

## Agenda: Item 6

Subpoena Authority and Hearing Rule Changes - Recommending Board  
of Supervisor Legislation [DISCUSSION and POSSIBLE ACTION]

CITY AND COUNTY OF  
SAN FRANCISCO



TAXI COMMISSION  
MAYOR GAVIN NEWSOM

COMMISSIONERS TELEPHONE (415) 554-7737  
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HEIDI MACHEN, EXECUTIVE DIRECTOR

## MEMORANDUM

**To: Honorable Commissioners**  
**From: Heidi Machen and Jordanna Thigpen**  
**Re: Subpoena Power for TXC**  
**Date: 11/7/07**

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Subpoena Power is necessary for several reasons.

- **This subpoena power existed previously when taxi permits were under the exclusive jurisdiction of the Police Commission.** The Chief of Police has subpoena power and can obtain records for any investigation conducted into permits issued by the Police Department (as taxi permits were before 1999). Although the Executive Director of the Taxi Commission was supposed to supplant the Chief of Police in Article 16, the Chief's subpoena power does not appear in Article 16, so it is easy to see how this previously existing power was apparently left out through a drafting error. Thus, this legislation is not *adding* any new power but is merely correcting a drafting error.
- **These proceedings are administrative – not criminal, thus the subpoena power would be civil, not criminal authority.** Administrative investigations and complaints are subject to a lower standard of scrutiny since a permit is a privilege and not a right. We have the *right* to be free from unreasonable search and seizure in our homes, but permit holders do not have the right to perpetuate fraud on the City and County of San Francisco without investigation. The civil subpoena power is not as broad-reaching as criminal subpoena authority because the potential penalties are not as harsh; the Commission cannot send a medallion-holder to jail as an administrative penalty or even investigate matters beyond its jurisdiction.
- **Other administrative bodies that share civil subpoena power include:** the Office of Labor Standards Enforcement, the Chief of Police (for permits including pawnbrokers, peddlers, junk and secondhand dealers, auctioneers, and “other types of businesses designated by the board of Supervisors,”) the City Attorney, the Human Rights Commission, the Retirement Board, the City Human Resources Department, the Treasurer/Tax Collector's Office, the Commission on the Status of Women, and the Office of Citizen Complaints.

- **If investigators do not have the tools to do their jobs, Taxi Commission has wasted resources and money in hiring them.**

The Commission has hired one Investigator and anticipates hiring another one by February 2008. These individuals must be able to gather documents and evidence. Even in cases where there are no waybills submitted, it is helpful to the Commission to have evidence that someone has been working another job, as additional proof to substantiate a revocation. If investigators do not have the resources to do their jobs, we have wasted resources and money, similar to allocating extra money for overtime for SFPD to go out and tow illegal limousines when DA wouldn't prosecute those cases.

- **Fraud cases are notoriously difficult to prove in any forum, from our administrative level to federal court.** We cannot submit declarations to the Commission with hearsay statements and anonymous tips – we must have actual proof, which is difficult to obtain without subpoena power. Many individuals will not submit documents or evidence without a subpoena, even if they have confirmed certain facts “off the record.”
- **Subpoena power is most needed to obtain records from outside agencies.** Civil subpoena power will add little to the authority the Commission already holds over taxi industry itself. Right now, the Commission can already request and inspect relevant records from the taxi industry – for example, leases, waybills, etc. Most companies cooperate by signing declarations as to the lack of waybills or other relevant facts. Outside agencies, however, are protected by privacy laws. For example, when a subpoena issues to a particular individual's employer, this employer will provide a confirmation of employment with starting dates and schedule, and termination if applicable, but will not provide personal information such as Social Security, DOB, etc., in order to protect the confidential private information of this particular individual.

**Here is a sample of authorizing legislation from another department – here, the Treasurer & Tax Collector's Office:**

#### **Business & Tax Code SEC. 6.4-1. RECORDS; INVESTIGATION; SUBPOENAS.**

(a) Every taxpayer shall keep and preserve such records for a period of five years as may be necessary to determine the amount of tax for which the person may be liable, including all local, State and federal tax returns of any kind. The Tax Collector shall have the right to inspect, examine, and copy such records at any time during normal business hours. Refusal to allow full inspection, examination or copying of such records shall subject the taxpayer to the penalties authorized by law, including but not limited to Section 6.17-3. Where the taxpayer does not have the necessary records to determine liability under the Business and Tax Regulations Code or fails to produce such records in a timely fashion, the Tax Collector may determine the taxpayer's liability based upon any information in the Tax Collector's possession or that may come into the Tax Collector's possession. Such determination shall be prima facie evidence of the taxpayer's liability in any subsequent administrative or judicial proceeding.

(b) The Tax Collector may order any persons, whether as taxpayers, alleged taxpayers, witnesses, or custodian or records, to produce for inspection, examination and copying at the Tax Collector's office

all books, papers and records which the Tax Collector believes may have relevance to enforcing compliance with the provisions of the Business and Tax Regulations Code. The Tax Collector may order the attendance before the Tax Collector of all persons, whether as taxpayers, alleged taxpayers, witnesses, or custodian of records, whom the Tax Collector believes may have any knowledge of such books, papers and records. The Tax Collector may issue, and serve, subpoenas to carry out these provisions. As an alternative to production at the Tax Collector's office, the Tax Collector may agree to inspect, examine and copy the requested books, papers and records at the taxpayer's place of business or some other mutually acceptable location, and may require the taxpayer to reimburse the City for the Tax Collector's ordinary and reasonable expenses incurred in the inspection, examination and copying of such books, papers and records, including food, lodging, transportation and other related items, as appropriate.



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**TAXI COMMISSION  
MAYOR GAVIN NEWSOM**

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HEIDI MACHEN, EXECUTIVE DIRECTOR

**MEMORANDUM**

**To: Honorable Commissioners**  
**From: Heidi Machen and Jordanna Thigpen**  
**Re: Various Legislation**  
**Date: October 17, 2007**

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Attached please find legislation drafted by City Attorney Tom Owen, as well as Draft Hearing Procedures also drafted by Tom Owen (updated from current procedures.)

**Legislation**

The legislation offered would amend Municipal Police Code (MPC) Sections 1077, 1090, and 1188, and add Section 1187.2 to:

1. Authorize the Executive Director to issue subpoenas under MPC § 1077
2. Provide that the summary suspension of a permit to protect the immediate public health and safety, under MPC § 1090, shall not be suspended by an appeal to the Board of Appeals
3. Add administrative penalties for violations of Article 16 of the Police Code, under Section 1187.2

The legislation also performs some housekeeping on MPC §§ 1077, 1090, and 1188 by substituting "Taxi Commission" for "Police Commission" and "Executive Director [of the Taxi Commission]" for "Chief of Police," where appropriate. This is conformance with the voter directive creating the Taxi Commission and mandating that the Taxi Commission continue to assimilate functions formerly performed by the Police Department.

**Hearing Procedures**

Currently, the Taxi Commission has two slightly differing sets of hearing procedures: one for administrative penalties under Police Code Section 1188, and another set for revocations and suspensions. The proposal would, for the sake of uniformity, conform all of the procedures to the provisions of Section 1188.

There would be two noteworthy changes to the procedures for revocations and suspensions if the case

was referred to a hearing officer: (1) the hearing officer's decision would go directly to the Commission—it would not be first submitted to the Executive Director; and (2) if the Commission agreed with the hearing officer's factual findings, it could re-determine the penalty without rehearing the entire case.

**Recommendations:**

Staff recommends the Commission forward this legislation to the Board of Supervisors for consideration.

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HEIDI MACHEN, EXECUTIVE DIRECTOR

November 13, 2007

At the meeting of the Taxicab Commission on Tuesday, October 23, 2007 the following resolutions and findings were adopted:

**RESOLUTION NO. 2007-XX**  
**URGING THE BOARD OF SUPERVISORS TO ADOPT AMENDMENTS TO MUNICIPAL**  
**POLICE CODE §§ 1077, 1090, 1188, AND ADDING 1187.2**

WHEREAS, on October 23, 2007, the Taxi Commission considered recommendations for amendments to Municipal Police Code §§ 1077, 1090, and 1188, and considered adding MPC § 1187.2; and

WHEREAS, copies of said amendments and the addition of MPC § 1187.2 are attached to this Resolution as Exhibit A; and

THEREFORE BE IT RESOLVED, that the Taxi Commission urges the Board of Supervisors to adopt said amendments and add MPC § 1187.2m, and further that the Commission asks that a copy of this Resolution with attached legislation be transmitted to the Board of Supervisors.

AYES:  
ABSENT:

NOES:  
RECUSED:

Respectfully Submitted,

Heidi Machen

FILE NO.

## LEGISLATIVE DIGEST

[Taxi Commission enforcement procedures]

**Ordinance amending the San Francisco Police Code by amending Sections 1077, 1090, 1185, and 1188, and by adding Section 1187.2, to: authorize the Executive Director to issue subpoenas, provide that the summary suspension of a permit to protect the immediate public health or safety shall not be suspended by an appeal to the Board of Appeals, and add administrative penalties for violations of Article 16 of the Police Code**

### Subpoena Power

Under current law, the Taxi Commission does not have authority to subpoena the testimony or records of persons who are not City officers or employees. Permit holders may be disciplined for failure to cooperate with a Commission investigation. (SF Police Code § 1090(a)(iv) [permit may be suspended or revoked for concealing information from the Taxi Commission]; Taxi Comm. Rules 4.A.2, 5.A.2, 6.A.4.) But actual production of testimony or records may not be compelled by court order pursuant to those provisions, which are also limited to persons holding permits from the Taxi Commission.

Under the proposed amendment to Police Code Section 1077, the Executive Director would be authorized to subpoena testimony and records from any witness who had information relevant to a Taxi Commission inquiry. Such subpoenas would be subject to general limits regarding reasonableness and relevancy. If the witness refused to honor the subpoena, the Director could apply to the Superior Court for an order finding the witness to be in contempt. The Chief of Police has similar subpoena authority with respect to businesses under the Chief's jurisdiction, such as pawnbrokers, peddlers, and junk and secondhand dealers. (SF Admin. Code § 2A.80 [¶ 3].)

### Stay of Summary Suspension Orders at the Board of Appeal

Under current law, an order of the Taxi Commission suspending or revoking a permit, including a summary suspension to preserve the public health or safety under Police Code Section 1090(c), is stayed when an appeal from the order is filed at the Board of Appeal. (SF Bus. & Tax Regs. Code § 8(h) [¶ 4].)

Under the proposed amendment to Police Code Section 1090, a summary suspension under subsection (c) of that section would not be stayed during the first 45 days following the filing of an appeal. A similar exception to the stay provisions applies to the suspension or



revocation of a permit by the Director of Public Health when the Director has determined that continued operation of the permit would constitute an extreme public health hazard.

### Administrative Penalties for Violations of Police Code Article 16

"Administrative penalties" are a type of fine imposed directly by an administrative agency. Under current law, most violations of the Police Code Article 16 [governing motor vehicles for hire] may only be enforced through criminal sanctions, charged either as infractions or misdemeanors, or by suspension or revocation of the permit if a permit-holder is the violator. (SF Police Code §§ 1090, 1185.) The Police Code authorizes the Taxi Commission to impose administrative penalties for only two violations of Article 16: violations of the full-time driving requirement and violations of the permit requirement. (SF Police Code §§ 1186 [full-time driving], 1187.1 [operating without a permit].) The Taxi Commission may also impose administrative penalties for violations of the Commission's Rules and Regulations. (SF Police Code § 1187.) The procedures for imposing administrative penalties are set forth in Police Code Section 1188.

Under the proposed new Police Code Section 1187.2, the Taxi Commission would be authorized to impose administrative penalties for any violation of Police Code Article 16, as an alternative to criminal proceedings or permit suspension or revocation. The penalty amounts would not exceed \$100 for the first violation, \$200 for a second violation of the same provision within one year, and \$500 for a third or additional violation of the same provision within one year.

FILE NO.

ORDINANCE NO.

1 [Taxi Commission enforcement procedures.]

2  
3 **Ordinance amending the San Francisco Police Code by amending Sections 1077, 1090,**  
4 **and 1188, and by adding Section 1187.2, to: authorize the Executive Director to issue**  
5 **subpoenas, provide that the summary suspension of a permit to protect the immediate**  
6 **public health or safety shall not be suspended by an appeal to the Board of Appeals,**  
7 **and add administrative penalties for violations of Article 16 of the Police Code.**

8 Note: Additions are *single-underline italics Times New Roman*;  
9 deletions are *strikethrough italics Times New Roman*.  
10 Board amendment additions are double underlined.  
Board amendment deletions are ~~strikethrough normal~~.

11 Be it ordained by the People of the City and County of San Francisco:

12  
13 Section 1. The San Francisco Police Code is hereby amended by amending  
14 Sections 1077, 1090, and 1188, to read as follows:

15 **SEC. 1077. ADMINISTRATION OF THIS ARTICLE; AUTHORITY TO ISSUE**  
16 **REGULATIONS; SUBPOENA POWER.**

17 (a) **Rules and Regulations.** The Taxi Commission from time to time shall, after a  
18 noticed public hearing, adopt such rules and regulations to effect the purposes of this Article  
19 as are not in conflict therewith.

20 (b) **Administration of Regulations.** As set forth elsewhere in this Article, the Taxi  
21 Commission shall be charged with administering and enforcing the provisions of this Article,  
22 and any rules or regulations promulgated hereunder.

23 (c) **Enforcement.** In addition to the administrative penalties set forth in Section 1090  
24 of this Article, violations of the Commission's Rules may be punished as infractions as set  
25 forth in Section 1185(d).

1           (d) Subpoena Power. The Executive Director of the Taxi Commission shall have the authority  
2 to subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take  
3 evidence and require by subpoena the production of books, papers, records or other items relevant to  
4 any inquiry, matter, proceeding, or hearing by or before the Commission. Any person refusing to obey  
5 such subpoena or to produce such books, papers, testimony, or other evidence shall be deemed in  
6 contempt and subject to proceedings and penalties as provided by general law in such instances. The  
7 Executive Director may exercise these inspection and subpoena powers prior to the filing of any  
8 administrative action or complaint.

9  
10 **SEC. 1090. REVOCATION OF PERMITS.**

11           (a) **Revocation for Cause.** Any permit issued under this Article may be suspended or  
12 revoked by the Taxi Police Commission for good cause after a noticed hearing. "Good cause"  
13 hereunder shall include, but shall not be limited to, the following:

14           (i) The permittee ceased to be a full-time driver.

15           (ii) The permittee failed to pay a permit fee after notice of nonpayment.

16           (iii) The permittee or the lessee of the permittee's permit operated without the  
17 insurance required by this Article.

18           (iv) The permittee or an agent of the permittee knowingly made false statements to or  
19 concealed information from the Taxi Commission or the Taxi Commission's Executive Director or  
20 staff Police Commission, the Chief of Police or the Police Department.

21           (v) The permittee has been convicted of any crime involving moral turpitude.

22           (vi) The permittee has failed to satisfy any judgment for damages arising from unlawful  
23 or negligent operation under any permit issued under this Article.

1 (vii) The permittee has been convicted of a misdemeanor under Section 1185 of this  
2 Article.

3 (viii) The permittee violated the Traffic Code of the City and County of San Francisco  
4 or the Vehicle Code or related laws of the State of California.

5 (ix) The permittee violated any applicable statute, ordinance, rule or regulation  
6 pertaining to the operation or licensing of the vehicles and services regulated by this Article,  
7 including any rules and regulations enacted by the Taxi Commission Chief of Police pursuant to  
8 this Article.

9 Upon a showing of good cause, the Taxi Police Commission shall have discretion to  
10 suspend or revoke a permit as set forth above, except that a suspension and/or revocation  
11 shall be mandatory in the circumstances described in Subparts (i) through (vi) above.

12 (b) **Revocation of More Than One Permit.** Where a person violating this Article  
13 holds more than one permit to operate a motor vehicle for hire in the City and County of San  
14 Francisco, the Taxi Police Commission may revoke or suspend all such permits.

15 (c) **Suspension by Executive Director Chief of Police.** The Executive Director of the Taxi  
16 Commission Chief of Police may suspend summarily any permit issued under this Article  
17 pending a disciplinary hearing before the Taxi Police Commission when in the opinion of the  
18 Executive Director said Chief of Police the public health or safety requires such summary  
19 suspension. Any affected permittee shall be given notice of such summary suspension in  
20 writing delivered to said permittee in person or by registered letter.

21 Notwithstanding Section 8 of the Business and Tax Regulations Code, the action of the  
22 Executive Director in summarily suspending a permit for a period not to exceed 45 days under this  
23 subsection (c) shall not be suspended by an appeal to the Board of Appeals.

1    **SEC. 1188. PROCEDURES FOR ADMINISTRATIVE PENALTIES.**

2           (a) **Director's Notice.** Upon a determination that a permit holder has violated the full-  
3    time driving requirement, the provisions of Police Code Article 16, or the Commission's rules and  
4    regulations, the Executive Director of the Taxi Commission (the Director) shall send a written  
5    notice, by first class mail or hand-delivery, to the permit holder, at the address listed in the  
6    Taxi Commission's records, identifying and describing the alleged violations and stating the  
7    amount of the administrative penalty to be imposed. The notice shall also inform the permit  
8    holder that he or she has the right to request a fact-finding hearing on the alleged violations  
9    and the proposed penalty by filing such a request within 15 business days of the date of the  
10   notice. The Director and the permit holder may modify the Director's proposed decision by  
11   mutual consent. If the permit holder does not request a fact-finding hearing within the 15  
12   days, the decision of the Director shall be final.

13           (b) **Scheduling of Fact-finding Hearing.** Whenever a fact-finding hearing is  
14   requested under subsection (a) above, the Director within 10 business days of receiving the  
15   request shall notify the permit holder of the date, time, and place of the hearing by first-class  
16   mail or hand delivery. Such hearing shall be held no sooner than 20 business days and no  
17   later than 40 business days after the Director receives the request for a hearing, unless the  
18   time is extended by mutual agreement of the permit holder and the Director. Notice of  
19   hearings shall be posted on the Commission's web site at least 72 hours in advance of the  
20   hearings.

21           (c) **Hearing Officers.** The Director shall appoint a hearing officer for the fact-finding  
22   hearing from a list approved by the Commission. The hearing officer shall not be an  
23   employee of the Taxi Commission or the Police Department.  
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1           (d) **Submittals for the Hearing.** At least 5 business days prior to the hearing, the  
2 parties to the hearing shall submit written information to the hearing officer including, but not  
3 limited to, the following: a statement of the issues to be determined by the hearing officer, a  
4 statement of the evidence to be offered at the hearing and the identity of any witnesses to  
5 appear at the hearing. The written information shall not exceed 10 double-spaced pages,  
6 excluding exhibits.

7           (e) **Conduct of the Hearing.** The hearing shall be open to the public and tape  
8 recorded. Any party to the hearing may, at his or her own expense, cause the hearing to be  
9 recorded by a certified court reporter. During the hearing, evidence and testimony may be  
10 presented to the hearing officer. Parties may be represented by counsel and have the right to  
11 cross-examine witnesses. All testimony shall be given under oath.

12           The hearing need not be conducted according to formal rules of procedure and  
13 evidence, but no decision shall be based solely on hearsay evidence. The hearing officer  
14 may make reasonable rulings to ensure a fair and efficient hearing.

15           (f) **Proposed Decision.** The hearing officer shall, within ten business days after the  
16 conclusion of the hearing, present a proposed decision including written findings and  
17 recommendations regarding penalties to the Commission. The hearing officer shall at that  
18 time transmit his or her decision to the permit holder by certified mail directed to the most  
19 recent address on file with the Commission for the permit holder. The Commission shall post  
20 at its office a notice that a copy of the proposed decision is available for public inspection  
21 during normal business hours.

22           (g) **Commission Action.** The Executive Director shall place the hearing officer's  
23 proposed decision on the Commission's consent calendar for the next scheduled meeting  
24 occurring not less than ten calendar days after entry of the Director's decision. The Director  
25

1 shall also submit the recording of the hearing and any written materials submitted in  
2 connection with the hearing. The proposed decision shall be a recommendation to the  
3 Commission, and the Commission may adopt, modify, or deny such recommendation, or may  
4 remand the matter to the hearing officer for further proceedings. The Commission may act on  
5 the hearing officer's proposed decision and the record presented; it may not rehear the case.  
6 The Commission shall serve its final decision upon the parties to the hearing and post the  
7 decision in the same manner as provided for herein with respect to the hearing officer's  
8 proposed decision.

9 (h) **Collection.** If the Commission finds against the permit holder and imposes  
10 administrative penalties, the Commission's decision shall state the amount of the penalties  
11 and declare that they are due and payable to the City and County of San Francisco within 30  
12 days of the date of the decision, provided that the Executive Director may agree to a  
13 reasonable payment schedule not to exceed the permit holder's income on a monthly basis. If  
14 the penalties are not paid to the Taxi Commission within 30 days of the notice, the  
15 Commission may move to suspend or revoke the permit.

16 (i) **Other Penalties.** The penalties and methods of enforcement set forth in this  
17 Section and in Sections 1186 and 1187 are in addition to those set forth in Sections 1090 and  
18 1185 of this Code and in addition to any other penalties or methods of enforcement authorized  
19 by law.  
20

21 Section 2. The San Francisco Police Code is hereby amended by adding  
22 Section 1187.2, to read as follows:

23 **SEC. 1187.2. POLICE CODE ARTICLE 16; VIOLATIONS; ADMINISTRATIVE PENALTIES.**  
24  
25

1           (a) Administrative Penalties. The Taxi Commission (the Commission) may impose  
2           administrative penalties for violations of the provisions of this Article 16 of the Police Code, in  
3           accordance with the procedures established in Section 1188.

4           (b) Amount of Penalty. Except as specifically provided otherwise in this Article, the  
5           administrative penalties assessed against the permit holder by the Commission for violation of the  
6           provisions of Article 16 of the Police Code shall not exceed \$100 for the first violation, \$200 for a  
7           second violation of the same provision within one year of the first violation, and \$500 for a third or  
8           additional violation of the same provision within one year of the first violation.

9           In determining the amount of the penalty in an individual case, the Commission shall take into  
10          account:

11          (i) Whether the permit holder has in the past violated the same or other provisions of Article  
12          16, the Taxi Commission's rules and regulations, or state law relevant to the operation of a taxicab  
13          permit;

14          (ii) Whether the permit holder concealed or attempted to conceal his or her non-compliance  
15          with the provisions of Article 16; and

16          (iii) Such additional factors as the Commission may determine are appropriate.

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18  
19  
20 APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

21  
22 By: \_\_\_\_\_  
23       THOMAS J. OWEN  
24       Deputy City Attorney



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HEIDI MACHEN, EXECUTIVE DIRECTOR

November 13, 2007

At the meeting of the Taxicab Commission on Tuesday, November 13, 2007 the following resolutions and findings were adopted:

**RESOLUTION NO. 2007-XX**  
**ADOPTING UNIFORM HEARING PROCEDURES TO CONFORM TO MUNICIPAL POLICE**  
**CODE § 1188**

WHEREAS, on October 23, 2007, the Taxi Commission considered adopting uniform hearing procedures, a copy of which is attached to this Resolution, and

THEREFORE BE IT RESOLVED, that the Taxi Commission adopts the attached hearing procedures.

**AYES:**  
**ABSENT:**

**NOES:**  
**RECUSED:**

Respectfully Submitted,

Heidi Machen

## **TAXI COMMISSION HEARING PROCEDURES**

### **I. HEARING OFFICER REFERRALS, INCLUDING ADMINISTRATIVE PENALTIES**

#### **(a) Notice of Violation; Request for Hearing**

1. Upon a determination that a permit-holder has violated a relevant provision of law or administrative regulation, the Executive Director shall send a written notice of violation, in the form of a proposed decision, to the permit-holder, by first-class mail or hand-delivery, at the address listed in the Taxi Commission's records. The notice shall identify and describe the alleged violations and the proposed or possible penalties, including the amount of any administrative penalties proposed.

The notice shall also inform the permit-holder that he or she has the right to request a fact-finding hearing on the alleged violations and penalties by filing such a request within 15 business days of the date of the notice.

The Executive Director and the permit-holder may modify the proposed decision by mutual consent. If the permit-holder does not request a fact-finding hearing within the 15 days, the proposed decision shall become final.

2. Within 10 business days of receiving a request for a fact-finding hearing under subsection (a)(1) above, the Executive Director shall notify the permit-holder of the date, time, and place of the hearing by first-class mail or hand-delivery. Such hearing shall be held no sooner than 20 business days and no later than 40 business days after the Executive Director receives the request for a hearing, unless the time is extended by mutual agreement of the permit-holder and the Executive Director. Notice of hearings shall be posted on the Commission's web site at least 72 hours in advance of the hearings.

The Executive Director shall appoint a hearing officer for the fact-finding hearing, from a list approved by the Commission. The hearing officer shall not be an employee of the Taxi Commission or the Police Department.

3. The permit-holder is entitled to a one-month continuance of the hearing as a matter of right, if a written request is submitted to the hearing officer at least two weeks prior to the hearing. Further and

additional continuances shall be granted at the discretion of the hearing officer.

**(b) Written Submittals**

At least 5 business days prior to the hearing, the parties to the hearing shall submit written information to the hearing officer including, but not limited to, the following: a statement of the issues to be determined by the hearing officer, a statement of the evidence to be offered at the hearing and the identity of any witnesses to appear at the hearing. The written information shall not exceed 10 double-spaced pages, excluding exhibits.

**(c) Conduct of the Case Before the Hearing Officer**

1. The hearing shall be open to the public and tape recorded. Any party to the hearing may, at his or her own expense, cause the hearing to be recorded by a certified court reporter. During the hearing, evidence and testimony may be presented to the hearing officer. Parties may be represented by counsel and have the right to cross-examine witnesses. All testimony shall be given under oath.
2. The hearing need not be conducted according to formal rules of procedure and evidence, but no decision shall be based solely on hearsay evidence. The hearing officer may make reasonable rulings to ensure a fair and efficient hearing.

**(d) Decision**

1. The hearing officer shall, within ten business days after the conclusion of the hearing, present a proposed decision including written findings and recommendations regarding penalties to the Executive Director. The hearing officer shall at that time transmit his or her decision to the permit-holder by certified mail directed to the most recent address on file with the Commission for the permit-holder. The Executive Director shall post at the Commission's office a notice that a copy of the proposed decision is available for public inspection during normal business hours.
2. The Executive Director shall place the hearing officer's proposed decision on the Commission's consent calendar for the next scheduled meeting occurring not less than ten calendar days after entry of the decision. The Executive Director shall also submit the recording of the hearing and any written materials submitted in connection with the hearing.

The proposed decision shall be a recommendation to the Commission, and the Commission may adopt, modify, or deny such recommendation by following the procedures in subsections (e) and (f) below, or may remand the matter to the hearing officer for further proceedings. The Commission shall act on the hearing officer's proposed decision and the record presented; it may not rehear the case.

The Commission shall serve its final decision upon the parties to the hearing and post the decision in the same manner as provided for herein with respect to the hearing officer's proposed decision.

**(e) Commission Decision to Review**

1. Review of the hearing officer's decision before the Commission is discretionary; the Commission decides which cases it will review. There is no right to review by the Commission.
2. Any Commissioner may ask that the hearing officer's decision be severed from the consent calendar. If the hearing officer's decision is not severed, then the decision is adopted by a majority vote of the Commission on the consent calendar. The permit holder may speak at public comment for the consent calendar, but otherwise has no independent right to argue his or her case before the Commission.
3. If the hearing officer's decision is severed, then the Commission may, by a majority vote, decide whether to review the decision. If the Commission does not by a majority vote decide to review the hearing officer's decision, the decision is adopted. The permit holder may speak at public comment for the severed item, but otherwise has no independent right to argue his or her case before the Commission.
4. If the Commission decides by majority vote to review the hearing officer's decision, the decision shall be continued and heard as a noticed item at a subsequent meeting after the Commission members have had the opportunity to review the record and the tapes of the proceeding before the hearing officer. The Commission will act on the hearing officer's decision and the record presented and will not re-open the evidentiary portion of the case unless the President of the Commission allows the introduction of new evidence pursuant to subsection (f)(3) below.

5. If the Commission accepts the hearing officer's factual findings but wishes to reconsider only the penalty imposed, it is not required to continue the matter or hear it as a separate noticed item at a future meeting, although it may in its discretion do so. If the Commission accepts the hearing officer's factual findings, it may sever the item from the consent calendar and vote to impose a new penalty at the same meeting, so long as that penalty is within the range of penalties identified in the notice of violation.

**(f) Conduct of Commission Hearing**

1. No later than two weeks prior to the Commission's hearing, the permit-holder and the Department may file written arguments regarding the case. The arguments shall not exceed ten double-spaced pages. The Department shall also submit a set of proposed findings to the Commission prior to the hearing on the complaint.
2. When the case appears on the Commission's agenda, the Executive Director shall call the item and read a brief summary of the case, based on the allegations contained in the complaint. The Executive Director shall then call for public comment on the item. Unless the President of the Commission rules otherwise, members of the public shall have up to three minutes each to address the Commission.

Before public comment is taken, the Executive Director shall read the following admonition:

"Disciplinary hearings regarding possible permit suspensions or revocations are quasi-judicial proceedings. The decisions of the Commission must be based exclusively on properly-admitted evidence. The Commission may not base any factual determinations necessary for its decisions on anything other than such evidence. Information presented through public comment is not evidence and will not be considered by the Commission for those purposes."

3. The Department's representative has the burden of proof and shall speak first. The Department's representative and the permit-holder shall each have seven (7) minutes to argue their case. The parties may request, and the President of the Commission in his or her discretion may grant, additional time to the parties if the matter is complex or public comment has been extensive and the party wishes to respond.

*Draft (8/8/2007)*

4. There is no testimony presented at the hearing before the Commission without the permission of the President of the Commission. If a party claims to have new evidence that reasonably could not have been presented at the original hearing, the President of the Commission may allow the evidence subject to reasonable conditions, remand the case to the hearing officer for consideration of the new evidence, or disallow the new evidence as untimely.
5. After each side has presented its case in chief, the President of the Commission may entertain questions for the parties from the Commission members.
6. After the Commission members have concluded their questions, the Department's representative and the permit holder shall each have three (3) minutes to present their rebuttal, if any. The Department's representative shall speak first.
7. After each side has presented its rebuttal, if any, the President of the Commission may entertain final questions for the parties from the Commission members.
8. The Commission members shall then conduct their deliberations and, in their discretion, introduce and adopt any motions to dispose of the case.
9. The Commission may modify or overturn the proposed decision by a simple majority of the Commission. If the Commission fails to modify or overturn the hearing officer's decision, the decision is deemed adopted as submitted.
10. If the Commission votes to impose penalties, the Executive Director, with the assistance of the City Attorney, shall prepare findings. The findings may be considered and adopted by the Commission at the same meeting or at a subsequent meeting. The Commission's decision shall take effect fifteen (15) days after the adoption of findings.

## **II. ORIGINAL PROCEEDINGS BEFORE THE COMMISSION.**

### **(a) Notice of Violation; Request for Hearing**

1. As an alternative to referring a case to a hearing officer as provided in Section I, above, the Executive Director may present the case directly to the full Commission for hearing in the first instance,

provided that all cases seeking administrative penalties must be referred to a hearing officer pursuant to Police Code Section 1188. The provisions of Section I, subd. (a), shall apply, except that the President of the Commission, rather than the hearing officer, shall decide whether to issue continuances beyond one month.

**(b) Written Submittals**

At least two weeks prior to the hearing, the parties to the hearing shall submit written information to the Commission including, but not limited to, the following: a statement of the issues to be determined by the Commission, a statement of the evidence to be offered at the hearing and the identity of any witnesses to appear at the hearing. The written information shall not exceed 10 double-spaced pages, excluding exhibits. The Department shall also submit a set of proposed findings to the Commission prior to the hearing on the complaint.

**(c) Conduct of the Commission Hearing**

1. When the case appears on the Commission's agenda, the Executive Director shall call the item and read a brief summary of the case, based on the allegations contained in the complaint. The Executive Director shall then call for public comment on the item. Unless the President of the Commission rules otherwise, members of the public shall have up to three minutes each to address the Commission.

Before public comment is taken, the Executive Director shall read the following admonition:

"Disciplinary hearings regarding possible permit suspensions or revocations are quasi-judicial proceedings. The decisions of the Commission must be based exclusively on properly-admitted evidence. The Commission may not base any factual determinations necessary for its decisions on anything other than such evidence. Information presented through public comment is not evidence and will not be considered by the Commission for those purposes."

2. The Department's representative has the burden of proof and shall speak first. The Department's representative and the permit-holder shall each have seven (7) minutes to argue their case, including the presentation of witnesses. The parties may request, and the President of the Commission in his or her discretion may grant,

additional time to the parties if the matter is complex or public comment has been extensive and the party wishes to respond.

3. The hearing need not be conducted according to formal rules of procedure and evidence, but no decision shall be based solely on hearsay evidence. The President of the Commission may make reasonable rulings to ensure a fair and efficient hearing. There shall be no cross-examination of witnesses as a matter of right, but the opposing party may propose questions for adverse witnesses through the President of the Commission.
4. After each side has presented its case in chief, the President of the Commission may entertain questions for the parties from the Commission members.
5. After the Commission members have concluded their questions, the Department's representative and the permit holder shall each have three (3) minutes to present their rebuttal, if any. The Department's representative shall speak first.
6. After each side has presented its rebuttal, if any, the President of the Commission may entertain final questions for the parties from the Commission members.
7. The Commission members shall then conduct their deliberations and, in their discretion, introduce and adopt any motions to dispose of the case.

**(d) Decision**

1. The Commission may decide the case and impose penalties by a majority vote.
2. If the Commission votes to impose penalties, the Executive Director, with the assistance of the City Attorney, shall prepare findings. The findings may be considered and adopted by the Commission at the same meeting or at a subsequent meeting. The Commission's decision shall take effect fifteen (15) days after the adoption of findings.



**III. REVIEW OF SUMMARY SUSPENSION.**

**(a) Notice of Suspension; Scheduling of Hearing.**

1. When the Executive Director has summarily suspended a permit under Police Code Section 1090(c), the Executive Director shall give notice of the suspension in writing delivered to the permit-holder in person or by registered letter.
2. The Executive Director shall also schedule a prompt hearing before the Taxi Commission on the allegations underlying the summary suspension.

**(b) Conduct of the Proceedings**

Once the hearing has been scheduled, the proceedings shall be conducted in accordance with the general provisions of Section II, subs. (b) through (d). The President of the Commission shall set a reasonable deadline for the submission of written materials for the hearing.