



**Roll Call Number**

**Agenda Item Number**

61

August 10, 2009

**Date**

**PUBLIC HEARING ON VEHICLE  
IMPOUND OF NIKALA PRASASOUK**

WHEREAS, Nikala Prasasouk, 3525 Belmar Drive, filed an appeal of her vehicle's impound for parking in a posted emergency no parking zone and the City Hearing Officer denied said appeal; and

WHEREAS, Ms. Prasasouk requested an opportunity to address the City Council on the matter of her appeal; and

WHEREAS, Ms. Prasasouk has been provided with the opportunity to address the City Council on the matter of her appeal; and

WHEREAS, Ms. Prasasouk's vehicle was found parked illegally in an emergency no parking zone; 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 Ms. Prasasouk.

MOVED BY \_\_\_\_\_ TO REVERSE DECISION.

FORM APPROVED:

*K. Massier*

Katharine Massier  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

**CERTIFICATE**

I, LAURA BAUMGARTNER, Chief Deputy 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.

MOTION CARRIED

APPROVED

\_\_\_\_\_  
Mayor

**EXHIBITS FOR VEHICLE IMPOUND**

**EXHIBIT 1**

**Ms. Prasasouk's Request for  
Hearing**

**EXHIBIT 2**

**Hearing Officer's Decision**

**EXHIBIT 3**

**Appeal from Ms. Prasasouk's Attorney**

**EXHIBIT 4**

**Transcript**

June 16, 2009

Nikala Prasadouk  
3525 Belmar Drive  
Des Moines, IA 50317

Re: Administrative Hearing-Vehicle Impound

An administrative hearing has been set for **Monday, June 29, 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,



Diane Rauh  
City Clerk

DR/kh

Enclosure

cc: Hearing Officer  
Assistant City Attorney  
Staff Notification



DIANE RAUH  
CITY CLERK  
CITY HALL-2ND FLOOR  
400 ROBERT D. RAY DRIVE  
DES MOINES, IOWA 50309-1891  
(515) 283-4209  
FAX (515) 237-1645  
www.dmgov.org

PARKING TICKETS  
PET LICENSES  
BUSINESS LICENSES

ALL-AMERICAN CITY  
1949, 1976, 1981,  
2003

# CITY OF DES MOINES

## Office of City Clerk

**To:** Officer Baker  
Police Traffic

**Date:** June 16, 2009

**From:** City Clerk's Office

**RE:** Vehicle Impound

Nikala Prasadouk, 3525 Belmar Drive, Des Moines, IA has requested an impound hearing which has been scheduled for **Monday, June 29, 2009** in the City Council Chambers, second floor of City Hall, 400 Robert D. Ray Drive at **9:00 A.M.**

Please inform **ID NO. 4907 ( SPO Kress)** of the time, date and location of the hearing. I have attached a copy of the Vehicle Impound Recovery Reports for hearing preparation. **If the Officer is not available, please contact Karen at X1389 to make other arrangements.**

Thank you for your assistance.



Diane Rauh  
City Clerk

**City of Des Moines**  
**Request for Administrative Hearing**

(File in the City Clerk's Office within **10** days of mailing of the notice of impoundment)

**Please print or type**

I hereby request an administrative hearing pursuant to Chapter 114-485.15 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 5/22/09, case number and/or tag number 09-15906.

Reason for appeal: ON FRIDAY 5/22/09 I WENT INTO WORK AT SPAGHETTI WORKS, 310 COURT AVE. I PARKED AT A METER ON COURT AVE & 3rd. I FED THE METER AT 3:30 PM, CAME OUT AGAIN AFTER 4pm to refuel and a farmer's market bag was over it. At 1am I got off work and found out that my car had been impounded because the parking spot I parked in was turned into a no park zone - it was a cab stand 7pm-3am. I would not have parked there if that sign had been posted prior to.

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

5/26/09  
Date

515-339-7386  
Daytime Telephone

Nikola Prasadouk  
Signature

NIKOLA PRASASOUK  
Print Name

3525 Belmar Dr  
Address

Dsm, IA 50317  
City/State/Zip

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 white copy of this form to the City Clerk's Office, 400 East First Street, Des Moines, IA 50309. Retain the yellow copy for your files. If you have any questions, call 283-4209.**

White - City      Yellow - Applicant

260121

**BODY SERVICE INC.**  
DES MOINES, IA. 50309

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

Repair      Painting  
DATE 5/22/2009

476579140507492 1111  
DATE 05/23/09      TIME 12:43 PM

ITEM: 005 MC SALE      OP: 00  
ACCT: XXXXXXXXXXXX6874      EXP: XXXX S  
RESP: AUTH-TKT 545716

TOTAL:      \$94.87

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

X \_\_\_\_\_  
SIGNATURE

LIC # 330 RMT  
MODEL Cherokee  
10:55 AM

KEY ON BOARD  
 KEY

Tow from 3rd. Court	49	60
to Dollies	30	80
Storage	9	90
TAX	5	37
DRIVER #10	TOTAL CHARGE	94 87

**PAID**  
MAY 23 2009  
OWEN CRIST AUTO BODY SERVICE

CUSTOMER COPY



City of Des Moines, Iowa Police Department  
**Notice of Impoundment**



Impound Tag Number:		Case Number / Control No. <i>09-15905</i>	
Fees:	How were fees paid?	Receipt Number:	
Impound Preservation Fee: <i>\$20</i>	Cash <input type="checkbox"/>		
Other Fees:	Check <input checked="" type="checkbox"/>		
Total:	Credit Card <input type="checkbox"/>		

If your vehicle and the personal property contained within, was impounded for being stopped or parked in violation of a City ordinance, you have a right, under City code 114-485.15 to an administrative hearing to determine whether there was probable cause to impound your vehicle.

To exercise this right, you must file a City of Des Moines Request for Administrative Hearing Form with the City Clerk's office, at east first and locust street, within ten days of the impoundment.

Should you request an administrative hearing, you may reclaim your motor vehicle by posting a bond in an amount sufficient to cover all charges attributable to the impoundment, preservation, and storage of the vehicle.

If, at the hearing, the hearing officer determines there was no probable cause to impound the vehicle, the bond shall be refunded upon presentation to the City Treasurer of a Certificate of No Probable Cause and the bond receipt.

Should you not request a hearing, you may claim your motor vehicle from the impoundment contractor upon payment of all charges attributable to the impoundment, preservation, and storage of the vehicle.

This is only a release, which entitles you to claim your vehicle and any personal property contained within from the Towing Contractor. The vehicle and any personal property contained within is not considered claimed until all towing and storage fees are paid to the Towing Contractor.

The issuance of this release does not automatically stop the accrual of storage fees.

**Impound Vehicle Release**  
**Des Moines, Iowa Police Department**



Owen Crist Auto Body Service  
 1221 Keosauqua Way  
 Des Moines, Iowa 50309  
 Phone: (515) 244-2171



Crow Tow  
 826 S.E. 21 Street  
 Des Moines, Iowa 50317  
 Phone: (515) 276-9869

Vehicles may be claimed from 6:00 AM to 10:00PM Monday through Friday and from 8:00 AM to 4:00 PM weekends and holidays.

**VEHICLE IMPOUND / RECOVERY REPORT**  
**DES MOINES, IOWA POLICE DEPARTMENT**

1. OWNERS NAME (LAST, FIRST, MIDDLE) <b>PRASASOONK, NIKALA</b>		2. CASE NUMBER <b>09-15906</b>	
16. BEAT <b>142</b>	17. PROPERTY SHEET	3. OWNERS ADDRESS <b>3525 BELMAR DR DSM UNK</b>	4. RES. PHONE
18. METHOD OF THEFT-JUMP WIRE, TOWED		19. KEYS LEFT ? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	5. IMP. TAG NO. <b>282401</b>
20. RESULTING DAMAGE OR STRIPPING		6. WHERE FOUND ? <b>300 BLOCK COURT AVE</b>	7. DATE / TIME FOUND <b>22 MAY 09 1850</b>
21. GENERAL CONDITION <b>FAIR</b>		8. WHY HELD ? ILL. PARKING <input checked="" type="checkbox"/> ASSN DET. <input type="checkbox"/> ASSN TRAFFIC <input type="checkbox"/> STOLEN CAR <input type="checkbox"/>	
22. MISSING ACCESSORIES ? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> EXPLAIN IN NARRATIVE		9. VEH. COLOR YEAR MAKE MODEL BODY <b>BLK 2004 JEEP GRAND C</b>	
23. ARRESTS OR OFFENSES (1) (2)		10. LICENSE NO. STATE / YR <b>330RMT IA 01 154GW48S24C243558</b>	
24. IDENT NOTIFIED ? YES <input type="checkbox"/> NO <input type="checkbox"/>		11. VEHICLE IDENTIFICATION NUMBER	
25. CID NOTIFIED ? YES <input type="checkbox"/> NO <input type="checkbox"/>		12. TOWED TO <b>OIC</b>	
26. WITNESS		13. TOW DRIVER / OWNER SIGNATURE <b>x KYLE</b>	
27. CRIME OR OFFENSE <b>ILLEGAL PARKING</b>		15. CLASSIFICATION	
RESIDENCE ADDRESS		CITY	
RES. PHONE		BUS. PHONE	

27. NARRATIVE: (1) CONTINUATION OF ABOVE ITEM NUMBERS INCLUDING ADDITIONAL INFORMATION AND WITNESSES.  
 (2) BRIEF DESCRIPTION OF INCIDENT INCLUDING COMPLAINT IF AVAILABLE

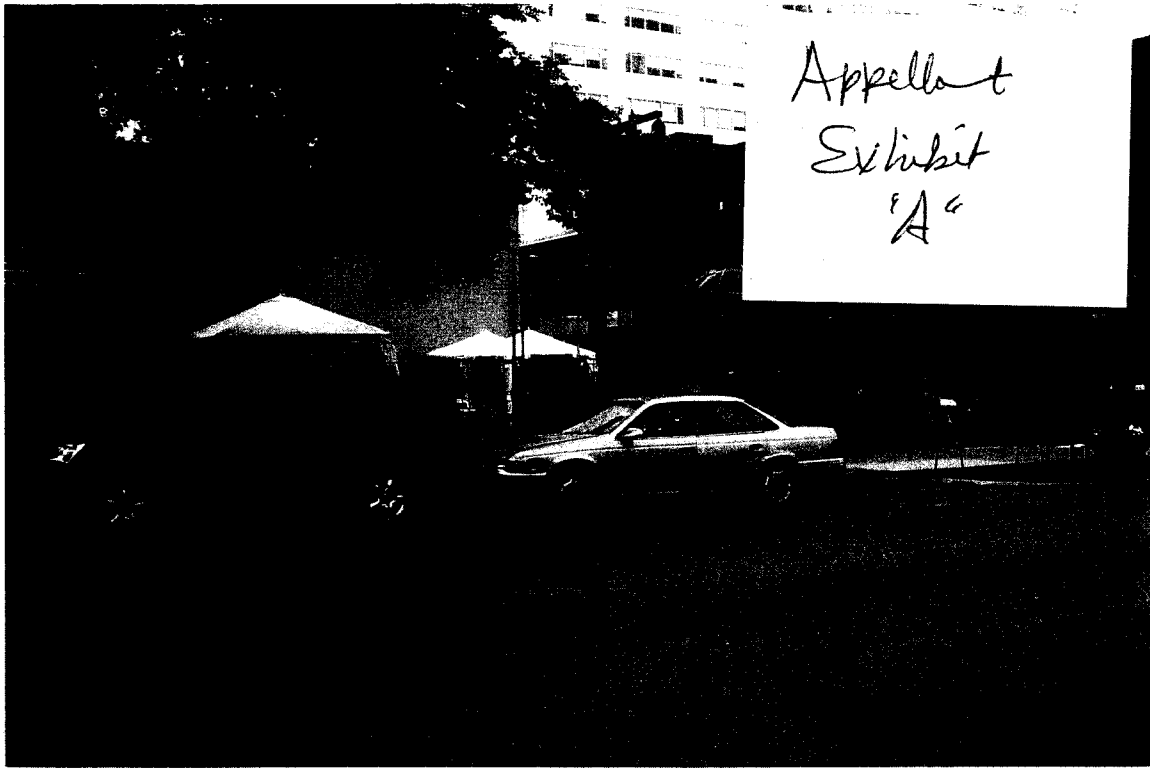
**VEHICLE PARKED / UNATTENDED IN A NO PARKING CAB STAND ONLY ZONE. MARKED WITH A METER BAG. UNABLE TO LOCATE OWNER.**

**NOTHING OF VALUE OBSERVED IN VEHICLE.**

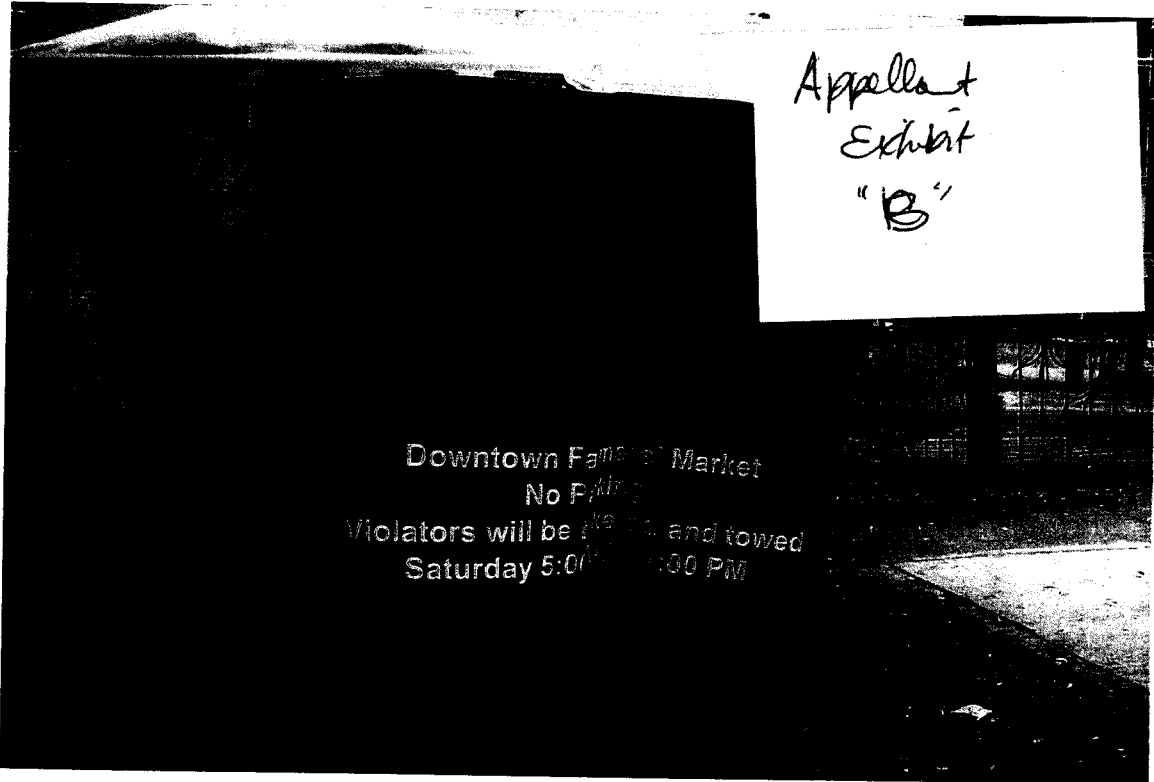
2009 MAY 23 AM 8:55

28. REPORTING OFFICER <b>KRESS</b>	IDENT NO. <b>4907</b>	CONTINUE NARRATIVE ON BACK	
SECOND OFFICER	IDENT NO.	<b>DISPATCH</b>	
29. SUPERVISOR APPROVING <i>[Signature]</i>	<b>4421</b>	REVIEWER <b>RK</b>	32. RADIO BROADCAST BY DISPATCHER #
30. INVESTIGATION STATUS <input type="checkbox"/> OPEN <input type="checkbox"/> SUSPENDED <input type="checkbox"/> CLOSED	33. DATE		34. TIME
31. CLEARANCE CLASSIFICATION <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> CLEARED BY ARREST <input type="checkbox"/> EXCEPT CLEARED	35. OPERATOR <b>CANCEL</b>		DATE / TIME
36. UNIT REFERRED TO: <b>CF</b>	IOWA <input type="checkbox"/>		NCIC <input type="checkbox"/>





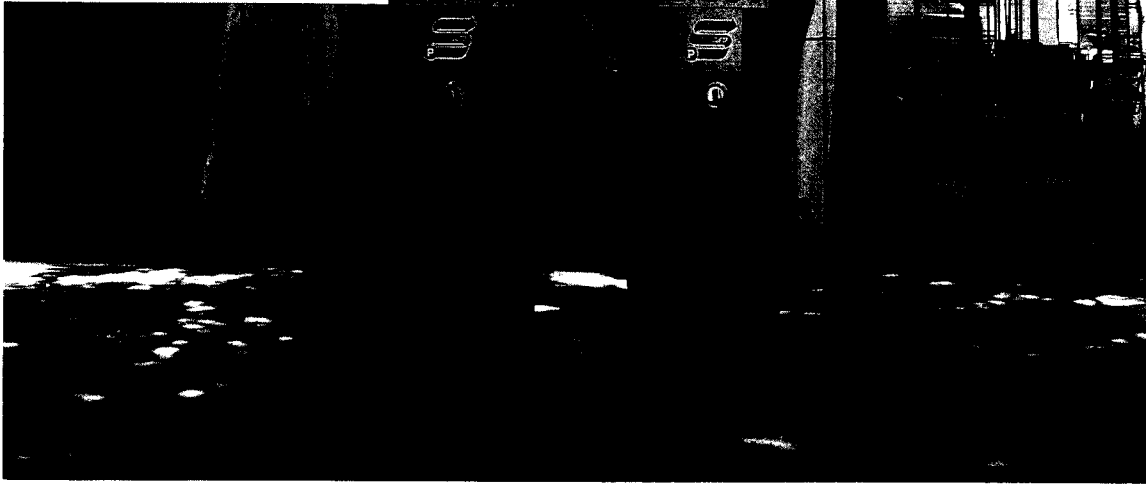
Appellant  
Exhibit  
"A"



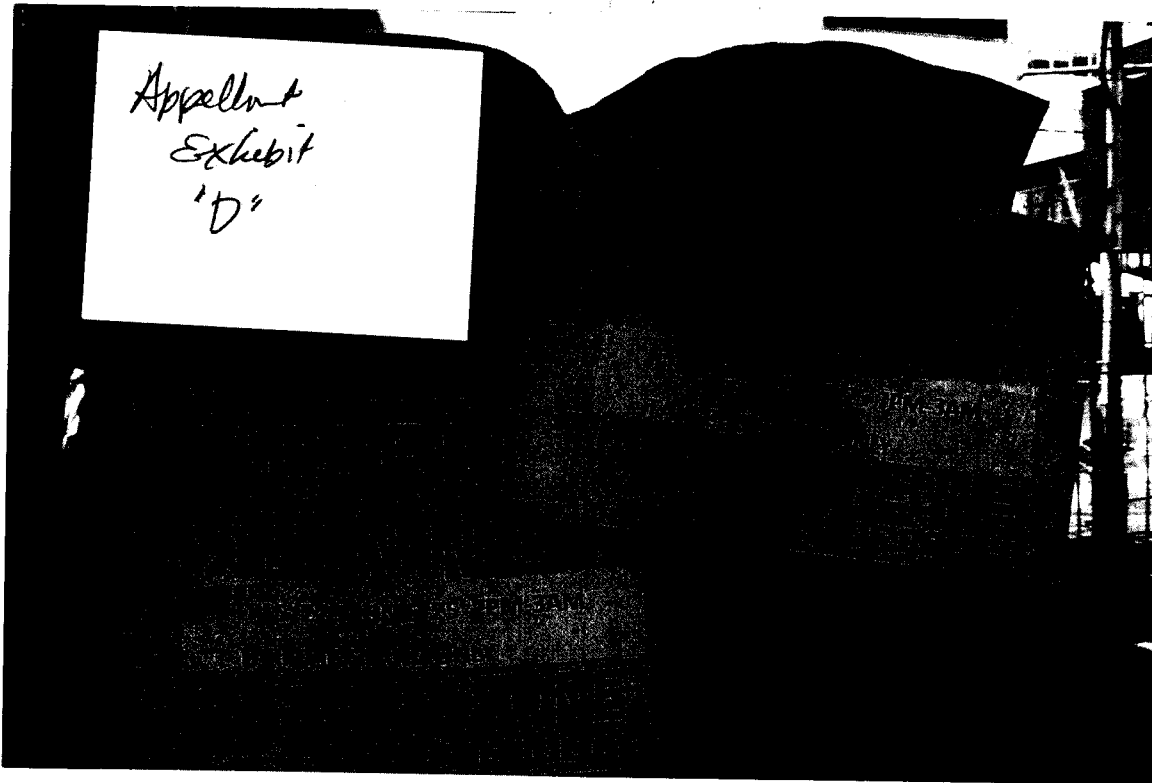
Appellant  
Exhibit  
"B"

Downtown Farmers Market  
No Parking  
Violators will be cited and towed  
Saturday 5:00 AM - 6:00 PM

Appellant  
Exhibit  
"C"



Appellant  
Exhibit  
"D"





July 8, 2009

Nikala Prasasouk  
3525 Belmar Drive  
Des Moines, IA 50317

Subject: Decision of Hearing Officer  
Vehicle Impound

Ms. Prasasouk:

A hearing was held regarding the impoundment of your vehicle.

Attached is the decision of the Hearing Officer. The Hearing Officer has ruled that probable cause did exist as stated on the attached Decision and Order.

Sincerely,

A handwritten signature in black ink that reads "Diane Rauh". The signature is written in a cursive, flowing style.

Diane Rauh  
City Clerk

DR:kh  
Attach

**City of Des Moines, Iowa**  
**June 29, 2009 Administrative Hearing**

In re:	)	
	)	
NIKALA PRASASOUK,	)	DECISION AND
Respondent	)	RIGHT OF APPEAL
	)	
	)	

Nikala Prasadouk, appeared on her own behalf and was represented by her attorney Dan Wilmouth. Brian Kress, an officer with the Des Moines Police Department, appeared on behalf of the City.

**Procedural History**

On or about 4:00 PM May 22, 2009 "Downtown Farmers Market No Parking" bags were placed over the parking meters along Court Avenue, which included the 300 block. The posted enforcement period stated "Saturday 5:00 AM – 1:00 PM." During the evening of May 22, 2009, the Des Moines Police Department posted "Emergency No Parking" signs over the meters along the north side of the 300 block of Court Avenue in response to an order by the Chief of Police. The posted enforcement period stated "FRI 5/22-MON 5/25 7PM-3AM." At 10:15 PM on May 22, 2009, Officer Kress observed one unattended illegally parked vehicle within the posted "Emergency No Parking" zone. At 10:30 PM the Des Moines Police Department seized and impounded the black 2004 Jeep, which was registered to Ms. Prasadouk. On May 23, 2009, Ms. Prasadouk claimed her vehicle and it was released to her after payment of impound and storage costs. On May 26, 2009, Ms. Prasadouk filed a request for an administrative hearing to determine whether there was probable cause for the vehicle and its contents to be impounded. On June 16, 2009, the City Clerk sent a notice to Ms. Prasadouk informing her that an administrative hearing was scheduled for June 29, 2009 to hear her case. The matter was so heard before the administrative hearing officer.

**Decision**

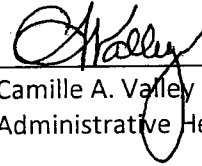
Section 114-361.17(a) provides that "the chief of police may, upon issuance of an emergency order, cause temporary no parking signs to be posted on or about streets of the city. No person shall park in violation of signs so posted." A person who leaves their vehicle parked on a public street for an extended period of time bears the risk of such an emergency declaration occurring during their absence. In the case at hand emergency no parking was so declared and posted along the street where Ms. Prasadouk had parked and left her vehicle for over nine hours.

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 Ms. Prasadouk's vehicle and its contents to be impounded while parked in a well posted emergency no parking zone. Therefore, Ms. Prasadouk is found liable for the charges attributable to the impoundment and storage of the vehicle, and she is ordered to pay any administrative costs due pursuant to section 114-485.16 of the Des Moines Municipal Code.

### Appeal Rights

As provided under section 114-485.18 of the City of Des Moines Municipal Code, this decision may be appealed to the City Council provided a written request is filed with the City Clerk's Office within seven days of this decision, which states the reason upon which the appeal is based. Failure to timely file a written request shall be deemed a waiver of the right to appeal this decision to the City Council.

This written ruling is hereby submitted on this 7<sup>th</sup> day of July, 2009 in Des Moines, Polk County, Iowa. The City Clerk for the City of Des Moines shall serve copies of this Decision and Order upon each of the parties.



---

Camille A. Valley  
Administrative Hearing Officer

CITY OF DES MOINES IOWA  
JUNE 29, 2009 ADMINISTRATIVE HEARING

Nikala Prasadouk , pursuant to the City of Des Moines Municipal Code 114-485.18, hereby appeals the decision of the hearing officer Camille A. Valley rendered July 7, 2009. The reasons upon which the appeal is based are as follows:

The decision does not contain any analysis of the undisputed facts which on their face entitle Nikala Prasadouk to relief in this matter because there was no probable cause to impound the vehicle as being illegally parked. The decision is further arbitrary and capricious and denies Nikala Prasadouk due process of law in that City of Des Moines Municipal Code 114-485.16 is unconstitutional on it's face as it amounts to an "ex post facto" law and makes the taking itself determinative of the ultimate issue. Lastly persons in the same situation are treated differently with no guidance given in the statute for the unequal treatment.

Argument

The Procedural History set forth by the Hearing Officer is as follows:

**Procedural History**

"On or about 4:00 PM May 22,2009 "Downtown Farmers Market No Parking" bags were placed over the parking meters along Court Avenue, which included the 300 block. The posted enforcement period stated "Saturday 5:00 AM -1:00 PM." During the evening of May 22,2009, the Des Moines Police Department posted "Emergency No Parking" signs over the meters along the north side of the 300 block of Court Avenue in response to an order by the Chief of Police. The posted enforcement period stated "FRI 5/22-MON 5/25 7PM-3AM." At 10:15 PM on May 22, 2009, Officer Kress observed one unattended illegally parked vehicle within the posted "Emergency No Parking" zone. At 10:30 PM the Des Moines Police Department seized and impounded the black 2004 Jeep, which was registered to Ms. Prasadouk. On May 23,2009, Ms. Prasadouk claimed her vehicle and it was released to her after payment of impound and storage costs. On May 26,2009, Ms. Prasadouk filed a request for an administrative hearing to determine whether there was probable cause for the vehicle and its contents to be impounded. On June 16, 2009, the City Clerk sent a notice to Ms. Prasadouk informing her that an administrative hearing was scheduled for June 29, 2009 to hear her case. The matter was so heard before the administrative hearing officer."

However, nowhere is there a statement of the undisputed fact that Ms. Prasadouk worked down town at the Spaghetti Works restaurant which is close to the meter in question. Nowhere is there a statement of the undisputed fact that Ms. Prasadouk went to work and parked at the meter in question on Friday May 22, 2009 about 3:30 pm - **before** the "Farmer's Market No Parking" bag was placed over the meter "on or about 4PM..." Nowhere is there a statement of the undisputed fact Ms. Prasadouk put money in the meter as required by law at the time she parked. Nowhere is there a statement of the undisputed fact that Ms. Prasadouk returned to put additional money in her meter more than an hour later and then discovered over the meter a "Farmers Market No parking Bag" which indicated there would be no parking at that meter beginning Saturday 5AM and ending Saturday at 1PM. Nowhere is there a statement of the undisputed fact

Ms. Prasadouk knew she would be off work and back to pick up her vehicle well in advance of 5AM when, as noted by the only sign she saw, it would become illegal to park there.

Nowhere is there a statement of the undisputed fact that up to this point Ms. Prasadouk was in violation of no law. Nowhere is there the statement of Officer Kress he did not know when the "Emergency No Parking Bag" had been placed over the meter as he did not see it or Ms. Prasadouk's vehicle until about 10:15PM. Nowhere is there a statement of the undisputed testimony of Officer Kress and the picture submitted by Ms. Prasadouk that the "Emergency No Parking Bag" showed the meter was designated as a taxi stand. Nowhere is there a statement of the undisputed testimony of Officer Kress the meter in question is not usually bagged as a taxi stand, but that on this one occasion it was so designated.

City of Des Moines Municipal Code 114-485.11 in pertinent part states as follows:

114-485.11 Removal and impoundment of illegally parked vehicles

"The police department...**may** (emphasis added) remove and impound vehicles...when the vehicles are stopped or parked in violation of this chapter or other city ordinances...."

As quoted in the decision: "Section 114-361.17(a) provides that 'the chief of police may, upon the issuance of an emergency order, cause temporary no parking signs to be posted on or about the streets of the city. No person shall park in violation of signs so posted.'" Notably, the statute does not say "Any person parked at this meter when the sign is posted shall be in violation of signs so posted." Certainly the city has the right to declare certain places off limits to parking. The purpose of posting signs are to put the populace on notice parking will not be allowed in those certain spaces. Anyone who knowingly parks in such a posted area may well expect they will incur some penalty, whether it be a fine or impoundment. But the situation is different when it becomes illegal to park somewhere **after** someone is already in the space in violation of no law and without notice it will become illegal before the person will be back to move the vehicle. Indeed, in the present case, there was a bag placed over the meter that gave Ms. Prasadouk the assurance it would not be illegal to park there until 5AM Saturday Morning. Ms. Prasadouk testified she would not have parked at the meter if the "Emergency No Parking" notice had been posted when she went back to put money in the meter.

It is respectfully submitted that it is inequitable to require Ms. Prasadouk to be liable for the cost of towing her vehicle from a meter at which she was lawfully parked and would be lawfully parked at all times as far as she could ascertain. There is no testimony on the point, but it may be assumed that the event occasioning the need to designate the meter as a taxi stand was scheduled prior to the specific afternoon. If that is so, then why not put the taxi stand bag on the meter in the first place instead of the "Farmers Market Bag" which led Ms. Prasadouk and would

### Nikala Prasasouk Appeal-3

lead any other reasonable person into the belief they could continue to park at that meter at least until 5AM Saturday morning? If there was an open meter anywhere near the meter in question, why not make that meter the taxi stand?

The Hearing Officer decided given Section 114-361.17(a), "A person who leaves their vehicle parked on a public street for an extended period of time bears the risk of such an emergency declaration occurring during their absence." Assuming for argument's sake that could be true, how is it relevant in this case? Would the situation have been different if Ms. Prasasouk parked at 3:30, the "Emergency No Parking" bag went on at 3:45 and Officer Kress called for the vehicle to be impounded at 4:30? The fact is, the "Farmer's market" bag led her to understand she could park in that spot until 5AM Saturday morning. There was no testimony from which it could be determined when the "Emergency" bag replaced the "Farmer's Market" bag. The "Farmers Market" bag did not say "No Parking Probably From Saturday 5:00AM-1:00PM, But Maybe From 10:00PM Friday - 1:00PM Saturday." Given the Hearing Officer's reasoning, anyone, lawfully parked at any time, at any meter, is subject to impoundment and towing costs if the chief of police issues an emergency order deciding any particular meter shall be posted before the owner of the vehicle gets back. Ms. Prasasouk did nothing illegal She parked her vehicle and went to work. She came back to put money in the meter but found that to be unnecessary because a bag place over the meter told her she could park there until 5AM in the morning - long after she would be going home. But because she was parked in a space where there was a no parking designation, the Hearing Officer with that information alone has found there was probable cause to impound her vehicle. And, of course, if there is probably cause,, she does not get a refund of the costs she incurred as allowed by 114-485.12(a). Given the reasoning of the Hearing Officer, there was a sign that said "Fri 5/22-Mon 5/25 7PM-3AM. If a vehicle is at that meter, it is a violation of the posting, so that's as far as the analysis goes. 114-485.12 has no effect in any such case, because all that counts is the vehicle being parked in a posted zone. The fact you are there gives rise to probable cause to tow-guilty with no intention of doing anything wrong. But posting is for the purpose of warning people if they intentionally park in a posted zone they can be towed or fined. If just being there is probable cause, there is no need of or value to the notice. Yet the statute does contemplate situations where the city will refund costs incurred by residents whose vehicles have been towed. So, intention and willfulness or lack thereof should enter into the decision to find that probable cause existed to find the person violated the posting.

Further, City of Des Moines Municipal Code 114-485.16 is unconstitutional on its face as it amounts to an "ex post facto" law. This is because it allows a taking of private property without notice for something that was not illegal when done. Laws should be enforced to punish wrongdoing. City of Des Moines Municipal Code 114-485.16 appears to establish a class of offenses that are ipso facto illegal without regard to the intention or even negligence of the offender. The Hearing office may be trying to say Ms. Prasasouk was negligent in leaving her vehicle parked in one spot for so long but, if so, it has already been shown how long the person parks has no bearing upon the situation as there was a sign that told her she could park until



5AM. The statute should provide for relief if it can be shown that the person acted reasonably in the circumstances.

City of Des Moines Municipal Code 114-485.01- 114-485.10 provides a method for parking enforcement that satisfies all the deficiencies found in 114.485.11 et seq.

Sec. 114-485.01. Notice on illegally parked vehicles.

Whenever any motor vehicle without a driver is found parked or stopped in violation of any of the restrictions imposed by this chapter or any other city ordinance or by state law, the officer or designated city employee finding such vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its owner or user and shall conspicuously affix to such vehicle a citation-complaint in writing, on a form as provided in section 114-485.04 of this article, for the owner to appear to the charge against him or her at the city clerk's office or in the county district court as designated in the citation-complaint.

Sec. 114-485.06. Administrative review panel.

An administrative review panel comprised of the city clerk or the city clerk's designee, as chairperson of the panel, and two other city employees appointed by the city manager to serve upon such panel shall, at the written request of the owner of the vehicle, review the facts and circumstances upon which a citation was issued and shall decide whether the parking citation-complaint should be voided or should be upheld.

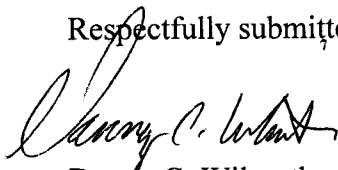
There is nothing in 114-485.11 that requires a vehicle parked in violation of the chapter or other city ordinances to be impounded. It merely says they may be impounded. If Ms. Prasasouk's vehicle was cited pursuant to 114-485.01, there is provided a remedy which would have allowed her to have had a meaningful opportunity to avoid the operation of the ticket as any reasonable panel would likely have concluded she was not at fault in this matter. But once her vehicle was impounded, there is no review possible that would allow her to avoid the impoundment costs. Where the impoundment statute is discretionary only, there is no legitimate reason why, if an officer chooses to impound rather than merely cite a vehicle apparently parked in violation of parking restrictions, the offending party is not entitled to a meaningful hearing which is available if the person was merely cited. Indeed, the costs of impoundment to the offending party are much greater than the \$15 fine imposed by operation of City of Des Moines Municipal Code 114-485.01- 114-485.10. It may be assumed there will be situations where Officer A would merely cite an illegally parked vehicle where Officer B would impound. In one case, there is a small fine but meaningful opportunity to present mitigating facts. In the other there is a substantially higher cost, and no meaningful review as the only issue is the apparent existence of

Nikala Prasasouk Appeal - 5

probable cause. This is substantially different treatment of persons similarly situated and may also be unconstitutional for that reason.

It is respectfully submitted that Ms. Prasasouk should be awarded a refund of her impoundment fees.

Respectfully submitted,



Danny C. Wilmoth  
4055 46<sup>th</sup> St.  
Des Moines, IA 50310  
(515) 331-3176  
Attorney for Nikala Prasasouk

July 24, 2009

Nikala Prasadouk  
3525 Belmar Drive  
Des Moines, IA 50317

Re: Appeal of Vehicle Impound

Dear Ms. Prasadouk:

This letter is to acknowledge receipt of your written request of July 14, 2009 filed by your attorney 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 August 10, 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.**

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

Sincerely,



Diane Rauh  
City Clerk

DR:kh

cc: Hearing Officer  
Assistant City Attorney  
Chief Bradshaw  
Danny C. Wilmoth - Attorney



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ADMINISTRATIVE HEARING TRANSCRIPT

June 29, 2009

City v. Prasasouk

Vehicle Impound

HEARING OFFICER CAMILLE VALLEY: ...and a hearing has been called to order by Ms. Prasasouk in response to the City's impoundment of her vehicle. Would the City representative please come to the microphone, state your name and your position with the City.

OFFICER BRADLEY RAY KRESS: My name is Bradley Ray Kress. I'm a Senior Police Officer with the City of Des Moines.

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

OFFICER BRADLEY RAY KRESS: I do.

HEARING OFFICER CAMILLE VALLEY: Okay. You may proceed and tell us what occurred.

OFFICER BRADLEY RAY KRESS: Uhm, on the evening on the 22<sup>nd</sup> of, I believe it was May, May 22<sup>nd</sup>, uhm, I was acting as Supervisor for the Downtown Squad which is Squad 4 on First Watch Patrol. Uhm, earlier in the evening I was notified by my Watch Commander, Captain Dana Wingert, that the City had authorized a partial closing of Third Avenue, or Third Street just north of Court. Normally during the evening hours from 11:00 til 3:00 in the morning there is a cab stand that is set up for patrons of the downtown Court Avenue District along Third Street. Because of the closure due to a block party, that cab stand was moved to the 300 block of Court Avenue on the north side of the road. He told me this because he said there could be some traffic congestion. Keep an eye on it and make sure all vehicles are out of the cab stand prior to it opening at 11:00. I went down to that area at 10:30 and notified that all the, or noticed that all the meters along the block that was going to be utilized as a cab stand had been marked prior with a Chief's order "do not park" meter cover. All the vehicles in that area had been removed except for one which was blocking the cab stand operations. Uhm, I went to that area, ran the vehicle for information on the driver to see if I could possibly locate them prior to impounding the vehicle. I was there for maybe 20 minutes before calling for a tow truck to remove the vehicle. Not being able to locate anyone, I called for Owen Crist and the vehicle was removed and impounded due to the parking violation. The vehicle was not issued a citation. I used my discretion on that part of it because normally that is not the cab stand. This evening it was marked. I was informed that the bags were placed at 4:00 p.m. for operations that night. The signs were put out prior to the opening of the cab stand and felt that the vehicle had plenty of notice and should have been moved prior to our having to impound it.

HEARING OFFICER CAMILLE VALLEY: Okay. Alright. Thank you. Ms. Prasasouk...

DAN WILMOTH: Hearing Officer. My name is Dan Wilmoth.

HEARING OFFICER CAMILLE VALLEY: Okay.

DAN WILMOTH: I'm here for Ms. Prasadouk.

HEARING OFFICER CAMILLE VALLEY: Okay.

DAN WILMOTH: I have a couple of questions for Officer Kress.

HEARING OFFICER CAMILLE VALLEY: Okay, would you like to, do you want to stay up here Officer and then do you want to come to the microphone also?

DAN WILMOTH: Are you asking me to come up?

HEARING OFFICER CAMILLE VALLEY: Come to the, we tape record it so if you're going to ask him questions can you, can you say your name again into the microphone so we have it on tape?

DAN WILMOTH: My name is Dan Wilmoth, "Wilmoth". I'm an attorney representing Ms. Prasadouk. I just have a couple of questions for Officer Kress if I may.

HEARING OFFICER CAMILLE VALLEY: Okay.

DAN WILMOTH: Officer, you said you were notified that the, that the meters in question were going to be a cab stand. What time were you notified, if you recall?

OFFICER BRADLEY RAY KRESS: It would have prior to my shift. I start at 9:00 p.m. or 2100 hours. So prior to roll call I was notified by my watch commander of the situation down there.

DAN WILMOTH: 8:45?

OFFICER BRADLEY RAY KRESS: Roughly.

DAN WILMOTH: And what time did you go down then to see if their cars had all been moved?

OFFICER BRADLEY RAY KRESS: Uhm, it would have been prior to 10:30 or 2230 hours. And it would have been in the area of quarter after 10.

DAN WILMOTH: And you said that the signs were put on about, or the designation that it was going to be a cab stand was put on about 4:00 p.m.?

OFFICER BRADLEY RAY KRESS: I believe, that was what I was told.

DAN WILMOTH: And who told you that?

OFFICER BRADLEY RAY KRESS: The same person, the Watch Commander.

DAN WILMOTH: And did you see that at any time prior to the time that you went down there at 10:40 or whenever?

OFFICER BRADLEY RAY KRESS: Uh, at a quarter after. That was the first time I'd been down there and the bags, or the meters were marked with bags.

DAN WILMOTH: Okay. But you don't know for sure other than what you were told what time they were actually put on the meters?

OFFICER BRADLEY RAY KRESS: Just what I read in the request for hearing. Prior to today Ms. Prasasouk stated that she fed the meter at 3:30 and then when she went there at 4:00 to feed the meter there were bags placed on there so she did know that there were bags on the meters and that vehicles were to be moved.

DAN WILMOTH: Did she tell you what kind of bags that were on the meter when she got there at 4:30?

OFFICER BRADLEY RAY KRESS: Uh, the request for hearing stated that Farmers Market bags. The ones that were on it were the red and white order of the Chief of Police bags.

DAN WILMOTH: And what do those bags say, if you know?

OFFICER BRADLEY RAY KRESS: Uh, by order of the Chief of Police, I don't know the exact verbage of it, but they are the order of the Chief of Police no parking.

DAN WILMOTH: Does it give a timeframe for parking?

OFFICER BRADLEY RAY KRESS: Uh, no.

DAN WILMOTH: Okay. That's all I have. Thank you.

HEARING OFFICER CAMILLE VALLEY: Ms. Prasasouk, do you want to come up to the microphone and give your testimony? First, please state your name and spell your last name for me and provide your address of residence.

NIKALA PRASASOUK: Nikala Prasasouk, "Prasasouk", 3525 Belmar Drive, Des Moines, Iowa, 50317.

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

NIKALA PRASASOUK: Yes.

HEARING OFFICER CAMILLE VALLEY: Okay. You may proceed.

DAN WILMOTH: Uh, is it alright if I refer to the Defendant as Niki, your Honor?

HEARING OFFICER CAMILLE VALLEY: That would be fine. Okay, for the record, because this is being taped again, her attorney Mr. Wilmoth will be asking her questions.

DAN WILMOTH: Thank you. Uhm, the day that you got the ticket, what were you doing downtown, Niki?

NIKALA PRASASOUK: I was working at Spaghetti Works.

DAN WILMOTH: And what time did you have to go to work that day?

NIKALA PRASASOUK: 3:30.

DAN WILMOTH: And what time were you scheduled to get off?

NIKALA PRASASOUK: Uhm, I wasn't, there wasn't a definite time I was scheduled to get off, just whenever the restaurant had closed. We close at 10:30 and then the staff would have to clean up and I was off after midnight. I believe it was around 1:00.

DAN WILMOTH: Okay. And what time did you get there that day to park?

NIKALA PRASASOUK: 3:30.

DAN WILMOTH: And what did you see as far as the meter goes?

NIKALA PRASASOUK: It was just a regular meter with no bag over it when I got there.

DAN WILMOTH: I'm going to show you a photograph. Is that the, does that accurately depict the meter that we're talking about?

NIKALA PRASASOUK: Yes.

DAN WILMOTH: And when was this picture taken?

NIKALA PRASASOUK: This picture was taken yes, Friday, just this past Friday.

DAN WILMOTH: Okay, which was later than the day you got the ticket?

NIKALA PRASASOUK: Correct.

DAN WILMOTH: Okay. And what time was that picture taken if you know?

NIKALA PRASASOUK: Uhm, between 3:00 and 4:00.

HEARING OFFICER CAMILLE VALLEY: Who took the picture?

NIKALA PRASASOUK: I did.

HEARING OFFICER CAMILLE VALLEY: Okay. I'm going to enter these into evidence then.

DAN WILMOTH: Yes Your Honor. Show the Officer.

HEARING OFFICER CAMILLE VALLEY: Are they both the same picture?

DAN WILMOTH: Yes.

HEARING OFFICER CAMILLE VALLEY: Okay. Okay, I'm going to enter one picture. It's two vehicles parked along the side of the street. I'm going to enter that as Exhibit A for the Appellate.

DAN WILMOTH: And it's your testimony that that bag on this past Friday was there about 3:30 when you parked?

NIKALA PRASASOUK: Uh, huh.

DAN WILMOTH: Okay. I'm going to show you another picture. And what does that say? What does that show?

NIKALA PRASASOUK: Uhm, it's a meter with a red bag over it. It says Downtown Farmers Market, no parking, violators will be ticketed and towed, Saturday, 5:00 a.m. to 1:00 p.m.

DAN WILMOTH: I want to show you another picture. And what does this show?

HEARING OFFICER CAMILLE VALLEY: Okay, can, okay. Can I see the pictures as we discuss them because I'm the one that...

DAN WILMOTH: Yes. I was going to give them to you together, but I will give them to you now.

HEARING OFFICER CAMILLE VALLEY: Okay. Well as we talk about them I would appreciate having them to look at if I could.

DAN WILMOTH: This next picture that I gave you, what does that show?

NIKALA PRASASOUK: Uh, two meters.

DAN WILMOTH: And which one is the one that you were parking at that night?

NIKALA PRASASOUK: C301.

DAN WILMOTH: Okay. Now, when was this picture taken?

NIKALA PRASASOUK: This picture was taken, uhm, this past Friday, or no. I really don't remember. It was after May 22<sup>nd</sup>.



DAN WILMOTH: It was after May 22<sup>nd</sup>?

NIKALA PRASASOUK: Yes.

HEARING OFFICER CAMILLE VALLEY: You need to speak up because we are recording this, please.

NIKALA PRASASOUK: It's after May 22<sup>nd</sup>. I don't recall the exact date. I have the camera in my purse. That'll show a date.

DAN WILMOTH: This is what the meter would normally look like? Is that right?

NIKALA PRASASOUK: Uh, huh.

HEARING OFFICER CAMILLE VALLEY: Okay. So all you're doing is testifying that this is what the meter looks like without the bag, correct?

NIKALA PRASASOUK: Right.

HEARING OFFICER CAMILLE VALLEY: Okay.

DAN WILMOTH: Yes Your Honor.

HEARING OFFICER CAMILLE VALLEY: Okay. We'll mark it as Appellate Exhibit C.

DAN WILMOTH: Now, what time did you have to be to work on that Friday?

NIKALA PRASASOUK: May 22<sup>nd</sup>?

DAN WILMOTH: Yes ma'am.

NIKALA PRASASOUK: Uhm, 4:00.

DAN WILMOTH: And so what time did you get there?

NIKALA PRASASOUK: 3:30.

DAN WILMOTH: And is your, what did the meter look like when you got there at 3:30? Did it have any kind of bag on it at all?

NIKALA PRASASOUK: No it didn't.

HEARING OFFICER CAMILLE VALLEY: Did it look like Exhibit C?

NIKALA PRASASOUK: Yes.

HEARING OFFICER CAMILLE VALLEY: Okay.

DAN WILMOTH: Now, did you plug the meter, or put any money in the meter at that time?

NIKALA PRASASOUK: Yes I did.

DAN WILMOTH: And how much money did you put in?

NIKALA PRASASOUK: Uhm, I think I put in a couple quarters. I didn't have very much change.

DAN WILMOTH: And so subsequently did you go out to put more money in the meter?

NIKALA PRASASOUK: Yes I did.

DAN WILMOTH: And about what time would you have gone out?

NIKALA PRASASOUK: Uhm, it was roughly after 4:00.

DAN WILMOTH: And what did the meter look like at that time?

NIKALA PRASASOUK: It had a red Farmers Market bag over it.

DAN WILMOTH: And what did you decide based on what was written on the market?

NIKALA PRASASOUK: I thought my vehicle was okay because I would have been out of there before Saturday, 5:00 a.m.

DAN WILMOTH: Now, did anyone, uhm, go out there with you at that time?

NIKALA PRASASOUK: No.

DAN WILMOTH: Okay. Did you go out to the car again that evening before you got off work?

NIKALA PRASASOUK: No, I wasn't able to. I became busy at work.

DAN WILMOTH: Can you see that meter from your place of business?

NIKALA PRASASOUK: Uhm, if I walked outside I would.

DAN WILMOTH: Do you normally go outside?

NIKALA PRASASOUK: No.

DAN WILMOTH: What kind of a job do you have at Spaghetti Works?

NIKALA PRASASOUK: Uhm, I am the Shift Supervisor.

DAN WILMOTH: Had you ever parked at that particular meter before?

NIKALA PRASASOUK: Yes I have.

DAN WILMOTH: And had you seen these red bags before?

NIKALA PRASASOUK: Normally on a Friday evening.

DAN WILMOTH: Had you ever seen it marked as a taxi stand before?

NIKALA PRASASOUK: No I haven't.

DAN WILMOTH: Now what time did you get off work, if you recall, that night?

NIKALA PRASASOUK: After 1:00.

DAN WILMOTH: And did you go to your car right away?

NIKALA PRASASOUK: I walked to the parking spot that I thought I had parked at and didn't see my vehicle there.

DAN WILMOTH: Did you, uhm, know what had happened to it?

NIKALA PRASASOUK: Uhm, after I walked over closer I, I seen that there was a cab stand bag over the meter and read the sign and, ya know, and I had been towed.

DAN WILMOTH: Was that sign on any meter in that area when you first went to work?

NIKALA PRASASOUK: No.

DAN WILMOTH: Was that sign on any meter when you went out to put more money in the meter after you'd been at work for an hour or so?

NIKALA PRASASOUK: No.

DAN WILMOTH: When was the last time you saw that meter before you got off work?

NIKALA PRASASOUK: Uh, after 4:00, a little after 4:00.

HEARING OFFICER CAMILLE VALLEY: Okay, if I may interrupt. You said that it was marked as a cab stand, so did you take pictures of what?

NIKALA PRASASOUK: After, the day after.

HEARING OFFICER CAMILLE VALLEY: I mean with the cab stand. I mean, you said it was marked as a cab stand. Do you have, was it marked differently than your Exhibit B?

NIKALA PRASASOUK: Yes.

HEARING OFFICER CAMILLE VALLEY: Did you take a picture of that?

NIKALA PRASASOUK: Yes.

DAN WILMOTH: I only have one of these Your Honor. Maybe I should show the Officer.

HEARING OFFICER CAMILLE VALLEY: I will mark this as Exhibit B.

DAN WILMOTH: Now if you recall, when did you take that picture?

NIKALA PRASASOUK: Uhm, the day after my car was towed.

DAN WILMOTH: And that's the signs that were there when you went to pick up your car after you got off work?

NIKALA PRASASOUK: Yes.

HEARING OFFICER CAMILLE VALLEY: These, these signs, you took this the day after but this was here when you went out to notice your vehicle was missing, correct?

NIKALA PRASASOUK: Yes.

HEARING OFFICER CAMILLE VALLEY: Okay.

DAN WILMOTH: But prior to your getting off work, had you ever seen that sign on the meter?

NIKALA PRASASOUK: No.

DAN WILMOTH: Do you have any reason to believe that it was going to be put on that meter?

NIKALA PRASASOUK: No.

DAN WILMOTH: Now, if you had seen a sign like that on the meter what would you have thought?

NIKALA PRASASOUK: I wouldn't have parked there.

DAN WILMOTH: So just to be sure, your testimony is when you parked at that meter and last saw it, it said that violators would be ticketed and towed Saturday, 5:00 a.m. to 1:00 p.m. as on Exhibit B?

NIKALA PRASASOUK: Yes.

DAN WILMOTH: I have nothing else Your Honor.

HEARING OFFICER CAMILLE VALLEY: I have a couple of questions. Uhm, do you usually park at the meters right across from Spaghetti Works?

NIKALA PRASASOUK: If, if it's available.

HEARING OFFICER CAMILLE VALLEY: And so you parked on Saturdays before I take it?

NIKALA PRASASOUK: Yes.

HEARING OFFICER CAMILLE VALLEY: And how long is it, do you have to plug the meters all of Saturday?

NIKALA PRASASOUK: No.

HEARING OFFICER CAMILLE VALLEY: What, when don't you need to plug the meters? From what point on?

NIKALA PRASASOUK: Uhm,

HEARING OFFICER CAMILLE VALLEY: Because you were plugging the meter at 3:30 or 4:00.

NIKALA PRASASOUK: Monday through Friday until 6:00. I work evenings.

HEARING OFFICER CAMILLE VALLEY: Okay, but you were plugging the meter on a Saturday.

NIKALA PRASASOUK: No, I plugged the meter on Friday.

HEARING OFFICER CAMILLE VALLEY: On the Friday that it was towed. So, until 6:00. So you were used to plugging all the way til 6:00.

NIKALA PRASASOUK: Uh huh.

HEARING OFFICER CAMILLE VALLEY: And so when you found the bag, when you found the bag there you didn't plug the meter because there was a bag over it I take it, but you knew specifically that you have to plug it all the way til 6:00.

NIKALA PRASASOUK: Yes.

HEARING OFFICER CAMILLE VALLEY: Okay.

DAN WILMOTH: I have another question Your Honor.

HEARING OFFICER CAMILLE VALLEY: Yes.

DAN WILMOTH: Then in order to plug the meter at that time you'd had to have taken the parking bag off and put money in the meter?

NIKALA PRASASOUK: Yes.

DAN WILMOTH: And that's all I have Your Honor, of this witness. And what's your witness' name?

NIKALA PRASASOUK: Joyce Titus.

DAN WILMOTH: I'd like to call Joyce Titus if I may.

HEARING OFFICER CAMILLE VALLEY: You can sit down while she's up here. Okay, would you please state your name, spell your last name and provide your residence address.

JOYCE TITUS: My name is Joyce Titus "Titus," 2619 Capitol Avenue, 50317.

HEARING OFFICER CAMILLE VALLEY: Okay, would you 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?

JOYCE TITUS: Yes ma'am.

HEARING OFFICER CAMILLE VALLEY: Okay. You may proceed.

DAN WILMOTH: Thank you Your Honor. And Ms. Titus, what is your, uh, relationship to Ms. Prasasouk?

JOYCE TITUS: I work with her at Spaghetti Works.

DAN WILMOTH: Okay. And, uhm, do you know where this particular meter is that we're talking about?

JOYCE TITUS: Yes I do.

DAN WILMOTH: Is it across the street from Spaghetti Works?

JOYCE TITUS: Yes it is.

DAN WILMOTH: Is it in front of Spaghetti Works so you look out the front window and you can see it?

JOYCE TITUS: Yes, across the street in front of the Spaghetti Works.

DAN WILMOTH: Okay. What do you have to tell us about this particular incident?

JOYCE TITUS: The day that her car was towed I arrived at work at 5:00 and when I arrived at 5:00 it was the red Farmers Market bags which I have parked in front of them myself and they, nothings ever happened to my vehicle.

DAN WILMOTH: And that's all you have that you know about.

JOYCE TITUS: Yep, yep, I didn't see the yellow bags.

DAN WILMOTH: That's all I have Your Honor.

HEARING OFFICER CAMILLE VALLEY: Okay. Thank you. Does the City want to add any further testimony?

OFFICER BRADLEY RAY KRESS: Just one thing Your Honor.

HEARING OFFICER CAMILLE VALLEY: Okay.

OFFICER BRADLEY RAY KRESS: ...have the yellow. Ma'am every Friday afternoon or early evening...

HEARING OFFICER CAMILLE VALLEY: Okay, just for the record, cause we're taping, this is Officer Kress again.

OFFICER BRADLEY RAY KRESS: This is Officer Brad Kress "Kress," Senior Police Officer with Des Moines.

HEARING OFFICER CAMILLE VALLEY: Thank you.

OFFICER BRADLEY RAY KRESS: The only comment that I have is during the spring and summer every Friday afternoon or evening, the Farmers Market bags are put on to be enforced the next day. Uhm, this particular evening as marked with Exhibit D, the photograph of the "no parking zone," there is no timeframe given as far as when they were placed on. I cannot even testify to when they were placed on. However, it does state by order of the Chief of Police it is a tow away zone and vehicles parked there between 7:00 p.m. and 3:00 a.m. will be towed by order of the Chief of Police. It is clearly marked with the bags and that is how I found them at a quarter after ten. I did everything in my power to try to locate that driver prior to impounding the vehicle because it was a change from the norm in the downtown area. Unable to locate the driver or to get a phone number or information from the registration as to the whereabouts of that driver, the vehicle was impounded because I was ordered to do so by my lead authority which is the Chief of Police. Uh, it was causing a hazard in the area. Uh, very easily could have caused an accident because part of Court Avenue then was being blocked because of the cabs not able to complete their operation. That's why the vehicle was impounded. Between the hours of 4 to 7 when this states, there's 3 hours there that the bags were put on and the cab stand was clearly marked. I feel that that was plenty enough time for someone to have the opportunity to move it when the testimony says that the cab stand operation was right across the street from where they were going to be. Every other vehicle on that side of the street had moved except for this one.

HEARING OFFICER CAMILLE VALLEY: Uhm, when, since there was two different bags that were placed on these meters, do you have any idea when they switched from....

OFFICER BRADLEY RAY KRESS: I don't even know when this bag had been placed on. I talked to the Officer that's in charge of Farmers Market and they say they go on any time from late afternoon to early evening the night before.

HEARING OFFICER CAMILLE VALLEY: Okay, but, but these clearly post that they are for the Farmers Market.

OFFICER BRADLEY RAY KRESS: Those clearly post whereas the other ones are an order of the Chief of Police stating that there is no parking at any time.

HEARING OFFICER CAMILLE VALLEY: Right, so that's why I'm asking. So any idea what, how much, I mean if these went on, these don't provide the kind of notice that the yellow ones obviously do to whoever is parking in the meters, so, do you have any idea when, when it switched from.....

OFFICER BRADLEY RAY KRESS: No I do not.

HEARING OFFICER CAMILLE VALLEY: Okay.

OFFICER BRADLEY RAY KRESS: I don't even know if this one was on prior to other than the statements by Ms. Prasasouk.

HEARING OFFICER CAMILLE VALLEY: Is this the meter that you say later in the evening? The yellow, Exhibit D there? Is that the meter, is that the bag that was on it when you were on duty that night?

OFFICER BRADLEY RAY KRESS: There were two different styles. There were this with the markers and the yellow and then there were the white ones with the red markings that slip over the top.

HEARING OFFICER CAMILLE VALLEY: But none of them were just at that time when you came on the shift?

OFFICER BRADLEY RAY KRESS: When I went there it was not the Farmers Market. If it was that I wouldn't have impounded the vehicle.

HEARING OFFICER CAMILLE VALLEY: Okay. Alright. Do you have anything further?

DAN WILMOTH: Your Honor, that was, I was going to make a closing statement...a couple points.

HEARING OFFICER CAMILLE VALLEY: Yes you may.

DAN WILMOTH: Okay. Uhm, Ms. Prasasouk is not.....

HEARING OFFICER CAMILLE VALLEY: Just for the record,

DAN WILMOTH: This is for the record, yes.



HEARING OFFICER CAMILLE VALLEY: I mean, no I meant, state your name again.

DAN WILMOTH: Dan Wilmoth, attorney for Ms. Prasadouk.

HEARING OFFICER CAMILLE VALLEY: Okay, thank you. I appreciate it.

DAN WILMOTH: We're not contesting that at the time that the vehicle was towed away that no parking sign and the cab stand sign was not on the meter. We believe that it was. Uhm, what we're suggesting is that the sign was not there when Ms. Prasadouk went out the second to put more money in the meter and that the Farmers Market bag which prohibited her from putting money in the meter clearly said that there was not going to be any problem parking there until 5:00 a.m. the next morning. She had no reason to suspect that they were going to be putting a cab stand sign there because the officer has said this was an unusual situation because of a block party. So whether her duties allowed her to constantly monitor the vehicle from inside the store, uhm, I don't think is relevant at this point. She didn't have any obligation to check to see if the car was being towed away because she thought by virtue of the signs on there that it was not going to be a no parking zone until 5:00 in the morning.

HEARING OFFICER CAMILLE VALLEY: Okay.

DAN WILMOTH: Thank you.

HEARING OFFICER CAMILLE VALLEY: Alright. Thank you. If no one has anything further, I will, I will be deliberating on the testimony and the evidence that was received today. I don't know anything about his until I, the hearing on the, today. So I will deliberate on this, be issuing a written ruling which will be submitted to the Clerk's Office and then a copy will be given to you. So until that point in time this case is adjourned. Thank you for your testimony.

I, Renae Lampkin, certify that I transcribed the minutes of the June 29, 2009 Administrative Hearing pertaining to the vehicle impound of Prasadouk.

Renae Lampkin