

TLC Tribunal Transferred to OATH

As announced by Mayor Michael R. Bloomberg, as of July 3, 2011, [Executive Order 148](#) transferred all management of the administrative tribunal of the TLC to the Office of Administrative Trials and Hearings (OATH). OATH is independent of the TLC and is dedicated to enhancing the professionalism of the City's administrative judiciary. OATH's oversight of these cases will also ensure that they move more quickly. As a result of the transfer, TLC's rules governing adjudication of summonses (Chapter 68) have been amended by Executive Order 148 and the Consolidation Report ([Read the Consolidation Report](#)).

Consolidation Report pages 41-47:

Taxi and Limousine Commission

The TLC rules governing adjudication and otherwise affecting the TLC tribunal are set forth in the Rules of the City of New York, Title 35, Chapters 68 and 69. The Committee recommends that during the transition to OATH management those rules be maintained as rules of OATH or TLC, as indicated below, with some modifications, including, in limited instances, supersession of rules. The Committee's recommendations are intended to preserve the processes established under the rules while reflecting that with consolidation the tribunal will be under the management of OATH rather than remaining a component of TLC. References to the tribunal or to the Commission, except where the context indicates otherwise, are generally deemed to be references to the Taxi and Limousine Tribunal at OATH. Where the existing rules refer to powers, duties or responsibilities of the tribunal by assigning them to TLC or the TLC tribunal, the recommendations clarify that they are assigned to the the Taxi and Limousine Tribunal at OATH or to OATH.

Apart from proceedings that take place before the TLC tribunal, TLC also currently participates in proceedings before OATH. The Committee is not

recommending any changes in the conduct or location of those proceedings. Those proceedings shall continue to be governed by the rules that currently govern them. As noted above, the tribunal will be redesignated as the “OATH Tribunal.”

During the transition, and until adoption of new rules by OATH or TLC, the following modifications of the TLC rules will apply and will govern adjudication and disposition of TLC matters:

Rules of the City of New York, Title 35, Chapter 68 (“Adjudications”)

§ 68-01 (*Scope of this Chapter*). Subsections (a) and (b) continue in effect as rules of OATH; sub-section (c) continues in effect as a rule of TLC.

§ 68-02 (*Penalties*). This section continues in effect as a rule of TLC. If a respondent serves a petition pursuant to the process described in connection with § 68-16, payment of the fine will be deferred until 30 days after delivery of the petition, unless the Chairperson takes action thereon.

§ 68-03 (*Definitions Specific to this Chapter*). This section continues in effect as a rule of TLC. However, some of the terms occur in sections that are, as described below, continued in effect as rules of OATH and some in sections that are continued in effect as rules of TLC. Therefore, OATH may effectively modify those definitions by adopting definitions specific to its own rules. The agencies are encouraged to cooperate in modifying definitions so as to ensure that the public benefits from consistency of terminology. TLC is considering a proposed amendment of this rule that would substitute a more detailed definition of “Fit to Hold a License.” See <http://www.nyc.gov/html/nycrules/downloads/rules/P-TLC-5-12-11-a.pdf>.

§ 68-04 (*Alternative Forum*). This section continues in effect as a rule of TLC

and is deemed to govern referrals to the OATH Tribunal.

§ 68-05 (*Service of Summonses and Notices*). This section continues in effect as a rule of TLC.

§ 68-06 (*Contents of Summons or Notice of Violation*). Subsection (a) continues in effect as a rule of TLC; subsections (b) and (c) continue in effect as rules of OATH.

§ 68-07 (*Respondent Options Based on Violation's Appearance Requirements*). This section continues in effect as a rule of OATH. The reference in subsection (a),

paragraph (1) to the Commission is construed as continuing to refer to TLC, the Chairperson or his/her designee.

§ 68-08 (*Failure to Prosecute by the Commission*). This section continues in effect as a rule of TLC.

§ 68-09 (*Hearings – Adjournment Requests*). This section continues in effect as a rule of OATH.

§ 68-10 (*Hearings – Who Must or Can Appear for the Respondent*). This section continues in effect as a rule of OATH. In subsection (h), the word “Commission” is deemed to refer to the Taxi and Limousine Tribunal at OATH.

§ 68-11 (*Hearings – Procedures*). This section continues in effect as a rule of OATH. The references in subsection (e) and in subsection (f), paragraph (4) to the Commission are construed as continuing to refer to TLC, the Chairperson or his/her designee.

§ 68-12 (*Inquests – Hearing Conducted in the Absence of Respondent*). This section continues in effect as a rule of OATH. In subsection (c), the “Commission” refers to the OATH/TLC tribunal, which is responsible for mailing a copy of the ALJ’s decision to the respondent and recording information pertinent to its mailing. However, the address on file that is referred to in this subsection shall be on file with TLC.

§ 68-13 (*Inquests – Respondent’s Right to Challenge Decision*). This section continues in effect as a rule of OATH. In subsection (b), the word “Chairperson” is deleted and replaced with “Chief Administrative Law Judge of OATH.”

§ 68-14 (*Appeals – By Respondent*). This section continues in effect as a rule of OATH, except that subsection (j) continues in effect as a rule of TLC. In subsection (e), paragraph (1), which concerns requests for copies of recordings, the word “Commission” is deemed to refer to the Taxi and Limousine Tribunal at OATH. Subsection (e),

paragraph (2) is modified and continued in effect as follows: “The Taxi and Limousine Tribunal at OATH shall provide Respondent with a copy of the recording within 30 days after receipt of the request. Whenever it provides a copy of the recording of a Hearing to a respondent, the Taxi and Limousine Tribunal at OATH shall simultaneously provide a copy to TLC.” Subsection (e), paragraph (3) is modified and continued in effect as follows: “If the Taxi and Limousine Tribunal at OATH cannot produce the recording to

the Respondent within 30 days, the determination being appealed will be dismissed without prejudice, which means that TLC is entitled to re-issue the violation and the Taxi and Limousine Tribunal at OATH is entitled to rehear the case as a new case.” Subsection (g) is modified by adding the following sentence: “In addition, the Respondent may argue that a penalty, even if it is lawful, should be reduced.”

§ 68-15 (*Appeals – By Commission*). This section continues in effect as a rule of OATH. Subsection (a) is modified to read as follows: “The Commission can appeal a final decision by an ALJ in the circumstances set forth in § 68-15(e).” Subsection (b) is superseded and replaced by the following: “(b) *Filing of appeal*. Two copies of the appeal, accompanied by two copies of the ALJ decision, must be directed to the Appeals Unit. The Appeals Unit shall mail one copy of the appeal and one copy of the ALJ decision to the respondent. TLC may request a copy of the recording of the Hearing within seven calendar days from the ALJ’s determination. The request must be made in writing on a form supplied by the Taxi and Limousine Tribunal at OATH. The Taxi and Limousine Tribunal at OATH will provide TLC with a copy of the recording within 30 days after receipt of the request. If TLC requests a copy of the recording of the Hearing, its time to file the appeal will be the *later* to occur of the following: (1) The original 30 calendar days from the date of the decision being appealed; or (2) Twenty-one calendar days from the date the Taxi and Limousine Tribunal at OATH issues the requested copy of the recording of the Hearing to TLC. Whenever it provides a copy of the recording of a Hearing to TLC, the Taxi and Limousine Tribunal at OATH shall simultaneously provide a copy to the respondent.” Subsection (e) is modified by adding the following sentence: “In addition, the Commission may argue that a penalty, even if it is lawful, should be increased.”

§ 68-16 (*ALJ’s Final and Recommended Decisions*). This section is superseded and replaced by the following as a rule of TLC:

“§ 68-16 Appeals Process and Recommended Decisions

“(a) Except as provided in subsection (b) of this section or as otherwise provided in these rules, appeals from the Taxi and Limousine Tribunal at OATH shall be subject to the following requirements:

“(1) Within 30 days of the issuance of the determination of an appeal by the Appeals Unit of the tribunal, either party may petition the Chairperson to reject the determination by delivering a petition to the General Counsel of TLC and mailing a copy to the adverse party.

“(2) If the respondent delivers and mails such a petition, TLC may submit an answer to the petition within 15 days by delivering such an answer to the General Counsel of TLC and serving it on the respondent. Unless the Chairperson takes action on the respondent’s petition within 30 days of its delivery, the determination of the appeal by the Appeals Unit shall become the final decision of TLC.

“(3) If TLC delivers and mails such a petition, within 30 days the Chairperson may notify the respondent that he or she is considering the petition and within 30 days the respondent may mail an answer to the General Counsel of TLC. If the Chairperson does not notify the respondent that he or she is considering the petition within 30 days of its receipt, or takes no action on the petition within 30 days of the receipt of respondent’s answer or within 60 days of its notification to the respondent if no answer is received, the determination of the appeal by the Appeals Unit shall become the final decision of TLC.

“(4) In reviewing the determination of the Appeals Unit of the Taxi and Limousine Tribunal at OATH, the Chairperson shall be bound by the findings of fact in the decision.

“(5) The determination of an appeal by the Appeals Unit that is not acted upon by the Chairperson shall become a final decision of TLC but shall not be binding precedent on the Chairperson in his/her consideration of subsequent petitions.

“(b) In the following circumstances, initial decisions of ALJs, whether by the Taxi and Limousine Tribunal at OATH or the OATH Tribunal, shall not be subject to the processes and requirements described in subsection (a) of this section, but shall be Recommended Decisions, subject to review by the Chairperson:

“(1) ALJ findings and penalty determinations as to the fitness of Licensees or

License Applicants.

“(2) ALJ penalty determinations in padlocking or proceedings under § 19-528(b)

of the Administrative Code.

“(3) ALJ findings and penalty determinations in Summary Suspension proceedings pending revocation.”

§ 68-17 (*Procedure for Finalizing Recommended Decisions*). This section continues in effect as a rule of TLC. TLC is considering a proposed amendment of this rule that would establish that a final decision of the Chairperson will be precedent for deciding later cases that involve similar facts or issues. See <http://www.nyc.gov/html/nycrules/downloads/rules/P-TLC-5-12-11-a.pdf>.

§ 68-18 (*Appeal of Chairperson’s Final Decision*). This section continues in effect as a rule of TLC.

§ 68-19 (*Special Procedures – Imposition of Revocation*). This section continues in effect as a rule of TLC.

§ 68-20 (*Special Procedures – Fitness Hearings*). This section continues in effect as a rule of TLC. TLC is considering a proposed amendment of this rule that would eliminate fitness hearings for license applicants. See <http://www.nyc.gov/html/nycrules/downloads/rules/P-TLC-5-12-11-a.pdf>.

§ 68-21 (*Special Procedures – Summary Suspension Pending Revocation*). This section continues in effect as a rule of TLC. In subsection (a)(2), the words “at the Taxi and Limousine Tribunal at OATH” are inserted before the phrase “as established below.” In subsection (b), the word “Commission” is deemed to refer to the Taxi and Limousine Tribunal at OATH.

§ 68-22 (*Special Procedures – Summary Suspension Pending Compliance*). This section continues in effect as a rule of TLC. The obligation set forth in subsection (c)(2) to schedule a requested hearing rests with the Taxi and Limousine Tribunal at OATH.

§ 68-23 (*Special Procedures – Seizure of Unlicensed Taxicab, Paratransit and For-Hire Vehicles*). This section continues in effect as a rule of TLC. The obligation set forth in subsection (f)(2) to issue notice to the owner or respondent of an inquest determination rests with the Taxi and Limousine Tribunal at OATH. Subsection (f)(3) is

modified to the extent that the owner or respondent is entitled to appear at the tribunal to comply with the inquest determination or move to vacate the determination.

§ 68-24 (Special Procedures – Forfeiture of Unlicensed Taxicab, Paratransit and For-Hire Vehicles). This section continues in effect as a rule of TLC. If TLC pursues an

administrative adjudication pursuant to subsection (d)(3) of this section, the hearing will be scheduled before an ALJ at the OATH Tribunal.

§ 68-25 (*Special Procedures – Abandoned Taxicab, Paratransit and For-Hire*

Vehicles). This section continues in effect as a rule of TLC.

§ 68-26 (*Special Procedures – Seizure of Commercial Vans*). This section continues in effect as a rule of TLC.

§ 68-27 (*Special Procedures – Forfeiture of Commuter Vans*). This section continues in effect as a rule of TLC.

§ 68-28 (*Special Procedures – Removal and Storage Fees for Seized Vehicles*).

This section continues in effect as a rule of TLC.

§ 68-29 (*Special Procedures – Settlements and Withdrawals*). This section continues in effect as a rule of TLC. Subsection (a)(3) is modified to add the following sentence: “If such an adjudication is open or completed before the Taxi and Limousine Tribunal at OATH, the Chairperson shall promptly notify the tribunal. If the Chairperson withdraws a summons or notice of violation, even if it has been adjudicated, that is open or has been completed before the Taxi and Limousine Tribunal at OATH, the Chairperson shall promptly notify the tribunal.”

Rules of the City of New York, Title 35, Chapter 69 (“Rules for Representatives”)

These rules continue in effect as rules of OATH. After the transfer of the tribunal to OATH, references to the “Commission” in the existing rules will be deemed to be references to both the Taxi and Limousine Tribunal at OATH and TLC, unless the context indicates otherwise. Forms referred to in § 69-04 shall be prescribed by the Taxi and

Limousine Tribunal at OATH. References to OATH shall be deemed to refer to the OATH Tribunal.

CHAPTER 68

ADJUDICATIONS

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§68-01 Scope of this Chapter

- (a) To establish a Commission Adjudications Tribunal.
- (b) To establish the procedures for all Hearings and appeals conducted by the Commission.
- (c) To establish the requirements for imposing the immediate summary suspension of a License and the procedures and protections for Licensees whose Licenses have been summarily suspended.

§68-02 Penalties

- (a) *Prescribed Penalties.* Whenever a Respondent is charged with a violation of any Commission Rule or Administrative Code Section, Respondent can be subject to the civil penalties as set in the Commission Rules or the Administrative Code.
- (b) *Discretionary Penalties.* In the alternative to any of the specific penalties set in the Commission Rules, the Commission can, in its discretion, impose a penalty of License revocation, License suspension of up to six months, and/or the following fines:
 - (1) A fine, not to exceed \$10,000 for each violation, against the Owner of a Licensed Taxicab or For-Hire vehicle, Base, Commuter Van Service or vehicle, Paratransit service or vehicle, Taximeter Business, Taxicab Broker or Taxicab agent
 - (2) A fine, not to exceed \$1,000 for each violation, against a Licensed Driver
- (c) *Imposition of Penalties.* Any revocation, suspension, Persistent Violator Penalty or Penalty Points will become effective on the date of the ALJ's decision.
 - (1) *Suspensions.* If a suspension for a specified period of time is imposed, the suspension period will be calculated from the time when the Respondent's License is turned in to the Commission.
 - (2) *Fines.* Fines are due within 30 days of the day the Respondent is found guilty of the violation.
 - (i) If the Respondent files an appeal of the decision imposing the fines within 30 days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §68-14(d) of these Rules).

If the Respondent requests a copy of the Hearing recording (see §68-14(e) of these Rules) within 7 calendar days of the Hearing, the time for either filing an appeal or paying the fines will be the later to occur of either 21

days from the date the recording is issued or 30 days from the day of the decision (see §68-14(f) of these Rules).

- (ii) If the fine is not paid by the close of business on the date due, the Commission will notify the Respondent in writing that the Respondent's License will be suspended in ten business days of the date of the notification until the fine is paid, unless the Respondent demonstrates to the Commission, in person or in writing, that the fine has been paid.

§68-03 Definitions Specific to this Chapter

- (a) *Commission Adjudications Tribunal (or Commission Tribunal)* is the adjudicatory body that has, except as otherwise provided in these Rules and consistent with Mayor Executive Order No. 148 of 2011, jurisdiction over:
 - (1) Violations of Title 19, Chapter 5 of the Administrative Code
 - (2) Violations of Commission Rules
 - (3) Review of the fitness of a Licensee to hold a License
- (b) *De Novo* is a legal term meaning “over again from the beginning.”
- (c) *Discretionary Revocation* is the imposition of the penalty of revocation when a Rule does not specify that revocation *must* be imposed; Discretionary Revocation can be sought by the Chairperson for *any* Rule violation, if the Chairperson determines that the continued licensure of the Respondent presents a threat to public health, safety, or welfare.
- (d) *Fit to Hold a License* means that
 - The Applicant or Licensee meets and will continue to meet all of the qualifications for the License sought or held as established by applicable Rules and laws.
 - The Applicant or Licensee is of good moral character.
 - The Applicant or Licensee has been and will be candid and forthcoming with the Commission and honest in dealing with the public.
 - The Applicant or Licensee has reliably complied with and will reliably comply with all of the rules and laws associated with holding the particular TLC License.
 - Where an Applicant has engaged in conduct that resulted or could have resulted in the suspension or revocation of a TLC License, the Applicant shows that he or she will not engage in similar conduct in the future.
- (e) *Inquest* is the presentation and consideration of evidence at a Hearing before an ALJ, when the Respondent has failed to appear.

- (f) *Mandatory Revocation* is the imposition of the penalty of revocation when a Rule specifies that revocation *must* be imposed.
- (g) *Notice of Seizure* is document served upon and mailed to an owner of a vehicle that has been seized and removed to a secure facility.
- (h) *OATH* is the New York City Office of Administrative Trials and Hearings.
- (i) *Recommended Decision*. A Recommended Decision is a writing made by an ALJ (or by OATH) following a Hearing that must be reviewed by the Chairperson, either in its entirety or for the appropriateness of the penalty being imposed, before it becomes final.
- (j) *Respondent* is an individual or Business Entity who has been noticed and charged with a violation of one or more of these Rules or the Administrative Code, or with being not Fit to Hold a License.
- (k) *Secondary Owner* is an individual or Business Entity that has a lien or mortgage or any other type of legal interest in a vehicle.
- (l) *Unlicensed Activity* is the provision or advertising of any Commission-regulated for-hire transportation service by any (i) Licensee whose License is suspended, revoked, or expired and not yet renewed, or by any (ii) person who does not hold a Valid License or Authorization for the vehicle, for the driver of the vehicle and, if applicable, for the service; Unlicensed Activity specifically includes these activities as specifically set forth in §19-506 and §19-529 of the Administrative Code, and can subject the violator to the seizure and possible forfeiture of his or her vehicle.

§68-04 Alternative Forum

- (a) The Commission can refer any adjudication to the New York City Office of Administrative Trials and Hearings (OATH). In this event, OATH's rules will govern the case. The determination of OATH about the penalty will be a recommendation to the Chairperson (“Recommended Decision”).

§68-05 Service of Summonses and Notices

- (a) *Service*. A Respondent must be served with a summons, a notice, or a notice of violation specifying the nature of the violation charged or the basis for any charge that the Respondent is not Fit to Hold a License.
- (b) *Licensees*. Service of a summons or other notice upon a Licensee can be accomplished through any of the following methods:
 - (1) By personal service;

- (2) By USPS first class mail addressed to the last Mailing Address filed with the Commission;
 - (3) If the Licensee is a Vehicle Owner (of a Taxicab, For-Hire Vehicle, Paratransit Vehicle, or Commuter Van), by personal service upon the Driver, who must promptly forward the summons or notice to the Owner or Agent; a Driver who fails to do so will be in violation of these Rules.
 - (4) If the Licensee is any Licensee other than a Vehicle Owner or Driver (for example, owner of a Commuter Van Service, For-Hire Vehicle Base, Paratransit Base, Taxicab Agent, or Taximeter Business), by personal service upon a person of suitable age and discretion employed by or acting as an agent of the Licensee at the Licensee's place of business.
- (c) *Non-Licensees.* Service of a summons or other notice upon a Respondent who is not a Licensee can be accomplished through any of the following methods consistent with the requirements set in the Civil Practice Law and Rules:
- (1) By personal service.
 - (2) By USPS first class mail addressed to the address on the Respondent's state-issued driver's License or vehicle registration.
 - (3) If the Respondent is the registered owner of a vehicle, by personal service upon the driver of the vehicle.
 - (4) If the Respondent is charged with operating an unlicensed Commuter Van Service, For-Hire Vehicle Base, Paratransit Base, Taxicab Agent, or Taximeter Business, by personal service upon a person of suitable age and discretion employed by or acting as an agent of the Respondent at the Respondent's place of business.

§68-06 Contents of Summons or Notice of Violation

- (a) *Required Information.* A summons or notice of violation must contain, at a minimum, the following information:
- (1) The date, time, and location of the alleged violation.
 - (2) A description of the nature of the violation sufficient to inform the Respondent of the prohibited conduct, including the basis for any charge that the Respondent is not Fit to Hold a License.
 - (3) The Rule or Administrative Code Section alleged to have been violated. If there is a conflict between the Rule or Code Section cited and the description of the violation, the description controls the final resolution of the issue.

- (4) The date, time, and location of the scheduled Hearing on the violation, or instructions to the Respondent on how to schedule a Hearing date including the deadline for responding.
 - (5) Whether the Respondent's personal appearance at the Hearing is required.
 - (6) If the rule violated includes the penalty of discretionary revocation, a specific statement that a finding of guilt could result in the revocation of the Respondent's License.
 - (7) If the rule violated includes the penalty of mandatory revocation, a specific statement that a finding of guilt will result in the revocation of the Respondent's License.
- (b) *Failure of Summons to Provide Information.*
- (1) If, at a Hearing, a Respondent claims that the summons or notice of violation did not provide the required information, the Commission will attempt to have the Respondent provided with the required information and the ALJ will determine if the lack of information has unfairly prejudiced the Respondent.
 - (2) The ALJ will then determine whether to:
 - (i) Proceed with the Hearing
 - (ii) Grant an adjournment, or
 - (iii) Dismiss the violation
 - (3) If the summons or notice of violation is dismissed solely because the information specified in subdivision (a) has not been provided, the Commission can issue an amended summons or notice of violation.
- (c) If the summons or notice of violation is sworn to under oath or affirmed under penalty of perjury, the summons or a copy of the summons will be admitted into evidence and will constitute prima facie evidence of the violations alleged.

§68-07 Respondent Options Based on Violation's Appearance Requirements

- (a) *Options When Attendance Is Not Required.* For violations where the Respondent's personal appearance is not required, the Respondent can choose from the following options:

- (1) The Respondent can plead guilty and pay the scheduled fine in person or by mail (or in any other manner approved by the Commission) before the beginning of the scheduled Hearing or deadline. Some Rules provide for reduced fines for Respondents who plead guilty. By pleading guilty, the Respondent admits the charges contained in the summons or notice of violation and waives any right to appeal the ALJ's determination or assessment of penalties.
 - (2) The Respondent can choose, instead, to appear for a Hearing at the location, date, and time indicated on the summons or notice of violation. If no Hearing date is scheduled, the Respondent can request a Hearing by pleading not guilty to the summons or by following the instructions contained in the notice from the Commission.
 - (3) The Respondent's failure to enter a plea in a timely manner will constitute a default to the charges, and the Respondent will be subject to penalties that can include License suspension or revocation.
- (b) *Options When Appearance is Required.* If the summons or violation requires a personal appearance, the Respondent must appear for a Hearing at the location, date, and time indicated on the summons or notice of violation. Failure to appear will constitute a default to the charges and the Respondent will be subject to penalties that can include License suspension or revocation.

§68-08 Failure to Prosecute by the Commission

- (a) If without any delay or default on the part of the Respondent, the Commission fails to act within one year from the date of the summons or notice of violation, the charges will be dismissed.

§68-09 Hearings – Adjournment Requests

(a) Requests for Adjournments

- (1) A request for an adjournment, which is a request to change the scheduled Hearing date, may be made either by the Chairperson or by the Respondent, or anyone authorized by this Chapter to appear for the Respondent.
- (2) A request to reschedule a Hearing must be made at least five business days before the first scheduled Hearing date or at the Hearing.
 - (i) Good cause is not necessary for an adjournment that is requested at least five business days before the first scheduled Hearing date.

- (ii) A request for an adjournment that is made at least five business days before the first scheduled Hearing date may be made ex parte, and may be made by telephone, or in person.
 - (iii) No more than one adjournment requested at least five business days before the first scheduled Hearing will be granted.
- (3) An adjournment that is requested at the Hearing will only be granted for good cause, as determined in the discretion of the ALJ (see §68-09(b) of these Rules). The adjournment request will be made on the record. On the record means that the ALJ shall conduct a Hearing. This Hearing shall be recorded. The ALJ will issue a written decision explaining the ALJ's decision to grant or deny the request.
- (4) *Adjournments to Obtain the Testimony of Complaining Witnesses.* The Respondent may request an adjournment at the first scheduled Hearing date for the purposes of obtaining the testimony of a complaining witness who has sworn to or affirmed a summons or notice of violation (see §68-06(c) of these Rules). A request for an adjournment for this purpose may not be made at any time other than the first scheduled Hearing date.
 - (i) The Respondent must explain the subject of the testimony that the Respondent intends to obtain from the complaining witness and must explain the relevance of that testimony to either the violations charged or a defense to those charges.
 - (ii) The ALJ will find that there is good cause for the adjournment only if the ALJ concludes that the complaining witness's testimony is reasonably likely to be necessary to a fair Hearing of the violations charged or the defenses to those charges.
 - (iii) The non-attendance of the complaining witness who submitted a sworn or affirmed summons or notice of violation at the first scheduled Hearing date shall not be a failure by the Commission to produce a complaining witness (see §68-11(c) of these Rules).
- (b) *Good cause.* In deciding whether there is good cause for an adjournment, the ALJ will consider:
 - (1) Whether granting the adjournment is necessary for the party requesting the adjournment to effectively present the case;
 - (2) Whether granting the adjournment is unfair to the other party;
 - (3) Whether granting the adjournment will cause inconvenience to any witness;

- (4) The age of the case and the number of adjournments previously granted;
- (5) Whether the party requesting the adjournment prepared for the scheduled Hearing with reasonable diligence;
- (6) Whether the need for the adjournment is due to facts that are beyond the requesting party's control;
- (7) The balance of the need for efficient and expeditious adjudication of the case and the need for full and fair consideration of the issues relevant to the case; and
- (8) Any other fact that the ALJ considers to be relevant to the request for an adjournment.

§68-10 Hearings – Who Must or Can Appear for the Respondent

- (a) *Licenseses.* A Respondent who is a Licensee can be represented at a Hearing by an attorney or by an authorized non-attorney Representative.
- (b) *Corporations.* If the Respondent is a corporation, it can also be represented by an officer, director, or employee of the Respondent corporation designated as an agent for the Respondent.
- (c) *Limited Liability Companies.* If the Respondent is a limited liability company, it can also be represented by a member or employee of the Respondent limited liability company designated as an agent for the Respondent.
- (d) *Partnerships.* If the Respondent is a partnership, it can also be represented by any partner.
- (e) *Non-Licenseses.* A Respondent who is not a Licensee must appear personally and can be accompanied and represented by an attorney or an authorized non-attorney Representative.
- (f) *Non-Licensee Business Entity.* If the non-Licensee Respondent is a corporation or partnership, an officer, director, employee, or partner must appear.
- (g) *Proof of Relationship to Respondent.* Any individual appearing who is not a Respondent must provide proof of his or her relationship to the Respondent.
- (h) The Commission can, for cause, deny any non-attorney (other than an authorized Representative or the Respondent) the opportunity to appear at a Hearing.

§68-11 Hearings – Procedures

- (a) *Identification Required.* A Respondent must provide the ALJ with a Valid government-issued photo ID prior to the Hearing.
- (b) *Hearings Conducted in English.* All Hearings must be conducted in English.
- (c) *Right to Bring Translator.* Except for a Licensed Taxicab Driver, any Respondent who does not speak or understand English can appear at a Hearing with a translator who is not a party, a representative of the Respondent, or a witness to the proceeding.
- (d) *Right to Present Witnesses.* A Respondent is entitled to be present throughout the entire Hearing and can present witnesses. However, witnesses will be excluded from the Hearing room except while they are actually testifying.
- (e) *Right to Confront Witnesses.*
 - (1) The Commission will produce a complaining witness, if there is one, to testify in person where the witness's credibility is relevant. The Respondent will have the opportunity to confront a complaining witness, if the witness is produced.
 - (2) If the witness does not personally appear, the Commission will make reasonable efforts to have the witness available by videoconferencing or teleconferencing at the Hearing.
 - (3) If the Commission is unable to produce the witness in person or by video or teleconference, it will provide the ALJ with a statement outlining its efforts to produce the witness.
 - (4) If the ALJ determines that the Commission's efforts were not adequate, the ALJ shall dismiss the notice of violation.
- (f) *Conduct of Hearing.*
 - (1) All Hearings must be conducted before an ALJ.
 - (2) The ALJ must consider all relevant testimony and review documentary evidence submitted at the Hearing.
 - (3) Evidence at a Hearing can include affidavits or affirmations submitted under penalties of perjury. Evidence can also include records maintained by the Commission or by another governmental body in its regular course of business.
 - (4) If the Respondent fails to produce any document that the Commission has requested or that Respondent is required by Commission Rules to maintain, the Commission will presume that the document, if produced, would have been adverse to the Respondent.

- (5) Although the formal rules of evidence do not apply, all witnesses must testify under oath or affirmation.
- (6) At the conclusion of the Hearing, the ALJ must issue a decision that includes findings of fact and conclusions of law.
- (g) *Recordings.* All Hearings shall be recorded. The record of the Hearing and the written decision of the ALJ will constitute the only official record of the Hearing. No individual can record or photograph the Hearing without prior written permission from the Commission.
- (h) *Findings of Guilt.* If the ALJ finds that a violation has been committed, the ALJ must impose the appropriate penalties, which can include a fine, Persistent Violator Points or Penalty Points, and a suspension or revocation of the Respondent's License.

§68-12 Inquests –Hearing Conducted in the Absence of Respondent

- (a) *Failure to Appear.* If a Respondent fails to appear at a scheduled Hearing, the Commission will conduct an Inquest on or after the Hearing date.
- (b) *Inquest Proceedings.* At the Inquest, the ALJ will conduct the Hearing and review the evidence and impose any penalties deemed appropriate, including additional penalties for the failure to appear at the Hearing.
- (c) *Notification of Results.*
 - (1) The Commission will mail a copy of the ALJ's decision by regular, USPS first class mail to the Respondent at the address on file with the Commission.
 - (2) The Commission will record the time and date this notification is mailed and the name of the person who mailed it. This record of information will be available to the Respondent upon request.
- (d) A Respondent may challenge a decision made after an Inquest only by moving to the vacate the Inquest decision (see §68-13 of these Rules).

§68-13 Inquests – Respondent's Right to Challenge Decision

- (a) *Motion to Vacate.* A Respondent can move to vacate the Inquest determination by filing a written motion to vacate within two years from the date of the Inquest.
- (b) *Form of Motion.* A motion to vacate must be on a form approved by the Chairperson. The motion must be signed and dated.

- (c) *Motions Filed Within 120 Days.* A motion to vacate filed within 120 days of the date of the Inquest must show:
- (1) Reasonable excuse for the Respondent's failure to appear at the Hearing
 - (2) A defense to the charge which, if established and proved at a Hearing, would result in the dismissal of the summons
- (d) *Motions Filed More than 120 Days and Less Than 2 Years.* A motion to vacate filed more than 120 days and less than 2 years after the date of Inquest must show;
- (1) Reasonable excuse for delay in presenting the motion,
 - (2) Reasonable excuse for the Respondent's failure to appear at the Hearing, and
 - (3) A defense to the charge which, if established and proved at a Hearing, would result in the dismissal of the summons.
- (e) *Subsequent Motions to Vacate.* If an Inquest decision on the same summons or notice of violation has been previously vacated, and a new Inquest decision has been issued, a motion to vacate the second Inquest decision must show:
- (1) An extraordinary and compelling reason for the Respondent's failure to appear at the Hearing,
 - (2) A defense to the charge which, if established and proved at a Hearing, would result in the dismissal of the summons
- (f) *Reasons for Failing to Appear.* In determining whether Respondent has shown a reasonable excuse for failing to appear at a Hearing, the ALJ will consider:
- (1) Whether circumstances that could not be reasonably foreseen prevented the Respondent from attending the Hearing;
 - (2) Whether the Respondent had an emergency or condition requiring immediate medical attention;
 - (3) Whether the matter had been previously adjourned by the Respondent;
 - (4) Whether the Respondent attempted to attend the Hearing with reasonable diligence;
 - (5) Whether the Respondent's inability to attend the Hearing was due to facts that were beyond the Respondent's control;

- (6) Whether the Respondent's failure to appear at the Hearing can be attributed to the Respondent's failure to maintain current contact information on file with the Chairperson; and
 - (7) Any other fact that the ALJ considers to be relevant to the motion to vacate.
- (g) *Granting of Motion to Vacate.* If the ALJ determines that the Respondent has met the requirements for a motion to vacate:
- (1) The Inquest determination will be vacated and the Respondent must be entitled to a new Hearing.
 - (2) Any suspension, revocation, Penalty Points or Persistent Violator penalties imposed at the Inquest will be vacated.
 - (3) Any fines paid will be refunded.
- (h) *Denial of Motion to Vacate.* If the ALJ denies the motion to vacate, the penalties imposed at the Inquest will remain in force.
- (i) *Review of a Denial of Motion to Vacate.* The Respondent may appeal a decision denying a motion to vacate (see §68-14 of these Rules).

§68-14 Appeals – By Respondent

- (a) *Time for Appeal.* The Respondent can appeal a final decision of the ALJ within 30 calendar days from the date of the decision, unless extended as provided by subdivision (f) below.
- (b) *Expedited Appeal.* If the ALJ's decision resulted in the suspension or revocation of a License, the determination of the appeal will be expedited.
- (c) *Filing of Appeal.* Two copies of the appeal, accompanied by two copies of the ALJ decision, must be directed to the Appeals Unit.
- (d) *Payment of Fines Deferred.*
 - (1) If the Respondent files a timely appeal, any fines imposed by the decision being appealed will be deferred until a decision on the appeal is made.
 - (2) The Commission will not be required to refund any fines paid before Respondent filed the appeal, unless the appeal is successful.
 - (3) Once an appeal has been decided, any outstanding fines imposed by the decision affirmed on appeal must be paid within 30 days.

- (e) *Requests for Copy of Recording.*
- (1) The Respondent can request a copy of the recording of the Hearing within seven calendar days from the ALJ's determination. The request must be made in writing on a form supplied by the Commission.
 - (2) The Commission will provide Respondent with a copy of the recording within 30 days after receipt of the request.
 - (3) If the Commission cannot produce the recording to the Respondent within 30 days, the determination being appealed will be dismissed without prejudice, which means that the Commission is entitled to re-issue the violation and rehear the case as a new case.
- (f) *Extension of Time for Appeal.* If the Respondent requests a copy of the recording of the Hearing, his or her time to respond to the notice of appeal will be the *later* to occur of the following:
- (1) The original 30 calendar days from the date of the decision being appealed
 - (2) Twenty-one calendar days from the date the Commission issues the requested copy of the recording of the Hearing to the Respondent.
- (g) *Issues of Law on Appeal.* A Respondent's appeal of an ALJ's decision must be limited to the issues of law raised in the determination being appealed. Findings of fact may be appealed only on the grounds that the findings of fact are not supported by substantial evidence in the record.
- (h) *Response by the Commission.*
- (1) The Commission may respond to the Respondent's appeal within 21 calendar days of the filing of the appeal.
 - (2) If the appeal is expedited (see §68-14(b) of these Rules), the Commission may respond within seven days of the filing of the appeal.
- (i) *Results of Appeal.* On appeal, the determination of the ALJ can be affirmed, reversed in whole or in part, or modified.
- (j) *Temporary License.*
- (1) If the ALJ's decision results in the suspension of the Respondent's License, the Chairperson can, in his or her discretion, issue a temporary license, which will remain in effect pending the determination of the appeal.

- (2) In deciding whether or not to issue a temporary license, the following factors can be considered: the Respondent's record, the seriousness of the charges, the likelihood of the success of the appeal, and the significance of the issues raised on appeal.

§68-15 Appeals – By Commission

- (a) *Appeal by the Commission.* The Commission can appeal a final decision by an ALJ if the determination has raised issues of law that require review.
- (b) *Filing of the Appeal.* The appeal must be filed with the Appeals Unit within 30 calendar days from the date of the determination and accompanied by a copy of the ALJ decision. The appeal must include a notation indicating that a copy of the appeal was mailed to the Respondent
- (c) *Basis for Appeal.* The appeal will include a written statement describing the basis for the appeal.
- (d) *Rights of the Respondent.*
 - (1) The Respondent has the right to receive by mail a written statement setting forth the basis for the appeal, and information as to when and how Respondent can respond to the appeal.
 - (2) The Respondent must respond to the Commission's appeal within 21 calendar days from the mailing of the appeal.
 - (3) The Respondent can request a copy of the recording of the Hearing within seven calendar days from the notice of appeal. The request must be in writing on the form supplied by the Commission.
 - (4) If a Respondent requests a copy of the recording of the Hearing, his or her time to respond to the notice of appeal is extended until 21 calendar days from the issuance of the requested copy by the Commission, whether by mailing or otherwise.
- (e) *Issues of Law on Appeal.* A Commission appeal of an ALJ's decision must be limited to the issues of law raised in the determination being appealed. Findings of fact may be appealed only on the grounds that the findings of fact are not supported by substantial evidence in the record.
- (f) *Results of Appeal.* On appeal, the determination of the ALJ can be affirmed, reversed in whole or in part, or modified. If the record on appeal is insufficient for the Appeals Unit to correct an error of law, the matter may be remanded to the Commission Adjudications Tribunal for a new Hearing.

§68-16 ALJ's Final and Recommended Decisions

- (a) ALJs of the Commission Adjudications Tribunal will render final decisions that include findings of fact and conclusions of law, as well as penalties to be assessed.
- (b) ALJ decisions will be final except for the following, which shall be Recommended Decisions:
 - (1) ALJ findings and penalty determinations as to the fitness of Licensees
 - (2) ALJ penalty determinations in padlocking or proceedings under §19-528(b) of the Administrative Code
 - (3) ALJ findings and penalty determinations in Summary Suspension proceedings pending revocation.

§68-17 Procedure for Finalizing Recommended Decisions

- (a) *Respondent's Opportunity to Respond.* When a Recommended Decision is issued, the Respondent must be given an opportunity to provide a written response. The response must be limited to the record of the Hearing and the determination of the ALJ with respect to penalty only.
- (b) *Submission to Chairperson.* The Recommended Decision must include the findings of fact, conclusions of law and recommended penalties. This will be submitted to the Chairperson along with any written comments submitted by the Respondent.
- (c) *Final Decision by Chairperson.* The Chairperson will determine whether to accept, modify, or reject the Recommendation of the ALJ and will issue a Final Decision. Alternatively, the Chairperson can remand the matter to the ALJ for further consideration. The Final Decision will be precedent for deciding later cases that involve similar facts or issues.

§68-18 Appeal of Chairperson's Final Decision

- (a) The only Chairperson's Final Decision that can be appealed is a decision regarding the imposition of Discretionary Revocation (see §68-19).
- (b) The Chairperson's Final Decision on the imposition of discretionary revocation can be appealed to the Commissioners following these rules:
 - (1) The Respondent must file a written appeal with the Deputy Commissioner for Legal Affairs/General Counsel within 30 calendar days from the date of the Chairperson's final decision.

- (2) The filing must describe the basis for the appeal and must include all supporting statements and arguments.
- (3) The Chairperson can prescribe the form for the conduct and filing of these appeals.
- (4) A review of the Chairperson's decision must be limited to the issues of law raised in the appeal submitted and whether the decision of the Chairperson and the Recommended Decision of the ALJ are supported by substantial evidence. The Commissioners can not review findings of fact or determinations of credibility by an ALJ.
- (5) The Commission can submit a written response to any appeal filed by the Respondent.
- (6) The Respondent must be given the opportunity to respond in writing to the Commission's written submission.
- (7) The Commissioners must each receive a copy of the ALJ's Recommended Decision, the Chairperson's Final Decision, the Respondent's appeal, and any responses filed by the Commission or the Respondent.
- (8) Acting in its quasi-judicial capacity, the Commission must affirm, reject, modify, or remand the Chairperson's Final Decision. A minimum of five votes is required to reject, modify or remand the Final Decision; the absence of five votes to change the Final Decision constitutes an affirmance. The Chairperson can not vote on these appeals.
- (9) The results of the vote and the action taken by the Commission must be communicated at a public meeting.

§68-19 Special Procedures – Imposition of Revocation

- (a) *Mandatory Revocation.* Mandatory License revocation will be imposed when a Respondent is found liable for a violation in which mandatory revocation is specified.
- (b) *Discretionary Revocation.* If the Commission seeks Discretionary Revocation, the following procedure must be followed.
 - (1) The Chairperson must determine that the continued licensure of the Respondent presents a threat to public health, safety, or welfare.
 - (2) The proceeding must be commenced before the Office of Administrative Trials and Hearings (OATH).

- (3) The Commission must notify the Respondent of the proceeding by serving a written summons or notice detailing the charged misconduct and warning the Respondent that a finding of guilt could result in the revocation of his License.
- (4) The Respondent must be served with charges according to the procedures adopted by OATH.
- (5) The charges must inform the Respondent of the location, date, and time of any scheduled Hearing.
- (6) The Hearing will be conducted by an OATH ALJ and governed by OATH procedures. The affirmative defenses in subdivision b of §19-512.1 of the Administrative Code can be available in the Hearing.
- (7) The OATH ALJ must issue a Recommended Decision to the Chairperson containing findings of fact, conclusions of law, and recommended penalties. These penalties can include License revocation, License suspension for a period up to six months, and a fine not to exceed \$1,000 for each offense for which a Licensed Driver is found guilty, or a fine not to exceed \$10,000 for each offense for which any other Respondent is found guilty.

§68-20 Special Procedures – Fitness Hearings

- (a) The Chairperson becomes aware that an Licensee may not be Fit to Hold a License, the Chairperson may refer the Licensee for a Fitness Hearing. The Chairperson will notify the Licensee to appear as Respondent for a fitness Hearing. Charges that a Licensee is not Fit to Hold a License may be as a result of, but are not limited to:
 - (1) A criminal conviction.
 - (2) A failed drug test as a result of illegal drug use or a sample which cannot be tested.
- (b) The Notice to Respondent, requests for adjournments and the conduct of the Hearing will be governed by the rules and procedures established in this Chapter.
- (c) At the conclusion of the Hearing, the ALJ must issue a Recommended Decision that must include a determination as to the Respondent's fitness to possess a License.
- (d) The Recommended Decision will be submitted to the Chairperson.
- (e) The Chairperson can accept, reject, or modify the Recommended Decision. The decision of the Chairperson will constitute the final determination of the Commission.
- (f) The License of a Licensee who is found to be not Fit to Hold a License will be revoked.

§68-21 Special Procedures – Summary Suspension Pending Revocation

(a) *Summary Suspension.*

- (1) The Chairperson can summarily suspend a License if the Chairperson believes that continued licensure would constitute a direct and substantial threat to public health or safety, pending revocation proceedings.
- (2) Any Licensee subjected to a Summary Suspension is entitled to a Summary Suspension Hearing or a Revocation Hearing as established below.
- (3) The Commission will notify the Licensee either by personal service or by USPS first class mail of the Summary Suspension, within five days of the suspension.

(b) *Summary Suspension or Revocation Hearing (other than Suspensions resulting from Criminal Charges).* If the Commission does not schedule a revocation Hearing to be held within 15 days from the suspension:

- (1) The Respondent can request a Hearing on the Summary Suspension within ten calendar days from receiving the notice of suspension.
- (2) Upon receipt of a request for a Hearing, the Commission must schedule a Suspension Hearing within ten calendar days of the receipt of the request, unless the Chairperson determines that the Hearing will harm any ongoing civil or criminal investigation.
- (3) No Summary Suspension Hearing will be required where the Commission schedules the revocation Hearing within 15 calendar days of the suspension.

(c) *Conduct of Summary Suspension Hearing.*

- (1) A summary suspension Hearing must be held before an ALJ who must consider relevant evidence and testimony under oath, according to the Hearing procedures established in this Chapter.
- (2) Where applicable, the affirmative defenses will include those provided in §19-512.1(b) of the Administrative Code.
- (3) At the end of the Summary Suspension Hearing, the ALJ must issue a written Recommended Decision to the Chairperson, who can accept, reject, or modify the recommendation.
- (4) The decision of the Chairperson is the final determination of the Commission with respect to the summary suspension.

- (5) If the Chairperson does not render a decision within 60 calendar days from the end of the suspension Hearing, the suspension must be lifted until the decision is rendered.

(d) *Summary Suspension for Criminal Charges.*

- (1) The Chairperson can summarily suspend a License based upon an arrest on criminal charges if the Chairperson believes that the charges, if true, would demonstrate that continued licensure would constitute a direct and substantial threat to public health or safety.
- (2) The Chairperson need not commence revocation proceedings while the criminal charges are pending. However, the Respondent is entitled to request a Suspension Hearing.
- (3) At the Summary Suspension Hearing, the issue will be whether the charges underlying the Licensee's arrest, if true, demonstrate that the continuation of the License while awaiting a decision on the criminal charges would pose a direct and substantial threat to the health or safety of the public.
- (4) Within five calendar days from the date the Commission receives from the Licensee a certificate of disposition of the criminal charges, the Chairperson must either lift the suspension or commence revocation proceedings.

§68-22 Special Procedures – Summary Suspension Pending Compliance

- (a) *Summary Suspension.* If the Chairperson finds that the Licensee is not in compliance with a rule in this title that provides for “summary suspension until compliance,” the Licensee's TLC-issued License can be summarily suspended until compliance pending an opportunity to be heard.
- (b) *Notice to Licensee.* The Commission will send a notice to the Licensee (now, Respondent) by personal service or by USPS first class mail to the Respondent's current Mailing Address with the following information:
 - (1) That the Respondent's TLC-issued License is being suspended for a violation of the Commission's rules or applicable Administrative Code section
 - (2) A description of the nature of the violation
 - (3) That the Respondent's License will be suspended based on one of the following options, whichever applies:
 - (i) Immediately upon service of the notice if made by personal service

- (ii) Five days from the date of the mailing if the notice was sent by USPS first class mail to the Respondent's current Mailing Address
- (4) That the Respondent has the right to be heard by following the instructions contained in the notice and responding:
 - (i) Within ten calendar days from receiving the notice, if notice was given by personal service
 - (ii) Within 15 calendar days from the mailing of the notice of suspension, if the notice was mailed
- (c) *Respondent's Right to Expedited Hearing.*
 - (1) Except as set forth in §68-22(d) below, any Licensee subjected to a summary suspension is entitled to an expedited Hearing provided the Licensee or Respondent timely requests an expedited Hearing.
 - (2) *Scheduling a Summary Suspension Hearing.*
 - (i) Upon receipt of a request for a Hearing, the Commission must schedule a Suspension Hearing (or a Hearing on the underlying violation), which must be held within ten calendar days from the receipt of the request.
 - (ii) A Summary Suspension Hearing must be held before an ALJ who will consider relevant evidence and testimony under oath according to the Hearing procedures established in this Chapter.
 - (3) *Failure to Request a Hearing on the Suspension.* If a Respondent does not request an expedited Hearing within the timeframe given in §68-22(b)(4) above, then the Respondent is deemed to have waived the opportunity to be heard on an expedited basis. The Respondent will be scheduled for a Hearing on the underlying violation in accordance with the normal procedures set forth in this Chapter. The Summary Suspension will be continued until lifted by the ALJ in the Hearing on the underlying violation or until the Licensee furnishes proof of compliance satisfactory to the Chairperson.
- (d) *Respondent's Right to be Heard Through Written Documentation.*
 - (1) *Violation of Drug-Testing Rules.* A Taxicab or For-Hire Vehicle Driver who fails to be timely tested for drug use, in accordance with §54-14(c) or §55-14(d) of these Rules, and whose License is then summarily suspended, is not entitled to a Hearing, but can provide the Commission with a single submission of written documentation refuting the suspension of his or her License.
 - (2) *ALJ Review of Documentation.* The documentation submitted by a Licensee

refuting the Summary Suspension will be reviewed by an ALJ who will then issue a decision including findings of fact and conclusions of law. This decision can be appealed in accordance with the process established in §68-14 of this Chapter.

- (3) *Failure to Submit Documentation.* If the Driver does not timely submit written documentation refuting the Summary Suspension, the opportunity to be heard is waived and the Driver will be deemed to be guilty of the violation.
- (e) *Continuation of a Suspension.* The suspension of TLC-issued Licenses provided by this section must continue until any fines assessed are paid and until compliance with the underlying Commission rule or Administrative Code section has been shown to the satisfaction of the Chairperson or his or her designee.
- (f) *Lifting of Suspension.* At any time after being notified of a suspension, a Respondent can pay any applicable fines, comply with the underlying Commission rule or Administrative Code section, and furnish proof of such compliance to the satisfaction of the Chairperson or his or her designee. Upon such payment and submission of proof of compliance, the suspension of the TLC-issued License will be lifted.

§68-23 Special Procedures – Seizure of Unlicensed Taxicab, Paratransit, and For-Hire Vehicles

- (a) *Seizure.*
 - (1) The Commission and/or a police officer is entitled to seize any vehicle where probable cause exists to believe that the vehicle is operated or engaged in any Unlicensed Activity set forth in §19-506(b) or (c) of the Administrative Code.
 - (2) A vehicle seized under subdivision (1) above will be removed to a designated secured facility.
- (b) *Summons and Notice of Seizure.*
 - (1) The officer or representative of the Commission seizing the vehicle will serve a summons for Unlicensed Activity upon the owner of the vehicle, by service upon the owner or any person who uses the vehicle with the permission of the owner, express or implied.
 - (2) The officer or representative of the Commission seizing the vehicle will also serve a Notice of Seizure upon the owner of the vehicle in the same manner permitted in paragraph (b)(1) above. The Notice of Seizure will include, but not be limited to, the following information:
 - (i) Identification of the seized vehicle
 - (ii) Information concerning these regulations, and

- (iii) The designated secured facility to which the vehicle was or will be taken.
- (3) An officer or representative of the Commission will also mail a Notice of Seizure to the owner of the vehicle. Any defect in delivery or mailing of a Notice of Seizure will not affect the validity of service of a summons upon the owner described in subdivision (b)(1) above.
- (c) *Expedited Hearing.* The summons will set a date and time for a Hearing, no later than:
 - (1) Seven calendar days (rolling forward to the next business day if the seventh day is not a business day) for seizure of a paratransit vehicle; or
 - (2) Fourteen days for seizure of a for-hire vehicle or Taxicab.
- (d) *Release of Vehicle Prior to the Scheduled Hearing.*
 - (1) *Eligibility for Early Release.*
 - (i) An owner of a vehicle is eligible to obtain the release of a seized vehicle prior to the scheduled hearing if the owner has not been found in violation two or more times of §19-506(b) or (c) of the Administrative Code within the previous thirty-six month period.
 - (ii) An owner who has already been found guilty of engaging in Unlicensed Activity two or more times within the previous thirty six months is subject to having the vehicle forfeited, and is *not* eligible for early release.
 - (2) *Process.* To obtain the release of a seized vehicle, an eligible owner must personally bring the notice of violation to the Commission Tribunal, on or before the scheduled hearing date, and either:
 - (i) Plead guilty, whereupon:
 - A. The Commission must verify that the owner meets the eligibility requirements;
 - B. An ALJ will determine the amount of the civil penalty;
 - C. The Commission will determine the amount of removal and storage fees;
 - D. The owner must pay in full the civil penalty and removal and storage fees;

E. Upon receiving payment, the Commission will issue an order to release the vehicle;

F. The owner or his agent can present the order at the designated secured facility to obtain the vehicle.

(ii) Post a Bond, whereupon:

A. The Commission must verify that the owner meets the eligibility requirements.

B. The owner must post a bond in the amount of the maximum civil penalty, plus removal and storage fees.

C. Upon the bond being posted, the Commission will issue an order to release the vehicle.

D. The owner or his agent can present the order at the designated secured facility to obtain the vehicle.

(iii) If the owner does not obtain the vehicle by the date specified in the order of release, the owner will be responsible for any further storage fees, and payment of such fees must be made before the release of the vehicle.

(e) *Decisions at the Expedited Hearing.*

(1) *Dismissal.* If the ALJ dismisses the summons, he or she will then issue an order for release of the seized vehicle without removal and storage fees.

(2) *Liable for Violation.* If the ALJ finds that the owner is guilty, the ALJ will assess a civil penalty. The owner must pay the civil penalty as well as any remaining removal and storage fees in order to obtain an order for release of the seized vehicle.

(3) *Potential for Forfeiture.* If the ALJ finds that the owner is guilty and that this was the owner's third or subsequent conviction of engaging in Unlicensed Activity within a thirty-six month period, the ALJ will:

(i) Set a civil penalty, and

(ii) Issue a notice to the owner and to the Chairperson that the vehicle is subject to forfeiture upon a judicial determination.

(f) *Inquest Review.* If the owner of the seized vehicle fails to appear for the Hearing, an Inquest hearing will be held, and the following process will be followed:

- (1) An ALJ will make a determination in accordance with subdivision (e) above.
- (2) The Commission will notify the owner/Respondent of the Inquest determination by first class mail, and will include the provisions of §68-25 concerning Abandoned Vehicles.
- (3) The owner/Respondent can appear at the Commission offices within seven calendar [business] days of the notice to comply with the Inquest determination or to move to vacate the determination.
- (4) If the Inquest determination is vacated, the owner/Respondent will be entitled to a hearing De Novo on the original summons.
- (5) Such hearing will be scheduled within seven calendar days of the order vacating the Inquest determination, or, if the seventh day is a Saturday, Sunday or City government holiday, no later than on the business day next following the seventh day.

(g) *Appeals.*

- (1) If the owner has been found guilty of Unlicensed Activity, he or she must pay the civil penalty together with removal and storage fees in order to appeal.
- (2) If the owner has been found liable for Unlicensed Activity three or more times within a 36-month period and therefore subject to having the vehicle forfeited, the owner must pay only the civil penalty in order to appeal.
- (3) If upon appeal the decision is reversed in whole or part, the relevant civil penalty and fees will be refunded to the owner.

§68-24 Special Procedures – Forfeiture of Unlicensed Taxicab, Paratransit, and For-Hire Vehicles

(a) *Forfeiture.* If an owner of a vehicle is found to be guilty of Unlicensed Activity three or more times within a thirty-six month period, the interest of the owner in the vehicle used to commit the most recent violation will be subject to forfeiture after notice and judicial determination.

(b) *Determination to Pursue Forfeiture.*

- (1) The Chairperson will determine whether to pursue the remedy of forfeiture.
- (2) If the Chairperson determines not to pursue the remedy of forfeiture, the owner will be notified by first class mail.
- (3) The owner can get an order to release the vehicle by paying the civil penalty

already assessed along with all removal and storage fees.

- (4) If the Chairperson determines to pursue a remedy of forfeiture, the owner will be served proper summons and other papers required under the provisions of the civil practice law and rules.

(c) *Public Sale Pursuant to Forfeiture.*

- (1) A public sale of the forfeited vehicle can be held no sooner than 30 days after the owner is served notice of the forfeiture.
- (2) Prior to a public sale, at least five days notice of the sale:
 - (i) Must be published in the City Record or in a newspaper of general circulation, and
 - (ii) Must be mailed to any Secondary Owner shown in the records of the jurisdiction that issued the number license plates on the vehicle.

(d) *Rights of Secondary Owners.*

- (1) Any person who can establish a right of ownership in the vehicle (other than the owner whose interest has been forfeited) can recover the vehicle, provided the person:
 - (i) Redeems the ownership interest which was subject to forfeiture, by paying the city the value of that interest;
 - (ii) Pays the reasonable expenses for the safekeeping of the vehicle between the time of seizure and redemption;
 - (iii) Proves that he or she has not expressly or impliedly permitted the actions that led to the seizure and forfeiture.
- (2) A person wishing to assert an ownership claim in the vehicle must either:
 - (i) File a claim and participate in the forfeiture proceedings or
 - (ii) Submit a claim in writing within 30 days after the determination of forfeiture.
- (3) If the Secondary Owner submits the claim after the forfeiture hearing (but within 30 days of the forfeiture determination), the Commission will hold a separate administrative adjudication, and will:
 - (i) Schedule a Hearing;

- (ii) Mail notice to the claimant at least ten business days in advance of the Hearing, and
- (iii) Determine whether the violations upon which the forfeiture was predicated were expressly or impliedly permitted by the claimant;
- (iv) If the ALJ finds that there was such permission by the claimant, the claim will be denied.

§68-25 Special Procedures – Abandoned Taxicab, Paratransit, and For-Hire Vehicles

- (a) *Declaration of Abandonment.* A vehicle will be declared Abandoned by the Commission, if an owner does not:
 - (1) Remove the vehicle from storage within five days of obtaining an order of release; or
 - (2) Pay the civil penalty and removal and storage fees within five days after the Hearing in which a determination of violation was made; or
 - (3) Pay the civil penalty and removal and storage fees, within seven days after a notice that the Commission will not pursue the remedy of forfeiture was mailed to the owner; or
 - (4) Within seven days after notice of an inquest determination of violation is mailed to the owner:
 - (i) Pay the civil penalty and removal and storage fees, or
 - (ii) Obtain an order vacating the Inquest determination of violation and setting a hearing De Novo.
- (b) *Disposition of the Vehicle.* In the event that a vehicle has been deemed Abandoned, the Commission will:
 - (1) Mail notice to the owner and any Secondary Owners that the vehicle has been declared Abandoned and that, unless claimed within 10 days of the mailing date of the letter, the vehicle will become the property of the Commission and will be sold.
 - (2) The owner or any Secondary Owner can claim the vehicle by paying the removal and storage fees due and, in the case of the owner, the civil penalty claimed that is now a lien on the vehicle.
 - (3) If the vehicle is not claimed within the allotted time, the Commission can sell the

vehicle by public auction or by bid.

(c) *Disposition of the Proceeds from the Sale of the Vehicle.*

- (1) Proceeds from any sale, minus expenses incurred for removal, storage and sale of the vehicle and minus the civil penalty lien will be held without interest for the benefit of the former owner of the vehicle for one year.
- (2) If these funds are not claimed within the one year period, they will be paid into the Commission's general fund.

§68-26 Special Procedures – Seizure of Commuter Vans

(a) *Right to Seize Vehicle.*

- (1) The Commission and/or any police officer is entitled to seize any vehicle where reasonable cause exists to believe that the vehicle is operated or engaged in any Unlicensed Activity set forth in §19-529.2 of the Administrative Code.
- (2) All passengers and the driver in a vehicle that has been seized will be left in or transported to a location that is readily accessible to other means of public transportation.
- (3) Any vehicle that has been seized will be taken to a designated secured facility.

(b) *Procedure after Seizure.*

- (1) Notice of Seizure.
 - (i) Within one business day after the seizure, notice of the seizure and a copy of the notice of violation will be mailed to the owner of the vehicle.
 - (ii) The notices will be mailed to the address listed for the owner in the records of the Department of Motor Vehicles (or equivalent agency) in the state in which the vehicle is registered.
- (2) Hearing.
 - (i) A Hearing to adjudicate Unlicensed Activity will be held before the Commission Tribunal within five business days after the date of the seizure.
 - (ii) The Hearing will be conducted according to the procedures set forth in this Chapter 68 of the Rules.

- (iii) Where the procedures in this section are inconsistent with procedures in other sections of this Chapter, the procedures established in this section will govern seizure and forfeiture Hearings.

(c) *Release of Vehicle Prior to Hearing.*

- (1) An owner will be eligible to obtain release of the vehicle prior to a Hearing if the owner has not previously been found liable for Unlicensed Activity under §19-529.2 within a five-year period prior to the violation resulting in the seizure.
- (2) To obtain release of the vehicle, an eligible owner must post a bond (in a form satisfactory to the Commission) in an amount equal to:
 - (i) The maximum civil penalty that could be imposed for the violation, plus
 - (ii) All reasonable costs for removal and storage of the vehicle.

(d) *Hearing Decision.*

- (1) *Timely Decision.* The Commission Tribunal will render a determination within one business day of the conclusion of the hearing, with a finding as to whether the vehicle has been engaged in Unlicensed Activity of a commuter van or a commuter van service.
- (2) *Guilty Finding.* If the Administrative Tribunal of the Commission finds that the vehicle has been engaged in Unlicensed Activity:
 - (i) If the vehicle's owner has not engaged in Unlicensed Activity within the past five years, the vehicle is not subject to forfeiture and the Commission will release the vehicle to the owner upon payment of the applicable civil penalties and all reasonable removal and storage costs;
 - (ii) If the vehicle's owner has previously engaged in Unlicensed Activity within the past five years, the vehicle is subject to forfeiture and the Commission can either:
 - A. Release the vehicle to an owner upon payment of the applicable civil penalties and all reasonable removal and storage costs, or
 - B. Commence a forfeiture action within ten days after the owner's written demand for such vehicle (see §68-27).
- (3) *Not Guilty Finding.* Where the Commission Tribunal finds that the charge of Unlicensed Activity has not been sustained, the vehicle will be released to the owner.

(e) *Declaration of Abandonment.*

- (1) If an owner has not tried to reclaim a seized vehicle within thirty days after the Commission mails the owner a notice that the Commission Tribunal has made its final determination regarding the violation underlying the seizure, the vehicle will be declared abandoned, regardless of whether the owner was found guilty or not guilty of the violation.
- (2) An abandoned vehicle will be disposed of by the City according to §1224 of the NYS Vehicle and Traffic Law; provided, however, that, if an owner seeks to reclaim the abandoned vehicle under §1224, nothing in this §68-26(e) will apply to prevent the owner from making the claim and the Commission will take whichever action is authorized by subdivision (d) of this section.

§68-27 Special Procedures – Forfeiture of Commuter Vans

(a) *Forfeiture.*

- (1) If an owner of a vehicle is found to be in violation of §19-529.2 of the Administrative Code two or more times within a five-year period, all rights, title and interest in the vehicle is subject to forfeiture of the vehicle after notice and judicial determination.
- (2) A vehicle which is the subject of such an action will remain in the custody of the City pending the final determination of the forfeiture action.

(b) *Commencing an Action for Forfeiture.* A forfeiture action is commenced by the filing of a summons with notice or a summons and complaint according to the New York Civil Practice Law and Rules.

(c) *Who Must Be Served and How.* Service of a summons with notice (or a summons and complaint) will be made:

- (1) By personal service (according to the New York Civil Practice Law and Rules) upon all owners listed in the records of the Department of Motor Vehicles (or equivalent agency) in the state in which the vehicle is registered.
- (2) By first class mail upon all individuals who have notified the Commission Tribunal that they are an owner of the vehicle; and
- (3) By first class mail upon all persons holding a Valid security interest, filed with the Department of Motor Vehicles (or equivalent agency) in the state in which the vehicle is registered, at the address shown in the filing.

(d) *Asserting a Claim.* Any owner or Secondary Owner who receives notice of the forfeiture action and who claims an interest in the vehicle must assert a claim for the recovery of

the vehicle or their interest in the vehicle by intervening in the forfeiture action (in accordance with the New York Civil Practice Law and Rules).

- (e) *Affirmative Defenses Required to Sustain a Claim.* In order to sustain his or her claim in the vehicle, a claimant must plead and prove that he or she was not in any way a party to allowing the actions that constituted the violation, by showing that:
 - (1) The claimant had no knowledge of the actions; or
 - (2) If the claimant had knowledge of the actions, claimant took all reasonable steps to prevent the use of the vehicle for the unlawful conduct and did not knowingly obtain his or her interest in the vehicle in order to avoid forfeiture of the vehicle; or
 - (3) The vehicle was unlawfully in the possession of another person who committed the actions that constituted the violation.
- (f) *Disposition of Vehicle.* The City, after judicial determination of forfeiture, can either:
 - (1) Retain the vehicle for the official use of the City; or
 - (2) Sell the vehicle at public sale after at least a 20-day public notice, and pay the net proceeds into the general fund of the City.
- (g) *Rights of Secondary Owners Unaware of Forfeiture Proceedings.*
 - (1) Any Secondary Owner who did not receive notice of the forfeiture action and who did not otherwise receive actual notice of the action may assert a claim within six months after the forfeiture.
 - (2) The claim must be one that could have been asserted in the original forfeiture action, and must be adjudicated before the Justice of the Supreme Court who presided at the original forfeiture action.
 - (3) The court can grant the relief sought upon such terms and conditions as it deems reasonable and just if the claimant:
 - (i) Establishes that he or she was not sent notice of the commencement of the forfeiture action and was without actual knowledge of the forfeiture action, and
 - (ii) Proves one of the affirmative defenses set forth in subdivision (e) of this section.
- (h) *Total Claims May Not Exceed Value of Vehicle at Sale.*

- (1) In any forfeiture action, including a subsequent action initiated under subdivision (g) of this section, where the court awards a sum of money to one or more persons in satisfaction of claims in the forfeited vehicle, the total amount awarded to satisfy all interests must not exceed the amount of the net proceeds of the sale of the forfeited vehicle.
- (2) The net proceeds is the amount remaining after deduction of the lawful expenses incurred by the City, including the reasonable costs of removal and storage of the vehicle between the time of seizure and the date of sale.

§68-28 Special Procedures – Removal and Storage Fees for Seized Vehicles

- (a) *Removal Fee.* The removal fee for all vehicles is one hundred eighty-five dollars (\$185).
- (b) *Storage Fee.*
 - (1) The storage fee for vehicles seized for unlicensed Taxicab, Paratransit, or For-Hire activity will be as set by the New York City Police Department or such other agency as may store the vehicles. .
 - (2) The storage fee for vehicles seized for unlicensed Commuter-Van activity is fifteen dollars (\$15) per day.

§68-29 Special Procedures – Settlements and Withdrawals

- (a) *Settlements.* The Chairperson and a Respondent may dispose of a summons or notice of violation by entering into a settlement agreement.
 - (1) The settlement agreement must be in writing.
 - (2) The settlement agreement may provide for penalties different than the penalties provided for in these Rules.
 - (3) The settlement agreement may provide for canceling an adjudication that is open or that has been completed.
 - (4) The settlement agreement may provide for penalties to be imposed, with or without a further Hearing, in the event that the Respondent does not comply with the terms of the settlement agreement.
 - (5) Unless the settlement agreement clearly provides otherwise, the License of a Respondent who does not comply with the terms of the settlement agreement may be suspended by the Chairperson without a Hearing until the Respondent complies with the settlement agreement.

- (6) By entering into a settlement agreement, the Chairperson and the Respondent both waive their rights to any further Hearings or appeals on the summons or notice of violation that is disposed of by the settlement agreement.

- (b) *Withdrawals.* The Chairperson may withdraw a summons or notice of violation, even if it has been adjudicated. Any fine, suspension, revocation, or Persistent Violator Points or Penalty Points imposed after the Hearing will be vacated. Any fines paid will be refunded. The Chairperson will notify the Respondent that the summons or notice of violation has been withdrawn. The Chairperson may withdraw a summons or notice of violation if the Chairperson determines that it was
 - (1) Written in error.
 - (2) Ineffectively served on the Respondent.
 - (3) Written in contravention of the Chairperson's enforcement policy.