Michael R. Gatti
Allison G. Strickland
JERMAIN, DUNNAGAN & OWENS
111 W. 16th Ave., Suite 203
Anchorage, AK 99501
Phone: (907) 563-8844
Fax: (907) 563-7322
Email: mgatti@jdolaw.com
astrickland@jdolaw.com

Attorneys for Defendant

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT SITKA

BARANOF TAXI & TOURS, LLC, and THADDEUS AND MELISSA A. LARA, Plaintiffs, vs. ROBERT M. BATY, Defendant.	Case No. 1SI-23-00045CI

MOTION FOR RECONSIDERATION

Defendant, Robert M. Baty, through counsel, Jermain, Dunnagan & Owens, P.C., respectfully requests that the Court reconsider its September 19, 2024, Order on Summary Judgment pursuant to Alaska Rule of Civil Procedure 77(k)(1)(i)-(iii). The Defendant respectfully proposes that the Court has misconceived the law of municipal governance, failed to apply the correct standard of review, and has misconceived material facts with

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
111 W. 16th Ave., SUITE 203
ANCHORAGE, ALASKA 99501
(907) 563-8844
FAX (907) 563-7322

respect to its holdings.[1]

The Court rejected Chief Baty's interpretation of Sitka code at least partially because it was "a violation of the separation of powers and is therefore unenforceable."[2] This "separation of powers" theory overlooks and misapplies the law regarding municipal governments, how they are organized, and what level of deference is afforded by courts when a municipality interprets its own ordinance.

Municipal governments in Alaska are not creatures of Constitutional Law. Instead, they are created by the Alaska Legislature in Title 29.[3] The different positions within a borough government, to include the assembly, the mayor, and the different officials, and their associated powers, are all defined by Alaska statute and the Borough's Charter and ordinances.[4] Boroughs do not have three, or even two, "coequal" branches of government such that the constitutional doctrine of separation of powers would apply.[5] The "separation

[1] Alaska R. Civ. P. 77(k) Reconsideration is appropriate when the Court has "overlooked, misapplied or failed to consider a statute, decision or principle directly controlling" or when the court has "overlooked or misconceived some material fact or proposition of law."

[2] Order, at 4, 11.

[3] *See* Alaska Const. art. X, §3 ("The legislature shall classify boroughs and prescribed their powers and functions. Methods by which boroughs may be organized . . . shall be prescribed by law."); AS 29.03.010 *et seq*.

[4] *See, e.g.*, AS 29.20.250 (defining general powers and duties of a mayor); AS 29.20.500 (defining general powers of a city manager); City & Borough of Sitka ("CBS") Charter §4.04 (defining general powers of the Sitka City administrator), hereinafter "Charter."

[5] There are, in fact, no coequal "branches" of a municipal government. Instead, all of the Borough is a single entity, similar to a corporation, and is in fact a political subdivision incorporated under the laws of the state. AS 29.71.800(14). Most often a borough has an Assembly (Board), a Mayor (CEO), and an Administrator (Chief of Staff). Sometimes, the Assembly acts in a legislative capacity, such as when it passes ordinances. *See* AS 29.20.050. Sometimes the Assembly acts in an administrative capacity, such as when it appoints the Administrator, or reviews and approves subdivisions proposed by the planning commission. *See* Sitka Charter §4.01; SGC 21.10.015. Sometimes the Assembly acts in a quasi-judicial capacity, such as when it adjudicates appeals from different boards or commissions. *See, e.g.*, Sitka Charter §2.13(e); SGO §6.05.090 (allowing an appeal "to the assembly"); 22.10.040 (granting quasi-judicial power to Assembly to hear appeals from the planning commission); 22.10.230 (same). In some municipalities, the

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
111 W. 16th Ave., Suite 203
Anchorage, Alaska 99501
(907) 563-8844
Fax (907) 563-7322

of powers" theory simply does not apply to municipal governments across Alaska.

As an overarching fundamental principle of municipal law, local governmental powers are to be broadly and liberally construed.[6] The Chief of Police is appointed by the Municipal Administrator, who is appointed by, and "serve[s] at the pleasure of" the assembly.[7] Both the Police Chief and Administrator work *for the Assembly*.

A fundamental part of both the Administrator and Police Chief's duties and powers necessarily requires interpretation and application of municipal code, including discussing those interpretations with the assembly and City Attorney prior to enforcement. The Police Chief's interpretation of the code **is** the CBS's interpretation of its own code. The Police Chief is an administrative "Policy Maker" that works for the Assembly.

Municipalities are vested with broad discretion *and given judicial deference to interpret their own ordinances*.[8] Accompanying this deference is the rule that municipal actions are presumed valid with the burden on the challenger to establish otherwise.[9] And most importantly, when reviewing an agency's (here municipality's) interpretation *of its*

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
111 W. 16th Ave., SUITE 203
ANCHORAGE, ALASKA 99501
(907) 563-8844
FAX (907) 563-7322

mayor is both the executive *and* a member of assembly and able to vote on ordinances and resolutions. AS 29.20.250(b) ("The mayor of a second class city, as a council member, may vote on all matters."); Sitka Charter §2.06 ("The mayor shall be a member of the assembly with all the powers and duties of that office.").

[6] AS 29.35.400; *Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1120–21 (Alaska 1978) (rejecting "Dillon's Rule, which directed that municipal corporations only had those powers explicitly granted in statute).

[7] Sitka Charter. at §4.01.

[8] *Treacy v. Municipality of Anchorage*, 91 P.3d 252, 260 (Alaska 2004); *Haggblom v. City of Dillingham*, 191 P.3d 991, 997 (Alaska 2008); *Kentopp v. Anchorage*, 652 P.2d 453, 462 (Alaska 1982) (judicial deference given to a municipal reapportionment plan).

[9] *Treacy*, 91 P.3d at 260; *Hilbers v. Anchorage*, 611 P.2d 31, 35 (Alaska 1980).

own regulation, the reasonable basis standard applies.[10]

Further, the Supreme Court has stated that reasonable basis applies *either* when agency expertise is implicated, *or* when "the determination of fundamental policies within the scope of the agency's statutory functions" are implicated.[11] This Court wholly ignored the second part of the standard, which makes the reasonable basis standard applicable when fundamental policies are implicated. The CBS's power to interpret and enforce its own ordinance is a question of fundamental policy. The reasonable basis standard is applicable here, and also applies the justification for why Boroughs are given deference when they interpret their own ordinances.[12]

Even applying the independent judgment standard, the Court misconceived material facts and propositions of law when it determined that "satellite business operations" refers "exclusively to other *taxi* business operations"[13] The Court's reasoning, however, incorrectly cites the text of the law, and misconceives the purpose of the section. The actual text of the ordinance reads that the "licensed operator **may not sublet or permit** satellite business operations to extend from his license."[14] The plain text of this subsection

[10] *Pasternak v. State, Com. Fisheries Entry Comm'n*, 166 P.3d 904, 907 (Alaska 2007) ("When reviewing an agency's interpretation of its own regulation, we apply the reasonable basis standard); *Simpson v. State, Com. Fisheries Entry Comm'n*, 101 P.3d 605, 609 (Alaska 2004) ("We review an agency's interpretation of its own regulation under the reasonable basis standard, deferring to the agency unless the interpretation is 'plainly erroneous and inconsistent with the regulation.' ").

[11] *Grizwold v. Homer*, Case No. S-18608, at *7 (Alaska Sep. 20, 2024); *Marathon Oil Co. v. State, Dep't of Nat. Res.*, 254 P.3d 1078, 1082 (Alaska 2011).

[12] *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 175 (Alaska 1986) (applying reasonable basis standard because "legislature intended the place the decision in the hands of the department"). Similarly, the legislature intended to give municipal governments a broad and liberal interpretation of their powers, including how to interpret their own ordinances.

[13] Order at 5.

[14] SGC 11.56.070D.

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
111 W. 16th Ave., Suite 203
Anchorage, Alaska 99501
(907) 563-8844
Fax (907) 563-7322

imposes two distinct requirements. The taxi operator may not sublet a taxi business (ostensibly because this could invalidate insurance coverage), *and* the operator may not permit satellite business operations to be conducted under the taxi permit (ostensibly *because the insurance policy only covers taxi operations*).

The Court's position that a tour company would not know to look under this provision for tour company regulations represents a fundamental misunderstanding of the ordinance. SGC 11.56.070 does not regulate tour operators but it does regulate *taxi* businesses. And it specifically prohibits a *taxi* operator from extending *any other type of business* from the taxi operator's permit. Not just tour operations. For example, a taxi operator could not extend food services under a taxi operator's permit to run a combination taxi-food-truck. It's not so much that a tour operator would be required to look at this section to check their compliance with the law, it's that a **taxi operator** would look to this section to determine whether it can operate a "satellite business" under its taxi permit, which it cannot. The CBS intended that all *taxi operators* are properly insured and the city is protected from liability damages, which would be negated if the taxi operator were simultaneously operating another unpermitted business under their taxi permit.

Finally, this Court denied summary judgment on the issue of qualified immunity finding an issue of fact as to whether Chief Baty's actions were corrupt, malicious, or done in bad faith. This Court improperly relies on plaintiff's subjective belief in finding an issue

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
111 W. 16th Ave., Suite 203
Anchorage, Alaska 99501
(907) 563-8844
Fax (907) 563-7322

of fact.[15] In answering the question as to bad faith, the Court must " 'focus on the *officers' perspectives and perceptions*, as it is what reasonable officers *in their position* could have thought that is dispositive of this issue.' "[16] The Court failed to focus on the officers' perspective when determining whether an issue of fact precluded summary judgment.

DATED this 30th day of September, 2024, at Anchorage, Alaska.

JERMAIN DUNNAGAN & OWENS, P.C.
Attorneys for Defendant

By: *s/Allison Strickland/*
Allison G. Strickland
Alaska Bar No. 1005020

CERTIFICATE OF SERVICE:
This is to certify that a true and correct copy of the foregoing was served by (X) TrueFiling ( ) mail ( ) hand ( ) fax on September 30, 2024, to:

James J. Davis
Nicholas Feronti
Northern Justice Project, LLC
406 G St., Suite 207
Anchorage, AK 99501
jdavis@njp-law.com
nferonti@njp-law.com

/s/Jamie Pierson
Jamie Pierson

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
111 W. 16th Ave., Suite 203
Anchorage, Alaska 99501
(907) 563-8844
Fax (907) 563-7322

[15] The Court relies on plaintiff's subjective opinion that their driver's applications were delayed, when the application states it could take two weeks to approve, and additional information was required by the applicants. The Court relies on plaintiff's subjective opinion that the change in inspection procedures took their vehicles out of commission for a month, even though the plaintiffs chose to operate without a license for three months before the SPD followed up on enforcement, and even then SPD did not cite or charge plaintiffs with operating without a license, but merely informed them that continued operations without a license would lead to citation or charge. Finally, the court relies on plaintiff's subjective opinion on fingerprint requirements when the Code specifically states it is a requirement for licensing.

[16] *Maness v. Daily*, 307 P.3d 894, 900 (Alaska 2013).