

## NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

### Notice of Public Hearing and Opportunity to Comment on Proposed Rules

**What are we proposing?** The Taxi and Limousine Commission (“TLC”) is considering amendments to its rules to refine its recent rules relating to adjudications of summonses and other enforcement actions to reflect the transfer of the administrative tribunal of the TLC (the TLC Tribunal) to the New York City Office of Administrative Trials and Hearings (OATH). The rules also clarify the instances in which the TLC will revoke a probationary license.

**When and where is the Hearing?** The Commission will hold a public hearing on the proposed rules. The public hearing will take place at 10:00 a.m. on Thursday, August 7, 2014. The hearing will be in the Commission hearing room at 33 Beaver Street, 19<sup>th</sup> Floor, New York, NY 10004.

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

**Mail.** You can mail written comments to the Taxi and Limousine Commission, Office of Legal Affairs, 33 Beaver Street – 22<sup>nd</sup> Floor, New York, New York 10004.

**Fax.** You can fax written comments to the Taxi and Limousine Commission, Office of Legal Affairs, at 212-676-1102.

**Email.** You can email written comments to [tlcrules@tlc.nyc.gov](mailto:tlcrules@tlc.nyc.gov).

**Website.** You can submit comments to the Taxi and Limousine Commission through the NYC Rules Web site at [www.nyc.gov/nycrules](http://www.nyc.gov/nycrules).

**By Speaking At the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 212-676-1135. You can also sign up in the hearing room before the hearing begins on, July 31, 2014 at 10:00 a.m. You may speak for up to three minutes.

**Is there a deadline to submit written comments?** Yes, you must submit written comments by July 31, 2014.

**Do you need assistance to participate in the Hearing?** You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-676-1135. You must tell us by Thursday, July 24, 2014.

**Can I review the comments made on the proposed rules?** A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Office of Legal Affairs at 33 Beaver Street, 22<sup>nd</sup> Floor, New York, NY 10004.

**What authorizes the Commission to make this rule?** Section 2303 of the City Charter and section 19-503 of the City Administrative Code authorize the Commission to make these proposed rules. These proposed rules were not included in the Commission’s regulatory agenda for this Fiscal Year because the need for the proposed rule was not yet identified.

**Where can I find the Commission’s rules?** The Commission’s rules are in Title 35 of the Rules of the City of New York.

**What rules govern the rulemaking process?** The Commission must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

### **Statement of Basis and Purpose of Proposed Rules**

The Taxi and Limousine Commission (“TLC”) is considering amendments to its recently issued rules on the adjudication of summonses and other enforcement actions that reflect the transfer of the administrative tribunal of the TLC (the TLC Tribunal) to the New York City Office of Administrative Trials and Hearings (OATH). The amendments clarify the instances in which the TLC will revoke a probationary license and address technical issues that were identified by TLC staff.

The proposed amendments to Title 35 of the Rules of the City of New York:

- Correct technical problems found in TLC’s adjudication rules;
- Delete unnecessary or inconsistent definitions relating to the adjudication of TLC summonses;
- Add a definition relating to the adjudication of TLC summonses; and,
- Clarify when the TLC will revoke a probationary driver’s license.

These proposed rules are authorized by Section 2303 of the Charter and Sections 19-503 and 19-506 of the New York City Administrative Code.

New material is underlined.

[Material inside brackets indicates deleted material.]

§1. Section 51-03 of Title 35 of the Rules of the City of New York is amended by adding the following definition, in alphabetical order:

**Final Decision** is the decision of the Hearing Officer at the Taxi and Limousine Tribunal at OATH and is subject to the appeals process provided for in Chapter 5 of Title 48 of the Rules of the City of New York and the Chairperson review process provided for in section 68-12.

§2. The introductory matter of paragraph (1) of subdivision (b) of Section 54-05 of Title 35 of the Rules of the City of New York is amended to read as follows:

(b) Automatic Refusal or Revocation.

- (1) The Commission will not issue a renewal License following the probationary period, and [can] will revoke an issued Probationary License at any time if any of the following occurs:

§3. The introductory matter of paragraph (1) of subdivision (b) of Section 55-05 of Title 35 of the Rules of the City of New York is amended to read as follows:

(b) Automatic Denial or Revocation.

- (1) The Commission will not issue a regular License following the probationary period, and [can] will revoke a Probationary License at any time if any of the following occurs:

§4. Subdivisions (m) and (o) of section 68-03 of Title 35 of the Rules of the City of New York are deleted, subdivisions (e) through (l) are relettered subdivisions (f) through (m), and a new subdivision (e) is added, to read as follows:

(e) Final Decision is the decision of the Hearing Officer at the Taxi and Limousine Tribunal at OATH and is subject to the appeals process provided for in chapter 5 of Title 48 of the Rules of the City of New York and the Chairperson review process provided for in section 68-12 of this title.

[ (m) Secondary Owner is an individual or Business Entity that has a lien or mortgage or any other type of legal interest in a vehicle.]

[ (o) 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 the activities specified in sections 19-506 and 19-528 of the Administrative Code and can subject the violator to the seizure and possible forfeiture of his or her vehicle.]

§5. Paragraph (1) of Section 68-05(b) of Title 35 of the Rules of the City of New York is amended to read as follows:

- (b) Licensees. Service of a summons upon a Licensee can be accomplished through:
1. personal service; or

§6. Paragraph (1) of Section 68-05(c) of Title 35 of the Rules of the City of New York is amended to read as follows:

- (c) Non-Licensees. Service of a summons 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[.]; or

§7. The introductory matter of subdivision (b) of Section 68-09 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (b) The determination of an ALJ at the OATH Tribunal will be a Recommended Decision, subject to review by the Chairperson for the following matters [. These matters are not subject to the appeals process provided for in Chapter 5 of Title 48 of the Rules of the City of New York and the Chairperson Review process provided for in TLC Rule 68-12]:

§8. Paragraphs (2), (3) and (5) of Section 68-12 (c) of Title 35 of the Rules of the City of New York are amended to read as follows:

(c) Process for Chairperson Review.

(2) If the respondent delivers and mails such a petition, TLC may submit an answer to the petition within 30 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 the [Taxi and Limousine Tribunal] Commission.

(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 thereof, 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 the [Taxi and Limousine Tribunal] Commission.

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(5) The determination of an appeal by the Appeals Unit that is not acted upon by the Chairperson shall become a final decision of the [Taxi and Limousine Tribunal] Commission.

§9. Subdivision (b) of Section 68-14 of Title 35 of the Rules of the City of New York is amended to read as follows:

(b) Prior to the hearing, the Commission must notify the Respondent of the proceeding by serving a written summons specifying the reason the Respondent is not Fit to Hold a License and warning the Respondent that a finding of guilt [could] will result in License revocation.

§10. Paragraphs (a)(1) and (d)(1) of Section 68-15 of Title 35 of the Rules of the City of New York are amended to read as follows:

(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. Such direct and substantial threats to public health or safety would include but are not limited to:

(A) Any act, as prohibited by these Rules, of driving a TLC licensed vehicle while Impaired by intoxicating liquor (regardless of its alcoholic content), or Drugs;

(B) Any act, as prohibited by these Rules, of bribery, fraud, material misrepresentation, theft, threat against a person, harassment, abuse, or use of physical force.

(C) Any act, as prohibited by these Rules, involving the possession of a Weapon in a vehicle licensed under these Rules;

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(d) Summary Suspension for Criminal Charges.

1. The Chairperson can summarily suspend a License based upon an arrest [on criminal charges] or citation 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. Such charges include but are not limited to the following:

- (A) [Any act, as prohibited by these Rules, of driving a TLC licensed vehicle while Impaired by intoxicating liquor (regardless of its alcoholic content), or Drugs;]
- (B) Any act, as prohibited by these Rules, of bribery, fraud, material misrepresentation, theft, threat against a person, harassment, abuse, or use of physical force;
- (C) Any act, as prohibited by these Rules, involving the possession of a Weapon in a vehicle licensed under these Rules;

(D) Any [felony conviction] arrest for a crime which constitutes a felony;

[(E)] (B) Or any [conviction of] arrest or citation for the following [criminal] offenses:

- A. Assault in the third degree, as set forth in PL § 120.00;
- B. Reckless endangerment in the second degree, as set forth in § 120.20;
- C. Criminal obstruction of breathing, as set forth in § 121.11;
- D. Sexual misconduct, as set forth in PL § 130.20;
- E. Forcible touching, as set forth in PL § 130.52;
- F. Sexual abuse in the third or second degree, as set forth in PL § 130.55 and § 130.60, respectively;
- G. Promoting prostitution in the third, second, or first degree, as set forth in PL § 230.25, § 230.30, and § 230.32, respectively;
- H. Compelling prostitution, as set forth in PL § 230.33;
- I. Sex trafficking, as set forth in PL § 230.34;
- J. Public lewdness, as set forth in PL § 245.00;
- K. Endangering the welfare of a child, as set forth in PL § 260.10;
- L. Criminal possession of a weapon in the fourth degree, as set forth in PL § 265.01;
- M. Overdriving, torturing, and injuring animals or failing to provide proper sustenance, as set forth in AGM § 353;
- N. Leaving the scene of an accident, as set forth in VAT § 600.2;
- O. Driving while ability impaired, as set forth in VAT § 1192.1;
- P. Operation of a motor vehicle while intoxicated, as set forth in VAT § 1192.2;
- Q. Operation of a motor vehicle with an illegal blood-alcohol content, as set forth in VAT § 1192.3;

R. Driving while ability impaired by drugs, as set forth in VAT § 1192.4.

§11. Subparagraph (c)(2)(A) of Section 68-16 of Title 35 of the Rules of the City of New York is amended to read as follows:

(c) Respondent's Right to Expedited Hearing.

2. Scheduling a Summary Suspension Hearing.

(A) Upon receipt of a timely request for an expedited Hearing, the Commission must request a Summary Suspension Hearing (or a Hearing on the underlying violation) to be held within 10 calendar days of the Commission's receipt of the request (if the tenth day falls on a Saturday, Sunday or holiday, the hearing may be held on the next business day).

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**NEW YORK CITY LAW DEPARTMENT**

**100 CHURCH STREET**

**NEW YORK, NY 10007**

**212-356-4028**

**CERTIFICATION PURSUANT TO**

**CHARTER §1043(d)**

**RULE TITLE: Amendment of TLC Tribunal Consolidation Rules**

**REFERENCE NUMBER: 2014 RG 047**

**RULEMAKING AGENCY: Taxi and Limousine Commission**

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN

Date: June 24, 2014

Acting Corporation Counsel

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS**

**253 BROADWAY, 10<sup>th</sup> FLOOR**

**NEW YORK, NY 10007**

**212-788-1400**

**CERTIFICATION / ANALYSIS**

**PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of TLC Tribunal Consolidation Rules**

**REFERENCE NUMBER: TLC-56**

**RULEMAKING AGENCY: TLC**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro

Mayor's Office of Operations

June 24, 2014

Date