

MEMORANDUM

City of Philadelphia

Date: 12/11/12

TO: Shelley Smith, City Solicitor

FROM: Jeanne Reedy, Administrative Services Director, Records Dept. 

SUBJECT: Bureau of Administrative Adjudication Regulations

The above Regulations promulgated by the Office Of The Director Of Finance were received in the Department of Records on 11/8/12 for filing and advertising. Inasmuch as there were no requests for hearings, these Regulations became effective midnight 12/10/12.

CC: Rob Dubow, Director of Finance

CITY OF PHILADELPHIA
Office of the Director of Finance
Regulations of the Bureau of Administrative Adjudication

CHAPTER I
DEFINITIONS

1.01. For purposes of these Regulations, the following terms shall have the following meanings:

Bureau. The Bureau of Administrative Adjudication of the Office of the Director of Finance.

Bureau Director. The Deputy Director of Finance designated to direct the work of the Bureau.

Costs and Additional Fees. Those costs and fees specified in Section 12-2809(1) of the Traffic Code.

Fine. The civil penalty established by law for a violation of the Traffic Code relating to parking violations.

Respondent. The person charged with the parking violation, including the owner of the vehicle, the operator of the vehicle, or both.

Traffic Code. Title 12 of The Philadelphia Code, as amended from time to time.

CHAPTER II
BUREAU OF ADMINISTRATIVE ADJUDICATION;
PERSONNEL, POWERS AND DUTIES

2.01. Bureau. The Bureau of Administrative Adjudication created under the Regulations of the Bureau of Administrative Adjudication filed on May 31, 1989, effective June 30, 1989, pursuant to Chapter 12-2800 of the Traffic Code, shall continue in existence in accordance with Chapter 12-2800 of the Traffic Code and these regulations.

2.02. Powers and Duties of the Bureau. The Bureau shall have the powers and duties of the Director of Finance set forth in Chapter 12-2800 of the Traffic Code, including, but not limited to, the power and duty to:

(a) hear and determine cases involving alleged violations of provisions of the Traffic Code relating to parking;

(b) impose civil penalties, costs and additional fees for such violations;

- (c) accept payment for such penalties, costs and additional fees; and
- (d) perform such other functions as may be reasonable or necessary to carry out the foregoing powers and duties.

2.03. Bureau Director. The work of the Bureau shall be directed by a Deputy Director of Finance, who as Bureau Director, shall also have the powers of a Parking Hearing Examiner as set forth in these Regulations.

2.04. Parking Hearing Examiners. The Director of Finance shall appoint Parking Hearing Examiners to preside at hearings held pursuant to these Regulations, and who shall have the power to:

- (a) administer oaths or affirmations;
- (b) rule on offers of proof and receive relevant evidence;
- (c) regulate the course of hearings;
- (d) rule on procedural requests or similar matters;
- (e) take such other actions as are authorized by these Regulations or by ordinance.

2.05. Supervising and Senior Hearing Examiners. The Bureau Director may designate certain Parking Hearing Examiners as Supervising and Senior Parking Hearing Examiners who shall assist in the supervision and administration of the work of the Bureau.

CHAPTER III PARKING TICKETS AND NOTICES OF VIOLATION

3.01. Parking Tickets. A parking violation shall be charged by the issuance and service of a parking ticket in the form and manner set forth in Section 12-2804 of the Traffic Code.

3.02. Notices of Violation. Notices of violations shall be sent to the owners of ticketed motor vehicles in the form and manner set forth in Section 12-2805 of the Traffic Code.

CHAPTER IV ANSWERS AND PAYMENTS

4.01. Form of Answer. A Respondent shall answer a parking ticket or notice of violation in one of the following ways:

(a) Admit commission of the violation by payment of the fines, costs and additional fees due.

(b) Admit commission of the violation with explanation.

(c) Deny liability for the violation and request a hearing thereon. An answer denying liability and requesting a hearing may take the form of a general denial, or may specifically raise any of the defenses set forth in Section 5.02(e) of these Regulations. Respondents who are physically handicapped or who are disabled veterans or severely disabled veterans, as defined by Section 12-1117(1)(a), (b), or (h) of the Traffic Code, may request a hearing by telephone when denying liability pursuant to this subsection (c).

(d) Deny liability for the violation and request that the violation be adjudicated on submission of written evidence by mail or electronically, through the web site established for that purpose.

No defense shall be waived for failure to raise it in an answer, provided that an answer pursuant to Section 4.01(d) shall act as a waiver of the right to request the opportunity to examine witnesses. Where the Bureau rejects an explanation proffered pursuant to Section 4.01(b), the case shall be referred for a hearing pursuant to Chapter V of these Regulations.

4.02. Procedure for answering. Answers shall be filed in any of the following ways:

(a) By mail to the address indicated on the ticket or notice of violation.

(b) In person or through a designated agent by appearing at any place designated by the Bureau Director as a hearing office or cashiering location and giving answer in writing to the Bureau.

(c) By telephone, according to such procedures as the Bureau Director may develop and implement.

(d) By Internet, according to such procedures as the Bureau Director may develop and implement.

4.03. Failure to Answer; Non-Conforming Answers.

(a) A Respondent who fails to answer a notice of violation within ten (10) days after the date the notice was issued, or, where ownership information cannot be obtained from a Department of Motor Vehicles, within ninety (90) days after issuance of the parking ticket, shall be subject to the imposition of costs and additional fees set forth in Section 12-2809(1) of the Traffic Code.

(b) If a Respondent fails to answer a notice of violation within the time for answering such notice under Section 4.03(a), an order of default shall be entered sustaining the charges, fixing the appropriate fine, and assessing appropriate costs and additional fees.

(c) If a Respondent's answer to a parking ticket or notice of violation admits liability but fails to remit payment of the full amount due (except for admissions with explanation pursuant to Section 4.01(b)), the answer shall be treated as an admission, and an order of default shall be entered sustaining the charges, fixing the appropriate fine, and assessing appropriate costs and additional fees.

(d) Orders entered by default pursuant to this section shall be served upon Respondent in the same manner as a notice of violation. A default order may be vacated within one (1) year of its entry pursuant to the procedures set forth in Section 12-2807(4) of the Traffic Code.

4.04. Payments.

(a) The Bureau Director shall designate one or more cashiering locations to accept the payment of fines, costs and additional fees.

(b) Cashiering personnel shall also be authorized, pursuant to Section 12-2406(2) of the Traffic Code, to accept payment of booting, towing and storage fees. The Bureau Director shall designate personnel of the City and the Parking Authority who are authorized to accept the posting of bond in lieu of payment of unpaid parking tickets, booting and/or towing fees and accrued storage fees pursuant to Section 12-2406(3) of the Traffic Code and to order vehicles released from immobilization or impoundment. Any surety bonds shall be in a form approved by the Law Department.

(c) The Bureau Director, Hearing Examiners, and such other personnel as the Bureau Director may designate shall be authorized to enter into an Installment Payment Plan with a Respondent pursuant to Section 12-2802(1) of the Traffic Code if the Respondent is found liable or admits to liability, and if the Respondent can demonstrate both a current lack of ability to pay the full amount due and a future ability to pay the installments. The Installment Payment Plan may include the posting of a bond or other security and may require the payment of an installment payment fee not to exceed \$3.00 per payment.

(d) Payments made by cash, check, money order, approved credit or debit card shall be accepted at any cashiering location. Payments made by personal check shall not be considered made until the check is honored. Respondents shall be liable for the fee set forth in Section 19-509(5) of the Philadelphia Code if any check is dishonored or unpaid by the bank on which it is drawn.

(e) In the event that payment is not made within thirty (30) days after entry of a final order determining liability for a parking violation, those Costs and Additional Fees prescribed under Section 12-2809(1) of the Traffic Code not already imposed and sustained shall be applied. In the event that payment is not made within thirty (30) days after entry of a final order dismissing Costs and Additional Fees, such Costs and Additional Fees shall be reinstated.

CHAPTER V HEARINGS

5.01. Hearing Officers; Hours of Operation. The Bureau Director shall designate one or more hearing locations as hearings offices and shall establish hours of operation. The Bureau Director may designate different days or periods of time for scheduled hearings and unscheduled hearings.

5.02. Conduct of Hearings.

(a) All hearings shall be conducted by a Parking Hearing Examiner. No representative or attorney of the City shall be required at the hearing unless the Parking Hearing Examiner determines such representative is required for a fair hearing. All in-person hearings shall be open to the public.

(b) All hearings shall be recorded by tape recorder or other suitable recording device.

(c) The Respondent shall appear in person or by a duly authorized representative, including an attorney, agent, officer, parent or guardian. If Respondent has requested, and is eligible for, a hearing by telephone pursuant to Section 4.01(c), Respondent shall appear by telephone. If the Respondent has requested adjudication by mail or electronic means pursuant to Section 4.01(d), neither the Respondent nor any representative of the Respondent shall appear in person. If the Respondent fails to appear at a hearing as required, or, having requested the hearing to be conducted by mail or electronic means pursuant to Section 4.01(d), fails to submit any documentary evidence within the time required, the Parking Hearing Examiner shall enter an order of default determining liability for the violation charged and assessing the fine, costs and additional fees due.

(d) The parking ticket containing all material information required by Section 12-2804 of the Traffic Code and information from a state department of motor vehicles identifying the owner of the vehicle involved in the alleged violation shall be considered prima facie evidence that the violation occurred and that the registered owner of the vehicle is a person liable for the violation. Other evidence of ownership or responsibility for the violation may be accepted by the Parking Hearing Examiner.

(e) If the City fails to produce the evidence required to establish the violation, the violation shall be dismissed. If the City produces such evidence, the Respondent shall be given a fair opportunity to rebut the violation charged. The violation shall be dismissed if the Respondent demonstrates to the satisfaction of the Parking Hearing Examiner that:

- (i) The violation charged did not occur;
- (ii) The Respondent was neither the owner nor the operator of the vehicle;

(iii) The vehicle was stolen at the time the violation occurred, the theft had been reported to the police or other proper authority, and the vehicle had not been recovered;

(iv) The vehicle was sold or validly transferred to another person prior to the occurrence of the violation, and the change of ownership had been reported to the appropriate agency;

(v) The parking meter was inoperable or operating improperly (for metered overtime parking violations);

(vi) The parking control device or sign was missing or improperly placed at the time of violation;

(vii) The registered owner is a Lessor who has complied with the provisions of Section 12-2804(8) of the Traffic Code, including the proper identification of the driver of the vehicle at the time of the violation;

(viii) The ticket was timely paid in full, and no additional costs or fees are due.

(x) Any other valid defense, proven by a preponderance of the evidence, that justifies dismissal of the violation.

(f) The Respondent shall have the right to present witnesses, to conduct examinations and to introduce documentary evidence. The Parking Hearing Examiner may issue a subpoena to compel the production at the hearing of any document, paper or record relevant to the violation charged.

(g) The standard of proof as to all relevant matters shall be a fair preponderance of the evidence.

(h) At the conclusion of the hearing, the Parking Hearing Examiner shall reach a decision, inform the Respondent or the Respondent's representative of the determination, and enter an order either dismissing or sustaining the violation charged. If the charges are sustained the order shall set forth the amount of the fine, costs and additional fees assessed. The Parking Hearing Examiner shall also set forth findings of fact and the reasons for the determination in the record.

(i) A copy of the order shall be delivered to the Respondent or the Respondent's representative together with a form setting forth the procedures for payment or administrative review of an adverse determination.

(j) If a Parking Hearing Examiner determines that the violation charged has been established, he or she shall have no discretion to reduce the fine prescribed for the violation in the Traffic Code, but the costs and additional fees set forth in Section 12-2809(1) of the Traffic Code may be reduced for good cause shown. After a determination has been made

sustaining the charges, the Parking Hearing Examiner may examine the Respondent's parking violations record prior to assessment of costs and additional fees, if any.

(k) A Parking Hearing Examiner may continue any hearing for good cause shown.

(l) The Bureau Director may consolidate for hearing or appeal any or all matters involving the Respondent then pending before the Bureau.

CHAPTER VI ADMINISTRATIVE REVIEW

6.01. Parking Appeals. The Bureau Director shall provide for appeals from the orders of Parking Hearing Examiners. Appeals shall be heard by Parking Appeals Panels, which shall be comprised of one or more persons. Only the Bureau Director, Supervising or Senior Parking Hearing Examiners, and Parking Hearing Examiners (except the Parking Hearing Examiner from whose decision an appeal is taken) may serve on Parking Appeals Panels. The Bureau Director shall schedule appeals and designate Parking Appeals Panels.

6.02. Appeal Procedure.

(a) An appeal from an order of a Parking Hearing Examiner must be taken by serving notice of an appeal upon the Parking Authority within thirty (30) days of the entry of such order, in the form and manner prescribed by Section 12-2808(3) of the Traffic Code. The Bureau may waive technical defects in the form or manner of service of the notice of appeal.

(b) Upon receipt of a notice of appeal, and if requested in the notice of appeal, the Bureau shall furnish the Respondent at the Respondent's expense a transcript of the original hearing before the Parking Hearing Examiner.

(c) Within thirty (30) days after the receipt of the notice of appeal, the Bureau shall schedule the appeal, and mail notice of the date of the appeal to the Respondent. No appeal shall take place less than ten (10) days after the mailing of such notice, nor less than ten (10) days after the mailing of the transcript to the Respondent, if requested pursuant to Section 6.02(b)

(d) If the Respondent wishes to appear at an appeal by or with a representative or attorney, the name of the persons appearing and their relationship to the appellant shall be provided with the notice of appeal.

(e) If the Parking Appeals Panel determines to hear the case de novo, the appeal shall be recorded by tape recorder or other suitable recording device.

(f) If the Respondent requests, the Parking Appeals Panel may decide an appeal solely on documentary evidence submitted by mail. Briefs or memorandum of law shall not be required, but may be accepted by the Panel.

(g) Within thirty (30) days after hearing of the appeal or submission of briefs and documents, whichever shall occur later, the Parking Appeals Panel shall render a decision, and the reason therefore, in writing. In the case of a de novo appeal, the Panel shall also set forth the findings of fact in its written decision. A copy of the decision shall be mailed to the Respondent or the Respondent's representative by first class mail at the address set forth on the notice of appeal.

(h) If a Respondent fails to appear at a scheduled hearing or fails to provide documents required for a hearing without oral argument, the appeal shall be dismissed.

(i) The decision of the Parking Appeals Panel shall be a final order of the Bureau, and may be appealed to the Court of Common Pleas pursuant to state law.