

ORDINANCE NO. 93-059

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF NOV 2 1993

AN ORDINANCE AMENDING TITLE 25 OF THE SACRAMENTO CITY CODE RELATING TO ESTABLISHING AN ADMINISTRATIVE ADJUDICATION PROCEDURE FOR PARKING AND STANDING VIOLATION CITATIONS, TO BECOME EFFECTIVE ON THE DATE THE CITY ASSUMES CITATION PROCESSING FROM THE SACRAMENTO MUNICIPAL COURT, OR NO LATER THAN JANUARY 1, 1994

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Chapter 25.17 is added to Title 25 of the Sacramento City Code, to read as follows:

Chapter 25.17 Administrative Adjudication Procedure for Parking and Standing Violation Citations

25.17.601 Administrative Adjudication Procedure

(a) Purpose

The procedures embodied in this Administrative Adjudication Procedure have been duly adopted by the Sacramento City Council, under the authority of, and for the purpose of implementing the requirements of Chapter 1244, Statutes of 1992 ("AB 408"). The purpose of the procedures specified herein are to provide a fair and thorough process for review, both at the administrative level, and in the form of a hearing when requested, of citations issued for parking or standing violations, within the City of Sacramento.

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(b) Application of time limitations

Within this Procedure there are various time limitations established for presentation of certain requests, including but not limited to requests for administrative review, requests for administrative hearing, and requests for copies of documents. For purposes of this Procedure, the specified time limitations are jurisdictional. Untimely requests will be rejected. Waivers will not be issued. No person has authority to waive, or otherwise grant exception to a specified time limitation.

(c) Summary of procedures

This procedure encompasses two sequential stages of review available to persons or entities wishing to contest citations for parking or standing violations: (i) administrative review; and (ii) administrative hearing.

The first stage, administrative review, is initiated by a contestant's timely written or telephonic or in-person request for review of the circumstances surrounding issuance of the citation. The contestant will be required to complete a review request form, within which the reasons for the contest must be specified, in order to focus the investigation. The review process consists of an investigation by City Parking Division staff, who will review the citation and the circumstances surrounding its issuance. The results of this process will be mailed to the contestant.

The second stage, administrative hearing, is initiated by a contestant who is not satisfied with the results of the administrative review. To initiate this process, the contestant must, on the written request form provided by the city, indicate whether he/she prefers a hearing by personal conference. The reasons for the contest must also be articulated on the form. In order to perfect the appeal, the contestant must also deposit the amount of the parking penalty, and pay the specified appeal fee, all at the time that the administrative hearing is requested. If any of these requirements are not met within the prescribed time limits, the appeal will be untimely and will be rejected. The hearing will be conducted by an independent hearing examiner appointed by the city for that purpose. The hearing will be conducted in accordance with the provisions of this Procedure. A written determination of the contest will be provided to the contestant personally, or by mail.

Finally, provisions are specified for appeal of the city's final decision on the citation, to the municipal court. Other miscellaneous matters are also specified.

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(d) Definitions

The following definitions pertain to terms utilized in this Procedure, in order to provide clarity and consistency.

- (1) **"Parking penalty"**: includes, but is not limited to the applicable civil penalty for the violation specified in the citation, together with any late payment penalty, administrative fee, assessment, process service fees, or other costs of collection related to civil debt collection.
- (2) **"Citation"**: includes, but is not limited to notices of parking or standing violation, and notices of delinquent violation.
- (3) **"Administrative review"**: the initial citation review process, initiated by a contestant's timely request, and conducted by the City Parking Division staff.
- (4) **"Administrative hearing"**: a hearing process with respect to a citation, conducted in accordance with the procedures specified herein, initiated by a timely written request of a contestant dissatisfied with the results of the administrative review.
- (5) **"Appeal"**: the action taken by a contestant to request an administrative hearing.
- (6) **"Parking violation"**: any violation of any regulation governing the standing or parking of a vehicle under the California Vehicle Code, under any federal or state statute or regulation, or under any City of Sacramento ordinance.
- (7) **"Contestant"**: any person or entity who is the registered owner, driver, rentee or lessee who is liable for parking penalties in accordance with the provisions of California Vehicle Code Sections 42000, et. seq., and who contests or disputes liability for the parking penalties.
- (8) **"Parking Division"**: the City of Sacramento Parking Division.
- (9) **"Revenue Division"**: the City of Sacramento Revenue Division.

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25.17.602 Administrative Review

(a) Initiating administrative review

- (1) Timeliness.** A request for administrative review must be made within 21 days from the issuance of the notice of parking violation, or within 10 days from the mailing of the notice of delinquent parking violation.
- (2) Manner of making request.** The request for administrative review may be made by written request, telephone, or in person.

(b) Written statement of reasons

A contestant shall provide to the Revenue Division a written statement of the reasons for contesting the parking violation, within 10 days of a timely request for administrative review. The statement of reasons shall be made on a form provided by the Revenue Division. Parking Division staff will not commence the investigation until the statement of reasons is provided. If the statement of reasons is not timely provided by the contestant, the request for administrative review will be rejected, and the contestant shall have no further rights to administrative review, or to an administrative hearing.

(c) Investigation

Upon receipt of a timely request for administrative review and the required statement of reasons, Parking Division staff will commence an investigation of the citation and the circumstances surrounding its issuance. The review shall consist of a determination of whether the citation contains all of the items required by California Vehicle Code Section 40202, and shall focus on the reasons for the request as specified by the contestant.

- (1) Cancellation of citation.** If, based on the results of the investigation, the Parking Division is satisfied that the citation was not in accordance with California Vehicle Code Section 40202, or based on the contestant's statement of reasons, that the violation did not occur or the registered owner was not responsible for the violation, the Parking Division shall cancel the citation and shall specify in writing the reasons for cancelling the citation.

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- (2) **Determination of validity.** If, based on the results of the investigation, the Parking Division is satisfied that the citation was in accordance with California Vehicle Section 40202, and that the reasons specified by the contestant do not exist, or do not affect the validity of the citation, the Parking Division shall specify those findings in writing together with the supporting reasons for making the findings.
- (d) **Notification to contestant.** The Revenue Division shall mail the results of the investigation to the contestant, by first class mail. Services of the results shall be complete upon placement of the results in the United States mail, postage paid.

25.17.603 Administrative Hearing

- (a) **Initiating appeal.**
- (1) **Timeliness.** A contestant dissatisfied with the results of the administrative review may appeal. Any such appeal must be made within 15 days of mailing by the Revenue Division of the results of the investigation.
- (2) **Requirements for perfecting appeals.** The contestant's appeal shall be initiated by means of a written form provided by the Revenue Division, completed by the contestant, and filed by the contestant with the Revenue Division within the time specified in subsection III.A.1. above. In addition, the following requirements must be satisfied within the said time period:
- (a) The contestant shall pay the appeal fee specified on the appeal form provided by the Revenue Division.
- (b) The contestant shall deposit with the Revenue Division the full amount of the parking penalty.
- (c) The contestant shall complete the portion of the form specifying the contestant's preference for a hearing by personal conference, or by mail.
- (d) The contestant shall complete the portion of the form specifying the reasons for contesting the citation.

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- (e) If different than the record address contained in the Parking or Revenue Division's records, the contestant shall complete the portion of the form specifying the address of the contestant for purposes of mailing notices of hearing and other documents in connection with the appeal.

In the event that the contestant fails to satisfy any one or more of the above requirements within the time specified in subsection III.A.1. above, the appeal shall be rejected as untimely.

(3) Exceptions to parking penalty deposit requirement.

- (a) **Indigency.** Pursuant to California Vehicle Code Section 40200.70, the Division is required to establish a procedure for contestants desiring to appeal, to enable them to establish their inability to deposit the full amount of the parking penalties. Such persons are required to establish their inability to pay the full amount of the parking penalties by verifiable and substantial proof thereof. The Revenue Division procedure will follow the City indigent collection procedure in effect at the time of request.
- (b) **Immobilized or impounded vehicles.** Pursuant to California Vehicle Code Section 40200.7, if a vehicle has been immobilized or impounded for unpaid citations pursuant to California Vehicle Code Section 22651 et seq., or any other provision of law allowing such action, and if the vehicle remains under the control of the Divisions, the Divisions shall permit a contestant to appeal the citations related to the seizure of that vehicle without requiring the deposit of the parking penalties on those specific citations. Nothing in this subsection affects the jurisdictional requirement for timely filing the appeal as to any of such specific citations.

(b) Notice of hearing.

Within 21 days from the filing with the Revenue Division of a contestant's timely appeal, the Revenue Division shall by first class mail send to the contestant a notice of hearing. The notice shall specify the date and time of hearing, and the place where the hearing will take place.

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(c) **Continuances.**

(1) **Requests made prior to date of hearing.**

A contestant may, in writing or otherwise, request that the Revenue Division continue the hearing. The Revenue Division shall grant the first such request made by a contestant. In the event that a contestant subsequently requests one or more further continuances, such requests may, in the discretion of the Revenue Division, be granted if made upon grounds which relate to the contestant's ability to present evidence in support of the reasons specified by the contestant in the appeal request form. The Revenue Division shall note each hearing continuance on the record pertaining to the citation, together with the disposition of the request.

(2) **Requests made at the time of hearing.**

The hearing officer may grant a request for continuance made by a contestant at the designated time and place of the hearing, upon presentation by the contestant of facts which would support a conclusion that unless the continuance is granted, the contestant will be unable to present the testimony or the documentation or other materials required to prove the contestant's case. The contestant must demonstrate to the hearing officer's satisfaction that such testimony, documentation or other materials are relevant to the reasons specified by the contestant in the appeal request form, for contesting the citation. The granting or denying of continuances is a matter committed to the sound discretion of the hearing officer, taking into account all of the circumstances, including the need to efficiently dispose of contests.

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(d) **Hearing procedures.**

(1) **Procedural matters.**

- (a) **Appearances.** The officer issuing the citation shall not be required to appear at the hearing. The contestant shall appear at the hearing, unless a hearing by mail has been designated by the contestant in the appeal request form. If the contestant does not appear at the hearing, the contest shall be decided by the hearing officer based on the citation, the record of the administrative review, and any other relevant material in the record, taking into account the reasons specified by the contestant in the appeal request form. Appearances by minors shall be governed by the provisions of California Vehicle Code Section 40215(b)(2).
- (b) **Hearing officers.** The hearing shall be conducted by an independent and impartial hearing officer meeting the qualifications specified in California Vehicle Code Section 40215(b)(3), who shall have been appointed by the City of Sacramento to act in that capacity.
- (c) **Hearing record.** The hearing will be tape recorded by the hearing officer, who shall prior to the commencement of the hearing so inform the contestant and all prospective witnesses. The hearing record will be retained for two years.
- (d) **Representation.** The contestant may, in his or her discretion, be represented by an attorney in the appeal process, including but not limited to the contest hearing. Any such representation shall be at the sole and exclusive cost of the contestant. No contestant shall be entitled to representation at the expense of the City of Sacramento, or any other public agency, irrespective of indigency status.

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(2) **Conduct of the hearing.**

- (a) **Initial procedures--hearing officer duties.** At the commencement of the hearing, the hearing officer shall: (i) make a pre-hearing statement, briefly explaining the nature of the civil proceedings, the manner of conducting the hearing and the limits on the introduction of evidence, the process of rendering a decision, the effects of the decision in terms of collection remedies available to the Revenue Division, the right of the contestant to appeal to the Municipal Court for a de novo hearing, and any other matters in the hearing officer's discretion; (ii) read the citation into the record; (iii) administer an oath to the contestant and any prospective witnesses; (iv) record the name and address of the contestant; and (v) record the registered owner's name and address, and the contestant's relationship to the registered owner, if applicable.
- (b) **Proof requirements--validity of citation.**
- (i) **Burden of proof--validity.** The Parking Division bears the burden of proof, by a preponderance of the evidence, that the citation meets statutory requirements for validity.
- (ii) **Prima facie case.** If the citation, or a copy thereof, contains all of the items specified in California Vehicle Code Section 40202, and if the Parking or Revenue Division has included in the record the information received from the Department of Motor Vehicles identifying the registered owner of the vehicle, the citation and such information shall be prima facie evidence of the facts contained therein, and of the parking violation. The Divisions shall not be required to produce any other information in order to establish the parking violation.
- (iii) **Rebuttal.** The contestant may introduce credible relevant rebuttal evidence relating to the validity of the citation.

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(c) **Proof requirements--contestant's defenses.**

- (i) **Burden of proof--defenses.** The contestant bears the burden of proof, by a preponderance of the evidence, that although the citation is facially valid, a viable defense exists which would preclude the contestant's liability for the parking penalty, or that a viable defense exists which would limit the contestant's liability for late payment penalties.
- (ii) **Defenses--late payment penalties.** Non-receipt of the notice of violation itself, if based on sufficient credible evidence, may constitute a defense to late payment penalties based on non-payment of the notice of violation. Non-receipt of the notice of violation, however, is not a defense to late response to the notice of delinquent parking violation. The defense of non-receipt of the notice of violation is not available to the registered owner, where the person operating the vehicle at the time of the citation was not the registered owner. Clear proof of timely payment of the citation is a defense to late payment penalties.

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(iii) **Defenses--merits of citation.** Defenses relating to the merits of the citation must be established by the contestant by credible evidence. Such defenses may include, but are not limited to signage matters (missing, obscured or defaced signs), where the contestant demonstrates that it was impossible for him or her to become aware of the applicable parking restriction; malfunctioning parking meters; recent loss of parking permit or placard, accompanied by clear proof of the exercise of due diligence in efforts to replace the permit or placard; mechanical breakdown of the vehicle, where the vehicle was not illegally parked prior to the breakdown, where the violation in fact results from the breakdown and reasonable steps were taken to remove the vehicle prior to the occurrence of the violation. Personal reasons, inconvenience, lack of funds, forgetfulness, failure to observe signs, lack of available parking elsewhere, lack of knowledge of the applicable restrictions, and similar or related matters are not under any circumstances a defense to liability for the parking penalties. No defense which was not included in the statement of reasons contained in the contestant's appeal hearing request will be considered.

(d) **Evidence.**

(i) **Rules of evidence.** The rules of evidence for civil court proceedings shall not apply in hearings conducted pursuant to this Procedure. Evidence relevant to the issues raised by the contestant's statement of reasons, and to the validity of the citation itself under California Vehicle Code Section 40202, will be received. Determinations of credibility of evidence are committed to the sound discretion of the hearing officer.

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- (ii) **Form of evidence.** Other than the citation and the Department of Motor Vehicles information, the hearing officer shall receive into the record the Parking and Revenue Division's record from the administrative review, together with relevant testimony, documentation and other material which is submitted by a party. Credibility determinations, together with determinations as to the weight to be assigned to evidence, are committed to the sound discretion of the hearing officer. The hearing officer may, but is not required to, admit evidence in the form of declarations of witnesses, submitted by the contestant. Such declarations shall not be admitted unless presented in the form required for declarations under California Code of Civil Procedure Section 2015.5, and shall contain the statements required by California Code of Civil Procedure 437c(d).
- (e) **Witnesses.** The contestant may present witnesses in support of the contestant's contentions. The hearing officer, after conducting the initial procedures of the hearing, exclude witnesses until their turn to testify occurs. The hearing officer may limit the number of witnesses in the interest of preventing cumulative or repetitive testimony.
- (f) **Cross-examination by hearing officer.** The hearing officer may conduct such cross-examination of the contestant or any witness, as in the hearing officer's sole and exclusive discretion is warranted under all of the circumstances.

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(g) **Special needs.** In the event that an interpreter is needed in the judgment of the hearing officer, the hearing officer may continue the hearing and make arrangements for a qualified interpreter. Any cost associated with providing the interpreter may, in the discretion of the Revenue Division, be added to the parking penalties as a cost of collection, but only in the event that the citation is determined to be valid by the hearing officer. In the event that the contestant is a disabled person, and accommodations are required in order to provide a fair and impartial hearing for the contestant, or to provide the contestant access to the facilities in which the hearing will be conducted, the hearing officer shall, with the assistance of the Revenue Division, provide such reasonable accommodations as are required under the circumstances.

(3) **Decisions.**

- (a) **Basis for decision.** The hearing officer shall make a decision on liability for the parking penalties based on the testimony and other evidence in the record.
- (b) **Disposition.** The hearing officer shall enter the disposition on the hearing record, and enter the total amount of the parking penalties. The hearing officer, in his or her discretion, may provide an oral explanation of the rationale for the decision. The decision, including the rationale therefor, shall be placed in written form.
- (c) **Delivery of decision to contestant.** The written decision shall be delivered to the contestant either in person at the hearing, or by placement in the United States first class mail.
- (d) **Finality.** The decision shall be the final decision of the Revenue Division when delivered pursuant to subparagraph III.D.3.c. The decision shall set forth the time limits for the contestant to file for judicial review in the Sacramento Municipal Court, and a notice that if no such review is sought within the applicable time limitation, the decision shall be final for all purposes.

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25.17.604 Judicial Review.

Within 20 days after the mailing of the final decision described in subsection III.D.3, the contestant may seek review by filing an appeal to Sacramento County Municipal Court. Such review will be conducted in accordance with the provisions of California Vehicle Code Section 40230.

25.17.605 Copies of Citations.

Upon request, the Revenue Division will provide a copy of a citation to any person who has received a notice of delinquent parking violation, or to his or her agent, upon request made by mail or in person. The copy will be provided within 15 days of the request, upon payment of the fee established by the Revenue Division. The copy can be one produced by any reasonable means available to the Revenue Division.

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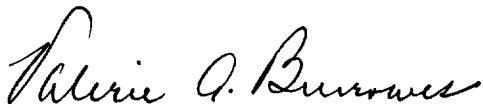
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DATE EFFECTIVE: DECEMBER 2, 1993

MAYOR



ATTEST:



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