

THE NEW YORK CITY TAXI AND LIMOUSINE COMMISSION



PADLOCK PROCEEDINGS

STANDARD OPERATING PROCEDURE

Dated October 4th, 2006

This Standard Operating Procedure updates any prior Standard Operating Procedure and is the procedure to be used by TLC Staff when proceeding to padlock a premise.

PADLOCK PROCEEDINGS

I. Statutory Authority for Proceedings

- A. Section 19-528 of the Administrative Code of the City of New York (“Administrative Code”) provides that it shall be unlawful to “engage in any trade, business or activity for which a license is required” unless a license has been obtained by the Taxi and Limousine Commission (“TLC”).
- B. The Administrative Code authorizes the TLC to undertake the following enforcement activities for engaging in unlicensed activity:
- A fine of one hundred (\$100) dollars for each day the person or business engaged in unlawful activity;
 - The issuance of a cease and desist order; and/or
 - An order that the premises be sealed provided that “such premises are primarily used for such activity.”(Section 19-528 (b)(3))
- C. Pursuant to Section 19-528(b) of the Administrative Code, the unlicensed entity must be served with a “notice and a hearing”, be adjudicated and found guilty, have the Order posted for ten (10) days and continue the activity prior to sealing. Proceedings to seal an unlicensed entity that has an application pending must be stayed for such time as to until the license is either granted or denied.
- D. Proceedings pursuant to Section 19-528 of the Administrative Code may be used whenever a person or entity is engaging in a trade or business for which a TLC license is required. These

proceedings can be used to seal a premise from which unlicensed activity is occurring.

II. Commencing a Padlock Proceeding

A. Targeting Unlicensed Activity and Conduct of Initial Investigations

1. The identification of unlicensed bases may come from various sources. They include, but are not limited to, referrals from Licensing, of those bases that failed to renew their licenses, revocations or suspension from Legal, consumer complaints, observations, web searches and newspaper advertisements.
2. Information that may be used to identify unlicensed activities shall include, but are not necessarily limited to:
 - A consumer complaint;
 - A bait, fish and hook operation and the summonses that resulted from the b/f/h operation;
 - Photographs of the unlicensed business (inside and outside);
 - Dispatch logs;
 - Bookkeeping logs;
 - Business cards;
 - Vouchers and receipts;
 - Road maps of NYC and the surrounding areas;
 - Dispatching equipment;
 - Phone Book listings.
3. Whoever is bringing the case shall determine if a new or renewal license application is pending, by contacting the liaison identified for this purpose by the Deputy Commissioner for Licensing. If a new or renewal license application is pending, the hearing shall proceed and the Order to Seal Premises, if any, shall not be effectuated until

the license application has been denied. If a license has been granted, the General Counsel or his/her designee shall settle the matter with a reasonable fine.

B. Service of Notice of Violation and Hearing

1. The Administrative Code requires that all padlocking proceedings be commenced by the service of a Notice and Hearing. The Notice of Violation and Hearing (PL) is to be used by TLC personnel whenever a violation has been observed. The Notice must provide the targeted business with at least seven (7) calendar days advance notice of the hearing.
2. TLC staff shall serve said Notice upon the targeted unlicensed entity in accordance with applicable rules.
3. A Notice of Hearing shall also be served on the landlord of the targeted premises. The landlord shall be afforded the opportunity to attend the padlock hearing.
4. After serving the Notice of Violation and Hearing, and before the date of the hearing, TLC Staff will either observe the location or take other actions as are necessary to determine if unlicensed activity continues to occur.

III. Padlock Hearing

- A. A TLC Administrative Law Judge (“ALJ”) shall preside at the hearing. Whoever is bringing the case shall notify the calendar clerk of the tribunal and the Deputy Commissioner or his/her designee of the date and time of the hearing.

- B. A TLC Attorney or USB Staff shall present the case on behalf of the TLC. The TLC Officers and/or Investigator who served the “Notice of Violation and Hearing”, and any other Inspector or Investigator, who participated in the investigation of the business, gathered evidence in the case, or has firsthand knowledge, may testify on behalf of the TLC. The named Respondent may appear with counsel or an authorized representative, and may present a defense by testifying, calling witnesses on its behalf, presenting documentary evidence, submitting memorandum of law and any other manner permitted by CAPA.
- C. The hearing procedures set forth in 35 RCNY Chapter 8 shall apply with respect to the conduct of the hearings. If the Respondent fails to appear, an inquest will be held, limited to the sufficiency of the “notice of violation and hearing” and appropriate penalty if found guilty.
- D. At the conclusion of the padlock hearing, the ALJ shall prepare a recommendation to the TLC’s Commissioner/Chairperson, which shall include finding of fact, conclusions of law, and a recommendation with respect to penalty.
- E. The ALJ’s recommendation shall be forwarded to the Chairperson. The Chairperson may accept, reject or modify the ALJ’s recommendation. A copy of the Chairperson’s final agency decision (Decision/Order) shall be mailed to all parties. If the Respondent is found guilty of being unlicensed, the decision will include an Order that if the Respondent continues to operate while unlicensed, that ten (10) days after the posting of the Order, the premises may be sealed.

IV. Padlocking the Unlicensed Premises

- A. The TLC Staff will post the Decision /Order at the premises. Ten days after the Decision/ Order is posted, TLC Staff will monitor the location and if unlicensed activity continues at the location a report will be made of the activity observed. The appropriate TLC Staff involved in the padlock case will create a report detailing the unlicensed activity. Additionally, a check will be done with a designee of Licensing to confirm that the Respondent has no pending license application or has become licensed.

If the Chair or his/her designee determines that unlicensed activity is continuing, a written directive to execute the Order to Seal will be issued. The Commission will be notified of all premises that are sealed. (See transcript of the June 15th, 2006 Commission Meeting).

- B. Prior to sealing the premises, TLC Staff will notify the local Police Department (“NYPD”) precinct. TLC shall request that the precinct provide back-up for conducting the sealing.
- C. TLC Staff shall seal the premises and post the Sealing Order and appropriate Notices.

V. Unsealing the Premises

- A. Pursuant to Section 19-528(f) of the New York City Administrative Code, the premises shall be unsealed when a TLC license has been attained and all outstanding fines are paid

by Respondent. Likewise, the premises shall also be unsealed when the owner of the premises presents proof that he/she will take steps to secure a new tenant or will take control of the premises for his/her own use. (See transcript of the June 15th, 2006 Commission meeting).

- B. A Stipulation will be prepared by the General Counsel or his/her designee. The owner of the premises, an officer or agent, or another person authorized to act on his/her behalf shall sign the Stipulation.
- C. The owner of the premises shall then make arrangements with TLC Staff for a mutually convenient time to remove the padlock. The premises shall not be unsealed unless the owner is present.
- D. The owner of the premises may request permission to gain temporary access to the padlocked premises for the purposes of retrieving belongings, business records, and/or equipment and for the purposes of renovating or showcasing to potential new tenant.