

**ANCHORAGE, ALASKA
AO No. 2023-67**

1 **AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY REPEALING**
2 **ANCHORAGE MUNICIPAL CODE SECTION 9.28.035, KNOWN AS THE**
3 **“SCOFFLAW LAW,” AND MAKING CONFORMING AMENDMENTS TO AMC**
4 **CHAPTER 9.28.**
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6
7 **WHEREAS**, the Municipality of Anchorage enacted its first iteration of the “Scofflaw
8 Law” with passage of AO 2007-060 with a delayed effective date, and soon after
9 repealed and rewrote its law by AO 2007-161 enacting Anchorage Municipal Code
10 section 9.28.035 to be consistent with nascent state legislation that authorized
11 municipalities to adopt ordinances allowing impoundment and forfeiture of motor
12 vehicles driven on public streets if the driver has accumulated more than \$1,000 in
13 delinquent fines for moving violations committed within the municipality; and
14

15 **WHEREAS**, the stated purpose of, the Municipality’s Scofflaw code, in AMC section
16 9.28.035A., is: “The purpose of abatement is to remove motor vehicles operated by
17 repeat traffic offenders who have not been subject to the deterrent and rehabilitative
18 effects of sentencing, and who therefore pose a heightened danger to the public.
19 The purpose of abatement is not to generate revenue.”; and
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21 **WHEREAS**, the Alaska Legislature later enacted a state statute amendment that
22 requires the Department of Motor Vehicles to “cancel a driver’s license upon
23 determination that ... the licensee owes \$1,000 or more in unpaid fines for offenses
24 involving a moving motor vehicle and failed to (A) pay the fines in full as required by
25 the court; or (B) make payments in good faith on the unpaid balance of the fines
26 under a payment plan established by the department.” AS 28.15.161(a)(7). The
27 statute change was part of House Bill 49 passed in 2019 as a response to the crime
28 rates in the wake of passage of Senate Bill 91 passed in 2016, as one of the tools
29 to address repeat offenders; and
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31 **WHEREAS**, the Municipal Ombudsman analyzed the utility and effect of the
32 Scofflaw code in a February 5, 2020 memorandum, finding that the “alleged public
33 safety purpose of the scofflaw program has not been achieved,” concluded that it is
34 “not fair, equitable or reasonable,” and recommended it be repealed; now, therefore,
35

36 **THE ANCHORAGE ASSEMBLY ORDAINS:**
37

38 **Section 1.** Anchorage Municipal Code section 9.28.035 is hereby repealed in its
39 entirety. In accordance with AMC section 1.05.050B., a copy of the existing text of
40 the section being repealed is attached as Attachment A.
41

42 **Section 2.** Anchorage Municipal Code section 9.28.026 is hereby amended as
43 follows (*the remainder of the section is not affected and therefore not set out*):
44

(AO No. 95-84(S-1), § 19, 4-27-95; AO No. 2001-72, § 3, 7-1-02; AO No. 2001-139, § 3, 7-1-02; AO No. 2003-155, § 3, 6-1-04; AO No. 2004-61, § 1, 3-2-04; AO No. 2007-60, § 3, 4-10-07; AO No. 2007-161, § 4, 12-11-07; AO No. 201-76, § 5, 10-26-10)

Section 4. This ordinance shall be effective 30 days after passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2023.

Chair of the Assembly

ATTEST:

Municipal Clerk

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**MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM**

No. AM 431-2023

Meeting Date: June 6, 2023

1 **From: Assembly Member Rivera**

2
3 **Subject: AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY**
4 **REPEALING ANCHORAGE MUNICIPAL CODE SECTION 9.28.035,**
5 **KNOWN AS THE “SCOFFLAW LAW,” AND MAKING**
6 **CONFORMING AMENDMENTS TO AMC CHAPTER 9.28.**
7

8 This ordinance seeks to repeal, in its entirety, Anchorage Municipal Code section
9 9.28.035, Abatement of Vehicles Operated by Delinquent Offenders.

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11 The Scofflaw Program, as this is commonly referred to, was created by AO 2007-
12 60. The rationale for this ordinance was a supposed “high correlation between motor
13 vehicle accidents caused by driver misconduct and drivers involved who have
14 accumulated significant delinquent fines for moving violations.”¹
15

16 Unfortunately, this program as currently set up by the Municipality of Anchorage has
17 had negative unintended consequences which greatly outweighs its utility. The
18 Municipal Ombudsman describes some examples in his memorandum of situations
19 where the Scofflaw code has a disparate impact on low-income persons, for
20 example: a person deciding between putting food on the table or replace a headlight
21 or taillight, and an elderly grandmother on a small fixed income stuck with the \$600-
22 \$700 costs for retrieving her vehicle after she loaned it to her grandson who was on
23 the scofflaw list. The costs for a vehicle owner who was not operating it when
24 impounded for a driver being on the scofflaw list are set out in AMC subsection
25 9.28.035G.4.: in order to retrieve their vehicle the owner must pay the MOA’s
26 administrative fee of \$410, towing and storage fees, and any court costs imposed.
27

28 In addition, the Municipality has been unable to demonstrate since its inception in
29 2007 that the Scofflaw code contributes to improved public safety outcomes. In fact,
30 based on anecdotal statements, the Municipality pays more to implement and
31 manage this program than it receives in delinquent fine payments with no metric
32 that shows results for this usage of taxpayer dollars.
33

34 The State of Alaska, through enabling legislation, set up a state Scofflaw Program
35 in 2019. The statute, AS 28.15.161(a)(7), requires the DMV to cancel a person’s
36 driver’s license, unless the individual has made payment arrangements with the
37 DMV on any unpaid fines involving a moving motor vehicle. With this more flexible
38 program in place, the purpose for a Municipal Scofflaw Program seems superfluous.
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40 Two memos put forward by the Municipal Ombudsman, dated February 5, 2020 and
41 October 28, 2021 provide additional background and rationale for repeal of the

¹ AO 2007-60, AM 237-2007, and AIM 46-2007:

<http://www.muni.org/Lists/AssemblyListDocuments/Attachments/649071/AO%202007-060%20OCR.pdf>

1 Scofflaw Program and are attached to this AM.
2

3 The Scofflaw Program has had a disproportionately negative impact on the lowest-
4 income residents of the Municipality of Anchorage and only serves to perpetuate a
5 cycle of poverty.
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7 **Effect of Ordinance**
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9 This ordinance will have an unknown economic impact as the purpose was not to
10 generate revenue, and thus the incidental revenues received were not specifically
11 tracked. The Department of Law administers the civil impounds and forfeiture of
12 vehicles, and the administrative fee it collects of \$410.00 per vehicle is applied to all
13 cases, which includes DUIs, Driving While License Suspended/Revoked, Refusal to
14 Submit to Chemical Tests, and Driving without the required insurance in effect. It is
15 not clear the costs of administering this program by the Department of Law, but it
16 does create a substantial work load to maintain and dedicate resources to. In
17 addition, the tow operators contracted for this work may have reduced calls for
18 service and corresponding reduction in the towing and storage fees they would
19 collect.
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22 **I ask for your support of this ordinance.**
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24 Reviewed by: Assembly Counsel's Office
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26 Respectfully submitted: Felix Rivera
27 Assembly Member, District 4 Midtown Anchorage
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30 Attachments: Attachment A, Existing text of AMC 9.28.035
31 Attachment B, Municipal Ombudsman Memorandum,
32 *AMC 9.28.035 – Abatement of Vehicles Operated by*
33 *Delinquent Offenders*, February 5, 2020.
34 Attachment C, Municipal Ombudsman Memorandum,
35 *AMC 9.28.035 – Abatement of Vehicles Operated by*
36 *Delinquent Offenders*, October 28, 2021.

9.28.035 Abatement of vehicles operated by delinquent offenders.

A. Any motor vehicle operated by a person who accumulates delinquent traffic fines totaling more than \$1,000.00 is a public nuisance subject to abatement as provided in this section. The purpose of abatement is to remove motor vehicles operated by repeat traffic offenders who have not been subject to the deterrent and rehabilitative effects of sentencing, and who therefore pose a heightened danger to the public. The purpose of abatement is not to generate revenue.

B. *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Arrest means traffic stops by a peace officer for the purpose of issuing a citation and detentions based upon reasonable suspicion of criminal activity.

Delinquent traffic fine means an unpaid traffic fine referred to the municipality for collection by the Alaska Court System.

Traffic fine means a fine issued by the municipality for a moving violation. Traffic fine does not include fines for parking violations.

C. A motor vehicle that is a public nuisance may be abated through seizure by order of the court upon a showing of probable cause the motor vehicle was operated in violation of subsection A. Abatement without a court order may be made if seizure is incident to an arrest and there is probable cause to believe the motor vehicle was operated in violation of subsection A.

D. A vehicle seized under subsection C. may be held by the municipality for up to two days before the registered owner or lienholder may obtain release of the seized vehicle. For purposes of computing the two-day period, the day the vehicle is seized is not included and Saturdays, Sundays, and municipal holidays are not included.

E. Notice of the seizure shall be provided as set forth in section 9.28.026C.7.

F. A post-seizure probable cause hearing shall be provided as set forth in section 9.28.026C.13. unless seizure is pursuant to a court order.

G. If the registered owner or lienholder was not the person operating the motor vehicle in violation of this section, the registered owner or lienholder may obtain release of the motor vehicle upon:

1. Agreement the registered owner or lienholder shall take reasonable steps to prevent the operation of the motor vehicle in violation of this section;
2. Proof of insurance of the motor vehicle in a form acceptable to the municipality;
3. Proof of ownership or a legal right to repossess the vehicle; and
4. Payment of an administrative fee of \$410.00, towing and storage fees, and any court costs imposed.

H. If the registered owner or lienholder was the person operating the motor vehicle in violation of this section, the registered owner or lienholder may obtain release of the motor vehicle upon:

1. Complete payment of all delinquent traffic fines;
2. Proof of insurance of the motor vehicle in a form acceptable to the municipality;
3. Proof of ownership or a legal right to repossess the vehicle; and
4. Payment of an administrative fee of \$410.00, towing and storage fees, and any court costs imposed.

I. A motor vehicle seized under this section may be forfeited to the municipality upon order of the court. The municipality may not bring an action for forfeiture unless the action is brought within six months from the date of seizure of the vehicle.

1. To obtain an order for forfeiture the municipality must establish by a preponderance of the evidence the motor vehicle was operated in violation of this section.
 2. A registered owner or lienholder may avoid forfeiture and obtain release of the motor vehicle without fees or costs after showing by a preponderance of the evidence the motor vehicle was legally unjustified as defined under section 9.28.026F.
 3. If the registered owner or lienholder fails to show the motor vehicle was legally unjustified, the court shall order the motor vehicle forfeited to the municipality, if the motor vehicle is not retrieved under subsection G. or H., as applicable, within five days of the order.
 4. A registered owner or lienholder may, after the commencement of an action under this section, retrieve the motor vehicle under subsection G. or H., as applicable.
- J. A registered owner may obtain temporary release of a vehicle upon:
1. Proof of insurance of the motor vehicle in a form acceptable to the municipality;
 2. Proof of ownership or a legal right to repossess the vehicle;
 3. Payment of an administrative fee of \$410.00, towing and storage fees and post in cash a vehicle return bond in the amount \$1,000.00.
- K. Notwithstanding the determination of a vehicle as a public nuisance under this section, the vehicle return bond shall be returned to a registered owner or lienholder who was not operating a motor vehicle in violation of this section if the registered owner complies with subsection G.1.
- L. The vehicle return bond in shall be forfeited to the municipality if a registered owner or lienholder who was operating a motor vehicle in violation of this section fails to show the seizure of the motor vehicle was legally unjustified under subsection I. and the registered owner or lienholder fails to return the vehicle to the municipality in accordance with the terms of release or upon order of the court. The court shall, upon motion by the municipality, also order seizure of the vehicle.
- M. A motor vehicle forfeited under subsection I. may be disposed of as set forth in section 9.28.026 E.7.
- N. Proof a registered owner or lienholder did not know or could not reasonably have known the vehicle was operated in violation of this section is not a defense to the requirements of release under subsection G. or H., as applicable, or to an action under subsection I.
- O. The administrative fee under subsection G. or H., as applicable, may be waived in exceptional cases or if it is in the best interests of the municipality. The administrative fee shall not be imposed if notice is not provided as required under subsection E. or the administrative hearing officer finds no probable cause under subsection F.

(AO No. 2007-161, § 5, 12-11-07; AO No. 2010-76, § 7, 10-26-10; AO No. 2010-81(S-1), § 10, 12-7-10, eff. 1-1-11)



OFFICE OF THE OMBUDSMAN

Memorandum

DATE: February 5, 2020

TO: Anchorage Assembly & Mayor Berkowitz

FROM: Darrel W. Hess, Municipal Ombudsman *DWH*

SUBJECT: AMC 9.28.035 – Abatement of Vehicles Operated by Delinquent Offenders

EXECUTIVE SUMMARY

The Municipal Ombudsman's Office has concerns regarding the fairness, equity and reasonableness of AMC 9.28.035 – Abatement of Vehicles Operated by Delinquent Offenders, more commonly known as the scofflaw ordinance. The ordinance states in part that “Any motor vehicle operated by a person who accumulates delinquent traffic fines totaling more than \$1,000.00 is a public nuisance subject to abatement as provided in this section.”

Traffic fine is defined as “{a} fine issued by the municipality for a moving violation. Traffic fine does not include fines for parking violations.” However, the term “moving violation” is not defined in the code. Unpaid criminal fines for offenses committed while operating a motor vehicle (criminally negligent homicide, manslaughter, second-degree murder, driving under the influence) are not counted for purposes of the scofflaw code, but unpaid fines for burned-out headlights and taillights are counted. In 2019 the Finance Department proposed amending the definition of “traffic fine” in Municipal Code (AO 2019-59) to codify that “moving violations” includes equipment and paperwork violations. The Ombudsman's Office recommended against approval of AO 2019-59, and the Assembly indefinitely postponed the ordinance. For purposes of the scofflaw code, the Municipality of Anchorage (MOA) is still including unpaid fines for paperwork and equipment violations.

After further review of AMC 9.28.035 by the Ombudsman's Office, the Ombudsman has determined that the code, while it may be legal, is not fair, equitable or reasonable, and for the reasons outlined in this memo recommends that AMC 9.28.035 – Abatement of Vehicles Operated by Delinquent Offenders be repealed.

BACKGROUND

In early 2007, the MOA began exploring ways to deal with a relatively small group of individuals who had accumulated over \$4 million in delinquent traffic fines. The MOA began lobbying members of the Alaska State Legislature to pass enabling legislation that would allow local governments to enact scofflaw ordinances.

On March 27, 2007, Assembly Members Shamberg and Tesche introduced AO 2007-60, accompanied by AM 237-2007. The ordinance made operation of a motor vehicle in the MOA by a person who had accumulated three or more delinquent traffic fines totaling more than \$1,000 a misdemeanor, and their vehicle subject to impound and possible forfeiture. AM 237-2007 noted that “Safer highways for Anchorage motorists, not increased revenue, is the goal of AO 2007-60.” The Assembly approved AO 2007-60 on April 10, 2007, with an effective date of October 1, 2007. The purpose of the delayed effective date was to give the Alaska Legislature time to pass legislation enabling municipalities to enact and enforce local ordinances such as AO 2007-60. When AO 2007-60 was adopted, proposed legislation was before the Judiciary Committee of the State House of Representatives. The Administration and Assembly believed that passing a local ordinance ahead of any enabling state legislation would provide guidance to the Legislature.

On May 10, 2007 multiple representatives of the MOA appeared before the Alaska State Legislature, House Judiciary Standing Committee to speak in support of Senate Bill 145, “An Act relating to municipal impoundment and forfeiture”, sponsored by Senator Lesil McGuire. The meeting lasted nearly 40 minutes and included a robust discussion of the terms “moving violation”, “traffic fines” and “traffic”. The term finally agreed upon was “moving violation”. The bill’s sponsor expressed concerns with criminalizing the act of driving a motor vehicle while the driver owed more than \$1,000 in delinquent traffic fines. She believed that this would be creating a “crime upon a crime”. Steve Smith with the Anchorage Police Department opined that SB 145 was “a worthwhile tool for law enforcement to use to attempt to change the behavior of those for whom the existing laws don’t seem to matter.” SB 145 passed late in the 2007 legislative session and was signed into law by Governor Palin on July 31, 2007. The final version of the bill defined operating a vehicle while owing more than \$1,000 in delinquent fines for moving violations as a civil public nuisance, not a criminal misdemeanor.

On November 27, 2007, at the request of the Mayor, the Chair of the Assembly introduced AO 2007-161, accompanied by AM 733-2007. The ordinance repealed AO 2007-60 and re-enacted the relevant sections of Anchorage Title 9 to conform to the parameters of the final legislation enacted by the Legislature and signed into law by the Governor. A vehicle driven within the MOA by a scofflaw was defined as a civil public nuisance, not a criminal misdemeanor. AM 733-2007 stated that “The purpose of abatement is not to generate revenue.” The current ordinance has been in effect since it was adopted by the Assembly on December 11, 2007.

ANALYSIS

Generally, in Alaska the Division of Motor Vehicles (DMV) and the courts determine if an individual’s driving privileges should be suspended, revoked or restricted. The scofflaw enabling statute authorizes local governments in Alaska to adopt ordinances which allow them to determine that individuals who possess a valid driver’s license pose a public safety risk, based on their non-payment of traffic fines, and to impound any vehicle that they are operating.

Based on our review of the scofflaw code, the Ombudsman’s Office has identified three issues of concern:

1. The MOA's interpretation of "moving violations".
2. The potential for disproportionate impacts on low-income individuals.
3. The financial impacts on persons who are not scofflaws.

Issue 1. The MOA has been interpreting the term "moving violations" in the scofflaw ordinance to include equipment and paperwork violations. The Ombudsman's Office believes that including equipment violations and paperwork violations in the definition of "moving violations" is inconsistent with the State of Alaska DMV's interpretation of a moving violation, and appears to contradict the numerous statements by the MOA that the scofflaw ordinance is solely about public safety, not debt collection.

While "moving violation" is not defined in the Alaska statutes or municipal code, the State of Alaska, DMV interprets the term as encompassing violations for which the DMV enters points on a driving record. Specifically, page 10 of the official State of Alaska, DMV Driver's Manual states that "convictions for moving traffic violations are assigned numeric point values ranging from 2 points to 10 points", with "violations with the highest likelihood of contributing to crashes. . . assigned the higher point values." Page 11 of the Driver's Manual contains a schedule of "moving traffic violations" and a paragraph at the top of the schedule that states, "If you are convicted of, or forfeit bail for, a moving traffic violation occurring in this, or any other state, points will be entered on your Alaska driving record. Assigned points are based on the following schedule:" The schedule lists all manner of different violations, but no equipment or paperwork violations. Indeed, in Alaska points are not entered on a driver's record for equipment or paperwork violations. Because the DMV assesses points for "moving traffic violations" it follows conversely that if the DMV does not enter points – as in the case of equipment and paperwork violations - it does not consider the offenses to be moving violations.

The DMV does not assign points for non-moving traffic violations, because they do not consider those offenses to be reflective of a person's ability to safely operate a motor vehicle on a public roadway. For the MOA to state that the scofflaw ordinance is strictly about public safety, and then seize private property for delinquent fines, including fines related to offenses for which the State DMV does not assign points, appears to run counter to the public safety argument the MOA has advanced for the past twelve years, especially with delinquent fines for serious criminal traffic offenses (criminally negligent homicide, manslaughter, second-degree murder, driving under the influence) not being included for purposes of enforcing the scofflaw code.

Issue 2: Including delinquent fines for equipment and paperwork violations as moving violations for purposes of the scofflaw code can have disproportionate impacts on low-income individuals, and neighborhoods with lower median incomes. Thousands of individuals in our community frequently have to make difficult choices, to put food on the table, or replace a headlight or taillight. Headlights can often cost over \$100 and be difficult to install without the services of an auto mechanic. It is not uncommon for some headlights to not be available in Anchorage. And, if you find one online, the odds are good that the company will not ship to Alaska.

The MOA impounding a person's vehicle can have serious consequences for someone who is already living on the edge financially, and could cause them to lose the transportation that allows them to get to and from work. The loss of their vehicle could start a downward spiral from which it would be difficult to recover. Does this mean that someone should get a free pass just because they are poor? Should the rules not apply to someone because of their financial status? Of course not; we are all responsible for following the rules. Persons who do not pay their traffic fines, regardless of their financial status, should bear the same consequences as persons who do not pay their MOA criminal fines, and other civil fines, including those owed to Animal Care & Control. These delinquent fines are sent to a collection agency, and the MOA garnishes the debtor's Alaska Permanent Fund Dividend. Is it fair and equitable to seize the personal property of persons with delinquent traffic fines, when the MOA does not generally seize the personal property of persons with delinquent criminal fines, and other delinquent civil fines owed to the MOA?

Issue 3. The Ombudsman's Office believes that the MOA's scofflaw program is not fair or equitable, because it causes significant financial harm and impacts to persons and businesses who are not on the scofflaw list, including an elderly grandmother on a small fixed-income who loaned her vehicle to her grandson (who possessed a valid driver's license). He was stopped by APD and her car was impounded. She had to pay \$600-\$700 to retrieve her vehicle.

Or, the employer who checked the driving record of his employee with the State of Alaska, DMV, and determined that the employee did not have any traffic violations on his driving record for the previous 5-10 years. However, the employee had outstanding unpaid traffic fines that were more than 10 years old. APD stopped the employee while he was driving a company vehicle and impounded the vehicle. The employer had to pay \$600-\$700 to retrieve the company vehicle. The employer also suffered lost business while the vehicle was impounded. The employer had never heard of the scofflaw program.

Under the scofflaw code, it is the responsibility of an individual or employer to be aware of an obscure MOA code and program, that is buried on the Finance Department's webpage on muni.org (not on APD's webpage or the MOA's impounds webpage). It is also their responsibility to check the scofflaw list (if they are aware of the program and can locate the scofflaw list online) before they loan a vehicle to or employ an individual who may have a valid driver's license. The Ombudsman's Office believes that placing this responsibility solely on members of the public is not fair or reasonable.

CONCLUSION

The scofflaw program is supposed to be about public safety. The individuals on the list, because they have not paid their traffic fines (not including unpaid fines for criminal offenses committed while operating a motor vehicle), are allegedly the worst of the worst, and pose such an imminent danger to the public that any vehicle they are operating must be impounded. Vehicles are impounded even if the scofflaw operator possesses a valid driver's license because the courts and the DMV have not determined that their operating a motor vehicle poses a danger to the public, and consequently have not revoked or suspended their driving privileges. And, if they pay their fines, they are good to go; with no requirement for a driver's safety course, or any

restrictions on their driving privileges. If they are the worst of the worst one day, how can they be safe to operate a vehicle the next day simply by paying money? Many of the top offenders on the scofflaw list simply purchase what they refer to as disposable or throwaway vehicles, or “beaters with heaters”. Many of the most egregious scofflaws have had multiple vehicles impounded and forfeited, yet they are still operating vehicles on Anchorage’s roads. This strongly suggests that the alleged public safety purpose for the scofflaw program has not been achieved.

The MOA has never provided any statistical data to the Legislature or Assembly that supports their contention that persons who do not pay traffic fines are any more dangerous on the roads than persons who pay their fines. The MOA cannot show how much revenue impounding vehicles under the scofflaw program generates for the MOA. The MOA cannot, with any certainty, show how much it costs the MOA to operate the scofflaw program. The MOA cannot show that the program’s goal of improving public safety is being achieved. And, the MOA acknowledges that the program may disproportionately impact individuals residing in certain neighborhoods.

In 2019 the Alaska State Legislature enacted a state scofflaw statute, which was signed into law by the Governor. The statute, AS 28.15.161(a)(7), requires that the DMV cancel the driver’s license of any person who “owes \$1,000 or more in unpaid fines for offenses involving a moving motor vehicle...”. The statute allows a scofflaw to keep their driver’s license if they make payment arrangements with the DMV. The DMV’s program relies on the potential cancellation of a privilege, rather than seizure of private property. The DMV hopes to have their scofflaw program implemented in the fourth quarter of 2020. With the upcoming implementation of the DMV’s scofflaw program, is the MOA’s scofflaw program necessary?

During our review of the scofflaw code, the Ombudsman’s Office could not find any way to amend the code to make it fair, equitable and reasonable. Given the inability of the MOA to show a compelling public need for the program, or that the scofflaw program is achieving its public safety goals, and given its impacts on persons not on the scofflaw list, and its potential disproportionate negative impacts on low-income individuals, the Ombudsman’s Office believes that the collateral damage caused by the scofflaw program cannot be justified. The scofflaw program also appears to be inconsistent with one of the reasons listed in the preamble of Anchorage’s Home Rule Charter for establishing the Charter – “to support individual rights”. The Ombudsman finds that AMC9.28.035 is not fair, equitable or reasonable and recommends that it be repealed.

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OFFICE OF THE OMBUDSMAN
Memorandum

DATE: October 28, 2021

TO: Anchorage Assembly & Mayor Bronson

FROM: Darrel W. Hess, Municipal Ombudsman *DWH*
May Ramirez-Xiong, Deputy Ombudsman *MRX*

SUBJECT: AMC 9.28.035 – Abatement of Vehicles Operated by Delinquent Offenders

On February 5, 2020, after an extensive review of AMC 9.28.035 – Abatement of Vehicles Operated by Delinquent Offenders and responding to numerous complaints regarding the code and its impacts on constituents, especially vehicle owners who were not on the scofflaw list, the Municipal Ombudsman’s Office issued a memo that recommended the repeal of AMC 9.28.035.

Unfortunately, the COVID – 19 global health pandemic sidetracked any response to our memo and recommendation. Consequently, we are resending the original memo, under cover of this memo. We are attaching several graphs and charts related to the recent history of scofflaw impounds by the Municipality of Anchorage. For the reasons outlined in the original memo, the Anchorage Municipal Ombudsman’s Office recommends that the Assembly repeal AMC 9.28.035.

The Municipality is unable to demonstrate that the code contributes to improved public safety, which was the stated purpose for implementing the scofflaw ordinance. Unpaid fines for criminal offenses committed while operating a motor vehicle do not count for purposes of the scofflaw code; cracked windshields and burned-out headlights and taillights do count. The Municipality loses money implementing and managing the program. Multiple non-scofflaw vehicle owners have lost their vehicles because they were unable to pay the costs to retrieve their vehicles that were impounded by the Municipality.

The negative impacts to non-scofflaw vehicle owners and businesses far outweighs any other considerations. The code is regressive, unfair, and unreasonable. The Municipality seizing private vehicles, including business vehicles, to collect delinquent civil fines is government overreach at its worst. The Municipality of Anchorage should defer to the state scofflaw statute, AS 28.15.161(a)(7)), which requires that the Division of Motor Vehicles cancel the driver’s licenses of individuals who accumulate over \$1,000 in unpaid traffic fines. The state statute cancels a privilege, rather than seizing private property.

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