the agency interpretation. Instead, it
6 enables the court to make its own interpretation of the relevant statute (or in this case, ordinance).
7 The independent judgment standard applies when “the knowledge and experience of the agency is
8 of little guidance to the court *or* where the case concerns ‘statutory interpretation or other analysis
9 of legal relationships about which the courts have specialized knowledge and experience.’”⁸

10 Here, the Court will apply the independent judgment standard, because this is a case that is
11 purely about statutory interpretation, an area of expertise for the court, not the police department.⁹
12 The determination of whether “satellite business operations” should include tour businesses or
13 refer exclusively to other taxi businesses is not an issue with which the chief of police has any
14 specialized knowledge. It is a question of the city assembly’s legislative intent when they wrote
15 the taxicab code, and courts are the branch of government vested with authority to determine
16 legislative intent.
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18 The reasonable basis standard would be inappropriate to apply in this case, because it typically
19 applies in cases where a court is reviewing agency regulation or adjudications.¹⁰ That is not the
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22 ⁷ *Id.* at 902, citing *Earth Resources v. State, Department of Revenue*, 665 P.2d 960, 964 (Alaska 1983).

23 ⁸ *Tesoro*, 746 P.2d at 903, citing *Earth Resources*, 665 P.2d at 965.

24 ⁹ See *State, Dept. Health & Soc. Serv., Div. Pub. Assistance v. Gross*, 347 P.3d 116, 122 (Alaska 2015) (finding that
25 answering the question of “whether the Department [of Health and Services] may, consistent with the interim
assistance statute, definitionally exclude persons who are eligible for SSI from eligibility for state interim assistance
is a question of legislative intent, which is “within the traditional province of judicial review”).

¹⁰ See e.g., *Tesoro*, 746 P.2d (concerning the regulatory authority of the Alaska Public Utilities Commission to
regulate the transportation of crude and refined oil), *Davis Wright Tremaine LLP v. State, Dept. Admin.*, 324 P.3d
293 (Alaska 2014) (applying reasonable basis to an agency’s interpretation of its own regulation).

1 case here. The Defendant’s interpretation of the law is not an official regulation nor does the
2 Defendant’s interpretation of the law arise out of a formal adjudication process between Baranof
3 Taxi and the police department.

4 As the chief of police, the Defendant lacks the power to make regulations, and yet his
5 interpretation of the taxicab code has broad, sweeping impacts on all taxi/tour businesses in town.
6 In addition, as both parties point out, the Defendant arrived at this new interpretation of the law
7 after working with the municipal attorney and municipal administrator to “revamp[] the code that
8 regulates... taxicabs, tour services, [etc.]”¹¹ In other words, the Defendant’s interpretation of the
9 taxicab code is a separation of powers issue. The chief of police is attempting to step into the shoes
10 of the legislature when he simply does not have the power to do so. All of these facts together
11 demand that this Court apply the independent judgment standard.

12
13 **B. The Defendant’s Interpretation of the Taxicab Code is Impermissible**

14 Applying the independent judgment standard, it is up to the Court to determine whether the
15 SGC 11.56.070D prohibits taxi vehicles from advertising their taxi and tour services
16 simultaneously. In construing the meaning of a statute, the Court looks to the meaning of the
17 language, the legislative history, and the purpose of the statute in question.¹² “The goal of statutory
18 construction is to give effect to the legislature's intent, with due regard for the meaning the statutory
19 language conveys to others.”¹³ In interpreting statutes, Alaska courts “have adopted a sliding scale
20 approach,” under which “[t]he plainer the statutory language is, the more convincing the evidence
21 of contrary legislative purpose or intent must be.”¹⁴

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24 ¹¹ Plaintiff’s Motion for PSJ at 10; Opp. to Motion for PSJ, Exh. G, pg. 1.

25 ¹² *Gov’t Employees Ins. Co. v. Graham–Gonzalez*, 107 P.3d 279, 284 (Alaska 2005).

¹³ *Tesoro*, 746 P.2d at 905.

¹⁴ *City of Kenai v. Friends of Recreation Center, Inc.*, 129 P.3d 452, 459 (Alaska 2006), citing *Graham–Gonzalez*, 107 P.3d at 284.

1 The Court finds that the plain meaning, legislative history, and the purpose of the taxicab code
2 all indicate that the phrase “satellite business operations” was not intended to refer to tour
3 businesses. The taxicab code was designed explicitly to regulate only taxicabs, not tours.¹⁵ A prior
4 version of the code regulated all commercial vehicles, but the Sitka City Assembly, later deciding
5 that the code was unwieldy, narrowed the scope of 11.56 to taxicabs exclusively.¹⁶ This focus on
6 taxicab regulation in Chapter 11.56 suggests that the chief of police cannot regulate tour businesses
7 under 11.56.

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9 Second, the taxicab code states that “satellite business operations” must “extend from [the
10 operator’s] license.”¹⁷ As the Plaintiff points out, an operator’s license is only required for taxi
11 businesses, not tours, therefore it wouldn’t make logical sense for a tour business to “extend from”
12 the taxi cab operator’s license. The only logical conclusion is that “satellite business operations”
13 refers exclusively to other *taxi* business operations.¹⁸

14 Finally, the “satellite business operations” language is found under the “Insurance”
15 subheading. While the Court agrees with the Defendant that “statutory headings are not law”¹⁹ and
16 headings should not be used to limit the meaning of the underlying text, headings do play an
17 important role in organizing the law, helping laypeople navigate an ordinance when they want to
18 check their compliance with the law. It would be unreasonable to expect a tour company to know
19 to look under the “Insurance” section of the taxicab code for a provision that regulates tour
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22 ¹⁵ Purpose, Ordinance No. 85-679, City & Borough of Sitka (“The present chapter, 11.56, lumps all for hire vehicles
23 to include rental cars, taxicabs, and tour buses in the same chapter and is overly general in nature. This ordinance is
intended to pertain only to taxicabs and delete regulation of rental vehicles and buses from Chapter 11.56.”)

24 ¹⁶ *Id.*

25 ¹⁷ SGC 11.56.070D.

¹⁸ Plaintiff’s Reply Memorandum in Support of Motion for Partial Summary Judgment and in Opposition to
Defendant’s Cross-Motion for Summary Judgment, *Baty*, Case No. 1SI-23-00045 CI at 11-15 [hereinafter Plaintiff’s
Reply].

¹⁹ Opp. to Motion for PSJ at 14.

1 companies. In this way, the subheading “Insurance” strongly suggests that the purpose of
2 11.56.070D is to ensure that all taxicabs in Sitka, including taxicabs that are subleased as “satellite
3 business operations”, are fully insured. Interpreting 11.56.070D to regulate tour businesses falls
4 far afield of this legislative purpose.

5 Even if the reasonable basis standard applied here, the Court holds that the Defendant’s
6 interpretation of the law would be unreasonable for the reasons listed above.

7 Thus, the Court holds SGC 11.56.070D does not require the Plaintiff to (1) stop conducting
8 tours; (2) remove any reference to tour services on the insignia of any vehicle providing taxi
9 services; (3) use separate vehicles, besides a vehicle used as a taxicab, if it ever provides tours; or
10 (4) remove and/or cover the taxicab designations before using the motor vehicle for tours.

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12 **III. Defendant’s Motion for Summary Judgment Regarding Official Immunity**
13 **(“Immunity Motion”)**

14 The Defendant is moving for summary judgment on the issue of official immunity. Official
15 immunity is a catch-all term for absolute or qualified immunity that public officials may receive
16 for discretionary actions they perform within the scope of their authority.

17 **A. Official Immunity Legal Standards**

18 The affirmative defense of official immunity is derived from both case law and statute. *Aspen*
19 *Exploration Corp. v. Sheffield* establishes the test for the official immunity defense in Alaska case
20 law.²⁰ In *Aspen*, the Court held that “some form of immunity for public officials is necessary to
21 insure that the government continues to function.”²¹ AS 09.65.070(d)(2) provides qualified
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24 ²⁰ 739 P.2d 150 (Alaska 1987).

25 ²¹ *Aspen*, 739 P.2d at 158. *Aspen* contemplates both absolute and qualified immunity. Absolute immunity protects officials from suit, whereas qualified immunity protects officials from certain claims, usually claims for common law torts or claims seeking damages. Defendant is only advocating for the application of qualified immunity, so the Court will not discuss absolute immunity under the *Aspen* test. See Opp. to Motion for PSJ at 18.

1 immunity for municipalities and their agents, officers and employees, by barring actions for
2 damages if “the claim [...] is based upon the exercise or performance or the failure to exercise or
3 perform a discretionary function or duty by a municipality or its agents, officers, or employees,
4 whether or not the discretion involved is abused [...]”.²²

5 Both *Aspen* and AS 09.65.070(d)(2) employ the same analysis for determining the existence
6 and applicability of qualified immunity.²³ The first step is to determine whether or not the doctrine
7 of qualified immunity applies to the defendant’s alleged conduct. This requires analyzing whether
8 the official was acting (1) within the scope of his authority and (2) whether those actions were
9 discretionary in nature. Discretionary actions are those “requiring personal deliberation, decision
10 and judgment”.²⁴ In other words, actions that are more than merely ministerial.²⁵

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12 The next step is to ask whether the official acted corruptly, maliciously, or in bad faith.²⁶ If it
13 is found that the official acted corruptly, maliciously, or in bad faith, then qualified immunity will
14 not attach. While absence or existence of malice and corruption are generally questions of fact for
15 the jury, the *Aspen* court clarifies that summary judgment regarding qualified immunity can still
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20 ²² AS Sec. 09.65.070(d). Note that under this statute, “a municipality’s immunity under this statute is different from,
21 and narrower than, a municipal employee’s immunity under the same statute and in the same circumstances.”
22 Municipal employees “enjoy personal or ‘official’ immunity for any action involving ‘deliberation’ and
23 ‘judgment,’” but municipalities only receive immunity for ‘planning’, as opposed to ‘operational’, decisions. *Lane v.*
24 *City of Juneau*, 421 P.3d 83, 88 (Alaska 2018). In the case before this Court, the City is not a defendant, therefore
25 only “official” immunity (using the personal deliberation test) as it applies to Chief Baty is relevant. The plaintiff
argues that the “operational” v. “planning” test should apply because the Sitka Police Department and City &
Borough of Sitka were involved in the taxicab code interpretation process, but this argument fails because neither of
those entities are parties to the suit. See Plaintiff’s Reply at 19.

²³ *Alpine Industries, Inc. v. Feyk*, 22 P.3d 445 (Alaska 2001).

²⁴ *Aspen*, 739 P.2d at 155; *Lane*, 421 P.3d at 88 (applying statutory analysis).

²⁵ *Aspen*, 739 P.2d at 155.

²⁶ *Feyk*, 22 P.3d at 447-48. *Aspen*, 739 P.2d at 160 (in qualified immunity cases, “inquiry into motive becomes relevant”).

1 be granted if there are uncontroverted affidavits and/or depositions concerning malice and/or
2 corruption.²⁷

3 **B. Defendant’s Motion for Summary Judgment Regarding Qualified Immunity is**
4 **Denied**

5 In the State of Alaska, the bar for withstanding a motion for summary judgment is low.²⁸
6 “Summary judgment is appropriate only when no reasonable person could discern a genuine
7 factual dispute on a material issue when reading the record in the light most favorable to the non-
8 moving party and making all reasonable inferences in its favor.”²⁹

9 In a summary judgment motion for official immunity, the moving party bears the burden of
10 showing that (1) the official was acting within the scope of their authority and (2) their actions
11 were discretionary. To survive a summary judgment motion, the nonmoving party must present
12 “at least some [admissible] objective evidence” capable of supporting an inference of malice,
13 corruption, or bad faith.³⁰ A mere subjective belief that the official was acting in bad faith is
14 insufficient to survive a summary judgment motion for qualified immunity because such a belief
15 does not raise disputed questions of material fact.³¹ Allegations made in a complaint are
16 unsubstantiated and therefore cannot be the basis for a genuine issue of material fact, but
17 allegations made in an affidavits, depositions, admissions, and other similar material can be.³²

18 Here, the Defendant met his burden. The Defendant was acting within the scope of his authority
19 when he informed the plaintiffs of his intention to and subsequently did enforce SGC 11.56.070D
20 according to his new interpretation, because the chief of police is vested with the authority to (1)

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22 ²⁷ *Aspen*, 739 P.2d at 160, n.24.

23 ²⁸ *Lum*, 426 P.3d at 1109 (denying summary judgment to the police officer because the plaintiffs provided sufficient
24 evidence of malice, namely that officer might have been motivated to act with excessive force because he knew and
25 disliked the plaintiff and not because there was an apparent emergency).

²⁹ *Christensen v. Alaska Sales & Serv., Inc.*, 335 P.3d 514, 520 (Alaska 2014).

³⁰ *Lum*, 426 P.3d at 1109; *Hill v. Giani*, 296 P.3d 14, 25 (Alaska 2013).

³¹ *Prentzel v. State, Dept. Pub. Safety*, 169 P.3d 573, 585 (Alaska 2007) (finding that plaintiff’s belief that the
defendant troopers “enjoyed arresting him” was insufficient to show bad faith).

³² *Smith v. Stafford*, 189 P.3d 1065, 1074 (Alaska 2008).

1 approve taxicab drivers and operators, (2) inspect taxicab vehicles, (3) approve taxicab insignia,
2 and (4) enforce the taxicab code.³³ Whether the Defendant’s interpretation of the taxicab code was
3 an abuse of his discretion is irrelevant to the question of whether he was acting within the scope
4 of his authority.³⁴ As stated in *Aspen*, “an abuse of authority is not synonymous with a lack of
5 authority”.³⁵ Moreover, the Defendant’s acts (i.e., dispersing and enforcing a new interpretation of
6 the taxicab code) were discretionary because interpretation and application of the law is textbook
7 example of a non-ministerial act requiring personal deliberation and judgment.³⁶

8 Whether the qualified immunity issue can be decided at summary judgment hangs on whether
9 there is a genuine issue of material fact concerning malice, corruption, or bad faith. The Plaintiff
10 bears the burden of showing that there is “at least some objective evidence” of bad faith. In their
11 briefing, the Plaintiff presents a narrative that the Defendant was harassing Baranof Taxi & Tours
12 for months before the Defendant introduced his new interpretation of the taxicab code, in order to
13 suggest that the Defendant’s taxicab code interpretation was motivated by a bad faith dislike for
14 the Plaintiff.³⁷ Plaintiff Thaddeus Lara submitted an affidavit that alleges facts related to this
15 supposed harassment. Some of the relevant facts include *inter alia*: (1) that the Plaintiffs wrote a
16 letter to the Defendant, all assembly members, and to the Sitka Sentinel in April 2021 and started
17 experiencing harassment from the police department after that time, (2) that the Defendant delayed
18 the approval of new drivers for the Plaintiff’s taxi business in May and June 2022, (3) that the

21 ³³ Opp. to Motion for PSJ at 19; see also SGC 11.56.020, 11.56.030, 11.56.040, 11.56.060, 11.56.100, 11.56.230
(giving police chief discretion in matters concerning taxi rates, taxi driver and operator licenses, taxi inspections,
and taxi insignia).

22 ³⁴ *Aspen*, 739 P.2d at 155, n.11 (noting that the governor’s allegedly defamatory remarks were still within the scope
of his authority because “an abuse of authority is not synonymous with a lack of authority”).

23 ³⁵ *Id.*

24 ³⁶ *Aspen*, 739 P.2d at 153 (“While a public employee ... may not be held liable for acts done in line of official duty
involving a mistake in judgment or discretion, or because of erroneous interpretation and application of law, it is
well established that the immunity from suit *does not apply to the negligent performance of acts not involving such*
25 *discretionary judgment-policy decisions.*”)

³⁷ In one footnote, the plaintiffs write that “Baty would not be entitled to immunity... if he imposed the requirements
in order to harass or punish the plaintiffs.” See Plaintiff’s Reply at 21.

1 Defendant changed the procedure for taxi vehicle inspections, thus resulting in the Plaintiff's
2 taxicabs being out of commission for a month, (4) that the Defendant required the Plaintiff to get
3 fingerprinted even though that was "unprecedented in [the Plaintiff's] experience" and even
4 though the Plaintiff does not drive the taxis himself, (5) that one of the Defendant's officers "pulled
5 our taxis off the road and told our drivers they will be arrested if they drive" without providing the
6 Plaintiff with notice.³⁸ The Defendant addressed each of these alleged facts in his own affidavit,
7 explaining why the alleged facts are either untrue or are not evidence of harassment.³⁹ Still,
8 whether these facts amount to a pattern of harassment and bad faith is a question for the jury.⁴⁰
9 Therefore, the Court DENIES the Defendant's Immunity Motion, so that the jury can decide
10 whether the Defendant acted in good faith and is therefore entitled to immunity.

11 **C. Consequences of Official Immunity in this Case**

12 In their complaint, Baranof Taxi seeks both monetary damages and declaratory and injunctive
13 relief. According to their amended complaint, Baranof Taxi's first cause of action is for violation
14 of due process and their second cause of action is for declarative and injunctive relief concerning
15 SGC 11.56.070.⁴¹ If a jury finds that the Defendant is entitled to qualified immunity, the first cause
16 of action would be barred under AS 09.65.070(d) because the first cause of action seeks monetary
17 damages (in addition injunctive relief and attorney's fees). The second cause of action would not
18 be barred by a qualified immunity defense (under *Aspen* or AS 09.65.070(d)) because the second
19 cause of action does not seek monetary damages and does not raise common law tort claims.⁴²

21 ³⁸ Affidavit of Thaddeus Lara in Support of Plaintiff's Supplemental Brief on Qualified Immunity, *Baty*, Case No.
22 1SI-23-00045 CI.

23 ³⁹ See Affidavit of Robert Baty, *Baty*, Case No. 1SI-23-00045 CI.

24 ⁴⁰ See *Crawford v. Kemp*, 139 P.3d 1249, 1258-59 (Alaska 2006) (denying summary judgment because there was a
25 genuine issue of material fact as to whether the officer believed he had probable cause or whether he was just
annoyed with the plaintiff when he arrested him).

26 ⁴¹ First Amended Complaint for Constitutional Violations and Injunctive and Declaratory Relief, *Baranof Taxi &*
Tours, LLC v. Robert M. Baty, Case No. 1SI-23-00045 CI at 4-5.

27 ⁴² *Aspen* and its progeny shield public officials from liability for common tort law claims. *Aspen*, 739 P.2d at 158,
n.19 ("qualified immunity is said to extend 'only to immunity from damages not from suit.'"). AS 09.65.070(d)(2),
on the other hand, bars certain claims for monetary damages. See AS Sec. 09.65.070(d)(2).

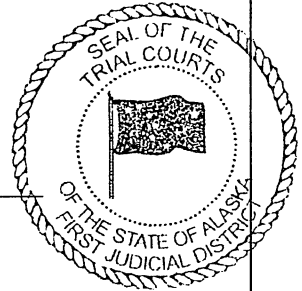
1 **IV. Conclusion**

2 The Court holds that the Defendant’s interpretation of the taxicab code is a violation of the
3 separation of powers and is therefore unenforceable. The Court hereby GRANTS the Plaintiff’s
4 Motion for Partial Summary Judgment and DENIES the Defendant’s Cross Motion for Summary
5 Judgment. The Court holds that SGC 11.56.070D does not require the Plaintiff to (1) stop
6 conducting tours; (2) remove any reference to tour services on the insignia of any vehicle providing
7 taxi services; (3) use separate vehicles, besides a vehicle used as a taxicab, if it ever provides tours;
8 or (4) remove and/or cover the taxicab designations before using the motor vehicle for tours. This
9 Order does not in any way prohibit the City Assembly from revising the Sitka General Code to
10 include any of the above requirements.

11 Second, the Court DENIES the Defendant’s Immunity Motion, because the question of
12 whether the Defendant acted in bad faith and is thus not entitled to qualified immunity, is a genuine
13 issue of material fact for the jury.

14 Dated at Sitka, Alaska this 19th day of September, 2024.

15 *Amanda L. Browning*
16 Amanda L. Browning
17 Superior Court Judge



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19
20
21 CERTIFICATION
22 I certify that on 20 day of 9/24
23 a true copy of this do was placed
24 in attorney's box/mailed to the following:
J. Davis, N. Ferenti, A. Strickland,
M. Gatti
25 By *[Signature]*