

**City of New York  
Office of Administrative Trials and Hearings**

**Notice of Promulgation of Rule**

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the** Office of Administrative Trials and Hearings (OATH) in accordance with Sections 1049 and 1043 of the New York City Charter that OATH amends chapter 5 of title 48 of the Rules of the City of New York to incorporate the requirements set forth in the recently added chapter 10 of title 19 of the Administrative Code of the City of New York, regarding certain procedures to be followed at the OATH Hearings Division in adjudicating summonses issued by the Taxi and Limousine Commission (TLC). The proposed rule was published in *The City Record* on May 6, 2019, and a public hearing was held on June 5, 2019.

Mr. Peter M. Mazer, Esq., General Counsel of the Metropolitan Taxicab Board of Trade, provided testimony at the public hearing concerning the use of videoconferencing for hearings on summonses issued by the TLC, the TLC Chairperson’s review of mitigated penalties, and the timeliness requirements of respondent appearances. As a result of his testimony, OATH amended sections 5-01a(c) and 5-06(c)(3) to reflect the requirements in Administrative Code sections 19-1003(c) and 19-1005.

**Statement of Basis and Purpose of Final Rule**

The City of New York recently enacted Local Law 19 of 2019, creating special procedures for the Office of Administrative Trials and Hearings (OATH) in adjudicating summonses issued by the Taxi and Limousine Commission (TLC). This rule incorporates these new procedures into chapter 5 of title 48 of the Rules of the City of New York, the chapter of OATH’s Hearings Division rules solely applicable to TLC-related hearings. OATH makes the following changes to chapter 5 of title 48: new section 5-01a; new subdivision (a) of section 5-04; an amendment to the title of subdivision (a) of section 5-05; and new subdivision (c) of section 5-06.

New section 5-01a specifies the times by which a Respondent and a Petitioner must appear at a scheduled OATH hearing in order to constitute an appearance and the consequences for failing to appear in a timely manner.

New subdivision (a) of section 5-04 sets a fifty (50) day time limit to appeal a Hearing Officer’s underlying decision in cases in which the Hearing Officer has reduced the TLC penalty in order to allow such appellants sufficient time to file an appeal with OATH after the TLC Chairperson issues a determination on the Hearing Officer’s penalty reduction.

The amended title of subdivision (a) of section 5-05, “Scope of Review of Appeals Unit Decisions,” clarifies that this subdivision, which relates to the review authority of the TLC Chairperson, only applies to decisions of the Appeals Unit.

New subdivision (c) of section 5-06 grants Hearing Officers the discretion to decrease the penalties imposed for TLC violations if, upon consulting a list of factors, the Hearing Officer

determines that a reduction of the penalty would be in the interest of justice. The same subdivision also makes clear that the Chairperson of the TLC may reinstate the full penalty or increase the penalty that the Hearing Officer had reduced.

This rule was not included in OATH's regulatory agenda for this Fiscal Year as the underlying legislation was not anticipated by OATH.

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New material is underlined.

[Deleted material is in brackets.]

**Section 1. Chapter 5 of title 48 of the Rules of the City of New York is amended by adding a new section 5-01a, to read as follows:**

**§ 5-01a Appearances**

(a) Appearances by Respondent. A Respondent's appearance at a hearing is timely if the Respondent appears and is ready to proceed no more than ninety (90) minutes after the scheduled hearing time.

(b) Appearances by Petitioner. If the Petitioner fails to appear within thirty (30) minutes of the timely appearance of the Respondent and does not make a timely request to reschedule the hearing pursuant to § 6-05 of this title, the Tribunal will dismiss the summons.

(c) If the hearing does not begin within three (3) hours of the timely appearance of both the Respondent and the Petitioner, the Tribunal will dismiss the summons without prejudice.

**§ 2. Subdivisions (a) through (e) of section 5-04 of chapter 5 of title 48 of the Rules of the City of New York are re-lettered as subdivisions (b) through (f), a new subdivision (a) is added, and subdivisions (b), (c) and (f), as re-lettered, are amended, to read as follows:**

(a) If a Hearing Officer issues a decision imposing a reduced penalty pursuant to § 5-06(c) of this chapter, the party seeking to appeal the Hearing Officer's underlying decision must file an appeal with the Tribunal within fifty (50) days of the date of the decision.

[(a) b] Pursuant to Administrative Code § 19-506.1(c), a Respondent will not be required to pay the fines, penalties, or restitution imposed in the decision in order to file [an] a timely appeal.

[(b) c] Expedited appeals. Either party may appeal a decision pursuant to section 6-19. Where the appeal involves the suspension or revocation of a TLC-issued license, the Appeals Unit will issue an expedited [appeal] decision.

[(c) d] A party responding to a request for appeal where the appeal involves the suspension or revocation of a TLC-issued license must file the response with the Tribunal within seven (7)

days after being served with the appeal. The responding party must also serve a copy of the response on the appealing party, and file proof of such service with the Tribunal.

([d] e) Requests for hearing recording. Pursuant to Administrative Code § 19-506.1(d), if a Respondent appealing a decision requests in writing a copy of the hearing recording, the recording will be produced to the Respondent within thirty (30) days after receipt of the request. If the recording cannot be produced within the thirty (30) day period, the determination being appealed will be dismissed without prejudice.

([e] f) Finality. A decision of the Appeals Unit becomes the final determination [of the Tribunal] in the case, unless either party petitions the TLC Chairperson in accordance with § 68-12(c) of Chapter 68 of Title 35 of the Rules of the City of New York (RCNY).

**§ 3. Subdivision (a) of section 5-05 of chapter 5 of Title 48 of the Rules of the City of New York is amended to read as follows:**

(a) Scope of Review of Appeals Unit Decisions. The TLC Chairperson or, if designated by the TLC Chairperson, the General Counsel for the TLC, may review any determination of the Appeals Unit that interprets any of the following:

- (1) A rule in Title 35 of the RCNY;
- (2) A provision of law in Chapter 5 of Title 19 of the Administrative Code;
- (3) A provision of law in Chapter 65 of the Charter.

**§ 4. Section 5-06 of chapter 5 of title 48 of the Rules of the City of New York is amended by adding a new subdivision (c), to read as follows:**

(c) Discretion of Hearing Officers to Reduce Penalties.

- (1) A Hearing Officer may, in the interest of justice, impose a reduced penalty for a violation, except for a violation of § 19-507 of the Administrative Code, after determining that such reduction in penalty is appropriate on the ground that one or more compelling considerations or circumstances clearly demonstrates that imposing such penalty would constitute or result in injustice. In determining whether such compelling consideration or circumstance exists, the Hearing Officer must, to the extent applicable, consider, individually and collectively, the following factors:
  - (i) The seriousness and circumstances of the violation;
  - (ii) The extent of harm caused by the violation;
  - (iii) The evidence supporting or refuting the violation charged, whether admissible or inadmissible at a hearing;
  - (iv) The history, character, and condition of the Respondent;

- (v) The effect of imposing upon the Respondent the penalty set by the TLC;
- (vi) The impact of a penalty reduction on the safety or welfare of the community;
- (vii) The impact of a penalty reduction on public confidence in the TLC, the Tribunal, and the implementation of laws by the city;
- (viii) The position of the Petitioner regarding the proposed fine reduction with reference to the specific circumstances of the Respondent and the violation charged; and
- (ix) Any other relevant fact indicating whether a decision to impose the penalty set by the TLC on the Respondent would serve a useful purpose.

- (2) Upon determining that a penalty should be reduced, the Hearing Officer will set forth in the decision the monetary penalty, if any, to be imposed on the Respondent, the amount of the reduction, and the reasons for such reduction.
- (3) Within twenty (20) business days of receipt of the Hearing Officer's decision, the TLC Chairperson or the Chairperson's designee may, upon determining that such decision is not in the interest of justice, pursuant to the factors set forth in paragraph (1) of this subdivision, re-impose the full penalty demanded by the TLC or increase the penalty imposed by the Hearing Officer.