

# Chapter 68

## PROCEDURES RELATING TO ENFORCEMENT

### Contents

§68-01	Scope of this Chapter.....	2
§68-02	Penalties .....	2
§68-03	Definitions Specific to this Chapter.....	3
§68-04	Forum.....	4
§68-05	Service of Summonses.....	4
§68-06	Contents of Summons.....	5
§68-07	Temporary Licenses Pending Appeal .....	6
§68-09	Final and Recommended Decisions.....	7
§68-10	Procedure for Finalizing Recommended Decisions .....	7
§68-11	Appeal of Chairperson’s Final Decision .....	8
§68-12	Chairperson Review.....	9
§68-13	Special Procedures – Mandatory Revocation and Discretionary Revocation (and Other Penalties).....	10
§68-14	Special Procedures – Fitness Revocation Hearings .....	11
§68-15	Special Procedures – Summary Suspension Pending Revocation.....	13
§68-16	Special Procedures – Summary Suspension Pending Compliance .....	17
§68-17	Special Procedures – Seizures.....	20
§68-18	Special Procedures – Forfeitures.....	23
§68-19	Special Procedures – Removal and Storage Fees for Seized Vehicles.....	24
§68-20	Special Procedures – Settlements and Withdrawals.....	25

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**§68-01        Scope of this Chapter**

- (a) To establish procedures for the enforcement of violations of TLC Rules and other laws enforced by the TLC, including the Administrative Code of the City of New York.
- (b) To establish:
  - 1. the requirements for imposing the immediate summary suspension of a License,
  - 2. procedures and protections for Licensees whose Licenses have been revoked,
  - 3. procedures and protections related to the seizure and forfeiture of unlicensed vehicles, and
  - 4. the requirements for the settling and withdrawal of violations.
- (c) These rules are to be read in conjunction with the rules and procedures established by the Office of Administrative Trials and Hearings, as described in Chapter 5 of Title 48 of the Rules of the City of New York.

**§68-02        Penalties**

- (a) Prescribed Penalties. Whenever a Respondent is charged with a violation of any Commission Rule or Administrative Code Section, Respondent may be subject to the civil penalties as set forth in the Commission Rules or the Administrative Code.
- (b) Discretionary Penalties. Where provided by local law, instead of any of the specific penalties in the Commission Rules, the Commission can, in its discretion, in accordance with subdivision (b) of section 68-13, revoke a License, suspend a License up to 6 months, and/or impose:
  - 1. A fine, not to exceed \$10,000 for each violation, against:
    - (A) the Owner of a Licensed Taxicab or For-Hire vehicle,
    - (B) a Base,
    - (C) a Commuter Van Service or vehicle,
    - (D) a Paratransit service or vehicle,
    - (E) a Taximeter Business,
    - (F) a Taxicab Broker, or
    - (G) a 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 the Respondent is found guilty of the violation.
1. Suspensions. Suspensions go into effect when the decision imposing the violation is issued.
  2. Fines are due not later than 30 days after the Respondent is found guilty of or pleads guilty to the violation, unless:
    - A. the Respondent files an appeal of the decision issued by the Taxi and Limousine Tribunal within the time required by Chapter 5 of Title 48 of the Rules of the City of New York, in which case the payment of the fines will be deferred until 30 days after the date of the appeal decision.
  3. 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 10 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) Appeal is the request for review of a decision of a Hearing Officer.
- (b) Appeals Unit is a unit within the Taxi and Limousine Tribunal at OATH responsible for deciding cases on Appeal, who do not hear cases in the first instance.
- (c) Default is a decision against a Respondent after a Respondent fails to appear for a hearing, enter a plea, or make a request to reschedule as required by Chapter 5 of Title 48 of the Rules of the City of New York.
- (d) Discretionary Revocation is the imposition of the penalty of revocation when a Rule does not specify that revocation *must* be imposed (for example, when "revocation" follows "or" or "and/or" in a penalty box); 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.
- (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.

- (f) Hearing Officer is a person designated by the Chief Administrative Law Judge of OATH, or his or her designee, to carry out the adjudicatory powers, duties, and responsibilities of the Taxi and Limousine Tribunal.
- (g) Mandatory Revocation is the imposition of the penalty of revocation when a Rule specifies that revocation *must* be imposed.
- (h) Notice of Seizure is a document served upon and mailed to an owner of a vehicle that has been seized and removed to a secure facility.
- (i) OATH is the New York City Office of Administrative Trials and Hearings.
- (j) OATH Administrative Law Judge is a person designated by the Chief Administrative Law Judge of OATH, or his or her designee, pursuant to the Charter of the City of New York paragraph 1049(1)(a), to carry out the adjudicatory powers, duties and responsibilities of the OATH Tribunal.
- (k) OATH Tribunal is the New York City Office of Administrative Trials and Hearings tribunal established by Charter subdivision 1048(1) and Chapter 1 of Title 48 of the Rules of the City of New York.
- (l) Recommended Decision. A Recommended Decision is a decision made by an OATH ALJ 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.
- (m) 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.
- (n) Taxi and Limousine Tribunal at OATH (or Taxi and Limousine Tribunal) is the Office of Administrative Trials and Hearings tribunal established under Chapter 5 of Title 48 of the Rules of the City of New York.

#### **§68-04 Forum**

- (a) The Commission may refer any adjudication to the OATH Tribunal instead of the Taxi and Limousine Tribunal at OATH. In this event, the OATH Tribunal's rules under Chapter 1 of Title 48 of the Rules of the City of New York will govern the case. The determination of the OATH Tribunal will be a recommendation to the Chairperson ("Recommended Decision").

#### **§68-05 Service of Summonses**

- (a) Service. A Respondent must be served with a summons 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 upon a Licensee can be accomplished through:
1. personal service; or
  2. 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 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
  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**

- (a) Required Information. A summons 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.
5. Whether the Respondent must appear in person at the hearing.
6. If the Commission seeks 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.

**§68-07 Temporary Licenses Pending Appeal**

(a) Temporary License.

1.
  - (A) If the Taxi and Limousine Tribunal's decision results in the suspension of the Respondent's License and the Respondent files a timely appeal, the Chairperson can, in his or her discretion, issue a temporary license pending the determination of the Appeals Unit.
  - (B) If the Appeals Unit's decision results in the suspension of the Respondent's License (or the continuance of the suspension) and the Chairperson notifies the Respondent of a review of the Appeals Unit decision pursuant to section 68-12, the Chairperson can, in her or her discretion, issue a temporary license pending the determination of his or her review.
2. In deciding whether or not to issue a temporary license, the Chairperson can consider:
  - (A) the Respondent's record,
  - (B) the seriousness of the charges,
  - (C) the likelihood of the success of the appeal, and

(D) the significance of the issues raised on appeal.

**§68-08 Failure to Prosecute by the Commission**

- (a) If the Commission fails to request a hearing within one year from the date of the summons, the charges will be withdrawn.
- (b) If the Chairperson fails to make a determination after receiving a Recommended Decision within 120 calendar days of the date of receipt of the Recommended Decision, the charges will be dismissed.

**§68-09 Final and Recommended Decisions**

- (a) The decision of the Hearing Officer at the Taxi and Limousine Tribunal at OATH is final 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.
- (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:
  - 1. findings and penalty determinations as to the fitness of Licensees under section 68-14 or as a result of Discretionary Revocation proceedings under section 68-13 of the TLC Rules;
  - 2. penalty determinations in padlocking or proceedings under subdivision (b) of section 19-528 of the Administrative Code; and
  - 3. findings and penalty determinations in Summary Suspension proceedings pending Revocation and in Summary Suspension proceedings pending Compliance.

**§68-10 Procedure for Finalizing Recommended Decisions**

- (a) Respondent's Opportunity to Respond.
  - 1. When a Recommended Decision is issued, the Respondent must be given an opportunity to provide a written response to the Chairperson.
  - 2. The response from the Respondent must be limited to only the record of the hearing and the determination of the OATH ALJ.
- (b) Submission to Chairperson. The Recommended Decision and record of the hearing will be submitted to the Chairperson along with any written comments submitted by the Respondent as provided in subdivision (a) of this section.
- (c) Final Decision by Chairperson.

1. The Chairperson will determine whether to accept, modify, or reject the Recommendation of the OATH ALJ and will issue a Final Decision.
2. As an alternative to 1. above, and instead of issuing a Final Decision, the Chairperson can remand the matter to the OATH ALJ for further consideration.

**§68-11 Appeal of Chairperson's Final Decision**

- (a) The only Chairperson's Final Decision that can be appealed to the Commissioners is a Final Decision that imposes Discretionary Revocation (see section 68-13).
- (b) The Chairperson's Final Decision to impose Discretionary Revocation can be appealed to the Commissioners as follows:
  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 by the Commissioners 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 OATH ALJ are supported by substantial evidence. The Commissioners cannot review findings of fact or determinations of credibility by an OATH ALJ.
  5. The Commission may 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 OATH ALJ's Recommended Decision, the Chairperson's Final Decision, the Respondent's appeal, and any responses filed by the Commission or the Respondent.
  8. The Commission must affirm, reject, modify, or remand the Chairperson's Final Decision.
    - (A) A minimum of 5 votes is required to reject, modify, or remand the Final Decision.

- (B) If there are fewer than 5 votes to reject, modify, or remand the Final Decision, the decision is affirmed.
  - (C) The Chairperson cannot vote on these appeals.
9. The Commission must communicate at a public meeting the results of the vote and the action taken.

### **§68-12 Chairperson Review**

- (a) The Chairperson, or if he or she designates, the General Counsel for the TLC, may review any determination of the Appeals Unit that interprets any of the following:
  - (1) A rule set forth in Title 35 of the Rules of the City of New York;
  - (2) A provision of law set forth in Chapter 5 of Title 19 of the Administrative Code;
  - (3) A provision of law set forth in Chapter 65 of the City Charter.
- (b) Upon review of a determination of the Appeals Unit, the Chairperson or the General Counsel may issue a decision adopting, rejecting or modifying the Appeals Unit decision. The Chairperson will be bound by the findings of fact in the record and will set forth his or her decision in a written order. The Chairperson's interpretation of the Commission's rules and the statutes it administers shall be considered agency policy and must be applied in future adjudications involving the same rules or statutes.
- (c) Process for Chairperson Review.
  - 1. Within 30 days of service by OATH of the determination of an appeal by the Appeals Unit of the Taxi and Limousine Tribunal, either party may petition the Chairperson to reject the determination by delivering a petition to the General Counsel of the TLC and mailing a copy to the adverse party.
    - A. Petitions to the Chairperson must state the errors of law that the Petitioner wishes to have reviewed, and must be accompanied by a copy of the decision of the Appeals Unit.
  - 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 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 Commission.

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 the Commission.

**§68-13 Special Procedures – Mandatory Revocation and Discretionary Revocation (and Other Penalties)**

- (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 Penalties.** If the Commission seeks Discretionary Revocation or other discretionary penalties as specified in subdivision (b) of section 68-02, 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 OATH Tribunal.
  - (3) The Commission must notify the Respondent of the proceeding by serving a written summons detailing the charged misconduct and warning the Respondent that a finding of guilt could result in License revocation.
  - (4) The Respondent must be served with charges according to the procedures in Chapter 1 of Title 48 of the Rules of the City of New York, which include the location, date, and time of any scheduled hearing.
  - (5) The hearing will be conducted by an OATH ALJ and governed by the procedures in Chapter 1 of Title 48 of the Rules of the City of New York. The affirmative defenses set forth in subdivision (b) of section 19-512.1 of the Administrative Code will be available in the hearing.
  - (6) The OATH Tribunal decision will be a Recommended Decision. The recommended penalties can include:
    - (i) License revocation,
    - (ii) License suspension for a period up to 6 months,
    - (iii) a fine not to exceed \$1,000 for each offense for which a Licensed Driver is found guilty, and

- (iv) a fine not to exceed \$10,000 for each offense for which any other Respondent is found guilty.

**§68-14 Special Procedures – Fitness Revocation Hearings**

- (a) The Chairperson will notify the Licensee to appear as a Respondent for a fitness hearing if the Chairperson believes that a Licensee is not Fit to Hold a License, for the following reasons, based upon:
  - (1) Any act that implicates the Licensee’s ability to safely interact with the public or operate a TLC licensed vehicle, including but not limited to:
    - (i) 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;
    - (ii) Any act, as prohibited by these Rules, of bribery, fraud, material misrepresentation, theft, threat against a person, harassment, abuse, or use of physical force;
    - (iii) Any act, as prohibited by these Rules, involving the possession of a Weapon in a vehicle licensed under these Rules;
    - (iv) Driver, while driving a Licensed Vehicle, was issued a summons for or charged with one or more traffic related violations or crimes in a Serious Crash, that is, a crash in which any person has suffered Critical Injury or death;
  - (2) Any felony conviction;
  - (3) Any conviction of the following criminal offenses:
    - A. Assault in the third degree, as set forth in New York State Penal Law § 120.00;
    - B. Reckless endangerment in the second degree, as set forth in New York State Penal Law § 120.20;
    - C. Criminal obstruction of breathing, as set forth in New York State Penal Law § 121.11;
    - D. Sexual misconduct, as set forth in New York State Penal Law § 130.20;
    - E. Forcible touching, as set forth in New York State Penal Law § 130.52;
    - F. Sexual abuse in the third or second degree, as set forth in New York State Penal Law § 130.55 and § 130.60, respectively;

- G. Promoting prostitution in the third, second, or first degree, as set forth in New York State Penal Law § 230.25, § 230.30, and § 230.32, respectively;
- H. Compelling prostitution, as set forth in New York State Penal Law § 230.33;
- I. Sex trafficking, as set forth in New York State Penal Law § 230.34;
- J. Public lewdness, as set forth in New York State Penal Law § 245.00;
- K. Endangering the welfare of a child, as set forth in New York State Penal Law § 260.10;
- L. Criminal possession of a weapon in the fourth degree, as set forth in New York State Penal Law § 265.01;
- M. Overdriving, torturing, and injuring animals or failing to provide proper sustenance, as set forth in New York Agriculture and Markets Law § 353;
- N. Leaving the scene of an accident, as set forth in New York Vehicle and Traffic Law § 600.2;
- O. Driving while ability impaired, as set forth in New York Vehicle and Traffic Law § 1192.1;
- P. Operation of a motor vehicle while intoxicated, as set forth in New York Vehicle and Traffic Law § 1192.2;
- Q. Operation of a motor vehicle with an illegal blood-alcohol content, as set forth in New York Vehicle and Traffic Law § 1192.3;
- R. Driving while ability impaired by drugs, as set forth in VAT § 1192.4.
- S. Driving while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs, as set forth in New York Vehicle and Traffic Law § 1192.4-a.

(4) A failed drug test as a result of illegal drug use or failure to comply with drug testing procedures.

- (b) Prior to the hearing, the Commission must notify the Respondent of the proceeding by serving a written notice specifying the reason(s) the Respondent is believed to be not Fit to Hold a License and warning the Respondent that a finding that Respondent is not Fit to Hold a License will result in License revocation.
- (c) The OATH Tribunal's decision after the hearing will be a Recommended Decision.
- (d) The Chairperson can accept, reject, or modify the Recommended Decision in a written decision that includes reasons therefor. The decision of the Chairperson will constitute the final determination of the Commission.
- (e) In determining whether the Licensee is not Fit to Hold a License, to the extent possible, the Chair shall not revoke the license solely by reason of the licensee having been

convicted of one or more criminal offenses, or by reason of a finding of lack of “good moral character,” when either such finding is based upon the fact that the individual has been convicted of one or more criminal offenses, unless:

- (1) There is a direct relationship between one or more of the criminal offenses and the duties of a Licensee licensed by the TLC; or
  - (2) The continuation of licensure would pose an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.
- (f) In determining whether the Licensee is not Fit to Hold a License, the Chair shall be governed by applicable law, and shall further consider the following factors in his or her Decision:
- (1) The specific duties and responsibilities necessarily related to licensure as a Licensee licensed by the TLC.
  - (2) The bearing, if any, the criminal offense or offenses for which the Licensee was convicted will have on his or her fitness or ability to perform one or more of the duties or responsibilities of a Licensee licensed by the TLC.
  - (3) The time that has elapsed since the occurrence of the criminal offense or offenses.
  - (4) The age of the Licensee at the time of occurrence of the criminal offense or offenses.
  - (5) The number of years during which the Licensee has held his or her License and his or her overall record as a Licensee.
  - (6) The seriousness of the offense or offenses.
  - (7) Any information produced by the Licensee, or produced on his or her behalf, in regard to his or her rehabilitation and good conduct.
  - (8) The legitimate interest of the Commission in protecting the safety and welfare of specific individuals, the general public, and property.
- (g) The License of a Licensee who is found to be not Fit to Hold a License will be revoked.

**§68-15 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. Such direct and substantial threats to public health or safety include but are not limited to:
    - (i) 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;

- (ii) Any act, as prohibited by these Rules, of bribery, fraud, material misrepresentation, theft, threat against a person, harassment, abuse, or use of physical force;
    - (iii) Any act, as prohibited by these Rules, involving the possession of a Weapon in a vehicle licensed under these Rules;
    - (iv) A positive result on a drug test or a drug test sample that cannot be tested for Drugs.
  - (2) Any Licensee whose License is summarily suspended is entitled to a Summary Suspension hearing at the OATH Tribunal as set forth below.
  - (3) The Commission will notify the Licensee either by personal service or by USPS first class mail of the Summary Suspension, within 5 days of the suspension.
- (b) Summary Suspension or Revocation Hearing. If a Revocation hearing is not scheduled to be held within 15 calendar days from the suspension:
- (1) The Respondent can request a hearing on the Summary Suspension by notifying the Commission within 10 calendar days from receiving the notice of suspension.
  - (2) Upon receipt of a request for a hearing, the Commission must request a Summary Suspension hearing to be held within 10 calendar days of the 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), unless the Chairperson determines that the hearing will impair an ongoing civil or criminal investigation.
  - (3) No Summary Suspension hearing will be required where the Revocation hearing is scheduled within 15 calendar days of the suspension.
  - (4) If a Respondent does not request a hearing on the Summary Suspension within the time specified in paragraph (1) of this subdivision, then all of the following apply:
    - (i) the Respondent is deemed to have waived the opportunity to be heard on an expedited basis.
    - (ii) The Respondent will be scheduled for a hearing on the underlying violation in accordance with the normal procedures set forth in Chapter 1 of Title 48 of the Rules of the City of New York.
    - (iii) The Summary Suspension will be continued until lifted by the OATH ALJ in the Revocation hearing.
- (c) Conduct of Summary Suspension Hearing
- (1) The Summary Suspension hearing will be conducted according to the hearing procedures established in Chapter 1 of Title 48 of the Rules of the City of New York.

- (2) Where applicable, the affirmative defenses will include those provided in subdivision (b) of section 19-512.1 of the Administrative Code.
  - (3) The decision in the Summary Suspension hearing will be a Recommended Decision that includes findings of fact, conclusions of law, and a recommendation as to continuation of the suspension.
  - (4) The decision of the Chairperson is the final determination of the Commission with respect to the Summary Suspension.
  - (5) Unless otherwise specified, if the Chairperson does not render a decision within 60 calendar days from the end of the Summary 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 criminal charges pending against a Licensee 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:
    - (i) Any charge for a crime which constitutes a felony;
    - (ii) Or any charge for the following 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.
- (2) Upon imposing Summary Suspension, the Commission must promptly notify the Respondent by serving written notice specifying the basis for the Summary Suspension, advising the Respondent of the right to a Summary Suspension hearing, and specifying the issue to be decided at the Summary Suspension hearing.
  - (3) The Commission need not commence revocation proceedings while the criminal charges are pending. However, the Respondent is entitled to request a Summary Suspension hearing.
  - (4) If the Respondent requests a Summary Suspension hearing, the Commission must schedule such hearing to be held within 10 calendar days of receipt of the Respondent's request. If the tenth day falls on a Saturday, Sunday or holiday, the hearing may be held on the next business day.
  - (5) At the Summary Suspension hearing, the Commission must prove by a preponderance of the evidence that the charges pending against the Respondent, if true, demonstrate that the continuation of the Respondent's License during the pendency of criminal charges would pose a direct and substantial threat to public health or safety.

At the hearing, both the Commission and the Respondent may present evidence relevant to the determination, including, but not limited to:

- (a) The particular facts and circumstances underlying the criminal charges, including the connection between the alleged offense and the Respondent's duties and responsibilities as a driver licensed by the Commission;
- (b) The Respondent's driving record, including any history of serious violations or license suspension under these Rules or applicable provisions of law relating to traffic or Vehicles licensed by the Commission;
- (c) The Respondent's previous criminal record, or lack thereof;
- (d) The Respondent's character and standing in the community; and
- (e) Any other evidence relevant to whether continued licensure of the Respondent during the pendency of criminal charges would pose a direct and substantial threat to public health or safety.

- (6) The Recommended Decision shall be rendered within 15 business days from the close of the record of the Summary Suspension hearing.
- (7) The Chairperson can accept, reject, or modify the Recommended Decision in a written decision that includes the reasons therefor. The Chairperson may not reject or modify the Recommended Decision without setting forth a reasonable basis for doing so.
- (8)
  - (a) Except as further specified in subparagraph (b) of this paragraph, the Chairperson must render a decision on continued suspension within twenty (20) calendar days of the date of the Recommended Decision, but only after providing the Respondent a copy of the Recommended Decision and an opportunity to respond to the Recommended Decision within ten (10) calendar days. If the Chairperson does not render a decision within the 20-day period, the suspension must be lifted until such action is taken by the Chairperson.
  - (b) Within seven (7) days of receiving a Recommended Decision recommending that the suspension be lifted, the Chairperson must: (i) accept the recommendation and lift the suspension, or (ii) provide the Respondent notice that the Recommended Decision may be rejected or modified, and the reasons therefor, and ten (10) days to respond in writing to such notice.
- (9) Notwithstanding the procedures for lifting a suspension during the pendency of criminal charges as set forth in this paragraph:
  - (a) Within one (1) business day of receipt of a certificate of disposition indicating that the charges against the Respondent have been dismissed, withdrawn, reduced to an offense not specified in paragraph (1) of this subdivision, or otherwise disposed of in a similar manner, the Commission must lift the suspension
  - (b) In all other cases, within five (5) business days of receiving from the Respondent a certificate of disposition of the criminal charges, the Commission must either lift the suspension or commence revocation proceedings.

**§68-16 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 (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 provision of the Administrative Code.

- (2) A description of the nature of the violation.
  - (3) That the Respondent's License will be suspended:
    - (i) Immediately upon service of the notice if made by personal service; or
    - (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 an expedited hearing at the OATH Tribunal by following the instructions contained in the notice and responding:
    - (i) Within 10 calendar days from receiving the notice, if notice was given by personal service; or
    - (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 subdivision (d) of this section, any Licensee whose License has been summarily suspended is entitled to an expedited hearing at the OATH Tribunal, provided the Licensee or Respondent requests an expedited hearing by notifying the Commission
    - (i) within 10 calendar days from receiving the notice referred to in subdivision (b) of this section, if notice was given by personal service, or
    - (ii) within 15 calendar days from the mailing of the notice of suspension, if the notice was mailed.
  - (2) Scheduling a Summary Suspension Hearing.
    - (i) 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).
    - (ii) The Summary Suspension hearing will be conducted according to the hearing procedures established in Chapter 1 of Title 48 of the Rules of the City of New York.
  - (3) The decision in the Summary Suspension hearing will be a Recommended Decision that includes findings of fact, conclusions of law, and a recommendation as to continuation of the suspension.

- (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 Summary Suspension hearing, the suspension must be lifted until the decision is rendered.
  - (6) Failure to Request an Expedited Hearing on the Suspension. If a Respondent does not request an expedited Hearing within the time specified in paragraph (1) of this subdivision, then all of the following apply:
    - (i) The Respondent is deemed to have waived the opportunity to be heard on an expedited basis.
    - (ii) The Respondent will be scheduled for a hearing on the underlying violation in accordance with the normal procedures set forth in Chapter 1 of Title 48 of the Rules of the City of New York.
    - (iii) The Summary Suspension will be continued until lifted by the OATH 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 Driver who fails to be timely tested for drug use, in accordance with subdivisions (c) or (d) of section 80-14 of these Rules, and whose License is then summarily suspended, is not entitled to a hearing, but can provide the Commission, within 10 calendar days of the notice described in subdivision (b), with a single submission of written documentation refuting the suspension of his or her License.
  - (2) Hearing Officer Review of Documentation. The Commission will submit the documentation submitted by a Licensee refuting the Summary Suspension to the Taxi and Limousine Tribunal at OATH which 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 Chapter 5 of Title 48 of the Rules of the City of New York.
  - (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 TLC will reinstate the License of any Licenses suspended under this section after the Licensee pays all fines assessed and complies with the underlying Commission rule or Administrative Code provision to the satisfaction of the Chairperson or his or her designee.

**§68-17 Special Procedures – Seizures**

(a) Right to Seize Vehicle.

- (1) The Commission and/or any police officer may seize any vehicle where:
  - (A) Probable cause exists to believe that the vehicle is being in violation of sections 19-506 (b), (c), or (k) of the Administrative Code, or is being operated as a Commuter Van without Authorization; and
  - (B) At the time of the stop, the Owner has at least one prior violation of sections 19-506 (b), (c), or (k) of the Administrative Code in the past 36 months (or in the case of an Owner of a Commuter Van, one prior violation for operating a Commuter Van without Authorization in the past five years), thereby making the vehicle potentially subject to forfeiture according to section 68-18 of these Rules.
- (2) The driver and all passengers in a seized Commuter Van 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) The officer or representative of the Commission seizing the vehicle will serve a summons for Unlicensed Activity and a notice of seizure of the vehicle by service upon the Owner or any person who is operating the vehicle with the permission of the Owner, express or implied, at the time of seizure. The notice of seizure will include, but not be limited to, the following information:
  - (A) Identification of the seized vehicle;
  - (B) Information concerning these regulations, including the facts TLC must prove in order to retain possession of the vehicle pending forfeiture;
  - (C) The designated secured facility to which the vehicle was or will be taken.
- (2) The summons against the Owner will set a date and time for a hearing at the Taxi and Limousine Tribunal at OATH to take place no later than 5 business days following seizure of a vehicle.
- (3) An officer or representative of the Commission will also mail the notice of seizure and a copy of the summons to the Owner of the seized vehicle, as listed in the records of the Department of Motor Vehicles (or equivalent agency) in the state in which the vehicle is registered.

- (A) The notice of seizure and copy of the summons will be mailed to the Owner of a seized Commuter Van within 1 business day.
  - (B) Any defect in delivery or mailing of the notice of seizure and copy of the summons will not affect the validity of service of a summons served upon the Owner in accordance with paragraph (1) of this subdivision.
- (4) For purposes of this section, the term Owner means:
- (A) An Owner as defined in section 128 and section 388 of the Vehicle and Traffic Law, unless the vehicle is a Commuter Van;
  - (B) If the vehicle is a Commuter Van, the term Owner when used in this section means an Owner as defined in subdivision (i) of section 19-502 of the Administrative Code.
- (c) Hearing on Unlicensed Activity.
- (1) The hearing against the Owner will be conducted at the Taxi and Limousine Tribunal at OATH according to the procedures in Chapter 5 of Title 48 of the Rules of the City of New York within five business days following a seizure. At the hearing, a determination will be made on the following:
- (A) Whether the Owner engaged in the Unlicensed Activity alleged in the summons.
  - (B) If the Owner is found to have engaged in such Unlicensed Activity, then:
    - i. Whether the Owner has two or more violations of sections 19-506 (b), (c), or (k) of the Administrative Code in the past 36 months or two or more violations for operating a Commuter Van without Authorization in the past five years; and
    - ii. Whether it is necessary that the vehicle remain impounded pending a judgment of forfeiture.
- (2) A determination in a case of Unlicensed Activity with a Commuter Van will be issued within 1 business day of the conclusion of the hearing or Default.
- (3) If a new hearing is required (e.g., because a default decision has been vacated) and TLC continues to maintain possession of Owner's vehicle, the hearing must be held no later than 14 days after the decision triggering the new hearing.

(d) Hearing Decision.

- (1) Not Guilty Finding. If the Taxi and Limousine Tribunal at OATH finds that the charge of Unlicensed Activity has not been sustained, the vehicle will be released to the Owner. The Owner will be responsible for any storage fees that accrue after one full business day following the date of the order of vehicle release.
- (2) Guilty Finding. If the Taxi and Limousine Tribunal at OATH finds that the vehicle has been engaged in Unlicensed Activity, and:
  - (A) TLC has met all the requirements of section 68-17(c)(1)(B), TLC will retain the vehicle and commence a forfeiture action according to section 68-18 of these Rules.
  - (B) TLC has not met the requirements of section 68-17(c)(1)(B)(i), TLC will release the vehicle to the Owner upon payment of applicable penalties. The Owner will be responsible for any storage fees that accrue after one full business day following the date of the order of vehicle release.
  - (C) TLC has not met the requirements of section 68-17(c)(1)(B)(ii), TLC will release the vehicle to the Owner upon payment of applicable penalties and all removal and storage fees.

(e) Appeal.

- (1) If the determination required by section 68-17(c)(1)(A) or section 68-17(c)(1)(B)(i) is reversed, the Owner will be responsible for any storage fees that accrue after one full business day following the date of the order of vehicle release.
- (2) If the determination required by section 68-17(c)(1)(B)(ii), is reversed the vehicle will be released to the Owner upon payment of applicable penalties and all removal and storage fees.

(f) Declaration of abandonment.

- (1) *Recovery Period.* If an Owner has not tried to reclaim a seized vehicle within 120 days after receiving an order of vehicle release from the Commission, or within 30 days after being served notice of final determination in the Owner's favor, whichever is sooner, the vehicle will be declared abandoned.
- (2) *Disposing of Vehicle.* An abandoned vehicle will be disposed of by the City or its agent according to section 1224 of the NYS Vehicle and Traffic Law. If an Owner seeks to reclaim the abandoned vehicle under section 1224, the Owner will be deemed to have made a written demand for the vehicle and the Commission will take whichever action is authorized by this section

- (A) In the event that a vehicle has been deemed abandoned, the Commission or its agent will:
  - (i) 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.
  - (ii) 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.
  - (iii) If the vehicle is not claimed within the allotted time, the Commission or its agent can sell the vehicle by public auction or by bid.
- (B) Disposition of the Proceeds from the Sale of the Vehicle.
  - (i) 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 1 year.
  - (ii) If these proceeds are not claimed within the 1-year period, they will be paid into the City's general fund.

**§68-18 Special Procedures – Forfeitures**

- (a) For purposes of this section, the term Owner means:
  - (1) An Owner as defined in section 128 and section 388 of the Vehicle and Traffic Law, unless the vehicle is a Commuter Van;
  - (2) If the vehicle is a Commuter Van, the term Owner when used in this section means an Owner as defined in subdivision (i) of section 19-502 of the Administrative Code.
- (b) A vehicle seized under the provision of subdivision (a) of Rule 68-17 is subject to forfeiture if either of the following are true:
  - (1) The Owner has been found to have committed two or more violations of subdivisions (b), (c) or (k) of section 19-506 of the Administrative Code within 36 months; or

- (2) The Owner has been found to have committed two or more violations of operating a Commuter Van without Authorization within 5 years.
- (c) A forfeiture action must be commenced within 45 days of a final agency determination that a seized vehicle is subject to forfeiture and in accordance with the New York Civil Practice Law and Rules, and, in the case of seized Commuter Vans, section 19-529.3 of the Administrative Code.
- (d) Rights of Secondary Owners (*Other than Commuter Vans*).
  - (1) A Secondary Owner who wishes to assert an ownership claim to the vehicle but does not participate in the forfeiture proceeding must submit a claim in writing to the Commission within 30 days after the judicial determination of forfeiture.
  - (2) If a Secondary Owner submits the claim, the Commission will schedule a hearing at the OATH Tribunal and will mail notice to the claimant at least 10 business days before the hearing.
  - (3) A Secondary Owner that establishes a right of ownership or other legal interest in the vehicle (other than an owner whose interest has been forfeited) can recover the vehicle, provided such person or entity:
    - (A) Redeems the ownership interest which was subject to forfeiture, by paying the city the value of that interest; and
    - (B) Pays the reasonable expenses for the safekeeping of the vehicle from the time of seizure and redemption.
  - (4) A Secondary Owner that establishes a right of ownership in the hearing is not entitled to recovery of the vehicle if TLC establishes that the violations upon which forfeiture is predicated were expressly or impliedly permitted by such Secondary Owner.

**§68-19 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 the fee 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.

**§68-20 Special Procedures – Settlements and Withdrawals**

- (a) Settlements. The Chairperson and a Respondent may dispose of a summons 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. If the adjudication is open or completed before the Taxi and Limousine Tribunal at OATH or the OATH Tribunal, the Chairperson will promptly notify the tribunal.
  - (4) The settlement agreement may provide for penalties to be imposed, with or without a further hearing, if the Respondent does not comply with the terms of the settlement agreement.
  - (5) Unless the settlement agreement explicitly 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.
  - (1) The Chairperson may withdraw a summons, even if it has been adjudicated, if the Chairperson determines that it was:
    - (i) Written in error,
    - (ii) Ineffectively served on the Respondent, or
    - (iii) Written in contravention of the Chairperson's enforcement policy.
  - (2) If the Chairperson withdraws a summons:
    - (i) Any fine, suspension, revocation, or Persistent Violator Points or Penalty Points imposed after the hearing will be vacated.
    - (ii) Any fines paid will be refunded.

- (iii) The Chairperson will notify the Respondent that the summons has been withdrawn.
- (iv) If a withdrawn summons is open or has been completed before the Taxi and Limousine Tribunal at OATH or the OATH Tribunal, the Chairperson shall promptly notify the tribunal.