**LETTER BRIEF #1**

Paul Gowder
[address]

July 18, 2012

Revenue Collections
City of Palo Alto
Processing Center
P.O. Box 10550
Palo Alto, CA 94303-0908

**RE: Palo Alto Parking Citation #PA100113720**

Dear Sir or Madam:

I write to contest the above-referenced parking citation and request an initial review.

The citation in question arises from an officer's unreasonable interpretation of Palo Alto's "color zone" parking regulation. On that interpretation, two distinct trips to the same color zone, separated by many hours, ostensibly give rise to a violation regardless of the length of time spent in each trip. Enforcing such an interpretation is a) contrary to any reasonable understanding of the relevant regulations, and b) is insufficiently communicated by the relevant parking signs, thus failing to give notice to drivers of the regulations to be applied to their conduct as required by California law (California Vehicle Code sec. 22507) as well as the due process clause of the Fourteenth Amendment of the United States Constitution.

## Summary of Facts

The relevant circumstances are as follows. At approximately 9:00am today, I drove into downtown Palo Alto. I left well within two hours, and I (and, more to the point, my automobile) spent the rest of the morning between the Stanford campus and in East Palo Alto. I returned to downtown at approximately 3:15pm for a cup of coffee.

To my surprise, on my return to my car (again within the parking time limit), I found a citation for "overtime parking," referencing MC 10.44.010(b) with the following remarks attached.

> REM1: NPOP: NO PERMIT OR PLACARD VISIBLE REPRKD IN SAME COLOR ZONE B4 5PM
>
> REM2 Mkd At 09:11AM, El: 7hr 26m.

I have enclosed a photocopy of my receipt from Nordstrom Rack in East Palo Alto, showing a purchase I made there at 2:55pm. This substantiates my claim that I had left the city of Palo Alto (and indeed, Santa Clara County) altogether during the time of the ostensible "reparking," and that the two recordings of my automobile's presence were, in fact, two distinct trips. I also invite the City to consult the records of its parking enforcement officers and see that my car was not observed parked within the city limits at any point between the two times mentioned on the citation. (I trust that the parking enforcement officers circulate more frequently than once per seven hours and twenty-six minutes?)

## Legal Argument

On any reasonable interpretation of the parking regulation under which my automobile was cited, drivers are prohibited from a) parking longer than two hours in any given space, and b) "reparking" by moving their vehicles within a zone in order to evade the two-hour time limitation by accruing more than two hours in that zone. Drivers are *not* prohibited from making two distinct trips, under the two-hour time limit, but separated by more than two hours, and with no intent to evade the time limit.

*The Municipal Code, and the Regulatory Sign*

The Municipal Code section under which the citation was written reads as follows:

> **10.44.010 Restrictions established - Signs designating.**
>
> (a) The city council shall by ordinance or resolution establish such parking, or stopping, standing and parking restrictions or prohibitions as may be necessary, and the city manager shall designate such streets, portions of streets, or city-owned parking facilities by appropriate signs or markings giving effect to such parking or stopping, standing and parking restrictions or prohibitions. Notwithstanding the foregoing, the city manager may establish such parking, or stopping, standing and parking restrictions or prohibitions for periods of time not to exceed four months at which time such restrictions or prohibitions shall no longer be of any force and effect unless duly established by ordinance or resolution of the city council. The city manager shall designate streets or portions of streets by appropriate signs or markings, giving effect to such parking or stopping, standing and parking restrictions or prohibitions.
>
> (b) When authorized signs are in place giving notice of such prohibition or limitation, no person shall stop, stand or park any vehicle in violation of such prohibition or limitation.
>
> (c) Whenever the stopping, standing or parking of a vehicle has been prohibited, restricted, or limited as to time by this chapter or any resolution enacted pursuant hereto, the continued standing or parking of such vehicle for an additional period longer than the maxi-mum permissible period of parking in such space or location after a citation therefor has been issued shall constitute a separate and ad-ditional violation. If no such period of time is designated, stopping, standing or parking for an additional period longer than one hour after a citation has been issued, shall constitute a separate and additional violation.

On the plain text of that ordinance, the *content of a parking sign* effectuates and gives notice of the parking limitations that may be enforced. For its part, the relevant parking signs forbid "reparking" within a given "color zone" before 5pm, after the expiration of a two-hour limit.

*The Meaning of the "Reparking" Rule*

The only reasonable interpretation of the "reparking" provision noted in those signs (and in the citation issued to me) is that they forbid the common practice of moving a vehicle a short distance in order to evade a time limitation. That is what "reparking" conventionally means. Indeed, that's the interpretation given by other cities which have enacted similar parking regulations. For example, the city of Davis helpfully explains its reparking ordinance as follows:

> "Reparking", also known as the "2-hour shuffle" or "sleeper parking", refers to the act of moving a vehicle from one parking space to another when the time limit expires. Previously, vehicles need only move one parking space over in order to have been considered "moved". This decreases parking turnover (the number of different vehicles that use a parking space in a given period of time) and deprives businesses of customers, revenue and growth.

Source: <http://cityofdavis.org/police/parking/reparking.cfm>. This clearly expresses the common understanding of the term "reparking" as *de minimis* moving of a vehicle to evade a parking time limit.

The city of Monterey has similar rules. Its parking ordinance, Monterey City Code Sec. 20-79 through 20-80 forbids reparking within a 150 foot distance. Its ordinance clearly expresses the point: to

prevent people from evading the total time limit on a parking space. A representative section reads as follows:

> No person shall stop, stand or park any motor vehicle in two or more spaces which have been designated as one hour time limit spaces pursuant to this Section, which spaces are less than 150 feet distant from each other, for a cumulative period of time in excess of one hour. For purposes of this Section, the distance between spaces shall be determined by measuring along the curb facing from the closest point of one space to the closest point of the other space.
>
> In enacting this Section, it is the intention of the City Council to provide short-term parking for customers and business visitors of commercial and professional establishments in the area and to prohibit the use of such parking spaces to persons desiring to park in excess of one hour.

Under Monterey's reparking regulation, that is, a citizen would not be punished for making two separate visits within the overall time limit, even if they were separated by more than an hour. Monterey explicitly explains that the intention is to put a stop to over-time parking, not to regulate the number of trips citizens may make.

The city of Petaluma too has a reparking regulation. A representative section reads as follows:

> For purposes of this section, a vehicle will be deemed to have been stopped, parked or left standing for longer than the time allowed in this section, if it has not been moved at least "Out of the Block Face" after the expiration of the designated time zone. A Block Face is defined as the block in which the vehicle is parked, bordered by an intersection at each end. A vehicle may not return to the same block sooner than two hours following the expiration of the initial time period.

Petaluma City Code sec. 11.44.010. Again, the point is clear: they count a vehicle as not having moved if it has only moved a little. Why? To prevent people from moving their cars just a little bit, or driving around the block and coming back a short time later, to evade parking time limits.

Similarly, the city of Bismark, North Dakota, has written a reparking regulation into its city code. The Bismark code, in relevant part, reads as follows:

> 3. Unless signed to prevent re-parking in the same block pursuant to paragraph 4 of this section, in any prosecution charging a violation of this chapter concerning the standing or parking of a vehicle, proof that the vehicle involved has not been moved a distance of 1200 feet during the period of time established and posted in accordance with this chapter or forty-eight consecutive hours, as the case may be, shall constitute prima facie proof that the vehicle has remained stationary for that period of time.
>
> 4. In any prosecution charging a violation of this chapter concerning the standing or parking of a vehicle, and the block is signed to prohibit re-parking in the same block, proof that the posted time-limit restriction has elapsed and the vehicle remains parked or has been moved and is again parked in the same block on either side of the street shall constitute prima facie proof that the vehicle has remained stationary for that period of time.

Bismark Code of Ordinances 12-13-21, paragraphs 3-4. The Bismark code clearly expresses the purpose that reparking regulations, including Palo Alto's, are meant to serve: preventing cars from moving a short distance to evade parking time limitations. Thus, in the Bismark code, the reappearance of a car within the

same block constitutes "prima facie proof that the vehicle has remained stationary." In legal parlance, of course, "prima facie proof" is rebuttable evidence of a legally relevant fact, from which it may be inferred that the legally relevant fact in question is that the car has not actually been genuinely moved, i.e., that the driver just shifted the car a few feet on the same trip to avoid parking restrictions.

The City of Fargo also has a reparking rule, and it quite clearly expresses the same point:

Source: < http://www.cityoffargo.com/CityInfo/Parking/Re-Parking/>.

> Fargo has a "Re-Parking" ordinance to ensure on-street parking spaces are available when customers visit Downtown. The City does not allow drivers to move their car from one parking space to another space on the same block when parking time limits are expired. This practice limits the availability of parking for others.
>
> Please remember:
>
> Moving your vehicle from one space to another on the same block does not restart the time zone. When the posted time-limit restriction has elapsed and the vehicle remains parked or is parked again in the same block (see diagram), the vehicle will be considered stationary and eligible for a parking ticket. (Ordinance 8-1006)
>
> The parking ticket fee is $15 for violating a time zone regulation, including moving your vehicle to another parking space in the same block. For example, if a driver is close to reaching his 90-minute time zone limit and moves his vehicle to a parking space half a block from where he was originally parked, he will not be given an additional 90 minutes for this time-limit violation. Driving around the block or driving away and returning to park on the same block a short time later may also lead to a ticket.

In Fargo, like Bismark, like Monterey, like Petaluma, like Davis – and like Palo Alto – the point and meaning of the reparking regulation is to keep people from moving their cars to evade time limits, not to prevent them visiting the same area twice in one day, separated by seven hours.

In light of the common understanding of the term "reparking," as well as the practices of Palo Alto's sister cities, no reasonable officer could have written a citation for "reparking" in two distinct trips, separated by seven hours.

However, on the enforcement officer's very different interpretation, one *cannot be seen in the same color zone more than two hours apart*, even if the total time spent in that zone is less than two hours. To repeat, the *complete* basis of the officer's citation was that my car had been observed in the same zone, once at 9:11am, and once at 4:38pm. As far as the officer knew when he wrote the citation, I could have been parked for five minutes the first trip, and five minutes the second trip, and by some dark magic still violated the two-hour time limit despite being parked for only ten minutes. This is a clearly unreasonable interpretation of the regulation.

To further illustrate the absurdity of this interpretation, note that it would require citizens to memorize the color zones in which they parked, no matter how many hours separate them. For example, suppose a citizen visits one color zone at 9am, for five minutes, another color zone at 11am, also for five minutes, and a third color zone at 1pm, again for five minutes. That poor citizen, on returning to the downtown area for his/her fourth trip, would be obliged to have some record of each of the previous three color zones to avoid a citation. Perhaps one of our friendly local startups could write an app for that?

The evidence is overwhelming: everyone – except, evidently, the officer who wrote the instant citation – understands "reparking" to mean moving a car a short distance over a short time in order to avoid a parking time limit. Not making two wholly separate trips separated by almost the length of an entire workday.

But why rely on evidence from Palo Alto's sister cities? The common understanding *in Palo Alto* is that the meaning of the "reparking" restriction is to prevent *de minimis* vehicle moves to evade time limit restrictions. I give you the following, from a Palo Alto Weekly story from 1996:

> The signs said "Welcome to the Blue Zone. After 2 hour limit expires no reparking in blue zone before 5 p.m." So Larry FitzSimmons, 77, parked his car for 36 minutes in the Webster/Cowper garage while he got a haircut. In the afternoon he parked for 46 minutes on a blue zone street because he had an appointment with a chaplain to discuss the memorial service for his late wife.
> His total time in the blue zone last Nov. 28 was 1 hour and 22 minutes, yet he got a $20 ticket.
>
> What the signs should say is: Do not repark in the same zone if parking officers have captured your license plate on their hand-held computer.
>
> "I am certain the City Council did not intend our new parking ordinance to catch someone like me," he wrote in a letter to the city contesting the ticket. FitzSimmons' ticket was dismissed, but since then, "I do feel I am not spending as much money downtown as I used to because I can't remember which zone I parked in," he said.
> * * *
> The blocks of coral, lime, blue and purple were set up to discourage the estimated 300 to 400 downtown workers, so-called "sleepers," who park their cars in timed zones and then move their cars two hours after finding a chalk mark on their tire.
>
> Some evidence suggests the system has been working. Last March, the city experienced a surge of people applying for permits in downtown lots and garages, suggesting that some "sleepers" were moving off the street. And the city has sold more permits in the past year, although the numbers are not available yet.

Source: < http://www.paloaltoonline.com/weekly/morgue/cover/1996_Feb_21.COVER21.html>. We learn two things from this story. First, that the common community understanding of the purpose and meaning of the "reparking" regulation is to forbid "sleepers" who make de minimis moves in order to evade parking regulations. And second, at least one Palo Alto parking hearing officer agreed with this interpretation, and correctly dismissed Mr. FitzSimmons's citation.

Even a city of Palo Alto-sponsored website offers an interpretation of the parking regulation that is different from that of your enforcement officer's:

> Parking in most downtown Palo Alto lots is free for two hours (and parking garages for three hours) during weekdays and Saturdays, after which a car is not allowed to re-park in the same "color zone" the rest of the day.

Source: "Destination Palo Alto" <http://www.destinationpaloalto.com/pages/d/getting-around?visitor_info_id=14>.

On that reading of the regulation, one is allowed two hours total within a color zone, spread out over the day. Not, as your officer would have it, forbidden from simply appearing in a color zone at any two points in time if those two points are separated by more than two hours.

I conclude that on no reasonable interpretation do two distinct trips to a color zone, separated by seven hours, constitute "reparking" within the meaning of the reparking prohibition written on the City of Palo Alto's parking signs.

*The Requirement of Notice*

The City may only enforce reasonable interpretations of its parking signs. This is a requirement both of California law and of the U.S. Constitution.

First, California law. Vehicle Code sec. 22507(a), which authorizes municipal parking regulations, provides as follows:

> Local authorities may, by ordinance or resolution, prohibit or restrict the stopping, parking, or standing of vehicles, including, but not limited to, vehicles that are six feet or more in height (including any load thereon) within 100 feet of any intersection, on certain streets or highways, or portions thereof, during all or certain hours of the day. The ordinance or resolution may include a designation of certain streets upon which preferential parking privileges are given to residents and merchants adjacent to the streets for their use and the use of their guests, under which the residents and merchants may be issued a permit or permits that exempt them from the prohibition or restriction of the ordinance or resolution. With the exception of alleys, the ordinance or resolution shall not apply until signs or markings giving adequate notice thereof have been placed. A local ordinance or resolution adopted pursuant to this section may contain provisions that are reasonable and necessary to ensure the effectiveness of a preferential parking program.

This statute on its face provides that no local parking ordinance shall apply until "adequate notice" is provided by signs. The key word there is "adequate" – for notice on a sign to be adequate, it must actually give notice to a reasonable citizen of the rules that will apply to his or her behavior. Obviously, a sign cannot give adequate notice of an unreasonable interpretation of its contents. (To see this, suppose some officer interpreted the word "parking" to mean "traveling slower than 30 miles per hour?" Obviously, nobody could be put on notice of this fantastical interpretation by a "no parking" sign.) And since no reasonable interpretation of the word "reparking" forbids two wholly distinct trips seven hours apart and within the two-hour time limit, no citizen could have been given adequate notice of such an interpretation of this regulation. Thus, even if the City of Palo Alto intended by the reparking regulation to forbid such wholly distinct trips, California law forbids its enforcement.

So does the U.S. Constitution. Adequate notice is not just a requirement of state law. It's also a requirement of due process. An ordinance is invalid if it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden." *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972) (invalidating vagrancy ordinance for giving inadequate notice of conduct to be prohibited), cf. *Palmer v. City of Euclid*, 402 U.S. 544 (1971) (on grounds of inadequate notice, invalidating "suspicious persons" ordinance as to those to whom its application would be ambiguous), *McNally v. United States*, 483 U.S. 350 (1987) (using traditional "rule of lenity," by which ambiguous criminal statutes are interpreted against the government, to interpret statute), *United States v. Santos*, 553 U.S. 507 (2008) (again applying rule of lenity).

For these reasons, citation number PA100113720 must be dismissed.

Very truly yours,

Paul Gowder, J.D., Ph.D.

**LETTER BRIEF #2**

Addendum to Previously Submitted Material

Paul Gowder
Citation No. 100113720

The letter sent with my previous appeal of this citation lays out the full grounds for this dispute. I write merely to address the initial review response.

The initial review response reads, in its entirety, as follows:

> *Insufficient excuse. May not repark in same color zone same day. Time begins at initial parking & is noted on signs posted throughout the color zones.*

This statement is not responsive to the points raised in my initial letter.

1. The controversy is about what "repark" means, and I have given evidence supporting my interpretation of "repark". Nothing in the response addresses that.

2. Perhaps the claim "time begins at initial parking" was meant to address my points about what "reparking" means. If so, it does not succeed in doing so. The question is not about when the time *begins* – it's undisputed that the parking limitation begins when one first parks in a color zone. Indeed, any other interpretation would completely vitiate the reparking regulation – it would be possible to move one's car to park for longer than two hours. The real question is about whether or not the time *tolls* when one is not actually parked.

3. That is, I do not deny that it violates the regulation to park in one spot for one hour, and then park in a second spot in the same zone that day for longer than one hour. Rather, I deny that it violates the regulation to park in one spot for five minutes, and then park in a second spot later that day for five minutes. The only reasonable interpretation of the regulation is that, yes, the clock on total time *actually spent parked* begins to run on initial parking, and continues to run whenever the car is actually parked. But it would be insane to think that the clock also continues to run *when the car is not parked in the color zone*, or even in the city limits. The time limit must toll when the car is actually in motion or out of the jurisdiction!

**ADMINISTRATIVE HEARING OFFICE**

**CITY OF PALO ALTO, CALIFORNIA**

IN THE MATTER OF:

Gowder, Paul
[redacted]

Respondent.
_____/

| | |
|---|---|
| Citation No.: | 100113720 |
| Decision Date: | 9/13/12 |
| Type of Hearing: | Telephone |
| Disposition: | Not Liable |
| Penalty Paid: | $41 |
| Penalty/Fee Due: | $0 |
| Refund Due: | $41 |

On a one-time basis only, the present citation is dismissed in the interests of justice.

Dated: September 18, 2012

Louis L. Amadeo, Jr.

LOUIS L. AMADEO, JR.,
Administrative Hearing Officer