



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 120100

Introduced February 16, 2012

Councilmembers Henon and Green

**Re-Referred to the
Committee on Finance**

AN ORDINANCE

Amending Chapter 10-1600 of The Philadelphia Code, entitled "Conduct in Public Places of Assembly; Administrative Adjudication of Violations," by providing for the administrative adjudication of violations, other than by personal appearance, and making certain technical changes, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 10-1600 of The Philadelphia Code is hereby amended to read as follows:

**CHAPTER 10-1600. [CONDUCT IN PUBLIC PLACES OF ASSEMBLY;]
ADMINISTRATIVE ADJUDICATION OF VIOLATIONS**

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§ 10-1604. Powers and Duties of the Director of Finance.

(1) The Director of Finance shall have the power and duty, unless otherwise provided by this [Chapter] *Code*, to provide by regulation (i) for the hearing and determination of cases (involving alleged violations of provisions [of this Chapter relating to conduct in public places of assembly, restaurant/entertainment districts and city permitted festivals and parades,] *of this Code*), (ii) for the imposition of civil penalties, cost and additional fees for such violations, and (iii) for the acceptance of payment for such penalties, costs and additional fees, including installment payments with installment payment fees and payments by credit cards, all in accordance with all provision of this Chapter.

City of Philadelphia

BILL NO. 120100 continued

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§ 10-1605. Functions, Powers and Duties [of the Bureau of] Relating to Administrative Adjudication.

In addition to its other functions, powers and [duties] *duties*, [of] the Bureau of Administrative Adjudication, *the OAR or other City Agency authorized by the Director of Finance*, shall have the following functions, powers and duties in connection with the administrative adjudication system established by this Chapter:

(1) To receive and process answers to charges of alleged violations and to refer contested answers to the Finance Director's Office for [hearing] *adjudication* and determination;

* * *

(3) To send notices, as required, on behalf of the Finance Director's Office, of orders determining liability, notices to appear *or otherwise participate in adjudications*, *notices of decisions* and other actions of the Finance Director's Office.

§ 10-1606. Issuance and Service of Violation Tickets.

* * *

(2) The ticket shall be in the form established by the Bureau of Administrative Adjudication, *the OAR or other City Agency* and approved by the Director of Finance, and shall contain information advising the person to whom it is issued of the manner in which and the time within which an answer to the violation alleged is required. *The ticket shall also advise that the violation may be contested at a hearing, in person or by telephone, or by the submission of written testimony and other documentation through the mail or electronically, including but not limited to email, agency website, or facsimile.* The ticket shall also advise that additional fees and costs may result from a failure to answer, that the failure to answer [or appear] *or participate in a hearing or other permissible form of review* shall be considered an admission of liability, and that other civil action may result from a failure to pay the amount due.

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(5) The Bureau of Administrative Adjudication, *the OAR or other City Agency* shall cause tickets to be prepared and distributed to the Police Department and other issuing agencies.

City of Philadelphia

BILL NO. 120100 continued

§ 10-1607. Answer.

- (1) In answer to a ticket, a person to whom such ticket was issued may:
 - (a) admit the commission of the violation by payment of the fines, costs and additional fees due;
 - (b) admit with explanation; or
 - (c) deny liability and request a hearing [with respect to the violation.] *or an adjudication by telephone, or by the submission of written testimony and other documentation through the mail or electronically, including but not limited to email, agency website, or facsimile.*

(2) The regulations issued by the Director of Finance pursuant to § 10-1604(1) shall provide for the manner by which a ticket may be answered. The regulations [may] *shall* provide for answer by personal appearance, by mail, by telephone, *electronically* or in such other manner as the Director of Finance deems appropriate.

* * *

(4) If the person to whom a ticket is issued is a minor, such person shall be permitted to [appear at a hearing] *participate in an administrative adjudication* or admit responsibility for a violation without the necessity of the appointment of a guardian, and the City may proceed against such person in the same manner as if that person were an adult.

§ 10-1608. [Hearings] *Administrative Adjudications.*

(1) Each [hearing for the] *administrative* adjudication of a violation pursuant to this Chapter shall be [held before] *conducted by* a Code Violation Hearing Examiner.

(2) The officer [issuing] *who issued* the ticket shall not be required to [appear at the hearing] *present or submit evidence*, unless the respondent has denied liability and the Code Violation Hearing Examiner determines that [the officer's presence] *evidence from the officer* is required. The Code Violation Hearing Examiner may grant a reasonable continuance *of any proceeding scheduled to be held in person or by telephone* if the officer is not available at the time of [hearing] *the proceeding*. The Code Violation Hearing Examiner may also *request documents, papers or records relevant to the violation charged* or issue a subpoena to compel [the] *their* production [at the hearing of any document, paper or record relevant to the violation charged]. *In the case of administrative adjudications by telephone, mail or electronically, the production of*

City of Philadelphia

BILL NO. 120100 continued

documents in response to a request or subpoena may be made by mail, facsimile or electronically. The City shall not be required to submit any evidence other than the ticket. Such documentation in proper form (including without limitation any facsimile of the original ticket which has been transferred onto microfilm, computer tape or other form of data storage) shall be considered prima facie evidence that the person to whom the ticket was issued was the person who committed the violation. The presence of an attorney or other representative of the City shall not be required.

(3) If a person fails to answer in response to a ticket or fails to [appear at a hearing] *participate in an administrative adjudication*, when required to do so, or, having admitted commission of the violation (with or without explanation), fails to pay the fines, costs and additional fees assessed, the Code Violation Hearing Examiner shall enter an order by default sustaining the charges, fix the appropriate fine or other penalty and assess appropriate costs and additional fees, if any.

* * *

(5) [Hearings] *Administrative adjudications* shall be conducted in a fair and appropriate manner. Technical rules of evidence shall not apply, and all relevant evidence of reasonably probative value may be received. All testimony shall be given under oath or affirmation. *Where an adjudication is conducted over the telephone, the oath or affirmation shall be administered over the telephone, and where conducted by mail or electronically, a written affidavit, signed by the affiant shall verify the truth and accuracy of the statements and documents provided and shall be notarized.* A record shall be made of [a hearing] *an administrative adjudication* of a contested violation, and recording devices may be used for such [purposes] *purposes, where applicable.*

(6) After due consideration of the evidence and arguments offered in a contested [care] *case*, the Code Violation Hearing Examiner shall determine whether the charges have been established. If the Code Violation Hearing Examiner determines the charges have not been established, an order dismissing the charges shall be entered. If the Code Violation Hearing Examiner determines the charges have been established, he shall enter an order sustaining the charges, fixing the appropriate fine, and assessing costs and additional fees, if any, as appropriate.

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(8) *Information regarding the manner in which administrative adjudications are conducted shall be made available on the City's official website.*

§ 10-1609. Administrative Review.

City of Philadelphia

BILL NO. 120100 continued

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(2) An appeal from a determination of any Code Violation Hearing Examiner after [a hearing] *an adjudication* on a plea denying liability, or from a determination denying a motion to reopen any matter, shall be submitted to an Appeals Panel which shall have *the* power to review the facts and the law, and [shall have power to affirm the determination or to] *affirm*, reverse or modify any determination [appealed from error] *because of an error* of fact or law, [or to] remand for additional proceedings, or, in appropriate cases, [to] hear the matter de novo.

(3) A party aggrieved by the final determination of a Code Violation Hearing Examiner may obtain a review thereof by serving upon the Bureau of Administrative [Adjudication] *Adjudication, the OAR or other City Agency*, within thirty (30) days of the entry of such final determination, a notice of appeal on a form provided by [the Bureau of Administrative Adjudication] *such agency which* shall be made by certified or registered mail, return receipt requested. Upon receipt of such notice of appeal, the Finance Director's Office shall furnish to the appellant, upon request and at the appellant's expense, a transcript *or certified record, whichever is applicable*, of the original [hearing] *adjudication*. No appeal shall be conducted less than ten (10) days after the mailing of the transcript *or certified record* to the appellant.

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(5) The order of a Code Violation Appeals Panel shall be the final order of the Finance Director's Office. However, in the event that no appeal is taken, the order of the Code Violation Hearing Examiner shall be the final order. If payment is not made within thirty (30) days after entry of a final order determining liability for a [parking] violation and fixing fines, costs and additional fees for such violation, such fines, costs and additional fees shall be considered a debt due and owing the City.

§ 10-1610. Civil Penalties and Costs.

(1) The civil penalties prescribed for violations under this Chapter, and payable by a person to whom a ticket has been issued, are as set forth in subsection 10-1610(2). The total sum of costs and additional fees payable by a person who fails to answer a ticket within eight (8) days after the date the ticket was issued, or by a person who, after [a hearing] *an administrative adjudication* pursuant to Section 10-1608, has an order entered against him sustaining the charges, is twenty-three (23) dollars. In the event that payment is not made within thirty (30) days after entry of a final order determining liability for a violation or in the event that a person fails to [appear at a hearing]

City of Philadelphia

BILL NO. 120100 continued

participate in an administrative adjudication, when required to do so, an additional fee of four (4) dollars shall be added to the amount due.

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SECTION 2. This Ordinance shall take effect 180 days after becoming law.

Explanation:

[Brackets] indicate matter deleted.

Italics indicate new matter added.