

January 9, 2018

Final Investigative Report Concerning Ombudsman Complaint OM20150411

COMPLAINT

An individual contacted the Municipal Ombudsman's Office alleging that the Anchorage Police Department had:

1. "Unlawfully" impounded his truck. His truck was subsequently sold and his claim with the Municipality's Risk Management Department was denied.
2. "Unlawfully" impounded his bus. The individual stated that he had moved his bus as required by Municipal Code, yet his bus was impounded by the Anchorage Police Department.
3. Disposed of his bus by crushing it, and that the requirements of Municipal Code were not adhered to during the process. His claim with the Municipality's Risk Management Department for the loss of his bus was denied.

FINDINGS

The first complaint, that the complainant's truck was impounded contrary to Anchorage Municipal Code, is **UNSUPPORTED**.

The second complaint, that the complainant's bus was impounded even though he had followed the requirements of Anchorage Municipal Code, is **JUSTIFIED**.

The third complaint, that the requirements of Anchorage Municipal Code were not adhered to during the process leading to the destruction of the complainant's bus, is **JUSTIFIED**.

ANALYSIS AND CONCLUSIONS

First Complaint: An individual contacted the Municipal Ombudsman's Office regarding his December 2, 2014 arrest, and the impoundment of his vehicles. The complainant had arrived on-scene in his truck as his bus was being impounded. The responding Anchorage Police Department (APD) officers checked the complainant's Alaska driver's license, and found it to be suspended; they arrested him for driving his truck with a suspended license, and impounded the truck.

AMC 9.28.019:

B. It is unlawful for any person, with criminal negligence as to the status of that person's license, to:

1. Drive a motor vehicle at a time when that person's driver's license, privilege to drive, or privilege to obtain a license has been canceled, suspended or revoked in this or another jurisdiction;

AMC 9.28.026:

A. Discretionary impound.

1. A motor vehicle operated, driven or in the actual physical control of an individual arrested for or charged with an alleged violation of section 9.28.019, pertaining to driving while license suspended/revoked/cancelled, section 9.28.020, pertaining to driving while under the influence, section 9.28.022, pertaining to refusal to submit to chemical tests, or section 8.65.030, pertaining to soliciting, may be impounded and may be forfeited to the municipality in accordance with this section.

Even though the charges against the complainant were dismissed in court, the Deputy Ombudsman concluded that the APD did have probable cause to arrest the complainant and impound his truck. The APD officers had witnessed the complainant driving his truck, and they verified that the complainant's driver's license was suspended at that time. The complainant was given notice of impoundment by certified mail on December 13, 2014, and he acknowledged receiving the notice. The charges were dismissed on February 2, 2015. It was the complainant's responsibility to pay the required fees and retrieve his truck from impound. Because he did not do so, the complainant's truck was sold at auction on February 14, 2015.

The complainant's first complaint, that his truck was impounded contrary to Anchorage Municipal Code, is **UNSUPPORTED**.

Second Complaint: The complainant owned a 1976 International bus. On October 31, 2014 the vehicle's registration expired. The bus was parked in the alley at 626 W. 34th Avenue, and was red-tagged by the APD on November 4th, 2014. The red tag stated, "Notice: Municipal Ordinance 9.30.150 states that no person may park a vehicle on any street for a period of time longer than 24 hours, except from Friday noon until Monday noon. If the vehicle is not moved within 24 hours it will be Subject to Impound." APD returned on November 6th, 2014 and found the red-tag removed and the bus moved about 20 feet. APD chalked the tires on November 6th, 2014. When chalking tires an APD officer marks the tires and tread at the 12 o'clock position, to determine if the vehicle moves from its current location before they return. APD returned on November 18th and found that the bus had been moved a few feet, and placed a rock on top of a tire. On November 21st, APD returned and noted the location of the bus, but did not indicate if the rock was still in place. On December 2nd, 2014, APD impounded the bus noting that it had moved, but only slightly. They also noted clear ground under the bus, and a snow berm plowed around it. The vehicle was towed as an abandoned vehicle by Aurora Towing on December 3rd, 2014, pursuant to AMC 15.20.030.

The impound notice stated:

Under AO§ 15.20.030, it is a misdemeanor to abandon a vehicle on a public street or on other public property (other than a refuse disposal site for the disposal of vehicles) or on private property described in 15.20.030(c) without the consent of the owner. A vehicle is deemed to be abandoned if it is left unattended on such public property or private property without permission for more than 72 hours after notice to move the vehicle has been given.

Although the bus was parked in the alley, and several neighbors had complained about it, the Deputy Ombudsman believes that the APD could not prove with any certainty that the bus was abandoned. AMC 15.20.010 states; "Abandoned vehicle means a motor vehicle left unattended upon an area set forth in section 15.20.030 for a period in excess of 72 hours." The APD conceded that the bus had been attended to in the days between the November 4th red tagging and the December 2nd impoundment. APD stated that the tag had been removed and that the bus had moved, "but only slightly". How can the APD have deemed the bus to be abandoned, while conceding that the red tag had been removed, and that the bus had moved, even if only slightly? The code does not state how far a vehicle must be moved. At the time Aurora Towing towed the bus, there were no chalk marks on the tires. Due to the length of time that had elapsed between the last tagging (November 4th), chalking (November 6th), and the impoundment (December 2nd) of the bus, it is impossible for the APD to prove conclusively that the bus had been unattended for more than 72 consecutive hours, after notice to move the bus had been given on November 4th, 2014.

During her investigation, the Deputy Ombudsman spoke with Officer Ryberg and Sergeant LeBlanc regarding the impoundment. APD's position was that by moving the bus a few feet here and there, the complainant was not complying with the "spirit of the law." The Ombudsman requested that the Deputy Ombudsman ask the community service officer who had red-tagged the bus how far was far enough to comply with the "spirit of the law". The response was "I don't know." Anchorage Municipal Code states only that vehicles must be moved, not how far. The Ombudsman asked Jack Frost, the Municipality's Chief of Code Enforcement how his Right of Way Enforcement officers interpret the code; Mr. Frost noted that if the tire mark moves even a couple of inches from the 12 o'clock position, and the tag is removed, his officers deem the vehicle to have been moved, and to be in compliance with the requirements of code.

On January 5, 2016 the Ombudsman met with APD Captain Justin Doll, and APD Impounds Supervisor Mindy McCulley to discuss several issues related to towing and impounds in the Municipality. When the Ombudsman asked Captain Doll how APD officers generally interpret the requirements of AMC 9.30.150 (parking for longer than 24 hours on a public Right of Way), Captain Doll responded that the APD generally uses the same standards as Right of Way Enforcement; if the tag has been removed, and the tire mark is no longer in the 12 o'clock position, the vehicle is deemed to be in compliance with the requirements of the code, and would not be impounded and towed as an abandoned vehicle. In some cases, such as when the vehicle is obviously inoperable and may have been pushed or pulled, APD officers use their best judgement, and may have a vehicle impounded, even if the tire mark is no longer at the 12 o'clock position.

Based on her investigation, and review of Anchorage Municipal Code, it is the Deputy Ombudsman's opinion that, in this instance, APD's standard operating policy regarding how it is determined if a vehicle is abandoned, was not followed. Relying on 300+ sworn officers and community service officers to interpret the "spirit" of the code can result in wide disparities in the enforcement of the code. The Deputy Ombudsman does not believe

that the APD could prove conclusively that the bus had been abandoned; the tag had been removed, and the bus had been moved, and a significant amount of time had elapsed between the red-tagging and chalking, and the impoundment and towing of the bus. The APD may have been able to find other, more legitimate, grounds to impound and tow the bus. However, the APD towed and impounded the bus as abandoned, under AMC 15.20.030.

The complainant's second complaint, that his bus was impounded even though he had followed the requirements of Anchorage Municipal Code is **JUSTIFIED**.

Third Complaint: AMC 15.20.040 states that "... the vehicle and its contents may be sold at public auction or, in the director's discretion, if the vehicle is determined by the director to be inoperable or worth less than \$200.00 disposed of by crushing or other means of destruction." The Ombudsman's Office had previously determined that the APD is not following the requirements of AMC 15.20.040. This was one of the topics that the Ombudsman discussed with the APD on January 5, 2016. The Ombudsman's Office had previously raised this issue with the Chief's Office in 2014. While APD officers have discretion in enforcing code (issuing warnings, etc.), the Ombudsman's Office does not believe that the APD has discretion in following the code. If AMC 15.20.040 does not make sense and is archaic, the APD should work with the Municipal Attorney's Office to revise the code. In this instance, there is no evidence that the value of the bus was assessed by the director (APD Chief or designee) to be worth less than \$200 and/or that the vehicle was inoperable. In fact, APD stated, "It was moved about 20 feet", which could lead to the presumption that it was operable.

The complainant's third complaint that the requirements of Anchorage Municipal Code were not adhered to during the process leading to the destruction of his bus is **JUSTIFIED**.

A preliminary report regarding this matter was provided to the Anchorage Police Department on September 14th, 2016. The APD forwarded the report to the Deputy Municipal Attorney for review and comment.

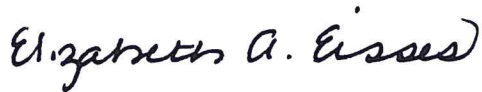
Based on the investigation of this case, the Municipal Ombudsman recommends the following:

- 1) that Risk Management re-consider the complainant's claim for the loss of his bus, based on the findings of this report. The Ombudsman believes that, based on the APD's own statements, the complainant followed the requirements of Municipal Code, and his bus should not have been impounded and towed as "Abandoned". Individuals should not lose their vehicles for not having sufficient funds to retrieve a vehicle that should not have been towed and impounded by the Municipality. This places the Municipality in the precarious position of inadvertently causing financial hardships to low-income individuals. *The Risk Management Department concurs with the Ombudsman's findings regarding the impoundment, towing and disposal of the complainant's bus. Risk Management offered the complainant \$19,204.00 to compensate him for the loss of his bus.*

- 2) that Anchorage Police Department follow the requirements of AMC 15.20.040 regarding the disposition of abandoned (and junk) vehicles. The code states that "if the vehicle is determined by the director to be inoperable or worth less than \$200 disposed of by crushing or other means of destruction." While the APD has discretion in enforcing the code, APD does not have discretion in following the code. If the requirements of the code are too archaic or burdensome, the department needs to recommend changes to the code. The Ombudsman's Office first brought this issue to the attention of APD in 2014. *APD Chief Doll referred the Ombudsman's report to the Department of Law, with the request that the Department of Law draft code language addressing impoundment and disposition of abandoned and junk vehicles. For example, key definitions within code, such as "unattended" lack clarity for enforcement purposes. APD also agrees with the Ombudsman's recommendation that the notice and procedure requirements following impoundment deserve further review by the Department of Law. APD has met with the Ombudsman and the Department of Law with respect to code revisions.*

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

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



Elizabeth A. Eisses
Deputy Ombudsman



Darrel W. Hess
Municipal Ombudsman