



**THE CITY OF NEW YORK
DEPARTMENT OF FINANCE**

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by section 237 of the Vehicle and Traffic Law, section 19-203 of the Administrative Code of the City of New York and sections 389(b) and 1043 of the New York City Charter, I hereby promulgate the within Amendments to the Rules Relating to Parking Violations. These amendments to rules were published in proposed form on November 16, 2011. A hearing for public comment was held on December 19, 2011. These final rule amendments include a revision of the proposed rule amendments, based on the consideration of agency comments, which is found in §7 of these final rules.

S/S
David M. Frankel
Commissioner of Finance

Note: New matter underscored; old matter in brackets [] to be deleted.

STATEMENT OF BASIS AND PURPOSE

Following a review of the Rules Relating to Parking Violations, the Department of Finance determined that several amendments were required to reflect current policies and procedures. These amendments update the rules to add, repeal and amend several provisions of the rules.

The amendments below relate to the following issues surrounding parking violations:

- Definitions of terms used in rules, such as “administrative law judges” and “supervising and senior administrative law judges”;
- The time limit for requests of copies of summons;
- Requests for and appearances at hearings and adjournments;
- Tractor-trailer parking violations;
- The bus lane restriction program;
- Hearings by the Department of Finance website;
- Cessation of the reduction of fine program;
- Times available for hearings;
- Adjournment of hearings;
- Representation of respondents;
- Transmission of final hearing determinations; and
- Appeals of hearing determinations
- Option to pay base fine without additional \$10 penalty within 7 days of notice of penalty if base fine is not paid within 30 days of summons

The Department of Finance has made changes to the procedures concerning adjudication of parking violations in order to make the procedure more efficient and practical for respondents who wish to contest violations. These rule amendments update the Rules Relating to Parking Violations to conform the rules to current practices.

Matter underlined is new. Matter in brackets [] is to be deleted.

Amendments to Rules Relating to Parking Violations

Section 1. Section 39-01 of 19 RCNY Chap. 39 (Rules Relating to Parking Violations) is amended to add the definition of “Administrative law judges,” to amend the definitions of “Supervising and senior hearing examiners,” and to repeal the definitions of “Hearing examiners” and “Plea of guilty with an explanation,” to read as follows:

Administrative law judges (ALJ’s). “Administrative law judges,” or “ALJ’s” are persons appointed by the Commissioner to hear and determine charges of parking violations and fix fines and assess penalties as provided in these rules, and when so designated by the Director, be members of the appeals board of the Bureau.

[Hearing examiners. "Hearing examiners" are persons appointed by the Commissioner to hear and determine charges of parking violations and fix fines and assess penalties as herein provided, and when so designated by the Director, be members of the appeals board of the Bureau.]

[Plea of guilty with an explanation. As used herein, the term "plea of guilty with an explanation" shall mean an admission of liability with a statement offered in mitigation thereof.]

Supervising and senior [hearing examiners] administrative law judges. "Supervising and senior [hearing examiners] administrative law judges" [shall mean] are persons [heretofore] appointed by the Commissioner of Transportation thus far, or [hereinafter] appointed by the Commissioner of Finance thus far and from now on, to hear and determine charges of parking violations, assist the Director in the supervision and administration of the work of the Bureau, and when so designated by the Director, be members of the Appeals Board of the Bureau.

§2. Subdivision (e) of section 39-02 of such rules is amended to read as follows:

(e)(1) Notice of violation (summons)[Summons] Copies. A respondent is entitled to one request of up to five free summons copies (in judgment or not in judgment) [within a thirty day period]. Beginning with copy number 6 in any single request, or any additional requests within thirty days of the previous request, there will be a charge of \$1.00 per summons copy.

This rule applies to all respondents, including commercial organizations, except as provided in paragraph (2) of this subdivision. Note that the respondent is entitled to only five free copies per request, not per plate.

(2) **Indigent respondents.** Notwithstanding any other provision of this subdivision, a Senior Hearing [Examiner] Administrative Law Judge, a Supervising [Hearing Examiner] Administrative Law Judge, the Chief Administrative Law Judge, the Special Counsel for Adjudications, the First Deputy Commissioner of Finance or the Commissioner of Finance may authorize, without fee, the provision of summons copies to which a fee is otherwise applicable under this subdivision, to a respondent who is a natural person for the purpose of defending against a charged parking violation or moving to open a default judgment, upon the respondent making affidavit or sworn statement on the record that the respondent is unable to pay the fee and demonstrating the indigence of the respondent. Such affidavit or sworn statement shall also state the reason the copy of each summons that was served at the time of occurrence is unavailable and, in the case of a motion to open default judgment, the basis of excusable neglect.

§3. Subdivisions (f) and (g) of section 39-03 of such rules are amended to read as follows:

(f) [The company must comply with the procedures of PVB and the Fleet Program by responding to listed summonses in a timely manner. A company is required to notify the Fleet Program manager of all summonses for which it is entering a plea of Not Guilty within 14 days after issuance of the PVB computer-generated log (currently called the "155").] Within 45 days from the issuance of the computer-generated log (the "155"), the company must pay the fine for each summons it does not contest. Upon entry of a Not Guilty plea, the Fleet Program manager shall schedule a hearing date for such summonses. If the scheduled hearing is inconvenient, the company may contact the Fleet Program manager within two work days after receipt of the notice of the scheduled hearing, and must be prepared to arrange to appear within 45 days from the date of issuance of the PVB computer-generated hearing log (the "155") for a hearing.

(g) [Adjournments shall not be requested less than seven days before a scheduled hearing except upon good cause.] Continual and excessive adjournment requests may constitute cause for disenrollment from the PVB Fleet Program. If a hearing adjournment is granted and marked "final" by PVB, no further adjournments will be granted except for extraordinary circumstances.

§4. Subdivision (d) of section 39-04 of such rules is amended, and subdivision (e) of section 39-04 of such rules is repealed, to read as follows:

(d) *Pleas requesting hearings.* (1) A respondent pleading not guilty [or guilty with an explanation] may request a [specified date, time and place for a] hearing.

(2) If a plea of not guilty [or guilty with an explanation] is made in person, an immediate hearing may be had on request of the respondent, if convenient to the Bureau.

(3) [Upon receipt of the notice of violation (summons) with a plea of not guilty or guilty with an explanation entered as specified, the Bureau shall advise the respondent in person or by such form of first class mail as the Director shall prescribe of the date, time and place on which he or she must appear for a hearing.

(4) The Bureau reserves the right to set a date, time and place of hearing different from that selected by the respondent.

[(e) *Failure to appear at hearing.* Failure by the respondent to appear on the date designated for a hearing or on any subsequent adjourned date, shall be deemed, for all purposes, an admission of liability and a default judgment sustaining the charges may be entered without further notice.]

§5. Subdivision (m) of section 39-05 of such rules is amended, a new subdivision (n) is added to section 39-05, and subdivisions (n), (o), (p) and (q) of section 39-05 are relettered, to read as follows:

(m)	Parking a commercial vehicle in violation of 34 RCNY 4-08(k)(5) or (6), <u>unless otherwise specifically enumerated in this schedule</u>	\$50.00
(n)	<u>Parking a commercial vehicle that is a tractor-trailer combination, tractor, truck trailer or semi-trailer in violation of 34 RCNY 4-08(k)(6)</u> <u>First offense</u> <u>Any subsequent offense within a six month period</u>	 <u>\$250.00</u> <u>\$500.00</u>
([n])o)	Parking in violation of officially posted street cleaning rules, unless such rules have been suspended by the Commissioner of Transportation or his or her designee	\$30.00
([o]p)	Parking where parking is prohibited by officially posted rule other than street cleaning rules	\$45.00
([p]q)	Obstructing traffic at an intersection in violation of 34 RCNY §4-08(e)(12)	\$100.00
([q]r)	Idling an engine in violation of 34 RCNY 4-08(p)	\$100.00

§6. Paragraphs (a) and (c) of the subdivision titled, “Fines following a hearing,” in section 39-05 of such rules, are amended and repealed, respectively, to read as follows:

(a) For persons found guilty after a hearing, a fine may be fixed by the [hearing examiner] administrative law judge in an amount not to exceed that indicated in the foregoing schedule of fines.

[(c) Upon a showing of good cause, made by the respondent under oath or on affirmation, after a plea of not guilty or guilty with an explanation, any scheduled fine may be reduced. Procedures for such reduction may be fixed by the Director.]

§7. Paragraphs (1) and (4) of subdivision (a) of section 39-07 of these rules are amended to read as follows:

(a) *Additional penalties.* Additional penalties may be assessed against the respondent for failure to plead or appear pursuant to these rules, or having appeared for a hearing, failing to make payment assessed thereat. The additional penalties shall be assessed according to the following schedule; provided, however, that if a respondent makes a plea or appears within 20 days after the Bureau mails a notice of violation to the owner pursuant to Vehicle and Traffic Law §235(2)(a) or prior to such mailing, the additional penalties which may be imposed pursuant to paragraphs (1), (2) and (3) of this subdivision shall not exceed the amount set forth in paragraph (1):

(1) Upon entry of a plea more than 30 days after date of summons . . . an additional penalty in an amount of \$10.00. Payment of the base fine that is received no later than 7 days after the Department of Finance has sent a notice of an additional penalty described by this paragraph (1) will be deemed payment in full of the violation, but no additional penalty described by this paragraph (1) that is paid following the aforementioned 30 day period will be refunded.

(4) Upon failure to either pay in full within 7 days, the amount of fine and penalties fixed by [a hearing examiner] an administrative law judge after a determination sustaining the charges, or otherwise comply with the provisions of §39-12 of these rules, the scheduled fine amount shall be restored and additional penalties shall become due in accordance with the amounts set forth in paragraphs (1), (2) and (3) of this subdivision as if there had been no plea or appearance.

§8. Paragraph (3) of subdivision (b) of section 39-08 of such rules is repealed, subdivision (c), paragraph (2) of subdivision (d), paragraph (1) of subdivision (f), subdivision (h) and subdivision (j) of section 39-08 are amended, to read as follows.

[(3) No night hearings shall be held on holidays as defined in §39-14(a)(2) of this chapter or on the eve of New Year's Day, the first and second days of Passover, the first and second days of Rosh Hashanah, Yom Kippur and Christmas Day.]

(c) **Hearing examiner to preside.** Every hearing shall be held before [a Hearing Examiner] an Administrative Law Judge, Senior [Hearing Examiner] Administrative Law Judge, or Supervising [Hearing Examiner] Administrative Law Judge. All hearings shall be public.

(d) **Counsel**

(2) Appearance by Counsel shall not be recognized unless such attorney shall have filed a proper notice of appearance. The notice of appearance shall contain the name, office address and telephone number of the attorney. No other attorney shall be permitted to appear for the respondent in such matter without an order in writing or made at open hearing by [a hearing examiner] an administrative law judge (See §39-09-Representatives at Parking Violations Bureau Hearings)

(f) **Rules of evidence.** (1) The [hearing examiner] administrative law judge shall not be bound by the rules of evidence in the conduct of the hearing, except rules relating to privileged communications.

(h) **Subpoenas.** The [hearing examiner] administrative law judge may, in his or her discretion, or at the request of the Respondent on a showing of good cause and need therefor, issue a subpoena to compel the appearance at a hearing of the officer who served the notice of violation or of other persons to give testimony, and may issue a subpoena duces tecum to compel the production for examination or introduction into evidence of any book, paper or other thing relevant to the charges alleged.

(j) *Adjournments.* An adjournment may be requested by the respondent prior to hearing. [No] In the case of a hearing relating to the vacatur of dismissals procured by knowing misconduct, no more than two adjournments shall be granted in any matter except under extraordinary circumstances.

§9. Subparagraph (iii) of paragraph (7) of subdivision (a), subparagraph (iii) of paragraph (7) of subdivision (b), and paragraphs (2) and (3) of subdivision (c), of section 39-09 of such rules, are amended to read as follows:

(iii) Except for [the morning break and] the lunch break, the hearing shall proceed without interruption until the end of the day, unless before then the ALJ adjudicates all of the summonses the broker has submitted or adjourns the hearing.

(iii) Except for [the morning break and] the lunch break, the hearing shall proceed without interruption until the end of the day, unless before then the ALJ adjudicates all the summonses the employee has submitted or adjourns the hearing.

(2) *Authorization for summonses not in judgment.* Prior to any hearing involving summonses not in judgment, an unpaid representative must file with the [administrative manager an "Affirmation of Authorization."] Department of Finance a signed and notarized designation from the respondent that the representative is authorized to represent the respondent.

(3) *Authorization for summonses in judgment.* An unpaid representative may not have a hearing on summonses in judgment unless he or she submits to the [administrative manager] Department of Finance a notarized [Motion to Vacate Judgment] Request for Hearing After Judgment, signed by the registrant of the summonsed vehicle and duly acknowledged before a Notary Public.

§10. Subdivisions (a), (b), (c) and (i), and paragraphs (1), (2), (3) (4) and (6) of subdivision (j) of section 39-10 of such rules are amended to read as follows:

(a) **Rendering of decision.** The [hearing examiner] administrative law judge shall make a determination on the charges, either sustaining or dismissing them.

(b) **Examination of prior parking record.** (1) The [hearing examiner] administrative law judge shall not examine the respondent's parking violations record prior to making a determination on the charges, without the respondent's consent.

(2) Where a determination has been made sustaining the charges, the [hearing examiner] administrative law judge may examine the respondent's parking violations record prior to fixing fines and assessing penalties and fees.

(c) *Final determination.* Upon the making of a determination sustaining the charges and the fixing of fines and assessment of penalties or a determination dismissing the charges, the [hearing examiner] administrative law judge shall cause a final determination to be rendered incorporating such fines and penalties, if any. The Department of Finance will retain the original final determination and will transmit a copy of the final determination to the respondent.

(i) **Opening of defaults.** A default judgment may be opened within one year of its entry only upon written application showing excusable neglect and a substantial defense to the charge. Such application shall be presented to [a hearing examiner] an administrative law judge, senior [hearing examiner] administrative law judge or supervising [hearing examiner] administrative law judge.

(j) Vacatur of dismissals procured by knowing misconduct.

(1) A determination dismissing a charged parking violation that has been procured due to the knowing fraud, false testimony, misrepresentation or other misconduct, or the knowing alteration of a notice of parking violation, by the person so charged or his or her agent, employee or representative may be set aside by [a hearing examiner] an administrative law judge as hereinafter provided.

(2) Notice shall be served on the owner by mail to the last known registered address within two years of the time that the enforcing authority discovers, or could with reasonable diligence have discovered, that the dismissal was procured due to the knowing fraud, false testimony, misrepresentation, or other misconduct, or the knowing alteration of a notice of parking violation, by the person so charged or his or her agent, employee or representative. Such notice shall fix a time when and place where a hearing shall be held before [a hearing examiner] an administrative law judge to determine whether or not dismissal of a charged parking violation shall be set aside. Such notice shall set forth the basis for setting aside the dismissal and advise the owner that failure to appear at the date and time indicated in such notice shall be deemed an admission of liability and shall result in the setting aside of the dismissal and entry of a determination on the charged parking violation. Such notice shall also contain a warning that civil penalties may be imposed for the violation pursuant to this subdivision and that a default judgment may be entered thereon.

(3) Upon a finding by [a hearing examiner] an administrative law judge that the dismissal of a charged parking violation has been procured due to the knowing fraud, false testimony, misrepresentation, or other misconduct, or the knowing alteration of a notice of parking violation, by the person so charged or his or her agent, employee or representative, the dismissal shall be set aside and a determination may be rendered against the owner on the charged parking violation. The [hearing examiner] administrative law judge may impose monetary penalties for the charged parking violation of up to three times the scheduled fine for the violation pursuant to section 39-05 and three times the additional penalties that may be imposed for failure to respond to a notice of violation pursuant to section 39-07. The [hearing examiner] administrative law judge shall also impose, without multiplying, the surcharge authorized by section 1809-a of the Vehicle and Traffic Law. For purposes of determining the amount of such additional penalties, the [hearing examiner] administrative law judge shall disregard the plea that procured the dismissal that has been set aside and shall calculate such penalties as if there had been no plea or appearance in the proceeding. In any proceeding under this subdivision to set aside a determination and to impose penalties for the violation, it shall not be necessary for the [hearing examiner] administrative law judge to find that the owner personally committed the unlawful acts that procured the dismissal of the violation.

(4) Failure to appear at the hearing in response to a notice issued pursuant to this subdivision, or to pay, within 7 days, the amount assessed by [a hearing examiner] an administrative law judge pursuant to paragraph 3, shall be deemed to be an admission of liability for the charged parking violation as set forth in the original notice of violation, and a default judgment may be entered against the owner in the maximum amount set forth in paragraph 3 of this subdivision.

(6) The respondent and the City of New York shall have the right to appeal from any adverse decision in accordance with the appeal procedure set forth in §39-12 of this chapter.

§11. Paragraphs (1) and (2) of subdivisions (a), paragraphs (1) and (3) of subdivision (b), and paragraph (1) of subdivision (d) of section 39-12 of such rules are amended to read as follows:

(a) **Appeals Board-powers.** (1) There shall be an Appeals Board within the Bureau which will consist of three or more persons duly qualified as [Hearing Examiners] Administrative Law Judges, Senior [Hearing Examiners] Administrative Law Judges, or Supervising [Hearing Examiners] Administrative Law Judges, as the Director shall determine, but in no event shall the [Hearing Examiner] Administrative Law Judge from whose decision the appeal is taken be included in the panel determining said appeal.

(2) The Appeals Board may review the facts and the law in any matter, and[, except in the interests of justice and upon consent of the respondent,] shall not consider any evidence which was not presented to the [hearing examiner] administrative law judge. A concurring vote by two members of the Appeals Board panel [shall] will be required to [reverse or modify any decision appealed from for error of fact or law, or to remand any matter in the interests of justice] make a determination on an appeal.

(b) (1) A respondent aggrieved by the decision of [a hearing examiner] an administrative law judge upon a plea of denying liability, may obtain a review thereof by serving upon the Bureau, within thirty days of the entry of such decision, a notice of appeal setting forth the reason why the decision should be reversed or modified. The notice of appeal shall be in such form and filed at such place as may be prescribed by the Director. No appeal may be had from a plea of guilty, which has been entered at the hearing.

(3) [No appeal shall be permitted unless the fines and penalties assessed by the Hearing Examiner are paid, or the respondent shall have posted a cash or recognized surety company bond in the full amount of the final determination appealed from.

(4) The [requirements] requirement of service of a notice of appeal within thirty days of the entry of the decision [and prepayment or posting a bond] may be waived in the interest of justice by the Director or a Senior or Supervising [Hearing Examiner] Administrative Law Judge designated for such purpose. If granted, such waiver shall be conditioned upon service of a notice of appeal within 30 days of the waiver, unless such notice has already been served.

(d) **Hearing of appeals.** (1) Appeals shall be heard upon the record of the hearing before the [hearing examiner] administrative law judge (if provided), the notice of appeal and such briefs as the respondent may file. The Appeals Board may request or accept briefs on behalf of other interested parties or by amici curiae. All appeals shall be submitted to the Appeals Board without oral argument, unless such oral argument is expressly requested by the appellant, or his or her attorney in the notice of appeal, and upon compliance with the rules and regulations of the Bureau. Procedures for oral argument and application therefor, shall be prescribed by the Director,

§12. Subdivision (d) of section 39-17 of such rules is amended to read as follows:

(d) [**Hearing examiners**] **Administrative law judges**. The [hearing examiners] administrative law judges heretofore or hereinafter appointed by the Commissioner of the New York City Department of Transportation or the Commissioner of the New York City Department of Finance for the adjudication of parking violations shall preside at hearings for the adjudication of allegations of liability in accordance with §1111-a of the vehicle and traffic law.

§13. A new section 39-18 is added to such rules to read as follows:

§39-18 Bus Lane Restriction Program.

(a) Liability. The liability of an owner pursuant to §1111-c of the vehicle and traffic law shall be \$115.00.

(b) Additional penalties. An additional penalty of \$25.00 may be assessed where the owner fails to make payment or contest the liability within thirty days after the mailing of the notice of liability.

(c) Notice of liability. The notice of liability will be in accordance with §1111-c of the vehicle and traffic law and in such form and substance as prescribed by the director of Adjudications.

(d) Administrative law judges. The administrative law judges appointed by the Commissioner of the New York City Department of Transportation or the Commissioner of the New York City Department of Finance up to this point and moving forward for the adjudication of parking violations will preside at hearings for the adjudication of allegations of liability in accordance with §1111-c of the vehicle and traffic law.

(e) Effective dates. This section will remain in effect for as long as §1111-c of the vehicle and traffic law will remain in effect.

§14. A new section 39-19 is added to such rules to read as follows:

§39-18 Hearings by Website. The Director may determine certain classes of alleged violations as appropriate for adjudication electronically through the Department of Finance website and may prescribe procedures for such adjudication.

§15. A new section 39-20 is added to such rules to read as follows:

§39-20. Reduction of Fine Program. (a) Cessation of program. The Reduction of Fine Program, in which a respondent was offered the opportunity to plead guilty and request the reduction of the fine for certain types of violations, will not be offered after January 31, 2012.

(b) Types of violations for which the program was available. The program was available for violations for:

- (1) No standing
- (2) No parking
- (3) Parking meter
- (4) Double parking; and
- (4) Status (e.g., expired registration, overdue for inspection)

(c) Types of violations for which the program was not available. Notwithstanding subdivision (b) of this section, this program was not available in the following circumstances:

- (1) for summonses that were issued more than one hundred days prior to the plea and that were in judgment
- (2) if the respondent had a prior hearing or settlement of the violation
- (3) for any of the following violations:
 - (i) no stopping
 - (ii) handicapped violations
 - (iii) parking at a fire hydrant
 - (iv) traffic lane violation
 - (v) bicycle lane violation
 - (vi) sidewalk violation
 - (v) crosswalk violation
 - (vi) engine idling violation
 - (vii) blocking an intersection
 - (viii) safety zone violation; and
 - (ix) pedestrian ramp violation.

(d) The provisions of this section will not affect the Program of Stipulated Fines for Vehicles Enrolled in the Fleet Program pursuant to §39-03.1 of these rules.