

BEFORE THE ADMINISTRATIVE HEARING OFFICE  
FOR THE MUNICIPALITY OF ANCHORAGE

MUNICIPALITY OF ANCHORAGE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TIARA HARPER, )  
 )  
 Defendant. )

Administrative Hearing Office Case No.: 19-0009  
Civil Citation No.: 51329

FINAL DECISION AND ORDER

DATE OF CITATION: January 23, 2019

DATE HEARING REQUEST  
FILED: February 7, 2019

DATE OF HEARING: March 6, 2019

APPEARANCES: Officer Timothy McCulley and  
Officer Charles Baker for the  
Plaintiff, Municipality of  
Anchorage

Tiara Harper, Defendant, for  
herself

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### Statement of the Case

On January 23, 2019, Anchorage Police Department (APD) Officer Charles Baker issued a citation to Tiara Harper for an alleged violation of AMC 15.20.030A. Ms. Harper appealed the citation by filing a timely request for a hearing with the Administrative Hearing Office.

A hearing was held on March 6, 2019. APD Community Service Officer Timothy McCulley, APD Patrol Officer Charles Baker, and Tiara Harper testified. Ms. Harper was apprised of her right to counsel at her own expense and choosing. She waived her right to counsel and represented herself.

The following exhibits were submitted by the Plaintiff and admitted into evidence:

- Exhibit 1: Department of Environmental Quality Abandoned/Junk Vehicle Form for Impound #63708, including Notice of Impoundment under AMC 15.20.030, dated January 7, 2019
- Exhibit 2: Computer-Aided Dispatch Summary of Incident History Detail, dated December 19, 2018
- Exhibit 3: Copy of Citation #51329, dated January 23, 2019
- Exhibit 4: Copy of incident report prepared by Officer Baker on January 9, 2019

The following exhibits were submitted by the Defendant and admitted into evidence:

- Exhibit A: Copy of draft APD Arrest Report – Case #19-856
- Exhibit B: Copy of Order and Conditions of Release, dated January 7, 2019
- Exhibit C: Copy of document memorializing Tyshaun Gray
- Exhibit D: Copy of written statement from Natasha Douglas
- Exhibit E: Copy of Notices of Abandoned/Junk Vehicle Impoundment for Impound #66464 and 63708, dated April 5, 2018 and January 7, 2019, respectively
- Exhibit F: Copy of Warning Notice form with the handwritten words, “Last Warning”
- Exhibit G: Copy of undated handwritten note to Tierra [sic] Harper
- Exhibit H: Copy of Notice - Subject to Impound, dated March 29, 2018
- Exhibit I: Copy of Notice - Subject to Impound, dated December 19, 2018
- Exhibit J: Copy of Notice - Subject to Impound, dated September 24, 2018
- Exhibit K: Copy of Notice - Subject to Impound, dated September 28, 2018
- Exhibit L: Copy of Notice - Subject to Impound, dated August 2, 2018

- Exhibit M: Copy of handwritten note from Officer McCulley to Tierra [sic] Harper
- Exhibit N: Copy of Vehicle Registration for 1999 Dodge Durango
- Exhibit O: Copy of Notice - Subject to Impound, dated April 12, 2018
- Exhibit P: Copy of Notice - Subject to Impound, dated March 31, 2018
- Exhibit Q: Copy of drawing showing Grand Larry, nearby buildings, and other features
- Exhibit R: Copy of photographs taken from apartment at 118 Grand Larry

### Background

1. APD has the authority to enforce Chapter 15.20 of the Anchorage Municipal Code (Code) concerning public nuisances, including junk and abandoned vehicles.

2. Officer Timothy McCulley has worked as a Community Service Officer (CSO) with APD for more than five years. Before then, he worked as an APD Patrol Officer for 21 years.

3. As a CSO, Officer McCulley works primarily with vehicle issues. He is experienced with the process APD follows if there are concerns that a vehicle may be junk or abandoned. He explained that APD first “red tags” the vehicle. A red tag referencing AMC 9.30.150 is placed on the vehicle to advise that it may be impounded if it is not moved within 24 hours.<sup>1</sup> To help determine whether the vehicle has been moved, APD draws a line in chalk across the tread of the driver’s side rear tire at 12 o’clock and vertically down the side of the tire. If the vehicle is moved, the chalk line across the tread will be gone, and the line on the side of the tire will be in a different position.

4. Officer McCully explained that if a vehicle is not moved after being red tagged, APD then “white tags” the vehicle. A white tag citing AMC 15.20.010, 15.20.020, and 15.20.030 is placed on the vehicle to advise that the vehicle will be impounded as junk or abandoned on a specified date if it is not moved by then. APD then paints the tires, usually at 6 or 12 o’clock, to help the tow contractor determine whether the vehicle has been moved or whether it should be impounded.

5. Tiara Harper is listed with the State of Alaska Division of Motor Vehicles as the registered owner of a 1999 Dodge Durango (Alaska License Plate #JKZ420) (Ex. N).<sup>2</sup> She was also the owner of two to four Pit Bull-mix dogs at all times relevant to this

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<sup>1</sup> AMC 9.30.150 provides that a vehicle may not be parked on any municipal street for more than 24 hours, except from Friday noon to Monday noon.

<sup>2</sup> Ms. Harper spelled her first name as “Tiara” on her Request for Hearing filed with the Administrative

proceeding.<sup>3</sup>

6. Ms. Harper moved with her dogs from Eagle River to Anchorage in February of 2018. She lived with her dogs in her vehicle, as she did not have a place to stay at the time.

7. After moving to Anchorage, Ms. Harper had periodic problems with her Durango malfunctioning. She tried fixing the vehicle herself because she could not afford a mechanic. The vehicle broke down from time to time when it was parked at various locations in Anchorage, and it was red-tagged multiple times.

8. For example, the vehicle broke down in Conifer Park (also known as “Dave Rose Park”) near Third and Pine Streets in March of 2018. Ms. Harper had been living in the vehicle with her dogs for about a month. APD red-tagged the vehicle on March 29 and March 31 to advise that it could be impounded if it was not moved within 24 hours (Ex. H and P).<sup>4</sup> The vehicle was subsequently white-tagged with the notice that it would be impounded if it was not moved by April 5 (Ex. E).

9. Ms. Harper was eventually able to get the vehicle running and moved it to Centennial Park on Star View Drive, but it broke down again. The vehicle was red-tagged on April 12, 2018 (Ex. O).

10. Ultimately, Ms. Harper got the Durango to run and moved with her dogs to Grand Larry Drive. Her sister was living in an apartment at 118 Grand Larry, where Ms. Harper helped babysit her sister’s children when her sister was at work.<sup>5</sup> The dogs were not allowed in the apartment and continued to reside in the vehicle. The owner of the apartment complex would not permit Ms. Harper to park the vehicle in the parking lot for insurance reasons, due to the breed of the dogs (Pit Bull mixes) in the vehicle. Thus, Ms. Harper parked on the street (Ex. Q).

11. Beginning in August, Ms. Harper began having problems with the Durango periodically breaking down. It was red-tagged on August 2, September 24, and September 28, 2018 (Ex. J, K, and L), but Ms. Harper was eventually able to fix and

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Hearing Office, although the vehicle registration and several other documents in the case refer to her as “Tierra.”

<sup>3</sup> Ms. Harper said she originally owned four dogs, but she was down to two dogs when her vehicle was eventually impounded on January 8, 2019.

<sup>4</sup> Officer McCulley also said the vehicle had been red-tagged on March 9, 2018, but the red tag was not submitted at the hearing.

<sup>5</sup> Ms. Harper claimed she could not work because people would call Animal Control about her dogs being left in her vehicle.

move it.<sup>6</sup> She said that when the vehicle was not disabled, she moved it daily to take her dogs to play in the park.<sup>7</sup>

12. On December 19, Officer McCulley saw the Durango parked on the street between 117 and 118 Grand Larry. There were two dogs inside.<sup>8</sup> The driver's front tire was off the rim, the vehicle was bermed in, and the surface beneath it was dry (Ex. 2). He red-tagged the vehicle and marked the driver's side rear tire with a colored marker across the tread and vertically from 12 o'clock.

13. On January 6, 2019, Patrol Officer Charles Baker went to Grand Larry to conduct a welfare check of Ms. Harper's dogs. The Durango was parked on the side of the road between 117 and 118 Grand Larry. Officer Baker said he told Ms. Harper she would need to move the vehicle, and she assured him the vehicle would be gone the next day. He documented his January 6 visit in a written report as follows:

. . . I contacted TIERRA HARPER who stated that her two dogs in a Red Dodge Durango which did not run and had not moved for several weeks were okay. . . HARPER told me she was planning on getting the vehicle running and would be leaving the area before 01 06 2019." I told her I was going to come back and check on her and the dogs. HARPER stated the vehicle would not be there.

14. Officer Baker said the reference in his report to "01 06 2019" was a typographical error and should have been "01 07 2019."

15. On January 7, Officer McCulley went back to Grand Larry and saw the Durango in the same spot it had been in on December 19. The front tire had been repaired, but the vehicle was still bermed in, the rear tire was still chalked, and there were no tire marks coming or going from that spot. Officer McCulley white-tagged the vehicle at 3:16 p.m. (Ex. 1 and E). The white tag stated:

[the vehicle] will be impounded at the owner's expense by the Municipality of Anchorage pursuant to AO § 15.20.030 as an

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<sup>6</sup> Officer McCulley also claimed the vehicle was red-tagged on June 28, but the red tag for that date was not submitted.

<sup>7</sup> Ms. Harper also said it was becoming difficult for her to continue living at Grand Larry because a woman was regularly calling and complaining to Animal Control whenever Ms. Harper was away from the vehicle.

<sup>8</sup> By the time Officer McCulley red-tagged the vehicle on December 19, APD and Animal Control had received multiple complaints from members of the public about the Durango being parked on the street and the dogs being kept in the vehicle.

abandoned junk vehicle on 1-8-19 as defined by AO § 15.20.010.

16. Officer Baker also returned to Grand Larry on January 7. It was cold outside, and he found Ms. Harper in the laundry room of the apartment complex. He said Ms. Harper told him she was planning to move the vehicle but was having difficulty getting it started due to a problem with the battery. Officer Baker arrested Ms. Harper for animal cruelty (Ex. 4, A, and B), and Animal Control took custody of her two dogs. The animal cruelty charge is not at issue in this case.

17. On January 8, Officer Baker received a call that a tow operator had arrived at Grand Larry to tow the Durango. Officer Baker went to Grand Larry and contacted the tow operator, who claimed it had taken him almost an hour to dig the vehicle out of the snow and pull it out (Ex. 4). Once the vehicle was out, Officer Baker said Ms. Harper wanted him to help her push the vehicle onto the parking lot at 118 Grand Larry, where he understood she was not welcome. He claimed he told Ms. Harper the vehicle would not be impounded if she could start it and drive it away. She was unable to start the vehicle, and it was impounded.

18. On January 23, 2019, Officer Baker issued Citation #51329, seeking a civil penalty of \$300.00 on the grounds that Ms. Harper had violated the prohibition on abandoned vehicles in AMC 15.20.030A. The date of the violation specified in the citation was January 23, 2019. Officer Baker explained that he issued the citation to give Ms. Harper an opportunity to appeal the determination that her vehicle was abandoned. He and Officer McCulley expressed their view that APD had been more than reasonable in giving Ms. Harper multiple opportunities and ample time to move her vehicle and find a warmer place for her dogs, but she did not do so.

19. At the hearing, Ms. Harper acknowledged that she had a flat tire on December 19. She claimed she had gotten the flat when she tried to move the Durango to make room for the snow plow to plow the street. It was cold outside, and the tire had frozen to the ground and pulled off the rim when she tried to move it. She believed the tire had frozen from snow melting off the vehicle due to electricity running into the vehicle from a building across the street (Ex. Q). Ms. Harper had plugged her vehicle into the power supply of the building with an electrical cord to keep the dogs warm.<sup>9</sup> She was subsequently able to repair the tire.

20. Ms. Harper said she understood how Officer McCulley thought the Durango had not been moved from December 19 to January 7. But she testified that she

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<sup>9</sup> Ms. Harper was previously told that she could not have an electrical cord running above the street. Thus, she said she dug a "ditch" to enable her to run the cord under the street. Officer Baker said the electrical cord was unplugged from the building when he went to Grand Larry on January 7.

did move the vehicle during that timeframe. At different points in the hearing, she variably stated that she moved the vehicle “three times”, “two to three times,” and “at least three times.” She said she was able to get the vehicle running despite an interruption in the connection to the alternator. She claimed that every time she moved the vehicle, she parked it back in the snow berm because there little room to park on the street.

21. Ms. Harper also testified that she was “constantly in and out of the vehicle” when she lived at Grand Larry. When asked where she was staying, she replied that she went back and forth between the vehicle and the apartment. She said she sometimes slept in the vehicle with the dogs, and sometimes in the apartment. When she was not staying in the vehicle, she went outside every few hours to check on the dogs.

22. Ms. Harper said her sister had moved out of the apartment shortly before Christmas, although the lease did not expire until the end of December. Ms. Harper said she stayed behind to clean the apartment and pack up her sister’s belongings. Officer Baker believed that Ms. Harper was illegally squatting in the apartment. That matter is not before me for adjudication.

23. Ms. Harper denied that Officer Baker mentioned anything about the vehicle on January 6, including that it needed to be moved, when he came to Grand Larry to check on her dogs. She also denied that she told him the vehicle was not operating then. She posited that the reason her dogs were removed from the vehicle and taken from her on January 7 was so APD could claim the vehicle was abandoned and impound it.

24. Ms. Harper also stated that she had been working on her vehicle all day on January 8 to try to get it started. She said she was still repairing the vehicle and had fuses ready to put in it when the tow operator arrived. She claimed that Officer Baker stood by the door of her vehicle and told her, “You’re done.” She maintained that she was not permitted to finish repairing the vehicle before it was impounded.

25. Ms. Harper took issue with the amount of time she was given to move the vehicle after it was white tagged on January 7. She said the vehicle was towed less than 24 hours after it was white tagged on January 7.

### Discussion

1. The Administrative Hearings Officer has jurisdiction to hear and decide this case pursuant to AMC 14.20.020.

2. Chapter 15.20 of the Code addresses public nuisances within the Municipality, including abandoned vehicles. AMC 15.20.010 defines an abandoned

vehicle as follows:

*Abandoned vehicle* means a motor vehicle left **unattended** on an area set forth in section 15.20.030 **for a period in excess of 72 hours**. (Emphasis supplied)

3. AMC 15.20.030 prohibits abandoned vehicles within the Municipality and states:

15.20.030 - Abandoned vehicles prohibited.

A. It is unlawful for a person to abandon a vehicle on a street or highway within the municipality.

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4. AMC 15.20.040 addresses the disposition of abandoned vehicles in pertinent part as follows:

15.20.040 – Disposition of abandoned vehicles

A. An abandoned vehicle may be impounded.

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5. In light of the above ordinances, Ms. Harper’s vehicle could be legally impounded if her vehicle was an “abandoned vehicle” as defined in the Code. Whether the Durango was an abandoned vehicle is an issue of statutory construction.

6. Ordinary principles of statutory construction apply to the consideration of a municipal ordinance. When interpreting a statute or ordinance, the “goal is to give effect to the intent of the law-making body with due regard for the meaning the language in the provision conveys to others.” *South Anchorage Concerned Coalition, Inc. v. Municipality of Anchorage*, 172 P. 768, 771 (Alaska 2007). Statutes or ordinances must be interpreted “according to reason, practicality, and common sense, considering the meaning of the statute’s language, its legislative history, and its purpose.” *Huit v. Ashwater Burns, Inc., et al.*, 372 P.3d 904, 912 (Alaska 2016). The language of the statute or ordinance must be “construed in accordance with common usage, unless the word or phrase in question has a peculiar meaning by virtue of a statutory definition or judicial construction.” *Lynch v. McCann*, 478 P. 2d 835, 837 (Alaska 1970). Courts in Alaska “do not mechanically apply the plain meaning rule,” but instead use a “sliding scale approach to statutory interpretation, in which the plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be.” *State of Alaska v. Fyfe*, 370 P.3d 1092, 1095 (2016). No one factor in this analysis is dispositive, but “when a statute’s meaning appears clear and unambiguous. . . the party



asserting a different meaning bears a correspondingly heavy burden of demonstrating contrary legislative intent.” *Id.* “[L]egislative history [that] is somewhat contrary does not overcome the plain meaning.” *Id.*

7. Under AMC 15.20.010, a vehicle is abandoned if it has been left “unattended” on a municipal street for more than 72 hours. The term “unattended” is not defined in Chapter 15.20. The common usage of that term is set forth in the Merriam-Webster Dictionary, which defines “unattended” as “not attended,” “not watched or looked after”, or “lacking a guard, escort, caretaker, etc.” The parties presented no legislative history to support a different meaning.

8. I note at the outset that the citation specifies the date of the alleged violation of AMC 15.20.030 as January 23, 2019 - roughly two weeks after the vehicle was impounded on January 8. This date of violation appears to be in error. Even if the citation had identified the violation date as January 8, however, I cannot conclude that the Durango had been left unattended for more than 72 hours. The uncontroverted evidence establishes that Ms. Harper’s dogs were living in the vehicle on Grand Larry until they were taken into the custody of Animal Control on January 7. Ms. Harper was routinely going back and forth between the vehicle and the apartment. When she was not staying in the vehicle herself, she checked on the dogs every few hours. Given the frequency and regularity with which she was accessing the vehicle to tend to the dogs, I cannot conclude that the vehicle was not watched or looked after – i.e., that it had been left unattended – for more than 72 hours when it was impounded from Grand Larry on January 8. Thus, the Durango does not fit the definition of an abandoned vehicle under AMC 15.20.010.

9. If the Code defined an abandoned vehicle as one that had not been moved for more than 72 hours, I may have reached a different result. But it is my responsibility as the quasi-judicial Administrative Hearing Officer to apply the Code as it is currently written to the facts of this case. The Code as written defines an abandoned vehicle as one that has been left unattended on a municipal street for more than 72 hours, not one that has been unmoved. While a vehicle that has not moved for more than 72 hours may also be unattended in many instances – e.g., where a broken down vehicle is deserted on a city street - that is not the case under the set of facts here.

### Findings of Fact and Conclusions of Law

I make the following findings based on a preponderance of the evidence in the record:

1. The Administrative Hearing Officer has jurisdiction to hear and decide this case pursuant to AMC 14.20.020.

2. Ms. Harper was the owner of the 1999 Dodge Durango at all times relevant to this matter. The Durango was parked on the street between 117 and 118 Grand Larry on December 19, 2018. It was parked in the same location on January 7, 2019.

3. Ms. Harper's two dogs were living in the vehicle from December 19 to January 7. Ms. Harper went back and forth between the vehicle and the apartment at 118 Grand Larry on a regular basis to tend to the dogs. When she was not staying in the vehicle, she went to the vehicle and checked on the dogs every few hours. The dogs were taken into the custody of Animal Control on January 7, 2018.

4. The vehicle was not unattended for more than 72 hours when it was impounded on January 8, 2019; thus, it was not an abandoned vehicle as defined in AMC 15.20.010.

5. APD bears the burden of proving that Ms. Harper was in violation of AMC 15.20.030 by a preponderance of the evidence, and it has not done so.

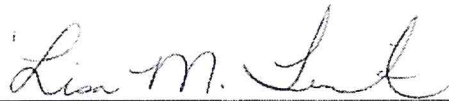
Accordingly, the Order is as follows:

**Order**

The Civil Citation #51329 and the \$300.00 fine levied therein is VACATED.

This Final Decision and Order has been mailed to the parties on the effective date below. The parties have thirty (30) days from the effective date to appeal the decision to the Superior Court, Third Judicial District, State of Alaska, pursuant to Rule 602(A)(2), of Appellate Rules of Procedure.

DATED and effective as of this 21<sup>ST</sup> day of March, 2019, Anchorage, Alaska.

By:   
Lisa M. Toussaint  
Administrative Hearing Officer

Certificate of Service

I, Kathi Flanders, hereby certify that I emailed  
a true and correct copy of the foregoing to:

Tiara Harper

Municipal Attorney's Office

Municipality of Anchorage/Treasury

on this 21<sup>st</sup> day of March, 2019.

Kathi Flanders