

DEPARTMENT OF PARKING AND TRAFFIC

HEARING DIVISION

POLICY AND PROCEDURE MANUAL

**City and County of San Francisco
San Francisco, California
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PART I ~ INTRODUCTION

The purpose of this manual is to provide Department of Parking and Traffic hearing officers with a comprehensive overview of the administrative adjudication process in this jurisdiction, their role in it, and the policies and procedures regulating and affecting their functions. The environment in which this Division works is constantly changing. The information contained herein is not intended to cover every detail or answer every question. It is a resource document but is not exhaustive. It includes background information, Hearing Division policies, procedures and guidelines for conducting and recording parking violation and towed vehicle hearings, and information concerning the issuance of citations. The manual will be amended over time as the need arises.

There are certain aspects of the adjudication procedure, particularly with respect to the manner in which hearings are conducted or testimony is elicited, which are not readily reduced to written formulas. There are, however, general format requirements presented and explained in this manual which are designed to ensure due process, administrative efficiency and complete and accurate record keeping. Certain aspects of the formats are absolute requirements. Each hearing officer will be able to "tailor" these to his/her personal "style" insofar as he/she respects the absolute requirements and the need for consistency, completeness, and efficiency.

It is hoped that this document will provide the hearing officer with a basic overview of the issues. Hearing officers are both free and encouraged to consult Hearing Division management on any questions concerning Hearing Division policy. Initial training, including observation of active hearing officers and mentoring, as well as practice, periodic staff meetings, retraining and memo updates are intended to keep everyone current on policies and procedures.

The information contained in this manual was compiled and/or drafted by Jill Bernstein, David Deasy and Terry Moran. It incorporates material from various sources internal and external to the Department and the Division. Among the major non-Departmental sources are the County of Sonoma: Hearing Officer Training manual, City of Los Angeles: Guidelines for Hearing Examiner Decisions and City of Boston Transportation Department, Office of the Parking Clerk: Hearing Officer Handbook. The San Francisco Department of Parking and Traffic Hearing Division would like to acknowledge these fellow agencies for their generosity in providing the manuals for review. We are also indebted to Mark Rand, former DPT Senior Traffic Engineer and Mario Kashou of the Office of the City Attorney for their assistance in editing the document.

MISSION STATEMENT

The primary mission of this Division, as defined by law and expanded by its management, is to provide fair and impartial hearings for notices of parking violation and towed vehicles. It is our goal to do so in a manner which is expeditious, consistent and sensitive to our desire to deliver high quality service to our customers. The Hearing Division acknowledges it is not enough to make correct and unbiased decisions. As a Division, and as individuals, we must strive to be user-friendly, and hope to be perceived as such by those contesting notices of parking violations (citations) and the legality of towing and storing vehicles. We must serve the public in a friendly, efficient and timely manner.

THE ROLE OF THE HEARING DIVISION

Citation hearings are conducted for persons protesting parking citations issued in San Francisco for violations of the California Vehicle Code, the San Francisco Municipal Traffic Code, the San Francisco Municipal Park Code and certain sections of the San Francisco Municipal Police Code. This includes all such citations issued by the following authorities: Department of Parking and Traffic, San Francisco Police Department, Institutional Police, Municipal Railway, City College Traffic Enforcement, Port Authority, Golden Gate Bridge District and National Park Service.

The Hearing Division also provides hearings for vehicles towed pursuant to violations of the California Vehicle Code and the San Francisco Municipal Codes.

As part of the City's effort to foster open government, the Hearing Division conducts weekly public hearings on behalf of the Executive Director to notify the public of planned traffic changes. The public hearings provide a forum for the Department and the public to exchange concerns and information.

A SHORT HISTORY OF ADMINISTRATIVE ADJUDICATION AT THE DEPARTMENT OF PARKING AND TRAFFIC

PARKING VIOLATIONS

The intent of California legislation authorizing administrative adjudication was to free limited criminal justice resources for more serious criminal matters and to provide a more timely, convenient, simplified and less intimidating forum for the hearing and disposition of contested parking citations.

California Assembly Bill 408, enacted during the 1992 Legislative Session, became effective January 1, 1993. This legislation made parking violations subject to civil penalties governed by civil administrative procedures. The California Vehicle Code, as amended by AB 408, established a three-level procedure to protest contested parking citations. AB 408 changed the venue for the processing and protesting of parking violations at the first two levels from the courts to administrative agencies (CVC40200.4). Liability for a parking violation is no longer criminal and although parking infractions remain part of the penal code, only civil penalties are imposed on violators. Appeal of the administrative hearing decision (second level administrative protest) is by appeal to Municipal Court and heard de novo (CVC40230).

Formerly attendance of the citing officer was required at the initial appearance. Current legislation does not require the attendance of the citing officer at the administrative hearing. The notice of parking violation is considered a record kept in the ordinary course of business and prima facie evidence of the violation.

TOWS

In San Francisco prior to 1995 tow hearings were conducted by personnel of the enforcement agency which had towed and stored the vehicle. In 1995 the Hearing Division of the Department of Parking and Traffic took over all tow hearings from the Department of Parking and Traffic Enforcement Division and the San Francisco Police Department (except driver license violation tows, governed by CVC14607.6).

The tow hearing process is governed by the California Vehicle Code. Administrative hearing officers were assigned to conduct the tow hearing process in San Francisco because of the precedent created by AB 408, case law, and the need to provide due process in a situation analogous to the parking citation protest procedure. State legislation to codify the tow hearing process came as a direct result of legal action in which the City and County of San Francisco was involved. Stypmann vs. City and County of San Francisco, United States Court of Appeals, 9th Circuit, 1977, ruled that an administrative procedure was necessary to provide due process protection to owners whose vehicles are towed and stored. This has been codified in §22852 of the Vehicle Code, enacted in 1987.

PART II ~ THE CITATION HEARING

STATUTES GOVERNING CITATION HEARINGS

The following is a brief summary of those statutes which are basic to the citation

hearing process. Although the hearing officer may not be directly affected by all of the provisions within these statutes, the hearing officer should nonetheless become familiar with them by reading them in their entirety. They are found in the California Vehicle Code (CVC), Division 17, Chapter 1, Article 3 (Procedure on Parking Violations) Sections 40200 et seq. and address parking citation issuance, processing and protest. The sections pertinent to the hearing process are listed below.

CVC SECTION 40200(a): PARKING VIOLATION: PROCEDURE

Any violation of any regulation that is not a misdemeanor governing the standing or parking of a vehicle under this code, under any federal statute or regulation, or under any ordinance enacted by local authorities is subject to a civil penalty. The enforcement of those civil penalties shall be governed by the civil administrative procedures set forth in this article

CVC SECTION 40202(a): NOTICE OF PARKING VIOLATION

A parking citation which contains the statutory requirements on its face constitutes prima facie evidence of the violation. A hearing officer is required to review every citation to ensure that the City has met its burden of proof. If any of the required information is absent or incorrect a hearing officer may summarily dismiss the parking citation as the City has failed to establish its prima facie case. The following information must be contained on the parking citation:

- The violation set forth by the California Vehicle Code, San Francisco Municipal Traffic Code, San Francisco Park Code or the San Francisco Municipal Police Code and its associated penalty.
- The time of the violation.
- The location where the violation occurred.
- The license plate number or vehicle identification number, if present and visible.
- The date of the violation.

Section 40202(a) states that the additional information should be contained on the parking citation. However, failure to include this information does not necessarily result in dismissal. The inclusion or lack of this information may go to further establishing the credibility or weakness of the issuing agency's case. The additional information is:

- The expiration date of the vehicle registration tabs (if visible to the issuing officer).
- The last four digits of the vehicle identification number (VIN) (only if visible to the issuing officer).
- The color of the vehicle.
- The make of the vehicle.

CVC SECTION 40203: NOTICE OF PENALTY

Section 40203 states that the notice of parking violation shall be accompanied by a

written notice of the amount of the parking penalty due for that violation. A parking citation which does not contain a penalty should be summarily dismissed.

CVC SECTION 40215: ADMINISTRATIVE HEARING PROCESS

The establishment of the Administrative Hearing Process is authorized by California Vehicle Code Article 3, Section 40215 which became effective on July 1, 1993. The adjudication procedure mandated by AB 408 is summarized as follows:

- Section 40215(a) sets forth the mandatory time limits for protesting a citation.

For a period of 21 calendar days from the issuance of a notice of parking violation (citation) or 14 calendar days from the mailing of a notice of delinquent parking violation, a person may request an initial review of the notice by the issuing agency (in practice, DPT uses the rule of 21/21). The issuing agency or the processing agency shall mail the results of the initial review to the person contesting the notice.

If the person is dissatisfied with the results of the initial review, the person may request an administrative hearing on the violation no later than 21 calendar days following the mailing of the results of the issuing agency's initial review. The request may be made by telephone, in person or in writing. The person requesting the hearing may request one continuance, not to exceed 21 calendar days.

NOTE: There are no provisions in the Vehicle Code, nor is the issuing agency required, to conduct an administrative review or schedule an appearance before a hearing officer if the mandated time limits are not followed.

- Section 40215(a) also requires that the penalty be deposited prior to the hearing. If a person cannot afford payment of the penalty the issuing agency shall provide a written procedure to allow a person to request an administrative hearing without payment of the parking penalty upon satisfactory proof of inability to pay the amount due.
- Section 40215(c)(1) states that a person requesting a hearing shall have the choice of a hearing by mail or in person.
- Section 40215(3) states that the hearing shall provide an independent, objective, fair and impartial review of the contested parking violation.
- Section 40215(5) does not require the officer or person who issues a notice of parking violation to participate in an administrative hearing. The issuing agency is not required to produce any evidence other than the notice of parking violation or copy thereof and information received from the Department of Motor Vehicles identifying the registered owner of the vehicle. **The documentation in proper**

form shall be prima facie evidence of the violation.

CVC SECTION 40230: NOTICE OF APPEAL

Within thirty calendar days after the mailing or personal delivery of the hearing officer's final decision, a contestant may file an appeal to be heard by the Municipal Court. The protest is heard *de novo* and the contents of the processing agency's file in the case are received into evidence. The person filing the appeal must pay a \$25.00 filing fee to the court which is refunded with the penalty if the hearing officer's decision is overruled.

CVC SECTIONS 22651(I) AND 22651.7: IMMOBILIZATION

The issuing agency is authorized to immobilize vehicles (Denver boot) or impound vehicles (tow and store) at the registered owner's expense. Vehicles that have been issued five or more notices of parking violation which remain unpaid and unprotested beyond the statutory time period for protest are subject to immobilization. See also Appendix B2 - Hearing Division Policy on Scofflaw Tows.

TYPES OF HEARINGS

In Person: The majority of parking citation hearings are conducted face to face in hearing rooms A and B. The respondent is required to deposit the penalty amount indicated on the citation or have deposit waived prior to being scheduled for a hearing. The clerk at the payment window collects the amount and keys the respondent's name into the SATS 5/11 screen. The respondent is called by the hearing officer on the intercom paging system in the order of appearance on the screen.

Mail Hearing: Hearings by mail are conducted at the respondent's request. Often, hearings by mail are convenient for respondents who reside outside the city limits or are disabled and find it a hardship to appear in person. Conducting a hearing by mail can be disadvantageous for the respondent due to the fact that the hearing officer must attempt to ascertain a respondent's credibility while examining documents rather than listening to a person explain a particular situation. In addition, the hearing officer is unable to ask questions before rendering a decision. Nonetheless, mail hearings serve an important function for those people who cannot appear in person.

Telephone Hearing: Under special circumstances a hearing officer will conduct a hearing by telephone when instructed to do so by the Division Manager. This type of hearing is scheduled to accommodate respondents having difficulty appearing in person and/or communicating in writing.

CONDUCTING A CITATION HEARING

GENERAL CONSIDERATIONS

A parking citation hearing is an informal, non-judicial process. However, certain standards must be respected to insure the consistency and the integrity of the process.

The Vehicle Code states that a properly completed parking citation is prima facie evidence of the validity of statements contained therein. This means that once a citation is determined to be properly completed, a prima facie case is established that the violation has occurred. When the hearing officer determines that the citation has been properly filled out, the burden of producing evidence to rebut the citation then shifts to the respondent. The Vehicle Code does not address the quality or quantity of evidence that the respondent must present to rebut the citation.

It is the policy of this Hearing Division to require that the respondent present credible and sufficient evidence to rebut the parking citation. This can be a rather flexible standard and what constitutes credible and sufficient evidence will be discussed in more detail below. Ultimately, it is the hearing officer who decides whether the respondent has presented evidence to support the explanation and whether the explanation is adequate, based upon applicable laws and policies, to warrant a dismissal. It is the responsibility of the hearing officer to document and/or explain in the hearing file and the computer record the reason for the decision.

Each hearing officer must allow the respondent a fair opportunity to establish his/her defense. The hearing officer should avoid prejudice and allow the respondent to present all relevant evidence.

At the Department of Parking and Traffic hearing data is entered and stored using a database devised by San Francisco Trial Courts Computer Services known as "SATS". Basic instructions for its use are located in a separate appendix - Hearing Officer Use of SATS System.

CONDUCTING THE IN-PERSON HEARING

Any person may appear for a hearing if authorized by the registered owner or as long as there is a clear statement of the relationship of the person appearing for the registered owner. The person might be a relative or friend, the actual operator of the car at the time it was cited, the lessee of a rented car, an officer or employee of a corporation, an attorney, etc.

Citation Division window clerks verify if respondents qualify for a hearing. Upon

completion of the paperwork at the window, the clerk will enter the respondent's name and the number of citations on the hearing officer's SATS 11 screen and send the person to the hearing waiting area. An intercom paging system allows the hearing officer to call each respondent in the order they appear on the hearing screen.

At the beginning of each hearing shift the hearing officer should place his/her nameplate in view on the table. The hearing officer should introduce him/herself to each respondent scheduled, ask the respondent to be seated and begin to fill out the Administrative Citation Hearing Report. This form must be complete before a decision is entered into the SATS database. The Report and the documents attached to it will constitute the full record of the hearing. The back of the form can be used if more space is needed to include all necessary written information.

The hearing officer then must ascertain the name and address of the respondent, request to view the driver license to verify identity, and determine what relationship the respondent has to the citation (registered owner, driver of the vehicle when cited, etc.). If the respondent is unwilling or unable to furnish this information a hearing can be conducted.

Always ask the respondent for his/her current address and make sure the stated address is entered properly in the SATS 12 screen. If the wrong address is entered in the computer, a successful respondent will not receive a timely refund.

Remember, the respondent always must provide the hearing officer, for each citation protested, a deposit of penalty receipt, or IFP receipt (waiver of deposit of the penalty). Sometimes a respondent will attempt to obtain a hearing on a parking citation that cannot be processed by the window clerk, i.e. the citation has not yet been entered into the system, the statutory time period to request a hearing has elapsed or the parking citation has not been submitted to administrative review. An unprocessed citation may be presented with another citation that has been processed. The SATS system is programmed to display the message "CITATION PENALTY NOT PAID". In addition it will not accept a hearing decision. If this occurs, the hearing officer **should not** conduct a hearing on the unprocessed parking citation. The hearing officer should explain to the respondent that the parking citation has not been processed for a hearing and advise the respondent to return to the window clerk.

THE OPENING STATEMENT

The hearing officer should explain to the respondent that this is an administrative hearing to determine the validity of the parking citation. Each hearing officer is obligated to pronounce the following opening statement:

"This is an administrative hearing to determine the validity of a parking citation. The citation is considered to be valid under the California Vehicle Code unless it

can be demonstrated by credible and sufficient evidence that the citation was invalidly issued or that there was a mitigating circumstance which could warrant dismissal. If you disagree with my decision you may file for a de novo hearing at Municipal Court”.

It is important to explain this procedure and provide the de novo information sheet. The hearing officer then should examine the parking citation and determine if the prima facie case is satisfied. If any statutorily required information is missing the hearing officer must dismiss the citation. If the required information is present, continue the hearing.

THE RESPONDENT'S PRESENTATION

After the citation has been found to be free of defects the respondent may present his or her case. The prima facie case may be rebutted successfully if a person presents a preponderance of credible and sufficient evidence (see Appendix A1 – Respondent's Evidence, Appendix A3 – Common Reasons For Protests) to demonstrate that the citation is invalid or that mitigating circumstances warrant dismissal.

Generally, the hearing officer should simply let the respondent tell his/her story in order to afford the respondent a fair opportunity to establish a defense (see Appendix A3 – Rules of Behavior In Conducting Hearings). The hearing officer will consider all testimony and documentation submitted by the respondent to rebut the prima facie case. It is important to listen and endeavor to understand what the respondent is saying. At times this may not be easy to do, since some respondents may be disorganized, nervous, adversarial, or have problems communicating. If a respondent attempts to provoke an argument, the hearing officer should avoid being drawn into it.

The hearing officer should try to make the respondent feel at ease, elicit information and assist the respondent, as necessary, to articulate the defense without putting words in the respondent's mouth or constructing a defense for the respondent. After the respondent articulates his/her defense, the hearing officer should cross-examine the respondent to test the credibility of the story.

When a respondent has difficulty communicating in English, the hearing officer should attempt to secure the assistance of a translator. Special assistance also may be necessary when a respondent is hearing impaired.

The following is a summary of the four possible variants in the respondent's presentation.

GENERAL DENIAL UNSUPPORTED BY EVIDENCE

The respondent may set forth a mere general denial of a violation, unsupported by evidence. This will not be sufficient to warrant a dismissal. There are situations in

which corroboration may not be possible, e.g. where a solitary driver contends that he/she moved the vehicle prior to the expiration of an allotted time. In such cases the hearing officer must make a decision based upon a careful appraisal of the respondent's credibility and statement of facts. However, it should be emphasized that it is unusual to dismiss a citation in this type of situation; normally, some sort of documentation or substantiation is required.

GENERAL DENIAL SUPPORTED BY EVIDENCE

The respondent may set forth a general denial and present evidence in support of the defense. In this case, the hearing officer must first determine whether the evidence is relevant to the defense. If the evidence is found to be relevant, the hearing officer should proceed with the investigative methods contained in Appendix A5 – Investigative Options and/or the evidentiary analysis contained in Appendix A1.

ADMITS WITH ALLEGATION OF MITIGATING CIRCUMSTANCE

The respondent may admit that he or she has committed the violation but alleges a mitigating circumstance. The hearing officer should determine whether the type of mitigating circumstance is sufficient to warrant dismissal, i.e. sign missing or medical emergency. If so, the hearing officer should proceed with the appropriate investigative methods contained in Appendix A5 and/or the evidentiary analysis contained in Appendix A1.

ADMITS

Occasionally a respondent admits to the violation and requests leniency from the hearing officer. The respondent may promise never to commit the violation again or claim that he/she cannot afford to pay the penalty. In this situation, the Hearing Division should not authorize dismissal of the parking citation.

THE CROSS EXAMINATION

Once the respondent has told his/her story and established a defense, the hearing officer should begin the examination. At this point the hearing officer's skills are critical. Every hearing officer develops his or her own technique(s) for examining a respondent or a witness. (see Appendix A4 – Suggested Techniques for Cross Examination)

There are a number of determinations to be made in a cross examination. First, the hearing officer should **understand the perception of the respondent** or witness. Did the respondent or witness actually see what he or she thought they saw? Did the respondent or the witness examine the situation at the time of the violation?

The hearing officer must always be conscious of **semantics**. A respondent or witness may say, for example, that he or she was "far enough" from the hydrant. What

exactly does he/she mean by "far enough"? Did the person measure it? If so, how did the person measure it? If the respondent or witness says there was "no sign", what exactly does the person mean by "no sign"? Was there no sign within a few yards of the car? Was there no sign next to the car? The respondent or witness may testify that the car was properly behind the sign. The hearing officer must determine what portion of the vehicle was behind a sign. All vehicles must be completely parked in a legal space.

The hearing officer must **question the completeness of a statement**. He/she should question whether the witness was telling the "whole" story. For example, to challenge a bus zone violation a respondent may claim a "breakdown" and produce a repair bill for starting the car. The hearing officer thereafter reviews the circumstances and finds that the respondent parked the car at 10:00 p.m. and the person returned to the vehicle at midnight and he/she found the vehicle would not start. What the respondent may not have told the hearing officer was that the vehicle was illegally parked **before** the mechanical trouble occurred.

The hearing officer always should consider the credibility or lack of credibility of the testimony or evidence when making a decision. The hearing officer must **test the credibility** of the respondent or witness. Many of the stories presented may stretch the truth or twist it a bit. Certain defenses may be complete fabrications. The hearing officer must try to determine whether the person testifying is telling the truth. This may be difficult because there is no test which can be administered to determine whether someone is truthful. Credibility is a gut level determination by the trier of fact. There is no right or wrong. But, if after the examination is completed and the hearing officer believes the respondent or witness is not telling the truth, the hearing officer may base a decision of denial on the lack of credible testimony.

THE INVESTIGATION

DURING THE HEARING

A limited number of investigative inquiries may be made during a hearing. The following investigations using the SATS screen may be helpful in reaching an immediate decision.

PRIOR HISTORY OF ALL PARKING CITATIONS

A complicated issue is whether or to what extent a history of prior citations should be relevant to the adjudication of a citation currently before the hearing officer.

A respondent's history may include helpful information such as whether additional or similar parking citations were issued to the respondent's vehicle, whether the citations have been protested and the outcome thereof and whether citations are delinquent or have been paid. The hearing officer can view this information on screen by entering QVLN prompt and then the license plate. Prior hearings and/or administrative reviews on a particular license plate also may be seen by entering the citation number into the SATS 5/12 hearing screen and pressing F7 ~~(see separate appendix - Hearing Officer Use Of SATS System)~~

The hearing officer should avoid developing any prejudice based upon a respondent's violation or protest history. A prior history of citations and/or protests must not be used as the basis for concluding that the respondent is "liable" in the current hearing. However, the existence of other parking citations may be relevant to the issue of notice, i.e. an earlier citation at the same location for the same type of violation may weaken respondent's contention that he/she was unaware of posted signs or if the respondent claims that his/her vehicle suddenly was disabled, i.e. earlier protest shows the reason for dismissal as mechanical failure. Prior hearings and/or reviews also may be relevant when the respondent has previously claimed the placard was properly displayed at the time the citation was issued.

PRIOR HISTORY OF A PARTICULAR CITATION

A hearing officer may begin a hearing only to discover that another hearing officer has already conducted a hearing and rendered a decision on that particular parking citation. The hearing must not proceed and the hearing officer must inform the respondent of this fact.

TOW HISTORY

A history of a tow hearing may be found by entering 5/13(DPT), 5/14(SFPD), 5/15(MUNI) on the SATS screen. The hearing officer should key in the VLN and state code, or VIN and press F8 (see **PART III -- THE TOW HEARING, Entering Hearing Records in the Sats Database, page 30**). This is particularly helpful in driveway tows.

VEHICLE REGISTRATION INFORMATION

Information regarding the identities and addresses of the registered and legal owners, information on the identification and registration of vehicles, and information on the registration of disabled placards and the identity of their owners can be found by utilizing the SATS – DMV link. The DMV queries are located in **Appendix A6 – Accessing DMV Information**.

Time permitting, some investigations, which would normally take place following a hearing, can be done during the hearing. The following research may be conducted, if and only if, there are no other people waiting for a hearing:

1. obtaining a microfiche copy of citation
2. reviewing Administrative Review documents
3. reviewing meter repair logs

AFTER THE HEARING

PENDING A CASE

There are instances in which a hearing officer cannot conclude a hearing immediately and should pend it in order to conduct a thorough investigation. In addition to those actions mentioned immediately above there are a number of investigative tools available to the hearing officer. These include, but are not limited to:

1. requesting a field survey
2. consulting traffic survey records
3. requesting a meter survey
4. making a telephone call to:
 - another DPT Division such as Enforcement, Operations (e.g. sign shop or meter shop)
 - another City Department (DPW, SFPD, etc.)
 - an individual, business or organization (public or private) to clarify or confirm testimony

5. allowing the respondent additional time to submit supporting evidence.

For a more detailed description of the investigation options available to the hearing officer see Appendix A5 - Investigative Options.

THE DECISION

After the hearing officer has heard and weighed the testimony and other evidence, the hearing officer must make a decision. The available facts must be applied to the law. The hearing officer will determine whether the respondent has submitted credible and sufficient evidence to demonstrate that the citation was invalidly issued or that there was a mitigating circumstance which warrants dismissal.

Normally, the hearing officer will issue the decision to the respondent at the end of the hearing. The hearing decision (U for protest upheld and D for protest denied) always is entered into the SATS 12 screen with an explanation for the dismissal or denial (DISPOSITION).

The disposition should contain a concise, clear and accurate description of the exact reason for the decision. Catch-all expressions and jargon must not be employed. The hearing officer should address the specific fact or facts that has/have guided the decision. The respondent's testimony should not be re-stated. In a later review of the decision the computer record of the disposition should stand alone in providing an adequate answer to any question concerning the why and wherefore of the decision.

The hearing officer then should access the QCIT screen and print out a copy of the decision to give to the respondent. The hearing officer should write "Hearing Upheld" or "Hearing Denied" on the printout and give the white copy to the respondent. The yellow copy should be attached to the case file. At the end of the scheduled shift the hearing officer should place all the hearing paperwork in the daily citation hearing envelope labeled by date. This envelope is located on the table in front of the Hearing Division administrative office. Hearing paperwork should include, but is not limited to, the hearing report, all documents submitted by the respondent, a copy of the parking citation and a copy of the payment or waiver of payment (IFP) receipt.

The hearing officer is required to advise the respondent that he/she has the right to file for a de novo hearing at Municipal Court within thirty days of the hearing officer's decision. A brief summary of the de novo filing procedure should be given to the respondent. The form is located in the hearing room form drawer.

Sometimes the hearing officer will need to "pend" the hearing decision for further investigation or review, i.e. field survey, meter survey. In this case the hearing officer should enter a "P" (for pending) into the SATS 12 screen. The hearing officer should then go to the QCIT screen, print out a record and write "pending" on the record. The white copy should be given to the respondent and the respondent should be told

that the decision is pending and he/she will be notified in writing of the decision. Normally, a two-week period is the maximum time period allowed for the respondent to submit further evidence.

When a decision is pended, the hearing officer is required to mail a written decision letter to the respondent within two weeks of the hearing date. All decision letters should conform to the four standard Hearing Division form decision letters. The hearing officer is required to provide the respondent with a brief explanation of the reason for the decision. The hearing officer should consult the payment record when determining which letter to send the respondent. It is not necessary to include a record of the decision.

If the respondent at the standard or mail hearing resides more than fifty miles from San Francisco he/she qualifies for a de novo hearing by written declaration. The standard paragraph that informs him/her of the right to a de novo hearing should be replaced by the following:

If you do not agree with my decision you may request a de novo hearing with a traffic commissioner through the Traffic Fines Bureau of Municipal Court. You must request a court date within 30 days of this notice. In this procedure the person is normally required to be physically present. Since you live far from San Francisco you may request a Trial by Declaration. If you do so please include a copy of this letter. There is a \$25 filing fee, which must be made out to San Francisco Municipal Court and included with any pertinent documents or testimony you would like to present by mail. If the traffic commissioner rules in your favor you will be refunded the \$25.00. Everything should be addressed to:

**Traffic Commissioner
San Francisco Municipal Court
Traffic Fines Bureau
Room 101, Hall of Justice
850 Bryant Street
San Francisco, CA 94103**

The decision should be entered into the SATS 12 screen on the same date the letter is written and mailed. This will ensure proper and timely notification for de novo hearings.

PART III ~ THE TOW HEARING

STATUTES GOVERNING TOW HEARINGS

The following is a list of those statutes which are basic to the tow and boot hearing processes. They are found in the California Vehicle Code, Division 11, Chapter 9 (Stopping, Standing and Parking), Chapter 10 (Removal of Parked and Abandoned Vehicles), Article 1 (Authority to Remove Vehicles) & Article 2 (Vehicle Disposition).

TOW AUTHORITIES AND CONDITIONS

CVC 22511.8(C): OFFSTREET PARKING FOR THE DISABLED: REMOVAL OF VEHICLES (PRIVATE TOW)

CVC 22650: PROHIBITION OF REMOVAL

CVC 22651: CIRCUMSTANCES PERMITTING REMOVAL

CVC 22651.2: VEHICLE REMOVAL

CVC 22651.3: OFFSTREET PARKING FACILITY: REMOVAL AND IMPOUNDMENT

CVC 22651.5: ADDITIONAL CIRCUMSTANCES PERMITTING REMOVAL

CVC 22651.7: IMMOBILIZATION

CVC 22651.9: REMOVAL OF VEHICLES FOR SALE

CVC 22652: REMOVAL FROM HANDICAPPED PERSONS' PARKING SPACES

CVC 22652.6: ADDITIONAL CIRCUMSTANCES PERMITTING REMOVAL

CVC 22653: REMOVAL FROM PRIVATE PROPERTY (PEACE OFFICER)

CVC 22654: AUTHORIZATION FOR MOVING A VEHICLE (PEACE OFFICER)

CVC 22655: IMPOUNDING VEHICLE FOR INVESTIGATION

CVC 22655.3: REMOVAL FOR INVESTIGATION (PEACE OFFICER)
CVC 22655.5: IMPOUNDING FOR EVIDENCE: LIEN: CHARGES (PEACE OFFICER)
CVC 22656: REMOVAL FROM RAILROAD RIGHT OF WAY (PEACE OFFICER)
CVC 22658: REMOVAL FROM PRIVATE PROPERTY (PRIVATE TOW)
CVC 22658.2: REMOVAL FROM COMMON INTEREST DEVELOPMENT (PRIVATE TOW)
CVC 22659: REMOVAL FROM STATE PROPERTY (STATE POLICE)
CVC 22669(a): REMOVAL OF ABANDONED VEHICLES
CVC 22851.3: DISPOSITION OF ABANDONED LOW-VALUED VEHICLES
SAN FRANCISCO ADMINISTRATIVE CODE, CHAPTER 10C: REIMBURSEMENT FOR TOWING AND STORAGE OF VEHICLES
SAN FRANCISCO TRAFFIC CODE, ARTICLE 9: PROCEDURE FOR REMOVING AND IMPOUNDING VEHICLES

See Appendix B1 – Reason for Tow / Tow Authority, Appendix B2 – Hearing Division Policy for Scofflaw Tows, Appendix B3 – Scofflaw Tow for Citations and for tow authorities and conditions specific to different situations.

TOW HEARINGS

CVC22852: STORAGE OF VEHICLE: NOTICE TO OWNERS

(a) Whenever an authorized member of a public agency directs the storage of a vehicle, ... the agency ... shall provide the vehicle's registered and legal owners of record, or their agents, with the opportunity for a post storage hearing to determine the validity of the storage.

(b) A notice of the storage shall be mailed or personally delivered to the registered and legal owners within 48 hours excluding weekends and holidays.

This California Vehicle Code section addresses the procedure for conducting tow hearings in a very cursory manner in comparison to the detailed treatment given to citation hearings in CVC40215. Nonetheless this is what state law mandates through the Vehicle Code. In subsection (b) and further subsections it states:

- The owners, or their agents shall request the hearing in person, in writing or by telephone within 10 days of the date appearing on the notice
- The hearing shall be conducted within 48 hours of the request, excluding weekends and holidays
- Failure to request or attend the hearing satisfies the poststorage hearing requirement
- The agency directing the storage shall be responsible for the costs if reasonable grounds for the storage are not established

GENERAL CONSIDERATIONS

The owner or agent of the owner can request and appear for a hearing concerning a towed vehicle. The function of a tow hearing is to determine if the agency responsible for the tow had **“reasonable grounds for the removal and storage of the vehicle”** [CVC 22852(e)] and if the tow and noticing was done in compliance with required procedures.

The hearing provides an **opportunity for the contestant to present any testimony, evidence or witnesses he/she feels supports the claim that the tow is invalid.** Concise written notes should be taken of the testimony and all documents presented must be included in the file as originals or as photocopies. Decisions are made only after considering all evidence included in the file.

DPT TOW HEARING PROCEDURES

SCHEDULING

STANDARD HEARING

If a towed vehicle is no longer impounded at the time of the request and the hearing was requested in a timely manner, a standard hearing will be scheduled within a reasonable period of time (usually 2 weeks) by the Tow Hearing Coordinator or Hearing Division management. **A hearing officer is not authorized to schedule or reschedule a hearing or to conduct a hearing that has not been scheduled or rescheduled.** If, in the course of a hearing, a person should request another tow hearing which has not been scheduled the person should be referred immediately to the Tow Hearing Coordinator. Individuals who tell the tow hearing officer that they

want to reschedule should also be referred immediately to the Tow Hearing Coordinator.

48-HOUR HEARING

A person whose **vehicle is impounded at the time of the request will have a tow hearing scheduled immediately** by the Tow Hearing Coordinator or Hearing Division management, **and the hearing shall take place within 48 hours** (excluding weekends and holidays). Before scheduling the hearing the Tow Hearing Coordinator will verify with City Tow that the vehicle remains impounded. A 48-hour hearing cannot be rescheduled. According to the City Attorney, if the vehicle is retrieved from impound, DPT has no obligation to schedule the hearing within 48 hours. When the respondent has removed the vehicle from City Tow after scheduling but prior to the hearing it becomes a standard hearing and can be pended.

THE FILE

STANDARD HEARING

The hearing officer should start the tow hearing by examining the file compiled by the Tow Hearing Coordinator. Hearing officers will find this file before their hearing shift in a box on the table in front of the Hearing Division clerks' office. The tow hearing file may contain any or all of the following documents available at the time of the hearing: the tow hearing request, computer printouts of the tow record, DMV vehicle registration, the SFPD/DPT/MUNI tow inventory.

Depending on the reason for the tow, the file also may contain a SATS computer printout of the QVLN screen (citations by vehicle license number or vin), DMV clearance information records, driveway complaints, police reports, copies of any correspondence and documents from the contestant, and dormant letters or other correspondence addressed to the contestant by the Tow Hearing Coordinator and copies of cited violations.

The **tow inventory** is an internal document **established to administer the actual tow procedure** after an officer establishes reasonable grounds for the tow. Its content could invalidate a vehicle removal if: 1) it was in contradiction with a citation or, 2) was manifestly flawed and was the sole document available for examination. Before this decision is made, however, the hearing officer should request a copy of the manual-entry tow log maintained by the Enforcement Division to see if the information is filed there.

The citation, if the tow was subsequent to a violation, can substantiate the circumstances that existed at the time of the tow as the citation is prima facie

evidence of the violation. A citation, however, is not legally required for a vehicle to be towed. For some tows there will never be a citation (scofflaw for tickets and/or registration, recoveries, emergencies etc.)

The **tow receipt** indicates the person who paid to retrieve the vehicle from storage and the amount paid.

48 HOUR HEARING

The hearing officer should start the hearing by examining a file compiled by the Tow Hearing Coordinator. Hearing officers will find this file before their hearing shift in a box on the table in front of the Hearing Division clerks' office. The file will contain all documents that the tow hearing coordinator has been able to put together in the time between scheduling and the date of the hearing. Documents that the Hearing Division is not able to obtain in that time period will not be in the file even if they may be pertinent.

COMMENCING THE HEARING

At the beginning of each hearing shift the hearing officer should place his/her nameplate in view on the table. **In both standard and 48-hour hearings the very first action of the hearing officer must be to enter the license plate and state into the hearing screen and hit the F8, LAST TOW HEARING key to verify that a hearing has not already been conducted for the same tow.** If a hearing has been conducted already, the hearing officer must inform the person that another hearing cannot take place.

STANDARD HEARING

The hearing officer should begin the hearing by stating that the function of an administrative tow hearing is to determine whether the tow was valid or invalid and that mitigating circumstances are not taken into consideration. The obligatory statement is:

"This is an administrative hearing to determine the validity of the tow. The tow is considered to be valid under the California Vehicle Code if there are reasonable grounds for the tow. Mitigating circumstances are not taken into consideration. If you disagree with my decision you may appeal it by filing a government tort claim against the City and County of San Francisco."

Before hearing any testimony, the hearing officer should **verify the information provided on the tow hearing request form**, particularly names, telephone numbers, addresses and reason for the tow. It is especially important to **determine who paid to retrieve the vehicle** (essential for an eventual reimbursement) and determine if the hearing officer is conducting the hearing with the registered owner, person in legal possession of the vehicle or other agent. The City Tow receipt form in most cases gives the name of the person who paid to retrieve the vehicle. A credit card receipt clearly indicates who paid to retrieve the vehicle.

The tow hearing procedure is as follows: begin the tow hearing report form, listen to the testimony of the contestant, examine any evidence presented by the contestant, examine the documents in the file and conclude the hearing by making a decision or pending the decision for further investigation, record all information.

48 HOUR HEARING

The hearing officer first should examine the file to determine if the respondent has read and signed the 48 hour hearing rights and obligations form. If it has not been signed the hearing officer should encourage the person to do so. A refusal to sign the form should be noted in the hearing file. The following obligatory statement should be made now:

“This is an administrative hearing to determine the validity of the tow. The tow is considered to be valid under the California Vehicle Code if there are reasonable grounds for the tow. Mitigating circumstances are not taken into consideration. If you disagree with my decision you may appeal it by filing a government tort claim against the City and County of San Francisco.”

The hearing officer then informs the respondent that a 48-hour tow hearing decision, barring any exceptional circumstance, will be rendered at the conclusion of the hearing.

The tow hearing consists of listening to the testimony of the contestant, examining any evidence presented by the respondent or a witness, reviewing the documents in the file and concluding the hearing by making a decision in the presence of the respondent. If the vehicle is still impounded the decision may not be pending without the approval of the Hearing Division management. Pending status may be authorized only if essential City documentation is not available at the time of the hearing. If pending is authorized the hearing must be concluded within two days. Any additional storage fees incurred during the pending status will be assumed by the City and County of San Francisco.

GROUNDS FOR THE TOW

All tows must be authorized by the California Vehicle Code (see Appendix A6 – Reason for Tow / Tow Authority).

STANDARD HEARING

A citation is not an essential document in a tow hearing. In some instances a vehicle in violation can be towed without being cited. In other cases, scofflaw for citations or registration, some accident tows, recovered vehicles, arrest, impoundment for evidence / auto burglary / arson, removal for safety reasons, etc., there will not be a violation associated with the tow.

Reasonable grounds for removal and storage may be demonstrated by any pertinent documents. A citation, if issued, may establish documentary and legal proof of the reasonable grounds for the removal and storage. A tow can be determined to be valid if documents exist which indicate reasonable grounds for a tow even in the absence of a citation or a tow inventory.

48 HOUR HEARING

The conditions stated above for a standard tow hearing apply to a 48-hour hearing. Any one of the following records: a citation, tow inventory, copy of the tow dispatch record, complaint record, manual tow log maintained by and at the Enforcement Division, is sufficient to prove reasonable grounds for a tow if the record is not manifestly flawed. These records, with the exception of the citation, are generally the only tow documents available at the time of a 48-hour hearing. DMV registration information, SATS citation information and temporary tow away zone information are also available to the hearing officer. If basic and essential information is not available due to technical problems or temporary inability to obtain records, the decision of the hearing officer will be made on the basis of the available information. The other alternative, subject to approval by Hearing Division management, would be to pend the hearing, for 2 days maximum, to acquire the information.

TAKING TESTIMONY

STANDARD / 48 HOUR HEARINGS

The hearing officer should take testimony, examine other evidence presented and ask all appropriate questions.

Tow hearing decisions can be appealed by filing a government tort claim and the file will be forwarded for review. All original photographs must be retained in the file or must not be considered as evidence. All original documents which can be retained should be retained in the file. Any original document which cannot be retained should be examined and verified, then photocopied and placed in the file. Evidence submitted will not be returned to the respondent, but must remain in the file. The City Tow receipt and credit card receipt, if available, will be necessary to issue a refund.

In the case that a **respondent refuses to give testimony**, or refers the hearing officer to his/her attorney, the hearing officer will inform the respondent that 1) the hearing cannot be postponed, 2) the hearing will proceed and 3) **if no testimony is offered**, the hearing officer will **make a decision on the basis of the information in the file.**

Audio recording of a hearing is allowed at the respondent's request. All requests should be referred immediately to Hearing Division management since it is required that the Hearing Division record the hearing separately.

PENDING FOR FURTHER INVESTIGATION

STANDARD / 48 HOUR HEARINGS

If a hearing is pended it shall be concluded and a decision made within two weeks. If the hearing officer has decided to pend the decision for further investigation:

- **The hearing officer should fill out the release form completely, instruct the respondent to print and to sign his/her name (printed above, signed below) on all pages of the form in triplicate. At the top of the form the hearing officer should note the license plate of the vehicle, the hearing date and his/her initials.**
- **If the release form has to be mailed to the respondent after the hearing the hearing officer must clearly indicate where the name should be printed and**

signed (in triplicate) and include a self-addressed return envelope with the name of the hearing officer. As a general rule, and as a courtesy to the public, anytime a hearing officer requests information a self-addressed envelope should be included.

48 HOUR HEARING

48 hour hearings should not be pended. The decision must be made before the contestant leaves the hearing room except in exceptional circumstances approved by the Division Manager.

WORKING ON FILES

REMOVING FILES FROM THEIR STORAGE CABINET AFTER THE HEARING:

Hearing officers should not take individual files out of a folder to work on them; **they should remove the entire folder** so it is evident that it has been temporarily removed. **Folders must be returned to the storage cabinet** before leaving the office.

It is not authorized, and can be grounds for dismissal, for hearing officers to remove files from the premises. Information contained in Hearing Division files is confidential City property and must not leave the office.

REFILING:

Many people access tow hearing files. It is therefore very important to **refile** each folder in its **correct daily chronological folder** in the filing cabinet.

The file date at the bottom of the REQUEST FOR VEHICLE STORAGE HEARING form is the actual date the hearing took place and it **must correspond to the hearing file folder date. Files must also be placed in the correct folder (DPT,SFPD,MUNI).**

If a hearing takes place on a day when there **has not been a folder prepared for that category (SFPD / DPT / MUNI)** the file should be separated from the others and given to the Tow Hearing Coordinator who will create a folder and file it. It should be **returned to the Tow Hearing Coordinator with a note clearly indicating:**

- **the type of hearing (DPT, SFPD, MUNI)**
- **The actual date of the hearing**

- The **type of folder needed** (DPT, SFPD, MUNI)

THE DECISION

STANDARD HEARING

The hearing officer states his/her decision to the respondent:

VALID TOW The hearing officer should inform the respondent of the right to **file a claim against the City**. The respondent should be provided with a claim form to be returned by mail to the Claims Division of the Controller's Office within 6 months of the date of the tow.

INVALID TOW The hearing officer should **fill in the date sections and refund amount on the release form**, have the **respondent sign the release form** in triplicate and **inform the person that the refund will be issued within 4 to 6 weeks**. If the person should refuse to sign the release, the hearing officer must inform the person that the refund will not be issued unless the release is completed.

The **reimbursement will be paid to the person whose name appears on the receipt from City Tow**. If there is a request to reimburse someone else, an authorization must be submitted by the person who paid to retrieve the vehicle. The authorization will consist of a signed letter accompanied by a copy of the person's driver license (for signature verification). No reimbursement will be issued if an insurance company has already paid all tow and storage fees.

48 HOUR

The hearing officer must make a decision based on the documents present in the initial file, the documents and testimony presented by the respondent as well as any information obtained from an examination of any other documents immediately available in the office.

VALID TOW The hearing officer should inform the respondent of the right to **file a claim against the City**. The respondent should be provided with a claim form to be returned by mail to the Claims Division of the Controller's Office within 6 months of the date of the tow.

INVALID TOW The hearing officer should notify Hearing Division management of his/her determination. The hearing officer should not communicate the decision to the respondent before requesting and receiving approval for a waiver from the Hearing Division Manager or person empowered to act on the Manager's behalf. If approval is granted, a full or partial waiver will be issued.

COMPLETING THE TOW HEARING REPORT

STANDARD/48 HOUR HEARINGS

All information should be entered on the tow hearing report form before entering any data on the SATS tow hearing screens. **Fill out the entire form indicating all actions taken during and after the hearing.** The reverse of the form can be used if there is not enough room to include all necessary comments on its face.

The hearing officer must include a short and concise summary of testimony and a concise, but clear and complete, explanation of the reason(s) for the decision. Before entering a "no show" denial, the hearing officer should verify with the Tow Hearing Coordinator that the person has not called to reschedule for a later date. Only then should the "no-show" box be checked.

NOTIFYING THE CONTESTANTS OF DECISIONS IN PENDED HEARINGS

Separate notification cards exist for upheld and denied tow hearings. The appropriate card should be sent to the respondent notifying him/her of the result of the hearing. If the hearing is denied, the hearing officer should include a Controller's Office claim form with the card in an envelope.

COMPLETING THE FILE COVERSHEET "TOW HEARING CALENDAR"

HO STATUS should indicate: P for pended, U for upheld and D for denied. No other abbreviations should be used. If pended first and later decided, a diagonal bar from bottom left to top right should be drawn across the space and a P entered on the top left and later the appropriate decision letter (U or D) entered in the lower right. Nothing must be written in the ADMIN box; it is reserved for refund processing information.

ENTERING HEARING RECORDS IN THE SATS DATABASE

Data should be entered on the appropriate **SATS administrative tow hearing** screen (DPT-13/SFPD-14/MUNI-15). The most reliable source for this information is the tow inventory; the tow dispatch record has frequent errors. Special care should be taken in entering the **license plate** and **state** fields as these are **key fields** for retrieving the file. **If the license plate or vin number (when there is no plate) is not entered correctly, the tow hearing record cannot be retrieved from the computer.**

Data to enter in the following fields :

HEARING DATE: enter all 6 digits

VEHICLE LICENSE NUMBER: LICENSE #, or, if towed under vin or no id, last 7 digits of VIN NUMBER, or NOID+FIRST 4 DIGITS OF noid number, EX. "NOID1234". Personalized plates for the disabled and disabled veterans end with DP AND DV, respectively.

STATE: Consul corps vehicles shall be entered as "US".

HEARING DECISION: U=UPHELD, D=DENIED, P=PENDED / if a partial refund is granted the decision should be entered as "U" and the reason noted in "EXPLANATION".

EXPLANATION: succinct but complete reason for the decision. If a partial refund is made this should indicate if the tow or the storage was valid and what the refund concerned.

NAME: FIRST, LAST

WAIVER: Y or N

VIOLATION: NUMBER or TITLE from tow inventory or tow dispatch record. This is where "RECOVERY", "ACCIDENT", etc. appear if applicable

TOW DATE: from tow inventory or tow dispatch record

LOCATION: from tow inventory or tow dispatch record

CITATION: NUMBER or NONE if non-violation tow, or UNKNOWN if not indicated

SURVEY REQUESTED: Y or N

Press **RETURN** to enter the record. **Before entering the data** as a record of the tow hearing **verify** from a reliable source (DVLN screen or NCIC out of state license number inquiry, etc.) **that the essential information (LICENSE PLATE #, VIN #, STATE) has been transposed absolutely correctly.**

PART IV ~ RESPONSIBILITIES, DUTIES AND OBLIGATIONS OF THE HEARING OFFICER

THE ROLE OF THE HEARING OFFICER

The role of Hearing Officer in the course of an administrative hearing could be considered loosely analogous to the roles in a criminal proceeding: prosecutor, defense advocate and judge.

- As the prosecutor, the hearing officer examines the respondent, witnesses and the authenticity of any documents presented to question the credibility of the defense.
- As the defense advocate, the hearing officer examines the parking citation for defects in the prima facie case, examines other aspects of the City's case (such as traffic surveys or Parking Control Officer's comments), elicits information and when necessary, assists the respondent in articulating his or her defense.
- As the judge, the hearing officer listens to the respondent's story, weighs the evidence, makes findings of fact and renders a fair and impartial decision.

It is essential that a hearing officer remain an independent, impartial, neutral and objective fact-finder. The hearing officer does not "represent" the City or the respondent but conducts hearings and renders decisions in accordance with the rules, regulations, and procedures established by applicable laws and Department policies. By law, any interest the City may have in collecting parking fines should not be considered during the hearing process [CVC Section 40215(c)(4)(a)]. See Appendix A3 - Rules of Behavior In Conducting Hearings.

The hearing officer should have a solid understanding of the California Vehicle Code and Municipal Traffic Code as well as other applicable statutes, regulations and policies to ensure the successful adjudication of parking citations and tows.

CONDUCT AND ETHICAL STANDARDS OF THE HEARING OFFICER

A hearing officer must uphold the integrity and impartiality of the hearing officer function. This is accomplished by avoiding any bias or personal animus and excludes soliciting or accepting anything of value or benefit. A hearing officer **must immediately report** any offers, suggested offers of any type, or gifts received to the Manager of the Hearing Division.

It cannot be overly stressed that any appearance of impropriety must be avoided. A hearing officer must not conduct a hearing for any relatives, friends or close

acquaintances. If the hearing officer knows the respondent he/she should inform the Division Manager and arrange for another hearing officer to conduct the hearing. A hearing officer **must** observe this rule even if he/she believes he/she can remain impartial.

A hearing officer should disqualify him/herself immediately in the following situation where his/her impartiality may be questioned:

- There is a personal bias or prejudice concerning a respondent, attorney or witness or personal knowledge of disputed facts in evidence.
- There is **any** personal connection with the respondent, attorney or witness.
- There is **any** financial connection with the respondent, attorney or witness.

NOTE: All Department of Parking and Traffic employees must submit parking violation protests to the Manager of the Hearing Division for adjudication. In addition, hearing officers are not authorized to conduct hearings for citations received in the course of duty by any government employee, domestic or foreign (city, county, regional, state, federal or consular), unless specifically authorized by the Manager of the Hearing Division. If a hearing officer should discover, in the course of a hearing, that this is the situation he/she should pend the hearing and inform the person that the Manager of the Hearing Division will conclude the hearing and issue a decision.

PART V ~ THE HEARING OFFICER AS AN EMPLOYEE OF THE DEPARTMENT OF PARKING AND TRAFFIC

DESCRIPTION OF DUTIES

The announcement of the hearing officer position reads as follows:

“Under general direction from the Executive Director, Parking and Traffic, positions in this class are responsible for conducting administrative hearings as required by the California Vehicle Code. Incumbents present opening remarks and information; listen to testimony and cross-examine; document testimony in written form; bring forth and examine relevant evidence; make a decision of liability/dismissal; inform the citizen protesting and document the rationale of this decision; and, perform other duties as required.”

CONFIDENTIALITY REQUIREMENTS

As an employee of the City and County of San Francisco a hearing officer must abide by the employee obligations found in the City and County of San Francisco, Employee Handbook. Concerning computer and data systems it stipulates:

“City and County employees with access to computer files and records may not release or disseminate information to others without authorization. The release or dissemination of such material may constitute an invasion of privacy, and may be grounds for disciplinary action and termination.”

Documents internal to the Department, and confidential, must be reviewed by hearing officers and are frequently an integral part of the information in a file. It is imperative that the hearing officer keep the documents in his/her possession during any processing and not allow anyone outside the Hearing Division access to them. Thus, a hearing officer should not allow a respondent to see the documents contained in the Hearing Division's file. Documents from within the Department of Parking and Traffic and from various other City departments should not be disclosed to anyone outside the Division by the hearing officer. Any request for information contained in a hearing file must be directed to the Division Manager. This includes requests for documentation under the California Public Records Act. At the Hearing Division level only the Manager or person(s) delegated by the Manager are

authorized to furnish information requested from Hearing Division public records.

The California Department of Motor Vehicles allows the Department of Parking and Traffic to access certain information via the SATS system link through the Municipal Court mainframe (See Appendix A5 – Accessing DMV Information). The information obtained on the system is proprietary to the DMV and should be used for hearing purposes only. Unauthorized disclosure of the information obtained from DMV records is a misdemeanor punishable by a maximum \$5000 fine and/or maximum 1 year imprisonment (CVC1808.45). Any person who engages in unauthorized distribution of DMV information is liable for a maximum \$100,000 in civil penalties (CVC1808.46).

Police records are often utilized in the process of conducting citation and tow hearings. These records are confidential and should not be left unattended or shared with anyone outside the Hearing Division.

CONFLICT OF INTEREST

Employees of the Department of Parking and Traffic Hearing Division have one of the most sensitive and highly visible jobs in City government. As the very nature of the work requires that Hearing Officers relate to individuals who have a dispute regarding a citation, it is essential that Hearing Officers avoid both actual conflicts of interest and the appearance of a conflict.

An actual conflict of interest is any situation which would prevent an employee from performing his or her job in a fair and impartial manner.

Certain activities may generate real conflicts of interest and are strictly prohibited:

- **Hearing Division policy is that no hearing officer may solicit, accept or receive gifts from the public including, but not limited to, money, food, beverages, articles of merchandise and discounts. Violations of this policy can result in disciplinary action up to and including termination of employment and constitute a misdemeanor. See San Francisco Charter Appendix C, §8.105 – Conflict of Interest and Other Prohibited Practices**
- A hearing officer can encounter in a hearing an individual with whom he/she has or had a personal or business relationship. Hearing officers should never conduct hearings with respondents or witnesses with whom they have any personal or business relationships. Examples of such relationships include, but are not limited to, family members, friends, neighbors, acquaintances, current or former business partners and co-workers. These individuals should be directed (or have their correspondence directed) to another hearing officer, or, if no other hearing officer

is available, to Hearing Division management. The simplest way to avoid any conflict of interest is to prevent it from arising in the first place. By taking the simple step of transferring the hearing to another hearing officer a conflict of interest will be avoided.

Whenever a hearing officer has any questions about the potential for a conflict of interest he/she should seek the guidance of Hearing Division management or the Executive Director.

PART VI ~ HEARING DIVISION ADMINISTRATIVE PROCEDURES

WORK SCHEDULE

Scheduling of employees and work shift assignments are the sole responsibility of the Hearing Division Manager or employees specifically delegated by the Manager. **Hearing officers may change or modify their work schedule without obtaining the abovementioned approval only on an emergency basis and for one given day.** This must be communicated to management immediately.

Any non-emergency shift changes must be requested in writing and approved by the Manager or person(s) responsible for scheduling prior to the date(s) in question. As a general rule, and if possible, the request should be made one week in advance.

PAYROLL

All hearing officers are paid on an hourly basis. The hearing officer must sign in and out upon his/her arrival and departure including time out of the office for breaks and lunch. Payroll is calculated in 15 minute increments. A time sheet is located outside the Hearing Division's clerks' office.

TIME OFF REQUESTS

Hearing officers may request time off for vacation or any personal reason. It is imperative that hearing officers give Hearing Division management as much notice as possible so that the hearing officer's shift may be covered by another hearing officer. Hearing officers are required to complete a yellow time-off request form specifying the dates and hours for the requested time off. A yellow time-off request form may be obtained from the Hearing Division clerk. After completing the form, the hearing officer should present it to the Hearing Division Manager for approval.

ILLNESS OR EMERGENCIES

It is unavoidable that a hearing officer may become ill from time to time. If a hearing officer knows a day or more before he/she is unable to work a shift, the hearing officer should notify the Administrative Assistant so that he/she can schedule another hearing officer to work the shift. If a hearing officer discovers at the last minute that he/she is unable to work a shift, the hearing officer should call another hearing officer

on the telephone list to work the shift. Whether the hearing officer is unable to find a replacement for his/her shift or not, the hearing officer should notify Hearing Division management.

In order to be compensated for sick pay hours, the hearing officer should complete a yellow time-off request form as soon as practicable.

LEAVE OF ABSENCE

A hearing officer may request a leave of absence by notifying the Hearing Division Manager in writing. A request for a leave of absence is subject to the approval of the Division Manager.

DRESS CODE

All Hearing Division employees must dress in professional attire. Hearing officers should be well-groomed and presentable at all times even when they are only working in the back office. Jeans, tennis shoes and tee shirts are strictly prohibited. All male hearing officers must wear a tie when conducting hearings.

MAIL BOX FOLDER

The primary form of communication among hearing officers is conducted via the mail box folders. The folders are located outside the Hearing Division clerks' office. All hearing officers should check their mail box upon arriving and departing the office.

AUDIX VOICE MAIL SYSTEM

Each hearing officer is assigned a voice mail telephone number. It is a convenient vehicle to receive information since the hearing officer's schedule is limited and sometimes sporadic. The hearing officer may give the telephone number to a respondent if the respondent feels the need to contact the hearing officer after a hearing has been conducted. The hearing officer also may utilize the voice mail system if he/she will not be in the office and wants a person from another Department within the City to leave a message concerning an investigation.

The procedure for utilizing the system is as follows: Dial 252-2580 - follow the prompt to dial your box number and password. Follow the voice mail prompts to listen to, save and/or delete messages.

TELEPHONE USE

Hearing Division staff use the telephone as an essential tool in conducting business. Individual telephone lines have different levels of access for long-distance and toll calls. Access is granted at varying levels for operational reasons.

It is understandable and acceptable that people use the telephone to make infrequent and brief personal calls. Free calls will be restricted to those in the 415 telephone code area. Calling cards or other means of self-billing should be used for personal calls outside the 415 area.

CONFRONTATIONAL AND EMERGENCY SITUATIONS

THE UNRULY RESPONDENT

Occasionally, a respondent will become unruly during or at the conclusion of a hearing. Often this can be avoided by fair and courteous treatment. As a matter of course, respondents should be advised of their right to a de novo hearing prior to the commencement of the hearing. Knowledge of this may have a calming effect on the respondent.

A hearing officer is not required to tolerate personal abuse. If a respondent becomes abusive, the hearing officer should warn him/her to desist, and that if such behavior continues it will result in a termination of the hearing. If a respondent continues to act abusively, the hearing officer should request the security guard to escort the respondent out of the building.

The safety of the hearing officer is of utmost importance. Personal safety issues take precedence over any established procedures. Safety procedures exist to offer opportunities for the hearing officer to protect him/herself and any other people. It is incumbent upon the hearing officer to evaluate the level of danger and how to react.

If at any time the hearing officer is threatened with bodily harm the hearing officer should: 1) remove him/herself immediately through the back door of the hearing room and 2) lock the deadbolt on the same hearing room door. The hearing officer should immediately call the Hearing Division main telephone line, 255-3969, and inform the Hearing Division Manager or support personnel of the incident and request the intervention of the security guard or of the police, as needed. There is also a button below the desk which activates an emergency police response.

If a hearing must be terminated because a respondent refuses to comply with the procedural requirements (after proper warning) or because the respondent continues to be abusive, the hearing officer should enter a decision based upon the evidence presented. The hearing officer **must** send a decision letter to the respondent. The letter should inform the respondent that the decision was made based on the evidence submitted up to the point the hearing was terminated. The letter should

advise the respondent of the right to a de novo hearing. It is vital that the hearing officer keep a written record in statement form with the file documenting the objectionable behavior, the reason for terminating the hearing and the basis for the decision.

A written report of the event should be drafted and given to the Manager as soon as possible after the incident.

UNCONTROLLED DISPLAYS OF EMOTION / SUSPECTED MENTAL INSTABILITY

In situations of uncontrollable displays of emotion or suspected mental instability it is sometimes helpful to bring in someone from Hearing Division management to attempt to calm the person. In most cases it is preferable to pend the decision, if possible, to defuse the situation. If the person becomes unruly and/or dangerous the procedures relating to an unruly respondent should be employed to ensure the safety of all and allow hearings to continue.

MEDICAL EMERGENCIES

Call 911 immediately and state the nature of the emergency, give the address of the building and the location of the person. Notify Hearing Division management, the security guard and the Hearing Division clerks that you have called 911.

PART VII ~ APPENDICES

APPENDIX A1

RESPONDENT'S EVIDENCE

REVIEW

It is difficult to define what constitutes "sufficient" evidence. Sufficiency, in each case, will depend on the circumstances and the type of violation. When determining the credibility and the weight of evidence, the hearing officer should always consider its source and possible bias, and then determine its probative value.

Factors involved in evaluating the probative value of evidence include:

- The credibility of the respondent or witness.
- The availability of persons with first-hand knowledge to testify at the hearing.
- Whether the statements submitted are in the form of a declaration (sworn) or a simple written statement.
- Whether the statement is that of a disinterested witness.
- Whether the statement is routinely made during the course of business.
- Whether witness bias is present.
- Consistency of respondent's or witness' accounts with other information in the case.
- Whether corroboration for statements can be found elsewhere in the respondent's record.
- The absence of contradictory evidence.

The hearing officer never should feel compelled to believe everything submitted or stated at the hearing. It is permissible to consider or accept, at face value, anything offered and thereafter subject it to examination and assign it a relative weight. Evidentiary requirements can be specific. For example, if a respondent or witness states that there were no signs on a particular block, this can be verified by the results of an investigation, i.e. field survey and/or sign shop inquiry (see Appendix A5).

WITNESSES

The respondent may call a reasonable number of witnesses. The hearing officer should listen to each witness carefully and examine the witness' testimony as presented. While a witness is testifying, the respondent and any other witness(es) must wait outside the hearing room until called by the hearing officer. The hearing officer should make note of any inconsistencies between the supporting testimony and the respondent's version of the facts.

Dismissal is never automatic even when the defense is corroborated by a witness. The hearing officer must always weigh the reliability (credibility, accuracy, bias) of testimony both from the respondent and his or her witness(es). The hearing officer should consider the amount of time between the time the incident took place and the time the written or oral statement was made in order to determine such issues as the ability of the witness to recollect and testify accurately.

DOCUMENTS

The respondent may submit any relevant document at the hearing. All respondents must be advised at the outset of the hearing that any document submitted as evidence will be retained in the hearing file as the hearing record. The hearing officer must review each document and attempt to determine its authenticity and assign probative weight to the document. Commonly presented documents include photographs, repair bills, tow receipts, medical verification, witness letters, bills of lading, delivery receipts, etc.

Each document submitted by the respondent must be retained as part of the hearing record. Any original document, with the exception of photographs, which cannot be retained should be examined and verified, then photocopied and placed in the file. All photographs submitted must be retained in the hearing file or not taken as evidence. When examining documents submitted, and before examining any photographs, the hearing officer should make a declaration to the respondent. The respondent should be informed that any photographs submitted must remain in the file and if he/she is not willing to permanently part with them the hearing officer will not examine them and will not take them into consideration.

If the respondent requests to withdraw any document from the record other than a photograph, the hearing officer should explain to the respondent that withdrawal of the document will be recorded, that the hearing officer cannot take it into consideration in formulating a decision and that the document will not be part of the record. If the respondent maintains the request, the hearing officer should make a notation in the file, request that the respondent sign a statement indicating that the specific document(s) is/are being withdrawn and he/she is withdrawing the document(s) of his/her own volition. If the respondent refuses to sign the statement, the hearing officer should so note the refusal.

If a respondent requests permission to bring forward additional evidence or documents to the hearing officer a limited period of time to produce such information may be accorded. This is usually limited to a one week delay of the decision.

Hearing decisions may be appealed to Municipal Court for a de novo hearing and a complete file including all documents presented at the administrative hearing must be forwarded to Municipal Court.

AUTHENTICITY

Documents purporting to represent an existing fact or legal situation must be authentic. While a respondent may present any documentary evidence, the hearing officer must attempt to determine the authenticity and the credibility of the documents. Many documents that may be submitted, such as towing receipts or repair bills, can be fabricated. It is important the hearing officer attempt to corroborate documents by contacting the originator. The hearing officer should strongly suspect such submissions as unauthenticated legal documents, doctor's notes on plain stationery, repair bills without headings, etc. If the hearing officer doubts a document's authenticity and the respondent does not thoroughly dispel this doubt, the hearing officer may assign the document less probative weight.

MATERIALITY

The respondent may submit any documents he/she may consider relevant. The hearing officer always should make sure the document being presented is actually germane to the case. Documents commonly presented include photographs, repair bills, statements by doctors, letters from witnesses, receipts, etc.

The hearing officer should be cautious in determining whether photographic evidence presented is an accurate record of conditions at the time a citation was issued. **Always verify the location represented in a photograph by ordering a field survey (see Appendix A5).**

PROBATIVE VALUE

To be assigned any weight when judging a case, a document must prove something essential or explain something germane to the defense. A photographic close-up of a sign on a pole is not definitive by itself. The photo may not accurately represent the pole or the street in question, other signs located above or below it, or different signs posted on another pole nearby. Close up photos of broken meters also may be meaningless unless the meter number is visible. The hearing officer may accept the document into evidence but should not give it probative value or determine its legal weight until further investigation has been conducted.

ABSENCE OF DOCUMENTATION

Sometimes the absence of documentary evidence can in itself be instructive. A respondent, for example, who claims to have had an emergency appendectomy and fails to provide any hospital records is possibly not telling the truth. The same applies to other situations where the reasonable person would produce some corroborating documentation to support the defense.

If the hearing officer believes that a reasonably prudent person would have produced documentary evidence to support a defense and the respondent does not produce such evidence, the hearing officer may consider this fact as a basis for a denial of the parking citation on the grounds that the evidence lacks substantiation or that there is inadequate proof for a defense.

APPENDIX A2

COMMON REASONS FOR PROTEST

The following are the most common types of rebuttals to the prima facie case that may be set forth by the respondent during the hearing:

GENERAL DENIALS

General denials may take several forms. Initially, a respondent may simply claim that he/she did not commit the violation. More often the allegation on the citation may be challenged by a specific claim such as "time was still showing on the meter", "the car was not in the restricted area when it was cited", "the regulation was not in effect at the time stated on the citation", etc. It is the duty of the hearing officer to investigate the facts pursuant to the defense raised by the respondent.

MATERIAL ERROR IN ISSUANCE OF THE CITATION

The respondent may contend that the issuing officer made an error in alleging the violation. The parking citation is the prima facie case. It stands or falls as charged, at least as to the material elements such as date, time and place. The respondent has the burden to prove otherwise that the citation should be dismissed.

NOTE: It is not conclusive to prove the respondent's location on the date of the violation; the citation was issued to a vehicle, not the respondent.

Some flexibility should be maintained in reviewing the address on a citation (e.g., location is given as 200 Main, and respondent claims he was in front of 226) or obvious inversions of the date and time (e.g., "21/10/92" as the date or the insertion of "2 p.m." in the date space and "11/2/92" as the time). This kind of error does not, without other proof, negate the charge. Minor and subjective differences in vehicle description such as shades or hues (as opposed to gross differences in description) and variations on make of the vehicle (such as Ford or Mustang) should be overlooked or deemed immaterial.

If there is a reference to an incorrect violation or incorrect penalty amount, the hearing officer must evaluate this as a weakness in the prima facie case and dismiss the parking citation.

MATERIAL ERROR IN THE VEHICLE IDENTIFICATION

If a defense is raised that the vehicle identified on the citation is not the respondent's

vehicle, the following guidelines should be applied:

- a. Claim must be raised **after** receipt of the courtesy notice, not on the windshield copy of the citation. Possession by the respondent of the original citation is a virtual negation of the claim.
- b. Check the QCIT screen to determine the make of the vehicle.
- c. Pull the microfiche copy of the parking citation and verify the vehicle license number, make, color, vin number (if indicated on the citation) and registration expiration date.
- d. Check the DVLN screen to determine the correct vehicle license number, vin number (if indicated on the citation) and registration expiration date.
- e. Examine the citations on the right and left side of the microfiche copy of the parking citation to compare locations.

TIME OF OBSERVATION VERSUS TIME OF WRITING

The relevant time for any allegation of parking violation is the time the violation is **observed**, not necessarily the time the citation is actually written. However, if a respondent proves that a citation was written before the prohibition came into effect the citation should be dismissed. For example, the prohibition states "No Stopping 4:00 to 6:00 p.m." and the citation is written at 3:55 p.m. On the other hand, if the officer observes a violation before a prohibition ends and the citation is placed on the vehicle after the prohibition ends, the citation is valid.

ILLEGIBILITY OF THE CITATION

A hearing officer may consider the illegibility of a particular parking citation in rendering a decision, especially when one of the statutory criteria on the parking citation is questionable. The hearing officer always must obtain a microfiche copy of the parking citation and compare it to the original or copy submitted by the respondent at the hearing.

PERFORMANCE OF THE ISSUING OFFICER

On occasion an individual may contest a citation based on an allegation of misconduct by the traffic officer who issued the citation. The complaint is irrelevant to the validity of the citation, for example, where the officer is rude or verbally abusive or where there is an allegation of selective enforcement. This would not negate the fact that the individual's vehicle may have been illegally parked and properly cited. In such a case, the hearing officer should give a complaint form to the respondent and advise him/her to mail the form to the address indicated at the bottom of the form.

APPENDIX A3

RULES OF BEHAVIOR IN CONDUCTING HEARINGS

It is important that each respondent receive a full and fair hearing even if the ultimate decision finds the respondent liable. The following guidelines should be utilized by the hearing officer during the hearing:

LISTEN ATTENTIVELY

The hearing officer should listen attentively to the respondent's presentation. Although the hearing officer may have heard a particular defense many times, it is necessary that the hearing officer show the respondent respect and consider the protest as if the hearing officer were hearing it for the first time.

BE PATIENT

A hearing officer should always be patient, dignified and courteous. It is important to let the citizen tell a complete story and present all pertinent evidence, but at the same time do not permit irrelevancies to intrude on the hearing process.

NEVER SHOW ANGER

This may be difficult sometimes since a person may become abusive. If the hearing officer is able to stay calm and professional, an agitated citizen often will cool down and the "judicial" aura of the proceedings will be maintained to the hearing's conclusion. If the individual continues to be insulting or abusive, advise the person that the hearing will be terminated if he/she does not act reasonably. In a case where the respondent is violent or disruptive, the hearing officer should call the security guard immediately or, if necessary, press the buzzer underneath the desk to call the police. See **PART VI ~ HEARING DIVISION ADMINISTRATIVE PROCEDURES CONFRONTATIONAL AND EMERGENCY SITUATIONS.**

CONTROL THE HEARING

The role of the hearing officer is to direct the progression of the hearing and to render a decision within the framework of applicable laws and Division policies and procedures. The hearing officer must ensure that necessary procedures are followed

and should avoid comments of a personal nature. Although the hearing officer should respond to reasonable requests for information or clarification, the hearing officer should not allow a "cross-examination" by the respondent. The hearing officer must not allow the hearing to digress into a discussion of matters not germane to 1) the adjudication of the parking citation or 2) the determination of the validity of the tow. It is not the hearing officer's function to "defend" City policies or regulations but to conduct and conclude a hearing in a professional and impartial manner.

BE FIRM

While it is important to be fair, it is also important for the hearing officer to be firm. The hearing officer may be tempted to dismiss a parking citation or issue a refund for a tow because of a desire to be lenient when the facts do not justify it. This is wrong for several reasons. First, the City is attempting to reduce illegal parking. The dismissal of a citation or the issuance of a tow refund, merely because the respondent took the time to come to a hearing or simply because the respondent is forceful in presenting his/her reasons for parking illegally (other than an accepted reason) undermines correct and legal enforcement of parking regulations. Second, it is unfair to the public as a whole, in whose interest the hearing officer labors, to make an unjustified special exception for one person. Finally, it is simply not good public relations to provide a loophole for those who seek to obtain an unjustified exception for themselves. The only policy acceptable to the Hearing Division is to treat everyone equally and fairly, and not to "give a break" to those who attempt to escape responsibility through an appeal to the hearing officer's sympathy.

SET LIMITS

The hearing officer should know when to set limits on the respondent's presentation. When a respondent becomes needlessly repetitive or offers irrelevant arguments/evidence a hearing officer should politely but firmly guide the person back to the facts of the case. He/she should require the respondent to restrict the defense to that which is appropriate to the validity of the citation or the tow. A hearing officer should be aware that in most cases others are awaiting their turn to be heard and there is a need to proceed expeditiously with the hearing.

PRESERVE CONFIDENTIALITY

A hearing officer should preserve the confidentiality of the hearing proceedings. The hearing officer can have privileged access to personal and/or confidential information concerning the respondent. This could include a medical condition, family problems,

job information or names of neighbors, other City employees, etc. The hearing officer must realize this information should be used only in his/her official functions as a hearing officer and should not be divulged outside of this context. If a request to furnish testimony is received it will be evaluated by Hearing Division management (and possibly the City Attorney). Hearing Division management will instruct the hearing officer. Any request for information under the California Public Records Act should be addressed to Hearing Division management.

APPENDIX A4

SUGGESTED TECHNIQUES FOR CROSS EXAMINATION

GUIDING THE TESTIMONY FROM THE RESPONDENT OR WITNESS

Probably the best method of examination is allowing the respondent or witness to tell the whole story prior to discussing the details. Due to the informality of the proceedings, many of the defenses and explanations may be based upon what might be called partial truths. "There was no sign." "I was unloading." "It was an emergency." "My car broke down." All of these arguments, if proven, may mitigate the violation, but they never should be taken at face value. The hearing officer should encourage a respondent to go into detail once the big picture has been established. The respondent should clarify as much as possible actual observations, actual times, distances, etc. Sometimes a different picture will emerge. Thorough questioning may sometimes reveal that the testimony of a respondent and his/her witness(es) is inconsistent.

If a respondent says that no sign was posted, the hearing officer should ask the person to reconstruct the search for a sign. How far did he/she look? Did he/she walk to each end of the block? Do the photographs show the whole block or only part of it? Sometimes the hearing officer may discover that the respondent or witness didn't see a sign that was posted near the vehicle and assumed that parking was legal.

In the case of a mechanical breakdown, the hearing officer should ask the respondent to describe the whole story with a sequence of events and times. Where was the car repaired? When was it repaired? How did the respondent find the repair garage? Be suspicious of repair bills from garages far from the alleged breakdown. Was the car illegally parked before the alleged breakdown occurred? If the respondent knowingly operated a defective vehicle, the respondent may be liable if the defect caused the breakdown.

This kind of questioning may often uncover more information on which to base a decision. Sometimes, the hearing officer will find that an excuse, even if true, is inadequate for dismissal. Often, the responses elicited help to determine the credibility of a respondent. Sometimes this type of examination will focus on a detail (e.g. actual measurements or actually walking the entire block looking for a sign) on which the hearing officer can question the respondent directly. Here many respondents will falter, allowing the hearing officer to pierce their story. Alternatively, thoroughly checking and questioning a whole or incomplete story may sometimes enable the hearing officer to see the merit in a defense that in its shortened form sounded inadequate or unbelievable.

RAPID QUESTIONING

If the hearing officer questions the credibility of a respondent or a witness, the hearing officer may uncover inconsistencies by asking a series of detailed questions in rapid succession. It helps to have a plan, but sometimes the hearing officer can just proceed instinctively by getting the respondent to detail the story with such fast questioning that the respondent does not have time to fabricate an answer. Get the respondent to concentrate on recalling the event. Suddenly the respondent may remember exactly where he/she parked, what he/she did and what he/she saw. It is important to remember, however, that rapid questioning, which is intended to trip up a respondent or witness, also may make a nervous situation even more so.

LOOKING FOR CONTRADICTIONS

The hearing officer may detect clear contradictions by careful questioning. For example, a truck driver states that he never left the truck. Later, after pursuing a different line of questioning the hearing officer asks: "What did the officer say"? The respondent states "I didn't see the officer; the citation was there when I returned".

APPENDIX A5

INVESTIGATIVE OPTIONS

After a hearing officer conducts a hearing and is unable to make a decision solely based on the evidence presented, the hearing officer may conduct an investigation. The following investigative methods are available to the hearing officer:

FIELD SURVEY

A hearing officer may request a field survey clerk (Citation Division employee) to physically inspect the location where the citation was issued. This is done by using the Field Survey Request Form. A copy of the parking citation must be attached to the form. The hearing officer should write a clear and concise request for information concerning the location. Photographs or drawings submitted by the respondent may be attached to the form and a question may be asked in reference to the picture or diagram.

TRAFFIC SURVEY

Temporary parking restrictions are registered and approved by the Traffic Survey Coordinator for special events and construction projects. All records of special events and construction projects are maintained in binders in the hearing officer room. The hearing officer may consult these records when conducting a tow or citation investigation.

METER SURVEY

Broken meters. In the event a respondent protests a citation on the grounds that the meter was broken, the hearing officer may refer to the meter logs located in the area outside the lunch room. The meter logs are maintained on a monthly basis. The logs contain a list of meters that have been repaired or replaced on specific dates. A citation may be dismissed if the meter log reflects the meter was repaired within 1 week after the date on the citation.

Fast meters. If a hearing officer has a question regarding the accuracy of the meter, he/she may fax a request to the meter shop (Traffic Operations Division) regarding the calibration of a particular meter (See the Meter Survey form). If a respondent states that the meter was broken, it is often not clear whether the respondent means the meter was broken or in fact means the meter did not give the correct length of time. In this circumstance, it is recommended that the hearing officer check both the

meter logs for service/repair information and the meter shop for any calibration problems.

Meters located in the Port/Pier area are serviced by the port meter shop (Port Authority). When conducting a meter survey for a port meter, the hearing officer should contact the port meter shop. (See Telephone List - Appendix C1)

INSPECTION OF ADMINISTRATIVE REVIEW DOCUMENTS

The hearing officer may wish to inspect the document(s) submitted to Administrative Review by the respondent. The SATS 5/12 screen indicates the 2-letter name code of the Administrative Review clerk and the date the decision was entered into the computer. The original Administrative Review documents are located in the Citation Division filing cabinets surrounding the field survey desks, filed by name code and date. By inspecting the original documents, a hearing officer may be able to determine if the respondent previously submitted supporting evidence or contradicting evidence. Inspecting these documents can be extremely helpful in the event a respondent submitted original documents to Administrative Review and did not retain a copy for the hearing.

INVESTIGATION INVOLVING OTHER CITY DEPARTMENTS

A hearing officer may need information regarding a street grade, curb paint, missing sign etc. and would like to contact the appropriate DPT Division or other City department for information. The telephone list located in Appendix C1 will direct the hearing officer to those telephone numbers which may assist him/her in the investigation.

INVESTIGATION INVOLVING OTHER ORGANIZATIONS, BUSINESSES OR INDIVIDUALS

The hearing officer should verify certain types of evidence submitted at the hearing. Telephone calls may be made to automotive garages or other businesses, medical offices, etc. This type of investigation is helpful in uncovering inconsistencies between the testimony and the documentation.

ACCEPTING ADDITIONAL SUPPORTING EVIDENCE FROM THE RESPONDENT

If a person would like to submit additional evidence, the hearing officer may accord a reasonable (one week) period in which to do so. If the person desires to bring the evidence in personally, he/she should be instructed to turn in the evidence or documents to a Hearing Division clerk who will provide the person with a RECEIPT FOR DOCUMENTS DELIVERED.

APPENDIX A6

ACCESSING DMV INFORMATION DIRECTLY FROM THE SATS TRANS:ID PROMPT

DMV INFORMATION

| <i>PROMPT</i> | <i>INFORMATION</i> |
|--|--|
| | |
| DVLN_LICENSE NUMBER | REGISTRATION RECORDS AND HISTORY |
| | |
| DVLN*LLICENSE NUMBER | REGISTRATION RECORDS AND HISTORY, PERSONALIZED PLATES |
| | |
| DVLD_MMDDYYLICENSE NUMBER | REGISTRATION RECORDS AS OF A GIVEN DATE |
| | |
| DVLC_LICENSE NUMBER | REGISTRATION AND PARKING CITATIONS ON A "DMV HOLD" STATUS(ALL CA JURISDICTIONS) |
| | |
| DVLC*LPERSONALIZED LICENSE PLATE NUMBER | REGISTRATION AND PARKING CITATIONS ON A "DMV HOLD" STATUS(ALL CA JURISDICTIONS) |
| | |
| DMVU_R604VVIN NUMBER | REGISTRATION RECORDS/COMPLETE VIN NUMBER REQUIRED |
| | |

| <i>PROMPT</i> | <i>INFORMATION</i> |
|--|---|
| | |
| DVLN*SDISABLED PLACARD NUMBER["K" is current, "M" is temporary] | PLACARD REGISTRATION |
| | |
| DVLC*SDISABLED VEHICLE LICENSE NUMBER (Ex. 25586DP - disabled, 25586DV - disabled veteran, 25586PH - for Purple Heart plates) | REGISTRATION RECORD FOR DISABLED DRIVER LICENSE PLATES |
| | |
| DNAV_DOE_JOHN | REGISTERED VEHICLE QUERY BY NAME |
| | |
| DNAV_DOE_JOHN X;COAKLAND) | REGISTERED VEHICLE QUERY BY NAME AND CITY |

APPENDIX B1

REASON FOR TOW / CVC TOW AUTHORITY

| REASON FOR TOW | CVC TOW AUTHORITY |
|---|-------------------|
| 22511.8A / PUBLIC OFF STREET PARKING FOR THE DISABLED | 22511.8C |
| HAZARD (22502A) (22522 \ 70B) TC 32A.1, 32A.2, 32B, 33.3, 33.3.2, 38B.1 | 22651B |
| RECOVERY (10851) | 22651C |
| 22500E | 22651D |
| 22514 (FIRE HYDRANT) | 22651E |
| ACCIDENT/MEDICAL EMERGENCY | 22651G |
| ARREST | 22651H |
| SCOFFLAW (CITATIONS) | 22651I |
| SCOFFLAW (REGISTRATION) | 22651O |
| 5200 | 22651J |

| REASON FOR TOW | CVC TOW AUTHORITY |
|---|--|
| | |
| TC37A | 22651K |
| | |
| STREET REPAIR / UNDERGROUND UTILITIES | (22651L) ILLEGALLY PARKED AFTER 24 HOUR NOTICE |
| | |
| TC 33.1 | 22651M (24 HOURS NOTICE) |
| | |
| 2 CITES?, TC68 | 22651N |
| | |
| 4000(a), 5204(a) | 22651O |
| | |
| STOP (12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, 14604) | 22651P |
| | |
| BLOCKING LEGALLY PARKED VEHICLE | 22651R |
| | |
| VEHICLE USED TO ADVERTISE | 22651.2 |
| | |
| OFFSTREET PUBLIC PARKING FACILITY (32.14) | 22651.3A |
| | |
| MPC37.03A | 22651.5A |
| | |
| VEHICLES FOR SALE | 22651.9 |
| | |

| REASON FOR TOW | CVC TOW AUTHORITY |
|---|-------------------------|
| | |
| 22507.8 SPACE DESIGNATED FOR THE DISABLED | 22652 |
| | |
| 22511.59 PROHIBITION OF MISUSE OF PLACARDS (VEHICLE IN VIOLATION OF A LOCAL ORDINANCE OR RES.) | 22652.6 |
| | |
| 22500 / NO STOPPING, STANDING, PARKING, 22504 / SCHOOL BUS | 22654A |
| WORK ON HIGHWAY OR PUBLIC WORKS FACILITY | 22654D |
| | |
| OBSTRUCTION - EMERGENCY SERVICES / TRAFFIC ROUTING SCENE OF DISASTER | 22654E |
| | |
| INVESTIGATION / CVC20002 - 20006 (HIT AND RUN) | 22655A |
| | |
| EVIDENCE / PENAL CODE/PART 2/TITLE 3/CHAPTER 4.5/SEC. 830 ET SEQ. / 4462 (UNLAWFUL REGISTRATION DEVICE) 4464 (ALTERED PLATES) | 22655.5 |
| | |
| 22521 \ TC 71(RAILWAY RIGHT OF WAY) | 22656 |
| | |
| 22669D (CVC 24002/VEHICLE NOT EQUIPPED OR UNSAFE) | 22669D / SEE 22851.3(a) |
| | |
| | |

| REASON FOR TOW | CVC TOW AUTHORITY |
|---|-------------------|
| | |
| INVESTIGATION / CVC 28001/2800.29 (EVADING PERSON) | 22655.3 |
| | |
| REMOVAL FROM STATE PROPERTY | 22659 |

APPENDIX B2

DIVISION POLICY ON SCOFFLAW TOWS (CITATIONS & REGISTRATION)

Vehicles are towed as "scofflaw" vehicles when it appears:

- there is a record of five or more, unpaid, unprotested citations on the vehicle record which have gone past the statutory protest period [CVC22651(i)],
- they have been out of registration for more than six months [CVC22651(o)],
- the vehicle is found to be subject to both of the above conditions [CVC22651(i)] & [22651(o)].

UNPAID CITATIONS

When a parking citation is issued to a vehicle it can be paid, protested or cleared by community service work. If none of these options are engaged the citation remains on the vehicle license record as uncleared [DMV hold, CVC4760(a)].

DPT Citation Division considers the CVC-mandated protest period to extend 21 days from the date of issuance and 21 days from the mailing date of the delinquent notice (found in the SATS QOPR screen). If it can be documented that proper notice has been given to the owner of the vehicle and no protest has been registered within these 21-day periods, no further protest is possible.

Citations which are in the protest process (administrative review, administrative hearing, denovo hearing) or signed up for community service (Project 20) are considered "calendared" (and indicated as such in the SATS QCIT screen) and cannot be counted as scofflaw citations. Review decisions denying requests for dismissal or failure to complete community service cause the citations to revert to unpaid and delinquent status. They will no longer appear as "CALENDARED" in the SATS QCIT screen but will then be designated by their penalty status designation (DNMAIL, DNMAIL2, DMVHOLD).

In DPT Citation Division administrative practice, individual citations are qualified and marked for the scofflaw count three months after the end of the protest period. This information is then transmitted to the Enforcement Division for action.

When a vehicle is towed for citations there are three possible scenarios:

- 1) The citations qualifying the vehicle for a scofflaw tow were acquired under the ownership of the current owner.
- 2) The citations qualifying the vehicle for a scofflaw tow were acquired under the ownership of the previous owner.
- 3) The citations qualifying the vehicle for a scofflaw tow were acquired both under the ownership of the current owner and that of the previous owner.

CITATIONS ACQUIRED BY THE CURRENT OWNER

If acquired under the current owner the hearing officer has simply to verify that the citations for which the vehicle was towed qualify as scofflaw citations.

CITATIONS ACQUIRED BY THE PREVIOUS OWNER

Transfer of ownership of a vehicle usually is established by the DMV at the same time vehicle re-registration to the new owner is initiated. Many times the new owner of a used vehicle places the vehicle in the public right of way without registering it *immediately* within the state-mandated 10-day period, or the registration process is initiated but not completed.

Sometimes, uncleared parking citations may be on the record of the vehicle at the time of sale. These citations are the responsibility of the person who is the vehicle's owner on the dates of their issuance. Nonpayment of penalties associated with citations constitute a lien on the vehicle and are legally effective from the date of issuance [CVC9800(a)(5)]. When a new owner takes possession of a vehicle, he/she assumes the legal consequences of any lien on that vehicle.

When a vehicle is towed for scofflaw as the result of citations acquired by the previous owner, the hearing officer must determine:

- 1) The current owner/person in legal possession of the vehicle on the date of the tow.
- 2) Whether this person is liable for the consequences created by the lien.

DPT Hearing Division policy is that the new owner's responsibility for payment of the penalties engendered by the lien terminates with the date of the official recording of the transfer of ownership. DMV records are consulted to establish this date. The Hearing Division will also accept proof of transfer in the form of a duly established, legible and legally binding document containing the names and other pertinent information about the seller and the buyer and **presenting substantial and credible proof of the actual date of transfer of ownership.**

If the new owner has not initiated the re-registration process *immediately* within 10 days or is not able to present credible proof of transfer of ownership during that 10-day period, he/she has assumed responsibility for the lien created by the citations on the vehicle. It is Division policy that if he/she chooses to place the vehicle in the public right-of-way he/she must assume the consequences if the vehicle is towed. Even though the Citation Division may not require the person to pay the citations, he/she is responsible for the costs associated with the tow.

Hearing Division policy is identical when a vehicle is towed more than a month after the DMV registration process has been initiated and the re-registration process has not been completed. The current owner/person in legal possession of the vehicle on the date of the tow is responsible for the costs associated with the tow.

The date the person initiates the process of changing ownership/re-registration with the DMV is reflected in the DVLN screen under Clearance Information Records or, when fees have been deposited, it is marked on the DMV form entitled "Report of Deposit of Fees". This form always indicates which procedures have to be accomplished to complete the change of ownership/re-registration of the vehicle. DMV records do not reflect the date of issuance of temporary registration. Only the person detaining the temporary registration document (a red paper square with the number of the month in the center designed to be glued in the window of the vehicle) can furnish the necessary information. **The DMV generally gives the new owner 30 days in which to complete registration.**

The new owner contesting a scofflaw tow for citations **may have gone to DMV and presented the appropriate documents** to establish ownership. The **new title document would be established in the new owner's name** which will appear on any paper documents and in the computer record for the registered owner.

The DPT Hearing Division, for the purpose of determining the validity of a tow from the public right of way, for citations acquired under the ownership of the previous owner, applies the following rules:

- A vehicle is towed for citations issued to a previous owner and the vehicle has been re-registered before the tow date to the new owner. The tow is invalid.
- *A vehicle is towed for citations issued to a previous owner and re-registration has not yet been initiated by the new owner. The tow is valid. The DPT Hearing Division considers that new owner is liable for the tow-associated costs. He/she bought the vehicle encumbered with the liens for citations and took no action to immediately clear the citations or complete registration.*
- The vehicle has been towed within 10 days of the date of transfer of the vehicle. The owner can present a duly established, legible and legally binding document including the names and other pertinent information about the seller and the buyer and presenting substantial and credible proof of the actual date of transfer of ownership. The tow is invalid. Without proof of the transfer date, the tow is valid.
- A vehicle is towed for citations issued to a previous owner and re-registration has not been initiated by the new owner in the 10 days after the sale. The tow is valid. The DPT Hearing Division considers the new owner responsible for the tow since he/she bought the vehicle encumbered with the liens for citations and took

no action to clear the citations or complete registration within the time prescribed by the Department of Motor Vehicles.

- The new owner has initiated the transfer of ownership/re-registration with the DMV and the vehicle is towed within the 30-day period following this first step. The tow is invalid.
- The person initiated the transfer of ownership/re-registration with the DMV but it has not been completed within 30 days, and the vehicle is towed more than 30 days after this first step. The tow is valid. The DPT Hearing Division considers the new owner responsible for the tow since he/she bought the vehicle encumbered with the liens for citations and did not complete the re-registration procedure in a timely manner.

Information on the identity of the registered owner on the date of issuance of individual citations is available using the **DVLD** query in the SATS system.

CITATIONS ACQUIRED BY BOTH THE CURRENT AND THE PREVIOUS OWNERS

Only the citations acquired by the current owner should be taken into consideration if the vehicle has been re-registered prior to the date of the tow.

If the vehicle has not been re-registered *immediately* (within the mandated 10-day period or re-registration was initiated but not completed within 30 days) all the scofflaw citations issued to the current owner are to be counted. Citations issued to the previous owner fall within the conditions delineated in **CITATIONS ACQUIRED BY THE PREVIOUS OWNER.**

UNREGISTERED VEHICLES

Vehicles which are legally towed as unregistered can be either:

- new vehicles for which the temporary registration has not been displayed or is past its six-month validity,
- used vehicles whose re-registration has not been initiated or completed,
- those vehicles registered in another state and which, per the California Vehicle Code, are subject to registration in California.

Unregistered vehicles purchased or previously registered in California can be towed as such if the vehicle is still not be registered 6 months after the date of sale [CVC4456(c)], or have been out of registration for at least 6 months (CVC22651). Out of state vehicles must be registered within 20 days of the date registration became

due. The vehicle must be out of registration for six months from this date to be a valid tow.

New or used vehicles sold by a dealer must display the numbered Used or New Report of Sale form. This form, placed on the vehicle by the dealer, is valid until the license plates and registration card is received or for a maximum period of six months from issuance. A hearing officer may want to contact the dealer to obtain a copy of the registration submission form sent to the Department of Motor Vehicles by the dealer.

Information on vehicle transfer of ownership and registration is available using the **DVLN** query in the SATS system. It may be necessary to page down through several different screens to read all the information. Sale date, registration certificate issue date (RCID), ownership certificate issue date (OCID) are available once the registration certificate has been issued. If it has not yet been issued the **DVLN** screen will show the date of transfer (DOT). If the person has the DMV title document it will also indicate the date of transfer. DMV registration documents always indicate what procedures have to be accomplished to complete registration, if it is pending further action or presentation of documents. It may be necessary to contact the local office of the DMV for help in interpreting the **CLEARANCE INFORMATION RECORDS** in the **DVLN** screen. DMV personnel can interpret this information as well as obtain information concerning ownership transfer which is not available in our **DVLN** screen.

If registration has been initiated but not completed at least one screen will begin with the notation **PENDING MASTER FILE**. This will indicate the date the registration procedure was initiated.

Vehicles which are unregistered are frequently towed, not as unregistered vehicles, but as citation scofflaw vehicles because they also have numbers of unpaid citations recorded to their license plate. This has been covered in this appendix under **UNPAID CITATIONS – CITATIONS ACQUIRED BY THE PREVIOUS OWNER**.