



MUNICIPALITY OF ANCHORAGE

Assembly Information Memorandum

No. AIM 180-2023

Meeting Date: September 26, 2023

Municipal Clerk's Office

Accepted

Date: **September 26, 2023**

1 **From: CHAIR**

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3 **Subject: OMBUDSMAN COMPLAINT OM2022-1146 FINAL**
4 **INVESTIGATIVE REPORT**

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6 Attached is the Office of the Ombudsman's Final Investigative Report concerning
7 Ombudsman Complaint OM2022-1146 for the Assembly's consideration and review.
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12 Prepared by: May Ramirez-Xiong, Deputy Ombudsman

13 Approved by: Christopher Constant, Chair



September 6, 2023

Final Investigative Report Concerning Ombudsman Complaint OM2022-1146

COMPLAINT

A constituent contacted the Anchorage Ombudsman's Office, alleging that the Anchorage Police Department (APD) had impounded his vehicle and that the towing company had denied him one-time, free access to the vehicle to retrieve his personal belongings, as required by Anchorage Municipal Code (A.M.C.) 9.54.030. The towing company informed the constituent that they required him to pay a \$125 administrative fee to access the vehicle and retrieve his personal belongings – the constituent was unable to pay the fee to access his vehicle. Subsequently, the vehicle and its contents were sold at auction. The constituent believed that this was unfair and unreasonable.

FINDINGS

The complaint regarding the Municipality of Anchorage, Anchorage Police Department is **JUSTIFIED**.

ANALYSIS AND CONCLUSIONS

In March 2022, a constituent contacted the Anchorage Ombudsman's Office alleging that the APD had impounded his vehicle and that the towing company would not allow him one-time free access to his impounded vehicle to retrieve his personal belongings, as required by A.M.C. 9.54.030.

The Ombudsman's Office initially referred the constituent to the MOA, Code Enforcement, to review his complaint that the tow company was not complying with the requirements of A.M.C. 9.54.030. The Acting Chief of Code Enforcement, Rich Fern, stated that Code Enforcement would not inquire into the matter, as they believed that A.M.C. 9.54.030 only applies to Private Party Impounds (PPI) and not impounds under the APD Rotational Tow program. Fern referred our office to the APD Administrative Manager.

The Anchorage Ombudsman's Office contacted the MOA, Department of Law (Legal) for clarification regarding Code Enforcement's interpretation of the code. The Ombudsman's Office questioned if A.M.C. 9.54.030 only applies to PPIs since A.M.C. 9.54.070C.3, Prohibited Conduct, states, "A tow operator shall not require payment of fees before allowing a vehicle owner or operator to recover any animal left in the vehicle or retrieve contents...."

Legal opined that "...the complainant's vehicle was seized incident to arrest for a serious traffic offense (A.M.C. 9.28.019), and so the applicable code is A.M.C. 9.28.026 and not A.M.C. 9.54. A.M.C. 9.28.026 concerns impoundment and forfeiture of a vehicle including in cases when driving without a license. Per A.M.C. 9.28.026D.5.c., 'The fee for monitoring the recovery of personal property shall be set by contract between the towing and storage contractor and the municipality if it is not established by ordinance.'"

Legal further opined that "A.M.C. 9.54 makes mention of public safety tows including cars impounded due to serious traffic offenses in A.M.C. 9.54.015. A.M.C. 9.54 specifically defines public safety tows as separate from private impounds, and A.M.C. 9.54's definitions do not explicitly include public safety impounds within consensual, non-consensual, or rotational tows. In addition, private impounds are not susceptible to forfeiture or impoundment as a criminal or civil penalty. The owner would only need to pay the associated fees to retrieve a privately impounded vehicle." In contrast, a vehicle owner whose vehicle is impounded, according to A.M.C. 9.28.026, must either "resolve their case through the court system or directly with the Municipality (depending on the circumstances)."

Legal also opined that the "Municipality has sole source contracts with tow operators for various types of impound tows. The reason the vehicle is towed dictates which towing company completed the impound and where the vehicle is taken. These contracts and tows are separate from the rotational program." Legal concluded that "While AO 2016-137(S) did amend A.M.C. 9.54.070C.3 to generally prohibit tow operators from charging owners' access fees to vehicles that had been towed, this prohibition does not apply to cars impounded by the Anchorage Police Department under A.M.C. 9.28.026."

During an investigation, the Ombudsman's Office must determine not only if the applicable codes and policies are being followed, but also whether we believe that the relevant codes and policies are fair and reasonable. On January 9, 2023, the Deputy and Associate Ombudsman met with Legal and the APD Administrative Manager. The purpose of the meeting was to seek clarification regarding Legal's interpretation of the code and whether the \$125 administrative fee levied by the tow company was fair and reasonable. Legal explained that vehicles impounded under the APD Rotational Tow contract(s) differ from those impounded under A.M.C. 9.28.026 - the fee is established by contract, not by ordinance, and according to the current contract, the administrative fee is set at \$125.

The Associate Ombudsman, Heather MacAlpine, inquired what portion of the \$125 administrative fee was for "access to vehicle" and what portion was for other contract-defined items. The APD Administrative Manager responded that the contract defined administrative fee broadly to include all items into a single payment so that tow companies cannot overcharge vehicle owners for items separately. In addition, she stated that the administrative fee is required even if vehicle owners are not attempting to access their vehicles; the fee is required when the owner enters the towing facility for any assistance as stipulated in the contract.

The Deputy Ombudsman, May Ramirez-Xiong, questioned whether vehicles that are impounded as a PPI, under the APD Rotational Tow Program, or under A.M.C. 9.28.026 have different impound procedures or are stored differently at tow yards - the answer was "No." Ramirez-Xiong stated that she was seeking some justification regarding whether to leave the current code language as is because it appears that the contractors are not performing any additional actions for vehicles impounded pursuant to A.M.C. 9.28.026. The Ombudsman's staff inquired why the one-time free access could not be applied to vehicles impounded pursuant to A.M.C. 9.28.026. The Department's rationale was that vehicle owners would not return to reclaim their vehicles after retrieving their personal belongings. MacAlpine stated that the accumulation of storage fees often makes it difficult for vehicle owners to reclaim their vehicles, a bad situation that would be compounded by them also losing their personal possessions.

When the Ombudsman staff asked, "What happens to personal belongings left in a vehicle if the owner cannot retrieve them?" and "What if the items in the vehicle were weapons, narcotics, or other forms of personally identifiable information, such as birth certificates, social security cards, or prescription medication?", they were informed that all contents in the car, regardless of what it is, are auctioned off to the new owner along with the vehicle. If a vehicle cannot be sold, it is crushed, and its contents discarded. The Anchorage Ombudsman staff asked the Department for a copy of the inventory list of the contents of the constituent's vehicle at the time that it was disposed of. A.M.C. 9.28.019.K states that "before disposing of any vehicle forfeited under this section, the chief of police or designee shall make an inventory of contents of any motor vehicle seized." The APD Administrative Manager stated that they could not access the vehicle and consequently could not conduct an accurate inventory.

During the meeting, Ramirez-Xiong shared that the Ombudsman, Darrel Hess, and MacAlpine had participated in the 2014 rewrite of the MOA towing codes. Both recall that one of the purposes of the rewrite was to enable every vehicle owner free one-time access to their impounded vehicles to retrieve their personal belongings, regardless of the reason for impounding – the exception being for vehicles impounded as evidence for criminal cases. The intent of allowing one-time free access in the code was to address the reality that not everyone can afford the fees and fines associated with retrieving their impounded vehicles, and consequently, they might lose important personal belongings because they cannot afford to pay the access fee. The APD Administrative Manager and Legal both stated that they were unaware of the intent of the revision. The code revision in 2014 was intended to include public safety impounds –it appears that not including them as part of the code revisions was an unintended oversight.

The Deputy Ombudsman reviewed the pertinent Assembly Ordinances and Memorandums associated with the 2014 code rewrite. The Anchorage Municipal Ombudsman's Office was part of the working group for the comprehensive revisions of A.M.C. 9.54 and 10.54 to update and clarify tow operator regulations and licensure. After a thorough review by the Clerk's and

Ombudsman's Offices, Assembly Memorandum (AM) 65-2014 was introduced in 2014, citing that "hidden charges and penalties were reported to the Assembly and the Municipal Clerk's Office, akin to towing practices identified as predatory in a 2007 Congressional report from the Federal Motor Carrier Safety Administration." The AM provides examples of unauthorized tow practices to include *"arbitrary penalties; inadequate signage; vehicle access policies and hours of operation that prevent vehicle retrieval and add storage charges that should be preventable...."* Attached to the AM was a letter dated October 29, 2014, from the Municipal Clerk's Office to the Assembly Chair and Members of the Assembly with the subject line "2014 Changes to Towing Procedures..." The Clerk highlighted updates to relevant areas of the towing procedures using bullet points. The relevant bullet point, *"prohibits tow operators from requiring payment before inspection of a vehicle, requiring payment for an agreement not to dispute tow fees before releasing the vehicle, requirement payment of tow fees before allowing the owner or operator to recover an animal or other property in the vehicle. A.M.C. 9.54.070C."* Subsequently, A.M.C. 9.54.030A.4 – Vehicle access fee – was enacted to give vehicle owners one-time access to their impounded vehicles to remove personal belongings.

Following her review and in-depth discussion with Legal, the Deputy Ombudsman has determined that it is unfair and unreasonable that owners of vehicles impounded by the APD as public safety impounds are required to pay a \$125 fee to retrieve their personal belongings from their impounded vehicles, while vehicle owners whose vehicles are towed by the MOA for other reasons, and PPIs, are allowed one-time free access to their impounded vehicles to retrieve their personal belongings. Given the significance of one's personal belongings and the fact that all other vehicle owners are granted free, one-time access to retrieve their belongings, the Deputy Ombudsman believes that it is unreasonable to charge certain members of the public an access fee but not others. This could be construed as punishing persons whose vehicles are impounded under AMC 9.28.026 for traffic offenses that have not yet been adjudicated.

During her review of this complaint, the Deputy Ombudsman determined that the APD and MOA Internal Audit do not appear to be following the requirements of A.M.C. 9.28.026.E.7.d.iii, which states that "The municipal auditor shall certify the proper disposal of property forfeited under this section, section 9.28.019, 9.28.020, 9.28.022, and 8.65.030." The Internal Auditor stated that he does not recall ever being requested to certify vehicles being auctioned off under this code section. The APD Administrative Manager and Legal stated that they were unaware of this provision of the code.

Because current municipal code and APD contracts do not provide persons whose vehicles are impounded under A.M.C. 9.28.026 one-time free access to their vehicles to retrieve their personal belongings, and because there is no reasonable justification for denying vehicle owners one-time free access to their impounded vehicles to recover personal belongings, and because the negative consequence of denying vehicle owners one-time free access to their

vehicles to recover personal belongings is unfair and unreasonable, the Deputy Ombudsman finds this complaint to be **JUSTIFIED**.

Based on the investigation into this matter, the Deputy Ombudsman makes the following recommendations:

1. that the Anchorage Assembly revise A.M.C. Chapter 9.28.026 and A.M.C. 9.54.030 to allow owners of vehicles impounded under A.M.C. 9.28.026 and APD Rotational Tows one-time free access to their impounded vehicles to retrieve their personal belongings, as allowed in A.M.C. 9.54.030 for vehicles impounded under other sections of municipal code.

The Administration did not provide a response to this recommendation.

2. that the APD and Legal review the requirements of A.M.C. 9.28.019.K to determine if this section of the code needs to be revised or repealed.

The Administration did not provide a response to this recommendation.

3. that the APD, Legal, and Internal Audit review the requirements of A.M.C. 9.28.026.E.7.d.iii to determine how to implement this section of code or if the code needs to be revised or repealed.

Internal Audit responded, - "Internal Audit concurred with this recommendation." APD and Legal did not provide a response to this recommendation.

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

If you object to the Ombudsman's decision to decline, discontinue, or close the investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C. 2.60.165.



May Ramirez-Xiong
Deputy Ombudsman



Darrel W. Hess
Municipal Ombudsman

