



## PUBLIC INVESTIGATIVE REPORT

Ombudsman Complaint J2003-0053

Final Report

*Edited to remove information made confidential by statute  
or to identify the complainant.*

July 15, 2005

In 2003, a Juneau resident contacted the Office of the Ombudsman regarding the impoundment and subsequent destruction of his car. The complainant complained that the Juneau Police Department (JPD) had impounded his car and that, although the complainant was found not guilty of a traffic violation in court, he was now unfairly being billed several hundred dollars for impoundment, storage, and disposal costs, not to mention for the loss of the car. The complainant believed that the City and Borough of Juneau (CBJ) should absorb these costs. He said that the car was probably worth \$100 or less, so the costs were his major concern, not the value of the car.

Assistant Ombudsman Beth Leibowitz investigated the following allegation and forwarded her report to me.

***UNFAIR: CBJ police impounded complainant's car, alleging failure to move the car frequently enough out of on-street parking. Even though complainant prevailed in court on the citation, his car has been destroyed and he was told that he is liable for more than \$400 for impound fees and the cost of dismantling the vehicle.***

### **SUMMARY OF THE COMPLAINT**

On March 8, 2003, JPD Officer Gregory Drake impounded the complainant's car and issued a \$20 citation for violating the "streets for storage" ordinance, **CBJ § 72.12.040**.<sup>1</sup> CBJ had repealed this ordinance in 2001, as part of a revision and readoption of the CBJ Code.<sup>2</sup> Officer Drake said he was unaware that the ordinance had been

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<sup>1</sup>In court, Officer Drake testified that he had observed the vehicle parked on March 3, and March 7, and that the vehicle did not appear to have been moved during those days. If the vehicle had indeed been immobile for that long, it would have violated the terms of (former) CBJ § 72.12.040, which prohibited storing a vehicle on the street longer than 120 hours (five days). The complainant disputed the merits of the allegation, and testified that he had moved the vehicle for a short time every day to use on his paper route. He also offered a witness who corroborated his testimony.

<sup>2</sup>Former CBJ Code § 72.12.040 is listed in the Table of Omitted Sections listing all ordinances repealed when CBJ adopted a comprehensive revision of the municipal code in 2001. In a May 7, 2003 email to City Manager Rod Swope, Captain Porter described the ordinance as one that "unfortunately was left off the revised traffic code."

repealed. JPD had the car towed to Glacier Towing/Doug's Auto Body, which, at the time, operated an impoundment lot under contract with CBJ.

JPD impounded the complainant's car on a Saturday. The complainant said that when he realized his car was missing (probably on a Sunday) he first suspected that acquaintances had taken it as a prank.

On Monday, March 10, the complainant contacted JPD in search of his car and visited the police station. JPD counter staff issued him a release authorization form (referred to as a "release"). This did not release the car to the complainant: It only authorized Glacier Towing to let the complainant pick up his car – if he could pay the fees. JPD may also have issued the complainant a slip listing Glacier Towing's rates: \$85 for impoundment, then \$5/day for storage, plus a warning that cars left more than 30 days would be disposed of. On March 10, 2003, the total cost to redeem the car was \$95.

The complainant maintained that he was innocent and intended to contest the citation. He believed that he should not have to pay without being found guilty first. Further, he balked at paying \$95 to retrieve his \$100 car. He said that no one told him that he might be able to obtain a refund if he was exonerated. The complainant contacted Nancy Maki at Glacier Towing. Ms. Maki told the investigator that the complainant made it clear that he was not going to pay any towing or impound fees. Because Ms. Maki runs Glacier Towing as a business, she was naturally unsympathetic to the complainant's position.

The complainant's case was eventually scheduled for trial on April 23, 2003. Before trial, the complainant spoke with both Sgt. Ben Coronell and Officer Drake regarding the status of his car – it was still in the tow lot, and the 30-day deadline expired well before April 23. Officer Drake phoned Ms. Maki at Glacier Towing and asked her to hang onto the car a little longer. Ms. Maki said she might wait a week, but did not commit to a specific additional time.

On April 21, 2003, Alaska Auto Towing towed the complainant's car to its lot for parts scavenging and fluid removal preparatory to the car's final trip to the dump. Sid Howerter of Alaska Auto Towing could not give the exact date that he sent the car to the dump.<sup>3</sup>

On April 23, 2003, the complainant contested the \$20 citation in district court. Magistrate Sivertsen noted that the ordinance relied upon in the citation no longer existed, due to the 2001 repeal. Magistrate Sivertsen therefore found the complainant not guilty. The magistrate did not address the complainant's dispute with JPD over the impoundment costs. The complainant's triumphed over the \$20 citation, but he emerged with no car and apparent liability for storage and disposal costs.

## **INVESTIGATION**

### **The complainant's Complaint to JPD**

At the end of April 2003, the complainant complained to JPD, and JPD agreed to cover the original \$95 fee owed when JPD "released" the car on March 10, 2003. In an email to City Manager Rod Swope, Captain Porter wrote:

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<sup>3</sup> The ombudsman could not determine whether the complainant's car was actually destroyed before the April 23 court hearing, or shortly thereafter.

I met with [the complainant] on 4-30-03. I explained that the PD would pay the impound/towing fee and two days of storage fees (\$95) but that was it. I attempted to help him understand that his storage fees have nothing to do with his case. He moved his head in a yes motion but the look on his face indicated he didn't agree. He said he assumed that because he wanted to fight the citation he didn't have to get his car out of storage and that the PD should take care of it.<sup>4</sup>

In May 2003, Captain Porter explained to Ms. Leibowitz that in most (more than 99 percent) cases, JPD never pays or refunds impound fees, even if the defendant is later found innocent. However, JPD has an "informal appeal" by which a citizen can complain, and JPD will refund impound fees on a case-by-case basis if JPD concludes that it lacked probable cause for the initial citation and impoundment – a "not guilty" verdict is insufficient for a refund. Captain Porter said that JPD processes one or two appeals each year. He also stated that JPD was not responsible for the car after they "released" it and any costs from further storage and disposal were the vehicle owner's responsibility, not JPD's, regardless of the validity of the original impoundment.

The complainant denied that anyone told him that a refund was possible when he initially objected to paying to redeem the car before his court date. He suspected that if he paid then, he would never see the money again, even if he prevailed in court. Later, JPD treated his complaint as an "informal appeal," but it appears that this appeal process was so informal that it was not generally publicized; it was only available to those persistent enough to complain.

### **Who Paid the Bills?**

When the complainant contacted the ombudsman, he complained about the unfairness of being stuck with a bill for several hundred dollars, when he was not guilty in the first place and his only sin was insisting on a court hearing before he handed over his money. In yet another twist to this complaint, it appears that in fact no one actually billed the complainant. Ms. Leibowitz interviewed the complainant again in July 2005, and he confirmed that, as far as he knew, no one had attempted to bill him for impoundment or destruction costs.

Ms. Leibowitz tabulated the costs associated with the impoundment and destruction of the complainant's car. These are the costs over and above the complainant's financial damage from the loss of the car itself.

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<sup>4</sup> Email of May 7, 2003, from JPD Captain Tom Porter to Rod Swope.

<b>Cost</b>	<b>Owed to</b>	<b>If Paid, by Whom?</b>	<b>Billed to the complainant?</b>
\$85 impoundment fee	Glacier Towing	Glacier Towing invoiced CBJ for this amount April 30, 2003. CBJ paid.	No. JPD agreed to absorb this cost.
\$10 storage costs – first two days	Glacier Towing	CBJ did not pay. Ms. Maki said that CBJ did not pay storage costs, because Glacier Towing's contract provided only for CBJ payment of impoundment fees. She said that CBJ expected her to sue the car owners for storage costs, and the lawsuits were not cost-effective.	No. JPD agreed to absorb this cost in response to The complainant's complaint; however, it appears that Glacier Towing actually bore this cost, not CBJ.
\$140 storage for another 28 days <sup>5</sup>	Glacier Towing	CBJ did not pay. Ms. Maki said that CBJ did not pay storage costs, pursuant to its contract with her. CBJ expected her to sue the car owners for these costs, and the lawsuits were not cost-effective.	No. Ms. Maki said she wrote this off; she did not attempt to collect from The complainant, although she believed that he owed the money.
\$180 towing and prepping car for dump	Alaska Auto Towing	Alaska Auto Towing invoiced CBJ, and CBJ paid \$180 in July 2003.	No. CBJ Treasurer Barbara Rolfe said that she has no record of CBJ billing the complainant. The complainant said that he had not received any bill that he was aware of.
\$150 dump fee	Dump	Billed to CBJ, and presumably paid.	No. See above.
<b>TOTAL: \$565</b>			JPD expressly agreed to absorb the first \$95; Glacier Towing judged it inefficient to seek collection of the additional storage fees; and CBJ apparently did not bill The complainant for the other \$330.

<sup>5</sup> Ms. Maki said that she did not count extra days after the 30-day deadline.

The complainant lost the value of his car (estimated at \$100), due to a combination of (1) practical difficulty affording the fees to recover the car, and (2) a less practical stance that his argument on principle was of greater value than the car itself. But he did not suffer additional financial injury. The biggest financial loss in this case appears to have been absorbed by Glacier Towing, a third party.

Since autumn of 2004, CBJ has been operating its own impoundment lot, so CBJ, not a private contractor, must now absorb costs if the car owner does not pay.

### **CBJ Ordinances**

Title 72 (Traffic) of the CBJ Code contains no less than three separate ordinances authorizing motor vehicle impoundment, all of which assign responsibility for the expenses a bit differently. When The complainant's car was impounded, **CBJ Code § 72.22.060** applied to his vehicle:

#### **72.22.060 Authority to impound vehicles; redemption or sale; presumption of abandonment.**

(a) Whenever any vehicle is located or is standing upon any street or alley or right-of-way *in violation of the provisions of this title or any rule or regulation adopted thereto*, or whenever any vehicle is found to be mechanically unsafe to operate upon any street or alley or right-of-way, or whenever the driver is arrested for an offense involving either driving under the influence of intoxicating liquor or hypnotic or narcotic drugs, reckless driving, negligent driving or any felony, *such vehicle may be removed from the City and Borough streets or alleys and may be impounded at a place to be designated by the chief of police.* The police shall, in the proper case and whenever any other provision of this title is violated, cause a complaint to be filed against the person committing such offense. *When the owner or authorized representative of the owner of the vehicle claims the same, he or she shall be informed of the nature of the circumstances causing the impoundment of such vehicle and to obtain release thereof shall pay all towing, impoundment and storage charges.* Such fees may be established, changed or abolished by the assembly by resolution. *If the operator or owner of the vehicle, upon hearing before the municipal judge, is found not guilty of the violation of which he or she is charged, the impounded vehicle shall be released immediately to the owner without collection of fees or other charges, or if such person found not guilty has already paid impoundment towing or storage charges, the court may order the City and Borough to refund part or all of such fees or charges.* If the owner or operator of such vehicle is found guilty, any fine imposed under the provisions of the appropriate section of this title shall be in addition to the towing, impounding and storage charges herein prescribed in this section. [Emphasis Added]

The above ordinance specifically contemplates that the car may still be impounded on the trial date, and that if the owner is not guilty, the city shall return the car without charging a cent. However, if the owner was practical enough to pay the impound fees promptly rather than allow them to accumulate, the court "may order" a refund – apparently, if the court does not decide to affirmatively order a refund, the car owner is worse off financially than if he had refused to redeem the car in the first place.

Another ordinance, **CBJ Code § 72.02.345**, also authorizes vehicle impoundment. Instead of the repealed “streets for storage” ordinance, Officer Drake could conceivably have cited the complainant under the portion of § 72.02.345 addressing abandoned cars. The same criteria that led Officer Drake to believe that the complainant was violating the former “streets for storage” ordinance could have led the officer to conclude that the car was abandoned as defined in AS 28.11.020:<sup>6</sup>

**72.02.345 Officers authorized to remove vehicles.**

- (a) If a vehicle is in violation of the provisions of sections 72.02.340 through 72.02.373, or is left on a roadway or under circumstances which obstruct the normal movement of traffic, a police officer may move the vehicle, or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway or to a safe place on the roadway.
- (b) A police officer may impound and remove to a place of safety a vehicle which:
- (1) Is found in the state and which has been previously reported stolen or taken without the owner's consent;
  - (2) Is found or operated on a highway or ferry facility without license plates or other evidence of registration or which evidence is false with respect to that vehicle;
  - (3) *Is found or presumed to be abandoned as provided in AS 28.11.020, except that a vehicle is not considered abandoned if left standing or parked in excess of the time specified in AS 28.11.020 when the owner or driver of the vehicle has given notice to a municipal police department, if the vehicle is located within a municipality, or to the nearest office of the Alaska State Troopers, specifying the circumstances which require standing or parking in excess of the time specified in AS 28.11.020, and the provisions the owner or driver is making to remove the vehicle; or*
  - (4) Is found to be in violation of subsection 72.02.340(d)(1)(K) upon a state-controlled or state-designated parking area.
- (c) When a police officer arrests and detains the driver of a motor vehicle, the officer shall impound and remove the vehicle to a place of safety; however, the officer shall inform the driver that the driver may elect to have another immediately available person, who is legally licensed to drive a motor vehicle, drive or otherwise remove the vehicle as the driver directs. The driver may designate the nearest available garage or tow car operator of the driver's choosing

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<sup>6</sup> AS 28.11 (Abandoned Vehicles) provides for impoundment of disposal of vehicles abandoned or presumed to be abandoned, i.e. a car “that reasonably appears to have been left unattended, standing, parked upon or within 10 feet of the traveled portion of a highway or vehicular way or area in excess of 48 hours.” AS 28.11.060 provides for redemption of impounded for abandonment, “by paying the charges of towing, storage, notice, other cost of impoundment, and any applicable penalty imposed by law. AS 28.11 lacks any express provision for a hearing to contest whether the car was in fact abandoned; however, AS 28.11.100, which addresses municipal abatement procedures, provides, “A municipality may adopt an ordinance establishing procedures for the abatement and removal ... a vehicle otherwise presumed to be abandoned. An ordinance adopted under this section must contain provisions for (1) notice to owners and lienholders of record and persons known to be lawfully entitled to possession of the vehicles, of their right to a hearing which shall be conducted by the municipality in the manner provided for by municipal ordinance.” In practice, Officer Troy Wilson of JPD noted that very few owners of cars impounded due to presumed abandonment bother to contest the matter.

to remove the vehicle. If the driver does not so indicate, the officer shall make the arrangements necessary to remove the vehicle.

*(d) When a vehicle is impounded and removed from a highway or elsewhere at the discretion of a police officer, the vehicle shall be removed to a place of safety. The owner or driver may claim the vehicle by securing a written release for it from the police officer or agency ordering its removal. A vehicle legally removed or impounded may not be released to the owner, nor may the owner secure its use until the release for it is certified by the officer or agency directing its removal. The expense for the removal and storage must be paid by the owner or driver of the vehicle. [Emphasis Added]*

Under **CBJ Code § 72.02.345**, the owner is always responsible for costs, regardless of the merits of the police action.

Then, shortly after the complainant appeared in traffic court, the Assembly adopted new provisions addressing the impoundment of the vehicle when the driver is arrested for drunken driving or driving without a license. **CBJ Code 72.23** is titled “Impoundment or Forfeiture of Motor Vehicles Involved in Driving Offenses” and provides in part:

**72.23.100 Vehicle impoundment; public nuisance.**

A motor vehicle that is operated, driven, or in actual physical control of an individual arrested for or charged with an impoundment driving offense shall be impounded by the City and Borough for 72 hours in accordance with this chapter. The purpose of the impoundment is to preserve any evidence that may be necessary for trial, to protect the public by removing public nuisances from the roads and deterring drivers from drinking and from operating vehicles in violation of license restrictions. A vehicle operated in the course of the commission of an impoundment driving offense is declared to be a public nuisance for which the registered owners shall be legally responsible subject only to defenses set forth by law.

CBJ Code § 72.23.101 provides for immediate impoundment of the vehicle upon arrest of the driver for a “driving offense,” i.e. DUI, refusing a Breathalyzer test, or driving without a valid license; however, §72.23.101(d) lists circumstances where the officer may waive impoundment. If the officer impounds the vehicle, the following sections apply:

**72.23.102 Storage of vehicle, payment of fees, release.**

- (a) The police officer shall arrange for a vehicle impounded under this chapter to be taken to and stored at a commercial vehicle storage service.
- (b) The vehicle storage service shall release the vehicle to the registered owner upon presentation of a release authorization issued by the police department.
- (c) *The police department shall issue a release authorization upon request on the first business day 72 hours after the vehicle was impounded. A release shall not be granted unless the owner:*
  - (1) Can provide proof of ownership or a legal right to possess the vehicle; and
  - (2) Is not intoxicated, and

(3) *Pays an administrative charge to offset the city's processing costs.*

(d) Vehicles ordered impounded under this section and which are not claimed may be disposed of pursuant to the provisions of AS 28.10.502. If the contents of the vehicle have not been recovered before such disposal, the contents may be disposed of with the vehicle.

(e) The owner shall be liable for payment of all towing and storage fees to the commercial towing and storage service.

#### **72.23.103 Reimbursement of impound fees.**

Fees under section 72.23.102(c) and (e) may be reimbursed by the City and Borough if:

(a) All charges related to the impoundment are dismissed or the driver is acquitted, or

(b) The chief of police finds there were facts which would have justified a decision by the officer under section 72.23.10(d) to waive impoundment. A finding under this subsection (b) shall not by itself be construed to mean that the officer knew or should have known such facts. [*italics added*]

Each ordinance has a slightly different approach to towing and storage costs if the car owner is exonerated: § 72.22.060 provides that if the owner had not yet paid, he should not have to, but if he had paid then he may obtain a refund only pursuant to court order; § 72.02.345 simply states that the owner is liable for the expenses, without exception; and the most recent ordinance, § 72.23.103, provides that CBJ may reimburse the car owner if charges related to the impoundment are dismissed or the driver is acquitted.

### **FINDING**

The complainant alleged that JPD acted unfairly. On the one hand, JPD followed its policies at the time. Although, the complainant argued that he should not have been asked to pay to redeem the car prior to his trial, the ombudsman cannot endorse the complainant's position that he had no responsibility to minimize his damages instead of allowing storage and disposal costs to accumulate. On the other hand, review of CBJ's ordinances indicates that CBJ's own provisions for impounded vehicles are confusing, and JPD's policies in 2003 may have conflicted with relevant ordinances.

Finally, the fact that the complainant had his car impounded and then crushed after being cited for violation of a repealed ordinance, before he could contest the citation in court, should be an embarrassment to the city.

The ombudsman finds the complainant's complaint *partially justified*. CBJ's actions demonstrated a problem with the policies in effect at the time; however, the ombudsman concluded that the complaint was only partially justified because the complainant's action (or inaction) also contributed to loss of his car.

### **RECOMMENDATIONS**

The three ordinances appear to overlap and are thus potentially in conflict. For example, all three can apply when the driver is arrested for driving under the influence.

***RECOMMENDATION 1: CBJ should direct its legal department to review all CBJ ordinances involving impoundment and confiscation of vehicles to clarify and harmonize them.***

Of the three ordinances listed, the 2003 ordinance enacting § 72.23.103 provides the fairest approach. If the car's owner is exonerated in court, he should not be paying impoundment and storage charges ranging from \$85 upwards, especially in cases involving minor traffic citations. On the other side of the argument, the city should not be obligated to incur extra storage costs pending trial, because the owner would rather make the city store the car. It makes sense to provide for reimbursement, rather than use the approach provided in § 72.22.060, which mainly provides that CBJ cannot charge for the expenses if they haven't been paid by the court date. The wording in § 72.22.060 creates a perverse incentive to leave the car in the impoundment, because the owner can gamble that the higher costs will be borne by the city after a favorable court verdict, but cannot similarly bet on reimbursement if he paid to redeem the car prior to the court date.

***RECOMMENDATION 2: CBJ should make the standards for reimbursement – or lack thereof – readily available to the public.***

In the complainant's case, JPD eventually told him that the city would cover the first \$95, but when the complainant first contacted JPD, JPD personnel did not mention the possibility of an appeal within JPD, or the possibility of reimbursement. JPD initially took the position that the complainant must pay the costs regardless of the outcome of the court hearing,<sup>7</sup> and it was only after both the destruction of the car and the conclusion of the trial that JPD admitted that it would be appropriate to cover at least the initial impoundment and storage costs.

***RECOMMENDATION 3: CBJ should develop a consistent policy of reimbursing or absorbing impoundment costs when the defendant is acquitted.<sup>8</sup>***

Without such a policy to protect the innocent, the unpalatable result is that the police may impound a citizen's car and demand payment without review or recourse. Although JPD officers generally exercise good judgment and believe that they have probable cause for each impoundment, they can and do make mistakes. The car's owner must have the opportunity to regain both car and money if the police made a mistake, as they did in the complainant's case. Otherwise, one is met with the unsightly spectacle of a citizen judged "not guilty" of a \$20 citation, yet owing several times that amount to regain possession of his car.

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## **CBJ RESPONSE TO PRELIMINARY REPORT**

City Manager Rod Swope wrote to Ombudsman Linda Lord-Jenkins on July 7, 2005:

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<sup>7</sup> Initially, The complainant disputed the "streets for storage" citation on the merits, and JPD disbelieved the complainant's assertion that he drove the car for a short time most days. The fact that the ordinance no longer existed was not brought up until the court date in April.

<sup>8</sup> As a corollary, one generally would expect the car in question to be preserved pending trial. CBJ may also consider formally limiting reimbursement if the car is left in custody for an unreasonable length of time.

The City and Borough of Juneau concurs with your findings and accepts your proposed recommendations. As soon as practicable the Law Department will review all CBJ ordinances involving impoundment and confiscations of vehicles to “clarify and harmonize” them.

Once all pertinent ordinances have been reviewed, CBJ will make the standards for reimbursement readily available to the public. We propose to accomplish this by creation of a pamphlet that will be provided to the owners of vehicles that have been impounded.

Subsequent to the ordinance review noted above, CBJ will also develop a consistent policy regarding reimbursement of impound costs when a defendant is acquitted.

We appreciate your thorough investigative efforts to resolve this matter.

## CONCLUSION

CBJ has agreed to remedy some of the systemic problems that contributed to the complainant’s difficulties: lack of clear law regarding who should bear impoundment costs, lack of accurate information for owners of impounded cars, and lack of a consistent municipal policy tailored to prevent excessive costs from being imposed on innocent parties. Based on CBJ’s agreement, this complaint is closed as *partially justified* but *rectified*.