

## ARTICLE VI. - CIVIL ADMINISTRATIVE HEARINGS

Sec. 2-8-200. - Administrative adjudication; evidence; penalty; appeal; other procedures.

- (a) *Establishment of administrative adjudication.* For accused violators desiring to contest a notice of violation, this Article provides for a system of civil administrative hearings for the following motor vehicle violations, which are deemed to be civil nuisances and not criminal offenses:
- (1) All stopping, standing, and parking violations, except any identified as criminal offenses in Section 1-1-5(e)(1) of this Code of Ordinances; and
  - (2) All traffic signal photographic enforcement cases, as provided for in Article XII of Chapter 16-3 of this Code of Ordinances.
- (b) *Hearing officers.* A sufficient number of hearing officers shall be appointed by the city manager. Such officers shall have authority to administer oaths and to issue orders compelling the attendance of witnesses and the production of documents, such orders to be enforced by the municipal court. For budgeting purposes or administrative convenience, the city manager may assign the Office of Civil Hearings to a City department, but oversight of these appointees shall remain in the city manager or designee. Hearing officer is disqualified and shall not preside over any case in which the officer has a business relationship; a familial relationship within the third degree by blood or second degree by marriage; or, is otherwise unable to render a fair and unbiased opinion. In such a case, the hearing officers may exchange cases to avoid the conflict or bias if possible, or a special hearing officer to hear such case, as designated by the City Manager.
- (c) *Notice of right to hearing; notice of time and place of scheduled hearings.* Notice of a parking violation pursuant to Section 1-1-5(e) may be affixed to the vehicle in a manner reasonably assured that it will be seen by the operator, or handed to the operator, if present. A notice of violation for a traffic signal photographic enforcement system shall be mailed to the registered owner as provided in Chapter 16-3, Article XII. Upon receipt of a notice of violation, the owner receiving a notice of violation must either timely pay the civil penalty or, alternatively, timely appear at the place, time, and day indicated in the notice of violation for an administrative hearing or as stated in a subsequent notice to appear mailed to the address on the State's vehicle title registration records or operator's driver's license address, if allowed for the type of violation being noticed.

(Ord. No. 7780, § 1, 3-26-2019)

Sec. 2-8-201. - Hearing procedures.

- (a) *Right to hearing.* A person who receives a notice of violation advising the violator of a right to

a civil administrative hearing may contest the imposition of the civil penalty for the violation by timely appearing or making a written request for administrative hearing as specified in the notice of violation.

- (b) *Evidence* . In a civil administrative hearing, the issues must be proved by a preponderance of the evidence. In addition to any other competent evidence offered at the hearing, the hearing officer is authorized to accept the following presumptive and prima facie evidence:
- (1) *Presumption* . It is presumed that the registered title owner of the vehicle that is the subject of the hearing is the person who parked or stopped the vehicle at the time and place of the offense charged, if the actual operator is not known.
  - (2) *Prima facie evidence* . (i) A computer generated record of the State of Texas vehicle title data base indicating the registered vehicle owner is prima facie evidence of the facts stated therein; (ii) The original or copy of the summons or citation is prima facie evidence of the facts stated therein; and (iii) The failure or refusal of a person charged with a violation to appear at the hearing shall be deemed an admission of liability for the charged civil nuisance violation.
- (c) *Affirmative defenses* . It shall be an affirmative defense to the imposition of civil liability under this Article, to be proven by a preponderance of the evidence, that:
- (1) The motor vehicle was a stolen vehicle being operated by a person without the effective consent of the Owner;
  - (2) The vehicle in violation was, at the time of violation, either stolen or was displaying a stolen license plate. To establish that the vehicle was a stolen vehicle or the license plate displayed on the motor vehicle was a stolen plate at the time of the violation, the Owner must submit proof acceptable to the hearing officer that the theft of the vehicle or license plate had been promptly and previous to the violation reported to an appropriate law enforcement agency.
  - (3) The presence of ice, snow, unusual amounts of rain or other extenuating condition prevented strict compliance; or
  - (4) The person who received the notice of violation was not the Owner of the motor-vehicle at the time of the violation, as evidenced by a bill of sale or prior transfer or assignment of the State certificate of title for that motor vehicle.
- (d) *Record of hearing; other procedures* . The record of witness testimony shall be preserved by the use of an audio tape recording or a video tape recording for appellant review. Other procedures for conducting a hearing under this Article shall be as stated in Chapter 16-3, Article XII. To the extent of any conflict or inconsistency between that Article XII and this Article, this Article shall prevail for hearings conducted pursuant to Section 1-1-5(e)(3).
- (e) *Entry of Order* . At the conclusion of the hearing, the hearing officer shall issue a signed and dated order stating whether the person charged with the violation is liable for the violation

and if so, shall re-state the penalty amount and describe the right to appeal to municipal court in accordance with other provisions of this Article.

- (f) *Retention of records* . The orders issued under this section together with any affidavits and other documents associated with each hearing or appeal shall be filed with and maintained by the Office of Civil Hearings, in a separate index and file for each hearing, either in hardcopy or electronic form. Such information shall be retained for the period specified by State law.

(Ord. No. 7780, § 1, 3-26-2019)

Sec. 2-8-202. - Appeal.

- (a) A person who is found liable after an administrative hearing may appeal that determination of civil liability to the municipal court, by filing both: (1) a written notice of appeal with the clerk of the municipal court not later than the 31<sup>st</sup> day after the date on which the administrative hearing officer entered the written finding of civil liability; and (2) a notarized statement of personal financial obligation (that is, either post a bond or sign a promissory note that is immediately due and payable upon entry of a judgment of liability by the municipal court and providing for recovery of the City's reasonable attorney fees and court costs for collection of the note, and providing for waiver of notice, presentment, and demand) in the amount of the civil penalty; and, (3) paying the applicable civil court appeal fee of twenty-seven dollars (\$27.00).
- (b) Collection or enforcement of the civil penalty is stayed during the period allowed for perfecting an appeal and during the pendency of the appeal.
- (c) The clerk of the municipal court shall set the matter for a trial-by judge as expeditiously as possible on the court's docket and issue notice of the date, time and place of the trial to the appellant and the City attorney's office. The appeal shall be conducted as a civil trial de novo and all issues determined by the judge upon a preponderance of the evidence. The municipal judge shall allow into evidence all affidavits, prima facie evidence, or presumptions which were filed or allowed in the administrative hearing, subject to such evidence being further challenged or rebutted in the municipal court trial.
- (d) At the conclusion of the trial, the trial judge shall enter a written judgment declaring whether the person is liable for the nuisance and civil penalty stated in this Article or is not liable for same. A person found liable in the municipal court trial shall immediately pay the civil penalty and any outstanding costs prescribed by this Article. The court is authorized to immediately collect the civil penalty by cash, credit card, or by immediately proceeding against any bond or note posted by the person. If the person is exonerated, then the statement of personal financial obligation required to perfect the appeal shall be immediately released.

(Ord. No. 7780, § 1, 3-26-2019)

## Sec. 2-8-203. - Nature of liability; collection.

- (a) The imposition of a civil penalty under this Article is not a criminal conviction for any purpose and shall not be reported to any insurance company or state agency that issues driver licenses or maintains driving records. However, a failure to pay the civil penalty or a late fee may be enforced or collected as follows:
- (b) *Vehicle impoundment* . If a vehicle has been the subject of six (6) or more civil nuisance violations (that is, a civil stopping, standing, or parking offense pursuant to section 1-1-5(e); a red light camera violation; or, a combination of those violations) within the prior twelve (12) months, or a sum of three hundred dollar (\$300.00) or more is then past due for unpaid civil penalties or costs, and that vehicle is again found parked on a public street, alley, right-of-way, easement, or government owned property, then the police may impound the vehicle in accordance with the procedures then in place for non-consent towing (see, chapter 10-3, Article VII). The vehicle owner is then liable for payment of outstanding parking penalties, any costs that have been assessed by a hearing officer, and the fees owed to the towing company, all of which must be paid before the vehicle will be released. In accordance with Texas Occupation Code, Chapter 2308, Subchapter J, a person who believes his/her vehicle was towed without probable cause is entitled to a hearing in justice of the peace court, upon timely request for a hearing on that issue.
- (b) *Hold on vehicle registration* . As provided by Texas Transportation Code § 702.003 reporting to the Texas Department of Transportation an outstanding and unpaid penalty and costs assessed against that vehicle, by a hearing officer or municipal judge. A county may thereafter refuse to re-register the vehicle until the amount is paid to the City.
- (c) *Other civil action* . Unless prohibited by other law, the city attorney or designee is authorized to file suit and to take other reasonable steps to collect the civil penalty and any fees imposed.

(Ord. No. 7780, § 1, 3-26-2019)

## Sec. 2-8-204. - No double violations.

A civil penalty may not be imposed under this Article on the Owner of a vehicle if the operator of the vehicle was arrested or was issued a citation or summons to appear in municipal court for the same violation. However, a civil penalty may be imposed on the vehicle Owner for the violation, if the arrest, citation, or summons of the vehicle operator is for a different violation of law than the notice of violation of a civil nuisance as defined in this Code of Ordinances.

(Ord. No. 7780, § 1, 3-26-2019)