

14 February 2022

## **DRAFT Resolution of Rogers Park Community Council**

Supporting Ombudsman recommended changes to Municipal Code regulating Vehicle Noise

### **Whereas:**

1. Excessive noise level in our council area from individual vehicles has increased drastically in the past few years,
2. In a memo dated October 8, 2021 the Municipal Ombudsman stated that the number of persons contacting the Ombudsman's Office, the Anchorage Police Department (APD), the Anchorage Health Department (AHD), the Mayor's Office and Members of the Anchorage Assembly with concerns related to excessively noisy motor vehicles has increased significantly over the past few years,
3. Excessive vehicle noise degrades our community and is recognized by health experts as a serious stressor affecting human health, likely causing or exacerbating sleep disturbance, heart disease, stroke, and diabetes. (reference: <https://www.annualreviews.org/doi/10.1146/annurev-publhealth-081519-062400> )
4. Current Anchorage Municipal Code sections 9.44.330 and 15.70.040 set stringent standards to protect residents from excessive vehicle noise,
5. Enforcement of these standards is delegated to the AHD and APD, but enforcement is rare because the codes are outdated and confusing and required testing equipment is not available,
6. In the memo dated October 8, 2021 the Municipal Ombudsman recommended review of the current code and the drafting of revisions necessary to make the codes easier for the AHD and APD to enforce,
7. The Municipal Ombudsman also recommended that APD purchase certified noise level meters for the Traffic Unit.
8. The current fine for a violation of this ordinance is \$60 and a citation for this offense may be dismissed if proof of correction is presented to an inspection official (AMC Section 9.48.130)

***Now therefore, be it resolved that the Rogers Park Community Council agrees with and supports the recommendations in the Ombudsman's October 8, 2021 memo with the subject heading AMC 15.70 - Noise Control & AMC 9.44.330 - Muffler and Exhaust System, attached.***

In addition, the Roger Park Community Council also supports a more significant fine for violations of vehicle noise regulations. We also request to be kept apprised of the progress of these revisions as they are drafted.



## OFFICE OF THE OMBUDSMAN Memorandum

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**DATE:** October 8, 2021

**TO:** Patrick Bergt, Municipal Attorney  
Chief Kenneth McCoy, Anchorage Police Department  
Joseph Gerace, Anchorage Health Department

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

**SUBJECT:** AMC 15.70 – Noise Control & AMC 9.44.330 – Muffler and exhaust system

The stated policy of the Municipality of Anchorage (MOA) is to “prevent excessive noise that may degrade the health or welfare of its citizens or degrade the quality of life”. This lofty policy statement is enshrined in code and sets a high bar for those who implement and enforce the code. Unfortunately, the current code is not easy for the Anchorage Health Department (AHD) and the Anchorage Police Department (APD) to implement or enforce. Municipal code should be easy for the public to understand, and easy to implement and enforce.

The current code sets expectations for the public that are frequently not achieved. When the public’s expectations are not met, they contact the Ombudsman’s Office, the APD, the AHD, the Mayor’s Office, and members of the Anchorage Assembly. The number of persons contacting these officials, departments, and agencies with concerns related to excessively noisy motor vehicles has increased significantly over the past few years. You only need walk, bike, or drive around Anchorage, and you will wonder if it is mandatory for a certain class of compact sports cars to have after-market exhaust systems that violate the standards in code and disturb the peace and quiet of multiple neighborhoods.

After reviewing the relevant sections of code, and speaking with APD and AHD staff, I have determined that some sections of the codes are outdated, confusing, and hard to implement and enforce. Several of the provisions in the codes were drafted when the MOA required IM inspections of motor vehicles; this program has since been repealed. Ours is an online society where persons pull up and review the codes online, and question why they are not being robustly enforced. Quality of life issues are important considerations for most Anchorage residents. Overly noisy motor vehicles negatively impact the quality of life for many Anchorage residents.

My review of the codes and conversations with AHD and APD staff raised multiple concerns and questions, including, but not limited to those outlined below.

- AMC 15.70.040.A.5 states that “The department and the police department may, except as otherwise prohibited by law, stop any motor vehicle, motorcycle or motorboat operated on a public right-of-way, public space or public waterway reasonably suspected

of violating any provision of this chapter and issue a notice of violation or compliance order after the motor vehicle, motorcycle or motorboat is inspected or tested on-site as the department and the police department may require.” This section of code implies that the AHD can stop vehicle operating in public rights-of-way. Is this legal? AHD staff are not commissioned police officers, certified by the Alaska Police Standards Council. “On-site” testing may not be practicable, or possible.

- APD does not enforce the sections of Title 15 related to excessively noisy motor vehicles; they enforce AMC 9.44.330. AHD staff informed me that they have not been issuing notices of violation for excessively noisy motor vehicles, given their lack of ability to stop vehicles on public rights-of way, and how testing meters must be used in order to obtain accurate readings. Should Title 15 contain any provisions for enforcing against excessively noisy motor vehicles being operated on public rights-of-way? Would revising AMC 9.44.330 to meet APD’s needs be the best way to address excessively noisy motor vehicles in Anchorage?
- Title 9 and Title 15 both contain sound level standards that are measured at a distance. The standard in AMC 15.70.090 – Motor vehicle noise standards, is measured “at 50 or more or an equivalent sound level at some other convenient distance according to testing procedures established pursuant to section 15.070.040.B.1”.The standard in AMC 9.44.330 is measured at “50 feet from the center of the lane of travel or the nearest property line, whichever is closer.” From an enforcement perspective, this is not practical. The code needs to contain a sound level standard measured at the tailpipe.
- AMC 9.44.330.C states that no person may “modify or change the exhaust muffler, intake muffler or any other noise abatement device of a motor vehicle in a manner such that the noise emitted by the motor vehicle is increased above that emitted by the motor vehicle as originally manufactured.” This section of code is virtually unenforceable. APD officers would need to know the original noise emissions levels for every year, make, and model of motor vehicles, and they would have to take accurate noise measurements to compare to their voluminous list of original manufacture motor vehicle noise emission levels. Rather than tying the requirements of this section to the noise levels emitted as manufactured, shouldn’t it be tied to the noise level emission standards in the code?
- In Title 9, person is defined to include businesses, but there are no provisions in Title 9.44.330 (or Title 15) which address any sanctions or penalties for businesses that install modified exhaust systems that increase the noise level emissions above the levels emitted at manufacture, or that violate the noise standards in the code. If we don’t intend sanctions or penalties for businesses who modify exhaust systems, should the code refer to “operating” a motor vehicle whose emission noise levels violate the standards in the code?
- Is it possible to add a provision to AMC 9.44.330 to allow APD officers to issue citations if they reasonably believe that a motor vehicle’s noise emissions violate the

standards found in the code? Individuals who are cited can take their vehicles to the AHD to be tested, after they are repaired.

Currently, when an APD officer encounters a motor vehicle that they reasonably believe violates the provisions of AMC 9.44.330, they issue a correctible citation. The person who receives the citation can have the vehicle repaired and make an appointment to take it to the AHD, where the motor vehicle's noise level emission is measured. The AHD uses noise standards measured at the tailpipe. If the motor vehicle's noise emissions are less than the maximum threshold at the tailpipe, the AHD notifies APD, and the citation is dismissed. The current process, including the reasonable person standard for issuing citations and the tailpipe noise level standard, make sense. This process should be codified. If the process that the APD and AHD are following is not in code, we risk legal challenges to our implementation and enforcement efforts. The codes need to clarify and coordinate the roles and responsibilities of APD and the AHD regarding implementation and enforcement of the codes related to excessively noisy motor vehicles.

Based upon my review, I recommend:

- ✓ That the Municipal Attorney assign an attorney to work with the AHD and APD to review the current codes, and draft revisions necessary to make the codes easier for the AHD and APD to enforce.
- ✓ That the AHD and APD assign appropriate staff to work with Legal to review and revise the code. It is imperative that the perspectives of staff who implement and enforce the codes help inform the review.
- ✓ That APD purchase 2 certified noise level meters for the Traffic Unit, and those personnel be trained in the use of the meters. This would allow some targeted enforcement by the Traffic Unit, as we consider implementing a reasonable person standard in the code.

Please let me know if you have any questions or concerns.