



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reasons outlined in this memo recommends that AMC 9.28.035 – Abatement of Vehicles Operated by Delinquent Offenders be repealed.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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