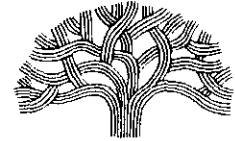


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CITY OF OAKLAND



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City Auditor

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MAY 22, 2006

JERRY BROWN, OFFICE OF THE MAYOR
IGNACIO DE LA FUENTE, PRESIDENT, CITY COUNCIL
Cc: Francine Larkrith-Thompson
Deborah Edgerly

SUBJECT: ILLEGAL CITATIONS ISSUED FOR TIME ZONE PARKING ON
FEBRUARY 13, 2006, A CITY HOLIDAY.

The Good Government Program of the City Auditor's Office received citizen complaints concerning parking tickets issued for time zone violations on a holiday as designated by the Oakland Municipal Code (OMC). We have reviewed the facts in order to determine what occurred. At issue are tickets written on February 13, 2006 under sections 10.28.180, 10.28.190 and 10.28.240 of the OMC.

BACKGROUND

On February 15, 2006, staff informed the City Auditor of the following: that the Parking Enforcement Division issued 1,291 parking citations on February 13, 2006 for violation of OMC section 10.28.240 for vehicles stopped, standing or parking during certain prohibited hours at locations designated as restrictive zones for street sweeping; that the Public Works Agency(PWA) acknowledged that the street sweeping personnel were not deployed on February 13, 2006; and, further that OMC section 10.04.040 defines Monday, February 13, 2006 as a "holiday" when February 12, 2006 falls on a Sunday.

On March 1, 2006, the Auditor's Office informed the City Administrator's Office (CAO) of the possible implications of these citations, stating that February 13, 2006 appeared to be a holiday exempting owners from parking citations.

On March 9, 2006, the CAO responded that the PWA website excludes February 12, 2006 (Lincoln's Birthday) from street sweeping holidays.

On March 13, 2006, the City Auditor requested that the City Attorney's Office render a legal opinion with respect to this apparent conflict.

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On March 21, 2006, the City Attorney's Office rendered an opinion that Monday, February 13, 2006, was a "holiday" as defined in section 10.40.240 of the OMC. In its conclusion, the City Attorney recommended that the Parking Enforcement Division rescind all street sweeping tickets issued February 13, 2006 and reimburse the affected individuals.

On March 27, 2006, the City Auditor informed Financial and Management Services (FMS) of the City Attorney's Legal Opinion.

On March 31, 2006, the City Attorney's Office reaffirmed its earlier opinion as to the status of Monday, February 13, 2006 as a "holiday" and requested that the Parking Enforcement Division reimburse those individuals who paid for "street sweeping tickets" issued on February 13, 2006. However, the City Attorney further stated that the City has no obligation to reimburse those individuals who have not complied with administrative procedures set forth in section 40215(a) of the California Vehicle Code (dismissal of complaint for failure to exhaust administrative remedies) especially because no party contested the tickets within 21 calendar days. The City Auditor's Office disagreed.

On April 18, 2006, the City Auditor's Office responded that it contested the tickets in a timely manner on March 1, 2006, 15 days after the parking tickets were issued as required by the provisions of sec 40215(a), California Vehicle Code, and that the tickets should be dismissed in the interest of justice.

FISCAL IMPACT

The financial impact on the City is worth considering. First, we assert that the injured parties should be reimbursed a total of \$63,080.00 for fines improperly paid to the City for the alleged violations. These fines were levied as follows:

Infractions OMC	Tickets issued	Amount per ticket	Total fines
Sec. 10.28.180	1	\$40.00	\$ 40.00
Sec. 10.28.190	27	\$40.00	1,080.00
Sec. 10.28.240	1,291	\$48.00	61,968.00
Total	1,391		\$63,088.00

Second, the City needs to consider that it inappropriately paid salaries, including holiday premiums, for Parking Enforcement employees on February 13, 2006, and is now incurring the additional costs of wages of involved departments in resolving this issue.

RECOMMENDATIONS

The City should abate all illegally derived fines and related penalties and interest.

A government is a creature of the people established to serve them. Accordingly, government functions subject to the confidence of the people. Such confidence does not contemplate government enrichment by assessment of fines in violation of its own adopted rules including exclusions for holidays.

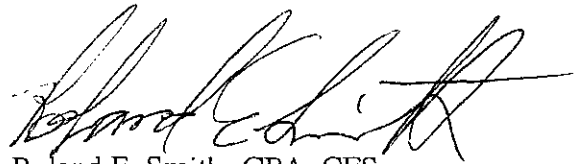
The action by the City Administration violates citizen rights. The failure of timely appeal is neither correct nor is it just cause to keep funds when the City fails to follow its own rules.

Prepared by:

Issued by:



Jim Mc Feely
Investigator
Good Government Program



Roland E. Smith, CPA, CFS
City Auditor

Report completion date:
May 22, 2006

Attachments.

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ATTORNEY-CLIENT COMMUNICATION
PRIVILEGED AND CONFIDENTIAL

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CITY OF OAKLAND
Office of the City Attorney
Legal Opinion

To: Roland Smith, City Auditor
From: Tracy Chriss, Deputy City Attorney
Date: March 21, 2006
RE: Street Sweeping Tickets Issued on February 13, 2006

I. Issue

The Parking Enforcement Division issued parking tickets to individuals parked in City of Oakland street sweeping zones on Monday, February 13, 2006. You would like to know if these tickets were issued in violation of the Oakland Municipal Code.

II. Summary Conclusion

Monday, February 13, 2006, was a "holiday" as that term is defined in section 10.04.040 of the Oakland Municipal Code. Therefore, the Parking Enforcement Division should not have issued street sweeping tickets on that date.

III. Analysis

Section 10.28.240, entitled, "Stopping, standing or parking prohibited during certain hours" provides, in pertinent part, that "when ... appropriate signs are in place giving notice ... no person shall stop, stand or park any vehicle between the hours

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To: Roland Smith, City Auditor
From: Tracy Chriss, Deputy City Attorney
RE: Street Sweeping Tickets Issued on February 13, 2006
Date: March 21, 2006
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indicated of any day, **except holidays**, on any street or any part of any street so indicated." (Emphasis added).

Similarly, sections 10.28.200 and 10.28.210 which prohibit parking in two-hour and four-hour zones, respectively, make exceptions for holidays.¹

The word "holiday" is defined at section 10.04.040 of the Oakland Municipal Code. That section states that,

"Holiday" means every Sunday, January 1st, February 12th, third Monday in February, last Monday in May, July 4th, first Monday in September, second Monday in October, fourth Monday in October, December 25th, Good Friday from twelve noon until three p.m., the Thursday in November appointed as "Thanksgiving Day," the Friday following the Thursday in November appointed as "Thanksgiving Day." **If any of the foregoing days, except Sunday, falls upon a Sunday, the Monday following is a holiday.** (Emphasis added).

Applying the above-referenced provision, February 12, 2006 was a "holiday". Because it fell on a Sunday, the "Monday following", February 13, 2006 was a "holiday". Therefore, the Parking Enforcement Division should not have issued tickets to individuals parked in street sweeping zones on that date.

IV. Conclusion

In conclusion, February 13, 2006 was a "holiday" in accordance with section 10.04.040 of the Oakland Municipal Code. Therefore, the Parking Enforcement Division

¹ The Parking Enforcement Division considers it a violation of § 10.28.240 of the OMC for an individual to park in a street sweeping zone.

To: Roland Smith, City Auditor
From: Tracy Chriss, Deputy City Attorney
RE: Street Sweeping Tickets Issued on February 13, 2006
Date: March 21, 2006
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should not have issued tickets to individuals parked in street sweeping zones on that date.

V. Recommendation

This office recommends that the Parking Enforcement Division rescind all street sweeping tickets issued on February 13, 2006. Individuals who have already paid their citations should be reimbursed.

Very truly yours,

JOHN A. RUSSO
City Attorney



By:

Tracy Chriss
Deputy City Attorney

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