

Date January 11, 2010

PUBLIC HEARING ON VEHICLE
IMPOUND OF JAMES SCHLOEMER

WHEREAS, James Schloemer, 2112 Garfield Avenue South, #13, Minneapolis, MN, filed an appeal of his vehicle's impound for violation of an Emergency No Parking order on September 27, 2009 and the City Hearing Officer denied said appeal; and

WHEREAS, Mr. Schloemer requested an opportunity to address the City Council on the matter of his appeal; and

WHEREAS, Mr. Schloemer has been provided with the opportunity to address the City Council on the matter of his appeal; and

WHEREAS, Mr. Schloemer's vehicle was found parked illegally on a street marked "No Parking (Emergency)"; NOW THEREFORE,

BE IT RESOLVED (Choose one of the two alternatives):

Alternative One: That the order of the hearing officer be upheld.

MOVED BY _____ TO UPHOLD DECISION.

Alternative Two: That the order of the hearing officer be reversed and a Certificate of No Probable Cause be issued to Mr. Schloemer.

MOVED BY _____ TO REVERSE DECISION.

FORM APPROVED:

K. Massier
Katharine Massier
Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE | | | | |
| COLEMAN | | | | |
| GRIESS | | | | |
| HENSLEY | | | | |
| MAHAFFEY | | | | |
| MEYER | | | | |
| MOORE | | | | |
| TOTAL | | | | |

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

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EXHIBITS FOR VEHICLE IMPOUND

- | | |
|-------------------------|--|
| <u>EXHIBIT 1</u> | James Schloemer Request for Administrative Hearing & Letter Setting Date of Hearing |
| <u>EXHIBIT 2</u> | Hearing Officer's Decision |
| <u>EXHIBIT 3</u> | James Schloemer Appeal of Hearing Officer's Decision |
| <u>EXHIBIT 4</u> | Transcript |
| <u>EXHIBIT 5</u> | Police Report and Citation |

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09-31238 tag 284779

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City of Des Moines
Request for Administrative Hearing
(File in the City Clerk's Office within 10 days of the vehicle impoundment)

Please print or type

I hereby request an administrative hearing pursuant to Chapter 27-485.15 of the Municipal Code of the City of Des Moines. This hearing process applies only to vehicles which have been impounded for illegal parking.

My vehicle was impounded on 9-27-09, case number and/or tag number 09-31238/tag 284779

Reason for appeal: See Attached Statement and documents

Multiple horizontal lines for providing additional details or comments.

I understand that my failure to attend my scheduled hearing will be deemed a waiver of my rights to such a hearing.

Date 10/5/09

Daytime Telephone (515) 441-1549

Signature [Handwritten Signature]

Print Name James J. Schloemer

Address 2112 Garfield Ave. S. #13

City/State/ZIP Minneapolis MN 55405

Attach to this form a copy of the Customer's Invoice for the towing charge. You may also provide copies of maps, drawings, or photographs which support your case.

Caution: Any statement made on this form may constitute an admission on your part.

Return the top two copies of this form to the City Clerk's Office, 400 East First Street, Des Moines, Ia 50309
Retain the third copy for your files. If you have any questions, call 283-4209.

At approximately noon on Sunday, September 27th, 2009, I discovered my vehicle missing from a parking spot directly in front of 4220 Ingersoll Avenue, Des Moines, IA 50312. I had parked my car at 12:00 a.m. on September 27th, 2009, just west of a pole displaying a permanent parking restriction to the east of the pole's location, but there was no sign displaying any parking restrictions (permanent or temporary) west of the pole's location where my car was located. I learned my car had been towed at 7:40am, due to a purported temporary parking restriction along the south side of Ingersoll Avenue. No signs for this temporary parking restriction were posted or visible from where I parked; the nearest sign was posted on a pole approximately 150 feet west of my vehicle and displayed on the west side of that pole facing west. Having approached my parking spot from the east, I had no way of knowing any temporary parking restriction was in effect due to the lack of signage.

While retrieving my car from impound, the gentleman at the towing company who towed my car, John, confirmed there was no posted sign indicating the temporary parking restriction visible from my parking spot. Multiple neighbors also confirm the lack of proper signage, having found themselves in the same situation as myself. Furthermore, I have multiple photos which clearly show no sign was posted (including one taken at the time my car was being towed away).

Consequently, I am confident the City of Des Moines was unjust in impounding my vehicle as no notice was given of the parking restriction. I request that my outstanding ticket for the incident be waived and voided, and that I be reimbursement for the impound and towing fees I accrued, which total \$114.87. The receipts, documentation and photographs supporting my claims and expenses are attached hereto.

I have filed both an appeal and contest of my parking ticket, but have also submitted a request for administrative hearing related to the impound of my vehicle.

3344 Ex. 1



Ex. 1



3344 Ex. 1



EX. 1
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City of Des Moines, Iowa Police Department
Notice of Impoundment



| | |
|-------------------------------------|--|
| Impound Tag Number 284779 | Case Number / Control No. 09-31238 |
|-------------------------------------|--|

| | | |
|--|---|-----------------|
| Fees: Impound/Preservation Fee: \$20 Other Fees: Total: | How were fees paid? Cash <input type="checkbox"/> Check <input type="checkbox"/> Credit Card <input checked="" type="checkbox"/> | Receipt Number: |
|--|---|-----------------|

If your vehicle and the personal property contained within, was impounded for being stopped or parked in a prohibited area, you have a right, under City code 114-435.15 to an administrative hearing to impound your vehicle for 14 days of the impoundment. You may retrieve your motor vehicle by posting the impoundment, preservation, and storage fees.

Probable cause to impound the vehicle and any personal property contained within the vehicle from the impoundment, preservation, and storage fees.

Thank You

Impound Vehicle Release
Des Moines, Iowa Police Department

| | |
|---|--|
| <input checked="" type="checkbox"/> Owen Crist Auto Body Service 1221 Keosauqua Way Des Moines, Iowa 50309 Phone: (515) 244-2171 | <input type="checkbox"/> Crow Tow 826 S.E. 21 Street Des Moines, Iowa 50317 Phone: (515) 278-9668 |
|---|--|

Vehicles may be claimed from 8:00 AM to 10:00 PM Monday through Friday and from 8:00 AM to 4:00 PM weekends and holidays.

| | |
|-----------------------------------|------------------------------------|
| A. Case No. 09-31238 | VIN: 80S339 |
| B. Tag Number 284779 | F. Released by: 4125 |
| C. Make and Model 99 Chev | |
| D. License No. 682AYY (mn) | G. Date Released: 27 Sep 09 |

PAID
This box must be stamped paid for a valid release.
DMPD

EX.1

Owen Crist John

AUTO BODY SERVICE INC.

1221 KEO Towing 515-244-2171 Collision Repair DES MOINES, IA. 50309 Painting

CITY OF DES MOINES Police Department

12:16PM
00-0002 001
#20030

Sep 27/09
Hartha

Impound Fee \$20.00

CARD # 4190*****8805

APPROVAL

APR# C 004756

REF# 000

*TTL \$20.00

Visa \$20.00

----- Thank You -----

CASE NO. 31238 TAG NO. 28779 DATE 9/27/2009

CHARGED TO

ADDRESS

OWNER James J Schloemer

ADDRESS MN

VIN # XG805339 LIC # 682A44

MAKE OF CAR Subaru

YEAR 1999

MODEL OutBack AWD

COLOR Green

MILEAGE 740

IMPOUND

PROPERTY IN OFFICE

KEY ON BOARD

P.D.

PVT

PRIVATE (AWD) Dollars

From 4200 Blk Ingersol

To Gate Lot

Storage

30 00
49 100
9 90
8 50

TAX 5 35

DRIVER #12

TOTAL CHARGE

04 87

CUSTOMERS INVOICE

OWEN CRIST AUTO BODY SRVC
1221 KEO WAY
DES MOINES, IA 50309
515-244-2171

476579140567492 1111
DATE 09/27/09 TIME 12:58 PM

ITEM: 006 VIS SALE OP: 00
ACCT: XXXXXXXXXXXX8805 EXP: XXXX S
RESP: AUTH-TKT 003965

TOTAL: \$94.87

I AGREE TO PAY ABOVE TOTAL AMOUNT
ACCORDING TO CARD ISSUER AGREEMENT
(MERCHANT AGREEMENT IF CREDIT VOUCHER)

X _____
SIGNATURE

Ex. 1
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C903079992812

MINNESOTA
DRIVER'S LICENSE

JAMES JOSEPH SCHMIDNER
 2172 GARFIELD AVE S
 NEPLS, MN 55404

Date of Birth: 05-30-1940
 Sex: M
 Hgt: 5-10
 Wgt: 180
 Eyes: BRN
 Hair: BRN
 Complexion: F
 Blood: B
 Class: D
 License No: 9992812
 Issued: 05-2009
 Expires: 05-30-2013



IMPOUND MOTOR VEHICLE

Case No. 01-312-38 Tag No. 284779

Property Sheet No. _____

Where Found 4700-D Ingersoll

Date 9-27-09 Time 0645

Color Green Year 99

Make Chev Body _____

License No. W32ATX (MN)

Serial No. 1F1014853X6805389

Registered To James Schluemer

Address 2112 Garfield #13

Why Held: Ill. Pkg. () Assn. Traffic ()
Stolen Car () Driver In Jail ()

Others _____

Condition Fair

Towed To 06

Officers 1129

Receipt for Car

Received the above described car
this 27 day of Sep 20 09

Sig. of Owner [Signature]
Address 2112 Garfield Ave #13 Mpls MN

Released by U125 1227

Ex. 1
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November 6, 2009

James J. Schloemer
2112 Garfield Avenue South, #13
Minneapolis, MN 55405

Re: Administrative Hearing-Vehicle Impound

An administrative hearing has been rescheduled for **Monday, November 16, 2009**, in the City Council Chambers, south end of the second floor, **City Hall, 400 Robert D. Ray Drive**, at **9:00 A.M.** at which time you will be provided an opportunity to present evidence.

Parking is available on the streets surrounding City Hall--you will need change to pay the parking meters. Please alert the City Clerk's Office when you arrive.

Pursuant to Section 114-485.16 of the Municipal Code, (copy enclosed), you will be given an opportunity to be heard at the hearing.

If you have questions in this regard, please call.

Sincerely,

A handwritten signature in cursive script that reads "Diane Rauh".

Diane Rauh

City Clerk

DR/kh

Enclosure

cc: Hearing Officer
Assistant City Attorney
Staff Notification

City of Des Moines, Iowa
November 16, 2009 Administrative Hearing

In re:

JAMES SCHOLEMER,
Appellant

)
)
)
) DECISION AND ORDER
) AND
) NOTICE OF APPEAL RIGHTS
)
)

Gretchen Jensen, an attorney with Goodman and Associates of West Des Moines, appeared on behalf of James Scholemer, the Appellant. Parking Enforcement Officer Ellie Reser, with the Des Moines Police Department, appeared on behalf of the City of Des Moines (the "City").

Procedural History

At approximately 6:00 AM on Sunday, September 27, 2009, the Des Moines Police Department began towing vehicles along Ingersoll Avenue, as the area had been posted with signage stating "EMERGENCY NO PARKING SUN BY ORDER CHIEF OF POLICE." The posted route included a segment along the 4200 block of Ingersoll Avenue. At approximately 6:45 AM on September 27, 2009, the Des Moines Police Department seized and impounded a 1999 green Subaru Outback (MN plate 682AYY) licensed to Mr. Scholemer, issuing City Citation 340076894 for "NO PARKING (EMERGENCY)" On September 27, 2009 at approximately 12:16 PM, Mr. Scholemer claimed the vehicle in question, and the vehicle was released to him after payment of impound fee and storage costs. On October 5, 2009, Mr. Scholemer filed a request for an administrative hearing to determine whether there was probable cause for the vehicle and its contents to be impounded. On October 21, 2009, the City Clerk sent a letter to Mr. Scholemer informing him that an administrative hearing had been scheduled for November 2, 2009 to hear his case. The City Clerk then rescheduled the administrative hearing to November 9, 2009 and subsequently rescheduled it again on November 6, 2009 to a November 16, 2009 hearing date in order to accommodate Mr. Scholemer, who resides in Minnesota. The matter was so heard before the Administrative Hearing Officer.

Decision

Section 114-361.17(a) of the City of Des Moines Municipal Code (the "Municipal Code") provides that "the chief of police may, upon issuance of an emergency order, cause temporary no parking signs to be posted on or about streets of the city. No person shall park in violation of signs so posted." The argument was raised that temporary signage may not be observed if a person either approaches the on-street parking space from the opposite direction and then either turns around in a drive immediately preceding the parking space or performs a u-turn adjacent to where the vehicle is ultimately parked. However, nothing in the Municipal Code requires the City to ensure emergency signage is posted so as to accommodate every approach that may be possible to an on-street parking space. Furthermore, City Exhibit 1 clearly demonstrates that one of the temporary emergency no parking signs did exist on the telephone pole immediately preceding the location where Mr. Scholemer's parked his vehicle, with no driveway in between them. Mr. Scholemer argues that the sign was facing west and could not be viewed from his parking space. However, it is unreasonable to expect the City to post signs in a direction other than that which is facing the normal flow of traffic. Furthermore, a person who leaves their vehicle parked on a public street bears the risk of such an emergency declaration occurring at anytime and therefore should exercise reasonable due diligence in keeping himself informed, which at

minimum should consist of traversing the entire block preceding the location where he chooses to park a vehicle for an extended period of time, in this case was approximately 12-hours. Therefore, it is found that the City acted in a reasonable manner to ensure the area was properly posted and in its follow up by enforcing the emergency order by the Chief of Police.

Therefore, it is held that a preponderance of all evidence in the record would lead a person of ordinary care and prudence to believe probable cause did exist when the Des Moines Police Department caused Mr. Scholemer's vehicle and its contents to be impounded. Mr. Scholemer is therefore held liable and ordered to pay all charges, costs and fees attributable to the impound and storage of his vehicle, as well as the fifteen dollar (\$15) citation fine (#340076894).

Right of Appeal

As provided under Section 114-485.18 of the Municipal Code, this decision may be appealed to the City Council by either the department causing the vehicle to be impounded or the registered owner or person having legal entitlement to possession of the impounded vehicle, provided a written notice of appeal is filed with the City Clerk's Office within seven days of this decision. Failure to file a written notice of appeal within such period shall be deemed a waiver of the right to appeal this decision to the City Council.

This written ruling is hereby submitted on this 23rd day of November, 2009 in Des Moines, Polk County, Iowa. The City Clerk shall serve copies of this Decision and Order upon each of the parties.



Camille A. Valley
Administrative Hearing Officer



EXHIBIT
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November 30, 2009

Diane Rauh, City Clerk
Office of the City Clerk, City Hall, City of Des Moines
400 Robert D. Roy Drive
Des Moines, IA 50309-1891

Reference: Appeal of Administrative Hearing Decision

Dear Diane,

I am appealing the written ruling submitted on November 23, 2009, by City of Des Moines Administrative Hearing Officer Cornille A. Valley; for the Administrative Hearing on November 16, 2009. I have attached a copy of the written ruling I received in the mail, which includes the details of my case and the citation number for the fine I was issued on September 27, 2009. Please contact me with any questions regarding this appeal, or to request additional copies of the evidence presented on my behalf at the Administrative Hearing on November 16, 2009.

Regards,

James J. Schloemer
2112 Garfield Avenue South, #13
Minneapolis, MN 55405
P: 515-441-1549
E: jims@kaaswilson.com

FILED
NOV 30 PM 1:20
CITY CLERK
DES MOINES, IOWA

December 4, 2009



James J. Schloemer
2112 Garfield Avenue South, #13
Minneapolis, MN 55405

Re: Appeal of Vehicle Impound

Dear Mr. Schloemer:

This letter is to acknowledge receipt of your written request that was faxed on November 30, 2009 requesting an appeal before the City Council regarding the Hearing Officer's decision in reference to your vehicle impound.

Accordingly, I have set this matter for hearing on December 21, 2009 at 4:30 p.m. in the City Council Chambers, City Hall, 400 Robert D. Ray Drive. A copy of the portion of the City Code pertaining to the appeal process is enclosed for your information. Failure to appear at the scheduled hearing will be deemed as a waiver of your rights to a hearing.

If you have any questions regarding this matter, please contact this office. A copy of the actual transcript will be sent under separate cover.

Sincerely,

A handwritten signature in cursive script that reads "Diane Rauh".

Diane Rauh
City Clerk

DR:kh

cc: Assistant City Attorney
Chief Bradshaw

ADMINISTRATIVE HEARING TRANSCRIPT

November 16, 2009

City v. Schloemer

Vehicle Impound

HEARING OFFICER CAMILLE VALLEY: It is 9:00 a.m. on November 16, 2009 and my name is Camille Valley and I'm the Administrative Hearing Officer and we're here in regards to a vehicle impound of a vehicle owned by James Schloemer. Would the City representative please come to the microphone, clearly state your name and the title of your position with the City of Des Moines.

PARKING METER CHECKER ELLIE RESER: My name is Ellie Reser. I'm a Parking Meter Checker for the City of Des Moines.

HEARING OFFICER CAMILLE VALLEY: Is it Ellie?

PARKING METER CHECKER ELLIE RESER: Uh huh.

HEARING OFFICER CAMILLE VALLEY: Okay. Please raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

PARKING METER CHECKER ELLIE RESER: I do.

HEARING OFFICER CAMILLE VALLEY: Okay. You may proceed.

PARKING METER CHECKER ELLIE RESER: Let's see, on September 27th about 6:00 a.m. I was sent, excuse me, I was sent onto Ingersoll Avenue to impound any cars that were parked there, to get them off the roadway in preparation for the Capital Striders race. In the 4200 block of Ingersoll there were three cars parked facing eastbound and, uh, I ticketed and impounded those vehicles. There was, because these aren't usual parking restrictions, temporary signs have been posted stating that there is to be no parking on Ingersoll on that particular day.

HEARING OFFICER CAMILLE VALLEY: So it was an emergency declaration?

PARKING METER CHECKER ELLIE RESER: It was emergency no parking sign.

HEARING OFFICER CAMILLE VALLEY: By the Chief of Police?

PARKING METER CHECKER ELLIE RESER: Uh, huh.

HEARING OFFICER CAMILLE VALLEY: When were those posted?

PARKING METER CHECKER ELLIE RESER: I want to say Friday afternoon, but I can't say specifically. We're not responsible for the posting of the signs.

HEARING OFFICER CAMILLE VALLEY: When was the race?

PARKING METER CHECKER ELLIE RESER: It was Sunday morning at, I believe the race started at 9:00 a.m.

HEARING OFFICER CAMILLE VALLEY: And September 27th was Saturday or Sunday?

PARKING METER CHECKER ELLIE RESER: That would have to be the Sunday.

HEARING OFFICER CAMILLE VALLEY: It was Sunday?

PARKING METER CHECKER ELLIE RESER: Yeah.

HEARING OFFICER CAMILLE VALLEY: What time was the vehicle?

PARKING METER CHECKER ELLIE RESER: At 6:45 a.m.

HEARING OFFICER CAMILLE VALLEY: What time did the sign say that it would be no parking?

PARKING METER CHECKER ELLIE RESER: There, sorry, there wasn't a time listed. It just said Sunday.

HEARING OFFICER CAMILLE VALLEY: Okay. So it covered the whole day from 12:01 a.m. all the way through the close of the day.

PARKING METER CHECKER ELLIE RESER: Right.

HEARING OFFICER CAMILLE VALLEY: Uh, were, let's see. Is there anything else? Is there any outstanding fines or anything related to this?

PARKING METER CHECKER ELLIE RESER: I know that the fines, I don't believe that the fines have been paid. I can't say for certain, but they are not required to be paid until this process is over.

HEARING OFFICER CAMILLE VALLEY: Do you know how much the fine is?

PARKING METER CHECKER ELLIE RESER: The fine for the ticket, for the citation is \$15.

HEARING OFFICER CAMILLE VALLEY: Fifteen dollars. And do you have the citation number on it?

PARKING METER CHECKER ELLIE RESER: Yes, 340076894.

HEARING OFFICER CAMILLE VALLEY: Okay.

PARKING METER CHECKER ELLIE RESER: I can say from previous testimony or whatever for some of the other vehicles that also appealed, people mentioned that they

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made a turn and then backed into their parking space rather than traveling eastbound on that roadway which is, I believe they assert in this appeal as well that they didn't see the sign because they didn't travel eastbound along that roadway to view the sign.

HEARING OFFICER CAMILLE VALLEY: How many signs are put up in a block? I presume....

PARKING METER CHECKER ELLIE RESER: I believe we are only required to put one up every 40 yards or something of that nature. I think we tried to put two, I think the City tried to put two signs up per block. But all I know is I just walked back to where I saw a sign and took a photo from that area so I know there was a sign at that block.

HEARING OFFICER CAMILLE VALLEY: Do I have, I don't have a copy of that.

PARKING METER CHECKER ELLIE RESER: I have this. You can have this one. I don't need it.

HEARING OFFICER CAMILLE VALLEY: Okay. Thank you. I'll mark that as City's Exhibit 1. It is two photos, one page. Uhm, so the vehicle in question is the one that we see being towed?

PARKING METER CHECKER ELLIE RESER: Uh, no. That is a Subaru and this vehicle. Oh, I'm sorry, yes. This is the vehicle in question.

HEARING OFFICER CAMILLE VALLEY: And so we can see the no parking sign.

PARKING METER CHECKER ELLIE RESER: Uh huh.

HEARING OFFICER CAMILLE VALLEY: Anything further?

PARKING METER CHECKER ELLIE RESER: That's all I have.

HEARING OFFICER CAMILLE VALLEY: Okay. Thank you.

PARKING METER CHECKER ELLIE RESER: Thanks.

HEARING OFFICER CAMILLE VALLEY: Okay. Would Mr. Schloemer's representative please come to the microphone and clearly state your name.

GRETCHEN JENSEN: Good morning. My name's Gretchen Jensen. I'm an attorney with Goodman & Associates.

HEARING OFFICER CAMILLE VALLEY: J-e-n-s-e-n?

GRETCHEN JENSEN: Correct.

HEARING OFFICER CAMILLE VALLEY: With Goodwin & Associates?

GRETCHEN JENSEN: "Goodman."

HEARING OFFICER CAMILLE VALLEY: Goodman.

GRETCHEN JENSEN: Yep. Would you like my address for the record or not?

HEARING OFFICER CAMILLE VALLEY: Here in Des Moines?

GRETCHEN JENSEN: Correct.

HEARING OFFICER CAMILLE VALLEY: Okay. Yes.

GRETCHEN JENSEN: Okay, 1501 42nd Street, Suite 300, West Des Moines, 50266.

HEARING OFFICER CAMILLE VALLEY: Okay. Now you're here to act on behalf of him. Do you have some, anything that acknowledges that you're representing him on this matter?

GRETCHEN JENSEN: Uhm, for lay people, yes the claimant would have to file something, but as a lawyer I'm allowed by law to come and appear on his behalf.

HEARING OFFICER CAMILLE VALLEY: Represent him on his behalf, okay. So, uhm, I, I also swear in the attorney too so. If you'd raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

GRETCHEN JENSEN: To my knowledge yes.

HEARING OFFICER CAMILLE VALLEY: Okay. You may proceed.

GRETCHEN JENSEN: For the record I wanted to note that I had contacted the City's Clerk's office and was informed that the only evidence needed for this would be the written materials provided by Mr. Schloemer and signed, uhm, and sworn to by Mr. Schloemer. Uhm, he's obviously located out of Minneapolis, Minnesota and is unable to be here today. As, for the record, uhm, in relation to his written statement, at about midnight, uhm, on the 27th, or at, at 12:00 a.m., he parked his car, well on the, well on the evening of Saturday let's say.

HEARING OFFICER CAMILLE VALLEY: The 26th.

GRETCHEN JENSEN: Correct. He parked his car directly in front of 4220 Ingersoll Avenue. Uh, when he returned, uh, back at 7:40 a.m. his car was gone. At that time he took pictures of the scene. You'll see one in our materials. Do you have our full materials with you?

HEARING OFFICER CAMILLE VALLEY: No I do not.

GRETCHEN JENSEN: They were filed, uhm, in conjunction with this.

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HEARING OFFICER CAMILLE VALLEY: Just hold on a second and let me go grab it from the Clerk.

GRETCHEN JENSEN: Okay.

HEARING OFFICER CAMILLE VALLEY: Okay you were referring to...

GRETCHEN JENSEN: There are three pictures provided with this petition. One is of Mr. Schloemer's car actually being towed that he received from a friend.

HEARING OFFICER CAMILLE VALLEY: Do you have large pictures of these, the ones that he had submitted?

GRETCHEN JENSEN: Correct.

HEARING OFFICER CAMILLE VALLEY: Okay.

GRETCHEN JENSEN: Uhm, that picture of his car being towed obviously shows no signs showing any posting restriction. The next, or one of the other pages is of the scene, notice he parked by the no parking, right in front of the no parking sign that otherwise indicated no parking north of that or probably east of that pole.

HEARING OFFICER CAMILLE VALLEY: When were these pictures taken?

GRETCHEN JENSEN: They were taken when he arrived, well the towing picture was taken by a friend when the car was being towed so I assume 6:00 or so according to the testimony.

HEARING OFFICER CAMILLE VALLEY: Okay, did you, you did not get to see the City's exhibit.

GRETCHEN JENSEN: I have not yet, but I, I would be happy to here in a second. The next picture is, Mr. Schloemer parked his car where it had been and there's a picture of a woman walking down the street. You'll notice that this is at 7:40 a.m. and according to the testimony by the City this was supposed to be no parking for the full day of Sunday but there are no signs listed along this stretch, uhm, that shows any restriction for no parking.

HEARING OFFICER CAMILLE VALLEY: So this is after he had gotten, his vehicle had been impounded and he was back.

GRETCHEN JENSEN: Correct. This was taken the day of the 27th.

HEARING OFFICER CAMILLE VALLEY: And it was at what time?

GRETCHEN JENSEN: I'll have to look at the impound vehicle information. There's, uhm, information provided here from Owen Crist.

HEARING OFFICER CAMILLE VALLEY: Well I wasn't concerned about when it was being towed. It was, when are the pictures, the post impound pictures taken?

GRETCHEN JENSEN: I'm trying to figure out if we can show what time he picked it up from Owen Crist from the record. It looks like the receipt in the bottom right-hand corner shows that he paid to have his vehicle, uhm, released at about 1:00. My understanding from the other people at the scene as you noticed in his statement, it sounds like other people have contested this as well was that there were no signs, uhm, in this stretch of parking in front of this building. Do you mind if I see Exhibit 1 provided by the City? I would note for the record that the sign on the right is still west of the car, the location that had been towed. Uh, my understanding is that signs that are posted for no parking are, are pretty frequent. I've seen them every 20 feet or so in locations. Frankly, I live in Sherman Hill and they post no parking signs and I've had four in my yard at any time because there's four parking spots in my front yard. For the record you had asked about the status of the parking ticket. I think in the materials you have in front of you we, in conjunction with this petition, filed an appeal form for that parking ticket as well which was attached with that packet of materials.

HEARING OFFICER CAMILLE VALLEY: Okay.

GRETCHEN JENSEN: Any other questions? None from me.

HEARING OFFICER CAMILLE VALLEY: Anything else the City wants to add?

PARKING METER CHECKER ELLIE RESER: I think what happened here on this day was there are several people who live right there. They are accustomed to coming home from the east so they either do u-turns and then park or pull into a driveway, back out onto the street and then park. So the reason that a lot of these people didn't see these signs, from previous testimony and from statements made during the time of impound, uhm, these people were not traveling appropriately down the roadway so they didn't view the sign. I understand if they didn't see it, but, uh, I think the reason they didn't see it because they weren't traveling along the roadway in a legal manner to park their car.

HEARING OFFICER CAMILLE VALLEY: If she wants to add, she wants to add something. Okay. This is Ms. Jensen again for the record.

GRETCHEN JENSEN: Yes, for the record, uh, Your Honor. The purpose of posting signs, this is a two-way street, and so the purpose of posting signs so that people can see them for, for a certain area of parking stretch where they're going to park is this precise reason. If someone is traveling coming from the east and traveling west and needs to park on the east, there is nothing illegal. He wasn't charged with anything illegal here. You have to turn around to make this parking spot. This is a two-way street so there's nothing illegal about turning your car around to enter a spot facing east. The whole point is if there would have been sufficient signage, uh, then all of these three cars would have been able to see that sign and Mr. Schloemer's car was at the very front of the three cars that have been noted for the record.

HEARING OFFICER CAMILLE VALLEY: Uhm, how frequently did he, is this some place that he regularly stayed?

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GRETCHEN JENSEN: It's a friend of his. He came in from out of town. So it is not.

HEARING OFFICER CAMILLE VALLEY: Okay. All right. Thank you very much.

GRETCHEN JENSEN: Thank you.

HEARING OFFICER CAMILLE VALLEY: I will take all the testimony I received today and the exhibits and deliberate and develop a written ruling which I will submit to the City Clerk's Office and then she'll make sure a copy gets sent to everyone. Until that time, this case is adjourned and I thank you for your time this morning.

I, Renae Lampkin, certify that I transcribed the minutes of the November 16, 2009 Administrative Hearing pertaining to the vehicle impound of James Schloemer.

Renae Lampkin

EX. 4

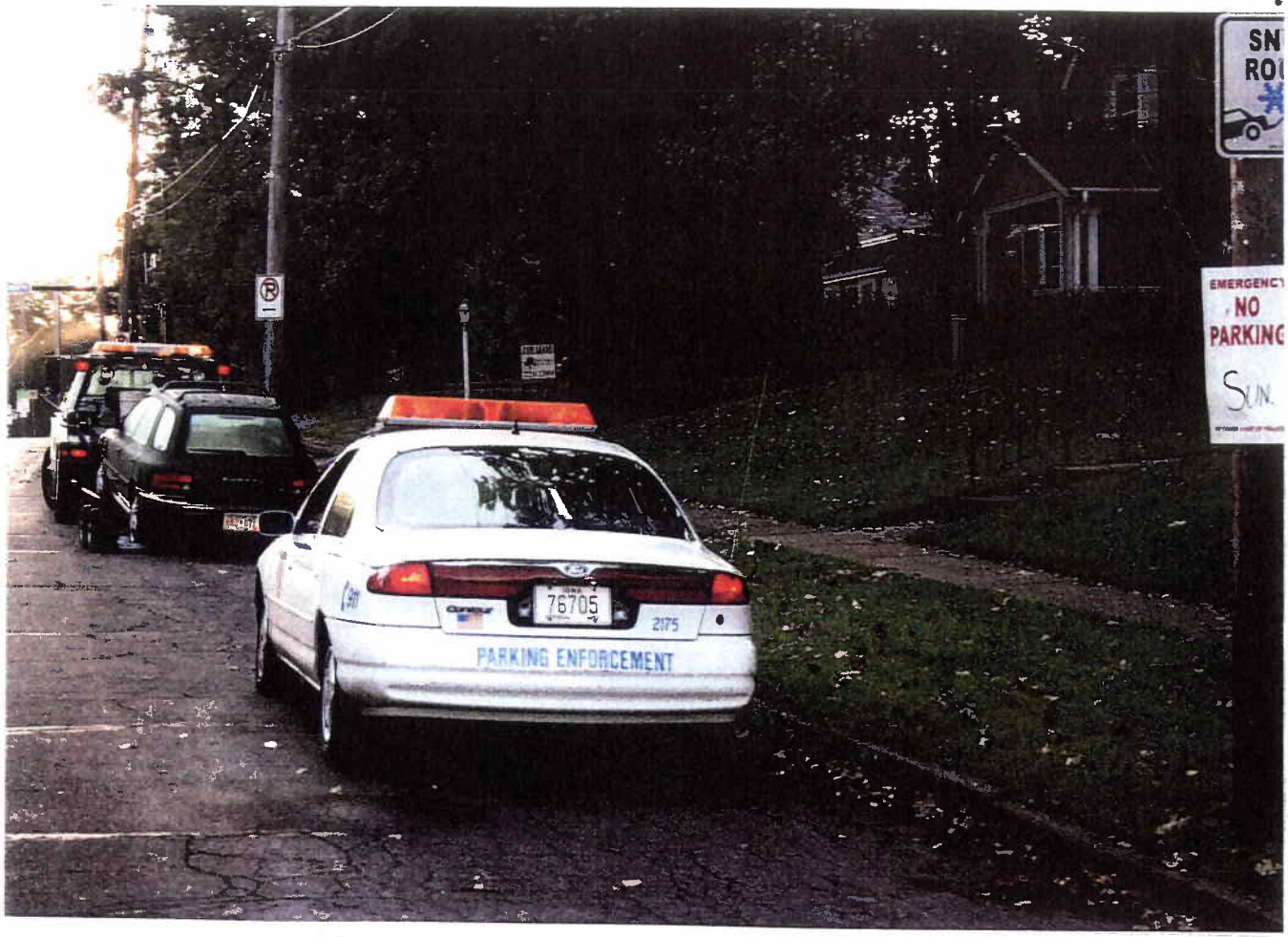


EXHIBIT
City
1

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December 4, 2009



James J. Schloemer
2112 Garfield Avenue South, #13
Minneapolis, MN 55405

Re: Appeal of Vehicle Impound

Dear Mr. Schloemer:

This letter is to acknowledge receipt of your written request that was faxed on November 30, 2009 requesting an appeal before the City Council regarding the Hearing Officer's decision in reference to your vehicle impound.

Accordingly, I have set this matter for hearing on December 21, 2009 at 4:30 p.m. in the City Council Chambers, City Hall, 400 Robert D. Ray Drive. A copy of the portion of the City Code pertaining to the appeal process is enclosed for your information. Failure to appear at the scheduled hearing will be deemed as a waiver of your rights to a hearing.

If you have any questions regarding this matter, please contact this office. A copy of the actual transcript will be sent under separate cover.

Sincerely,

A handwritten signature in cursive script that reads "Diane Rauh".

Diane Rauh
City Clerk

DR:kh

cc: Assistant City Attorney
Chief Bradshaw



December 7, 2009

James J. Schloemer
2112 Garfield Avenue South, #13
Minneapolis, MN 55405

RE: Administrative Hearing Transcript

Per the letter sent to you on December 4, 2009, enclosed is a copy of the administrative hearing transcript that was held on November 16, 2009 at 9:00 a.m.

If you have any questions regarding this matter, please contact me at 283-4209.

Sincerely,

A handwritten signature in cursive script that reads "Diane Rauh".

Diane Rauh
City Clerk

DR:kh
Enc.

cc: Hearing Officer
Assistant City Attorney

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VEHICLE IMPOUND / RECOVERY REPORT
DES MOINES, IOWA POLICE DEPARTMENT

| | | | |
|---|---|---|---|
| 1. OWNERS NAME (LAST, FIRST, MIDDLE) N/A | | 2. CASE NUMBER 09-21238 | |
| 3. OWNERS ADDRESS N/A | 4. RES PHONE N/A | 5. IMP TAG NO. 284779 | |
| 16. BEAT 210 | 17. PROPERTY SHEET NONE | 6. WHERE FOUND? 4200 BLK OF INGERSOLL | |
| 18. METHOD OF THEFT JUMP WIRE, TOYED N/A | | 19. KEYS LEFT? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> | 7. DATE / TIME FOUND 27 SEP 09 / 06:45 |
| 20. RESULTING DAMAGE OR STRIPPING NONE | | 8. WHY HELD? ILL. PARKING <input checked="" type="checkbox"/> ASSH DET. <input type="checkbox"/> ASSE. TRAFFIC <input type="checkbox"/> STOLEN CAR <input type="checkbox"/> | |
| 21. GENERAL CONDITION FAIR | 22. MISSING ACCESSORIES? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> EXPLAIN IN NARRATIVE | 9. VEH. COLOR GRN | 10. LICENSE NO. STATE / YR 6828444 MN / 09 |
| 23. ARRESTS OR OFFENSES (1) NO PRK (EMERG) 340076996 (2) | | 11. VEHICLE IDENTIFICATION NUMBER JF1CF4853XC005339 | 12. TOWED TO OC |
| 14. CRIME OR OFFENSE ILL. PRK6 | 15. CLASSIFICATION | 13. TOW DRIVER / OWNER SIGNATURE X JON | |
| 24. IDENT NOTIFIED? YES <input type="checkbox"/> NO <input type="checkbox"/> | 25. CID NOTIFIED? YES <input type="checkbox"/> NO <input type="checkbox"/> | 16. WITNESS | |
| 26. REPORTING OFFICER E. REBER | | IDENT NO. 7428 | |
| 26. SUPERVISOR APPROVING J. FULLER | | IDENT NO. 7429 | |
| 30. INVESTIGATION STATUS <input type="checkbox"/> OPEN <input type="checkbox"/> SUSPENDED <input checked="" type="checkbox"/> CLOSED | | 32. RADIO BROADCAST BY DISPATCHER # | |
| 33. CLEARANCE CLASSIFICATION <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> CLEARED BY ARREST <input type="checkbox"/> EXCEPT CLEARED | | 34. DATE | |
| 36. UNIT REFERRED TO. CP | | 35. DATE | |

21 PRIOR TO IMPOUND THE VEHICLE HAD A DENTED REAR FENDER, NUMEROUS SCRATCHES AND DINGS

27 ISSUED THE CITATION LISTED ABOVE AND IMPOUNDED IT.

| | | | |
|---|-------------------------------------|----------------------------|-------------|
| 26. REPORTING OFFICER E. REBER | IDENT NO. 7428 | CONTINUE NARRATIVE OR BACK | |
| 26. SUPERVISOR APPROVING J. FULLER | IDENT NO. 7429 | DISPATCH | |
| 30. INVESTIGATION STATUS <input type="checkbox"/> OPEN <input type="checkbox"/> SUSPENDED <input checked="" type="checkbox"/> CLOSED | 32. RADIO BROADCAST BY DISPATCHER # | 34. DATE | 35. DATE |
| 33. CLEARANCE CLASSIFICATION <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> CLEARED BY ARREST <input type="checkbox"/> EXCEPT CLEARED | 36. UNIT REFERRED TO. CP | OPERATOR | LATE / TIME |

00.ORI/.LIC/682AYY.LIS/MN. M29 20090927 . 08:48:16

MSG FROM NLETS 2181
RR.MNVIND000. TO:DEST IA0770300
*REFSEQ0124.
TXT

LIC/682AYY. LIY/09. LIT/PC.
NAM/SCHLOEMER, JAMES JOSEPH.
SNM/2112 GARFIELD AVE S #13. CTY/MPLS. STA/MN. ZIP/55405.
VIN/JF1GF4853XG005339. VYR/99. VMA/SUBA. VMO/SWISP. VCC/GRN/GRN.
EXM/DEC. DOB/19800530. STICKER:J3972992

;200909270848/200909270848
PDM1 596
MESSAGE FROM NLETS
049862

PDM1.

* NO MATCH ON INQUIRY *
LIC/682AYY LIS/MN

;200909270656/200909270656
PDM1 547
MESSAGE FROM IOWA
044146

1101PDM1,MRI0Y2806C
IA0770300
NO RECORD LIC/682AYY LIS/MN

;200909270656/200909270656
PDM1 546
MESSAGE FROM NCIC
044145

EX. 5
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CITY OF DES MOINES

Non-Moving Traffic Violation
Notice of Fine

CITATION-COMPLAINT

In the Iowa District Court for Polk County
(Scheduled Violations Office) Des
Moines, Iowa; City of Des Moines, A
Municipal Corporation, PLAINTIFF vs.

TICKET #340076894

LIC: 682AYY MN

MO/YR: 12/2009 COUNTY #

VIN:

METER:

At or near:
LOCATION 4200 BLK INGERSOLL SS

VEHICLE: GRN SUBA 4D

In the City of Des Moines, Polk County,
Iowa, DEFENDANT did violate the
following section of the Municipal Code
of the City of Des Moines, Iowa:

VIOLATION :
NO PARKING (EMERGENCY)
SEC 114-361.17
\$15.00

FINE: \$15.00

COMMENTS:
POSTED NP SUN

Pay Online at: www.dmgov.org

PLEASE ADD \$5.00
AFTER 10-25-2009

OFFICER: 7429
Date: 09/27/2009 Time: 06:46

This citation is due within 30 days of the
issuance. Failure to pay or appeal this
citation (see reverse side for
payment/appeal instructions) will result in
the citation becoming delinquent and
subject the motor vehicle to tow.

Tag # 264779 Case # 09-3123H
SEE REVERSE FOR PAYMENT INSTRUCTIONS



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December 17, 2009

Diane Rauh, City Clerk
Office of the City Clerk, City Hall, City of Des Moines
400 Robert D. Ray Drive
Des Moines, IA 50309-1891

Reference: Request to Reschedule 'Appeal of Vehicle Impound'

Dear Diane,

I am submitting this written request to reschedule my 'Appeal of Vehicle Impound' hearing from Monday, December 21st, 2009 to Monday, January 11th, 2010. Please contact me with any questions regarding this request.

Regards,

James J. Schloemer
2112 Garfield Avenue South, #13
Minneapolis, MN 55405
P: 515-441-1549
E: jims@kaaswilson.com

FILED
DEC 17 PM 4:43
CITY CLERK
DES MOINES, IOWA

January 4, 2010



James J. Schloemer
2112 Garfield Avenue South, #13
Minneapolis, MN 55405

Re: Appeal of Vehicle Impound

Dear Mr. Schloemer:

This letter is to acknowledge our telephone conversation requesting an extension of your appeal before the City Council regarding the Hearing Officer's decision in reference to your vehicle impound.

Accordingly, I have set this matter for hearing on January 11, 2010 at 4:30 p.m. in the City Council Chambers, City Hall, 400 Robert D. Ray Drive. A copy of the portion of the City Code pertaining to the appeal process is enclosed for your information. Failure to appear at the scheduled hearing will be deemed as a waiver of your rights to a hearing.

If you have any questions regarding this matter, please contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Diane Rauh".

Diane Rauh
City Clerk

DR:kh

cc: Assistant City Attorney
Chief Bradshaw