

## New York City Department of Finance

### **Notice of Public Hearing and Opportunity to Comment on Proposed Rule**

**What are we proposing?** The New York City Department of Finance (“the Department”) is proposing an amendment to the Department’s rules concerning representatives at Parking Violations Bureau hearings. This amendment sets forth detailed rules concerning the conduct of such representatives when appearing before the Department in any capacity.

**When and where is the hearing?** The Department will hold a public hearing on the proposed rule. The public hearing will take place at 11:00am on July 21, 2015. The hearing will be in the Department hearing room at 345 Adams Street, 3<sup>rd</sup> Floor, Brooklyn, N.Y. 11201.

**How do I comment on the proposed rule?** Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to the Department through the NYC rules website: <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to [laroset@finance.nyc.gov](mailto:laroset@finance.nyc.gov).
- **Mail.** You can mail written comments to NYC Department of Finance, Legal Affairs Division, 345 Adams Street, 3<sup>rd</sup> Floor, Brooklyn, N.Y. 11201, Attn: Timothy LaRose.
- **Fax.** You can fax written comments to NYC Department of Finance, Attn: Timothy LaRose, at (718) 403-3650.
- **Hearing.** You can speak at the public hearing. Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Joan Best at (718) 488-2007, or you can sign up in the hearing room before the hearing begins on July 21, 2015. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** The deadline to submit written comments is July 21, 2015.

**What if I need assistance to participate in the hearing?** You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may tell us by mail at the address given above, sent to the attention of Joan Best; by telephone, by calling Joan Best at (718) 488-2007; or by e-mail at [bestj@finance.nyc.gov](mailto:bestj@finance.nyc.gov). You must tell us by July 7, 2015.

**Can I review the comments made on the proposed rule?** You can review the comments that have been submitted online by visiting the NYC rules website: <http://rules.cityofnewyork.us/>. In addition, copies of all submitted comments concerning

the proposed rule and a summary of oral comments from the hearing will be available to the public a few days after the hearing at NYC Department of Finance, Legal Affairs Division, 345 Adams Street, 3<sup>rd</sup> Floor, Brooklyn, N.Y. 11201.

**What authorizes Department of Finance to adopt this rule?** New York State Vehicle and Traffic Law sections 237 and 239, section 19-203 of the Administrative Code of the City of New York, and New York City Charter (“Charter”) sections 1043 and 1504 authorize the Department to adopt this proposed rule.

**Where can I find the Department of Finance’s rules?** The Department’s rules can be found in Title 19 of the Rules of the City of New York.

**What laws govern the rulemaking process?** The Department must meet the requirements of section 1043 of the Charter when creating or amending rules. This notice is made according to the requirements of section 1043 of the Charter.

### **STATEMENT OF BASIS AND PURPOSE**

The Department of Finance’s Fleet Program is a voluntary program that assists companies with one or more commercial vehicles obtain hearings for outstanding parking violations summonses. Similarly, the Department’s Car Rental Program is a voluntary program that assists vehicle rental companies in managing parking summonses. Under these programs, when companies receive summonses for their vehicles, they may be represented at hearings in the Department’s Commercial Adjudications Unit (CAU) by their employees or by brokers. This proposed rule revises the Department’s rules concerning the conduct of such brokers and employees while appearing before the Department in any capacity, to ensure proper behavior when responding to summonses.

Matter underlined is new. Matter in brackets [] is to be deleted.

“Will” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department unless otherwise specified or unless the context clearly indicates otherwise.

### **Amendments to Rules Relating to Parking Violations**

§1. Paragraph (2) of subdivision (a) of section 39-09 of Title 19 of the Rules of the City of New York is amended to read as follows:

- (2) Rules and Authorization. [Prior to any hearing, the person or company represented by a broker must file with PVB a Broker Authorization Form.] The rules set forth in paragraph (8) of subdivision (a) of this section apply to brokers appearing before the Department in any capacity, which include but are not limited to: the fleet program, stipulated fine program, commercial abatement program, car rental program, hearings by mail, CAU hearings, and scheduling and billing.  
A broker must register with the Department before representing a respondent before the Department in any capacity. Such registration must be on a Broker Authorization Form prescribed by the Department. The Broker Authorization Form must be:

§2. Paragraph (8) of subdivision (a) of section 39-09 of Title 19 of the Rules of the City of New York is amended to read as follows:

[(i) PVB equipment. Brokers shall not operate any PVB terminal/equipment at any time.

(ii) Trespassing. Brokers shall not go into any non-public service area unless accompanied or authorized by a manager or supervisor.

(iii) Non-routine tasks. Broker shall not request any PVB clerical staff to perform non-routine tasks. All such requests must be addressed directly to and approved by the CAU Manager. "Non-routine" means anything out of the ordinary/regular processing stream.]

(i) Brokers shall observe in good faith the laws and regulations governing the adjudication of parking violation summonses and any forms and instructions provided to the broker by the Department.

(ii) Brokers must exercise due diligence in:

(1) Learning and obeying applicable statutes, rules, and instructions governing the disposition of, or agreements concerning payment of, parking violation summonses before the CAU;

(2) Complying with schedules for appearances; and

(3) Ensuring that their oral and written arguments and statements to the Department are correct.

(iii) A broker who knows or has reason to believe that a respondent has made a factual error in or omission from a document submitted at the hearing must advise the respondent promptly of such error or omission. A broker shall urge the applicant to correct the error and promptly submit the corrected information. If the applicant refuses to do so, the broker must withdraw from representation for the summons(es) where continued representation would violate this section.

(iv) Brokers must not file an application, submit a document, or present testimony or other evidence that is obviously false, or that the broker knows or has reason to believe is false, fraudulent, or contains false information.

(v) Brokers must not make any statement or fail to disclose any fact in any situation where such broker knows or has reason to know such statement or failure to disclose information will mislead the ALJ at a hearing.

(vi) Brokers must not present a demand or an opinion of fact or law to the ALJ at a hearing unless the broker holds it in good faith and can support it on reasonable grounds.

(vii) A broker must not sign an application in the name of the applicant. A broker signing an application pursuant to a broker authorization form must sign in the broker's own name.

- (viii) Brokers must not attempt to initiate conversations or correspondence about particular cases with the ALJ before or after the hearing. At the hearing, brokers must discuss the scheduled matters only. Brokers must not telephone or write the ALJ or other employees of the Department before or after the hearing with additional arguments.
- (ix) Brokers must not attempt to influence any ALJ or employee of the Department by the use of threats, false accusations, intimidation or coercion; promises of advantage; or the presenting or offer of any gift, favor or thing of value. A broker must report promptly any such acts of which the broker is aware to the New York City Department of Investigation.
- (x) Brokers must not engage in disrespectful conduct in appearing before an ALJ through means including, but not limited to, using abusive language or disrupting a hearing.
- (xi) Brokers must not go into any non-public service area unless accompanied or authorized by a manager or supervisor and they must not operate any PVB terminal or other equipment at any time.
- (xii) Brokers must not request any Department clerical staff to perform non-routine tasks. All such requests must be addressed directly to and approved by the CAU Manager. "Non-routine" means anything out of the regular processing stream.

§ 3. Paragraph (9) of subdivision (a) of section 39-09 of Title 19 of the Rules of the City of New York is amended to read as follows:

- (9) *Penalty for violation of these rules.* Any broker who willfully or repeatedly violates these rules may be barred from representing clients at PVB in any capacity [for such time and subject to such conditions as may be determined by the Director of Adjudications]. The Commissioner may, after providing notice to the broker and an opportunity to be heard, suspend the broker for up to five years from appearing before the Department in any capacity, except that the broker may appear on parking violations issued in the broker's name. Such notice will inform the broker of the reasons for the proposed suspension and that the broker has the right to present information as to why the broker should not be suspended to the Commissioner, or his or her designee, within 10 business days of delivery of the notice by hand or 15 business days of the posting of notice by mail. Any suspension will apply solely to the broker unless the Department has evidence that the standard practice of the broker's company was to commit infractions in its interactions with the Department regardless of the broker involved.

§4. Paragraph (2) of subdivision (b) of section 39-09 of Title 19 of the Rules of the City of New York is amended to read as follows:

- (2) *Rules and Authorization.* [Prior to any hearing, an employee must file with PVB a notarized "Authorization For Employee to act as Representative at PVB Hearings."] The rules set forth in paragraph (8) of subdivision (b) of this section apply to employees appearing before the Department in any capacity, which include but are not limited to: the fleet program, stipulated fine program,

commercial abatement program, car rental program, hearings by mail, CAU hearings, and scheduling and billing.

An employee must register with the Department before representing a respondent before the Department in any capacity. Such registration must be on an Employee Authorization Form prescribed by the City of New York Department of Finance. [Such] The Employee Authorization Form must be:

§ 5. Paragraph (8) of subdivision (b) of section 39-09 of Title 19 of the Rules of the City of New York is amended to read as follows:

[(i) PVB equipment. Employees may not operate any PVB terminal/equipment at any time.

(ii) Trespassing. Employees may not go into any non-public service area unless accompanied or authorized by a manager or supervisor.

(iii) Non-routine tasks. Employees shall not request any PVB clerical staff to perform non-routine tasks. All such requests must be addressed directly to and approved by the CAU Manager. "Non-routine" means anything out of the ordinary/regular processing stream.]

(i) Employees shall observe in good faith the laws and regulations governing the adjudication of parking violation summonses and any forms and instructions provided to the employee by the Department.

(ii) Employees must exercise due diligence in:

(1) Learning and obeying applicable statutes, rules, and instructions governing the disposition of, or agreements concerning payment of parking violation summonses before the CAU;

(2) Complying with schedules for appearances; and

(3) Ensuring that their oral and written arguments and statements to the Department are correct.

(iii) An employee who knows or has reason to believe that a respondent has made a factual error in or omission from a document submitted at the hearing must advise the respondent promptly of such error or omission. An employee shall urge the applicant to correct the error and promptly submit the corrected information.

(iv) Employees must not file an application, submit a document, or present testimony or other evidence that is obviously false, or that the employee knows or has reason to believe is false, fraudulent, or contains false information.

(v) Employees must not make any statement or fail to disclose any fact in any situation where such employee knows or has reason to know such statement or failure to disclose information will mislead the ALJ at a hearing.

- (vi) Employees must not present a demand or an opinion of fact or law to the ALJ at a hearing unless the broker holds it in good faith and can support it on reasonable grounds.
- (vii) An employee must not sign an application in the name of the applicant. An employee signing an application pursuant to an employee authorization form must sign in the employee's own name.
- (viii) Employees must not attempt to initiate conversations or correspondence about particular cases with the ALJ before or after the hearing. At the hearing, employees must discuss the scheduled matters only. Employees must not telephone or write the ALJ or other employees of the Department before or after the hearing with additional arguments.
- (ix) Employees must not attempt to influence any ALJ or employee of the Department by the use of threats, false accusations, intimidation or coercion; promises of advantage; or the presenting or offer of any gift, favor or thing of value. An employee must report promptly any such acts of which the employee is aware to the New York City Department of Investigation.
- (x) Employees must not engage in disrespectful conduct in appearing before an ALJ through means including, but not limited to, using abusive language or disrupting a hearing.
- (xi) Employees must not go into any non-public service area unless accompanied or authorized by a manager or supervisor and they must not operate any PVB terminal or other equipment at any time.
- (xii) Employees must not request any Department clerical staff to perform non-routine tasks. All such requests must be addressed directly to and approved by the CAU Manager. "Non-routine" means anything out of the regular processing stream.

§ 6. Paragraph (9) of subdivision (b) of section 39-09 of Title 19 of the Rules of the City of New York is amended to read as follows:

Any employee who willfully or repeatedly violates these rules may be barred from representing his or her employer at PVB in any capacity [for such time and subject to such conditions as may be determined by the Director of Adjudications] The Commissioner may, after providing notice to the employee and an opportunity to be heard, suspend the employee for up to five years from appearing before the Department in any capacity, except that the employee may appear on parking violations issued in the employee's name. Such notice will inform the employee of the reasons for the proposed suspension and that the employee has the right to present information as to why the employee should not be suspended to the Commissioner, or his or her designee, within 10 business days of delivery notice by hand or 15 business days of the posting of notice by mail. Any suspension will apply solely to the employee unless the Department has evidence that the standard practice of the employee's company was to commit infractions in its interactions with the Department regardless of the employee involved.

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Appearances by Representatives at Parking Violations Bureau Hearings

**REFERENCE NUMBER:** 2015 RG 028

**RULEMAKING AGENCY:** Department of Finance

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: June 3, 2015

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE:** Appearances by Representatives at Parking Violations Bureau Hearings

**REFERENCE NUMBER:** 2015 RG 028

**RULEMAKING AGENCY:** Department of Finance

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Natalie Kotkin  
Mayor's Office of Operations

6/3/2015  
Date