



## Resolution to approve the Rules and Regulations of the Memphis Transportation Commission

**WHEREAS**, Section 39-244 of the City of Memphis, Code of Ordinances authorizes the Memphis Transportation Commission (hereinafter "Commission") to make such rules and regulations as may be necessary and proper for the performance of its duties, subject to the approval of the Memphis City Council; and

**WHEREAS**, the Commission has devised the proposed rules and regulations attached hereto and dated October 4, 2012 for the review and approval of the Council;

**BE IT FURTHER RESOLVED**, that the rules and regulations promulgated by the Memphis Transportation Commission are hereby adopted.

**BE IT FURTHER RESOLVED**, that the Commission may administratively modify such rules and regulations as are deemed necessary without further Council approval.

I hereby certify that the foregoing is a true copy and document was adopted, approved by the Council of the City of Memphis in regular session on

Date

DEC 18 2012

Valerie C. Sripel  
Deputy Comptroller-Council Records

OPD

#3

# **MEMPHIS TRANSPORTATION COMMISSION**

## **RULES OF PROCEDURE AND REGULATIONS**

### **1. PURPOSE**

Pursuant to its authority granted in the City of Memphis Code Section 39-244, the Memphis Transportation Commission (the "Commission") has promulgated these Rules of Procedure and Regulations. The purpose of these rules is to provide for the orderly disposition of the business of the Commission by setting forth how business is to be transacted. In some respects, these rules clarify and supplement, but do not supersede, ambiguous language in the Ordinances and Code of the City of Memphis (the Code"). The rules specify the procedure in situations not covered by the Ordinances that assign duties to the Commission. The Commission shall conduct all public hearings according to the procedures and regulations adopted in these rules.

### **2. APPLICATION**

- (A) Any person who wishes to apply or appeal to the Commission under the provisions of the Code must do so on a form provided for that purpose by the City of Memphis Permits Administrator.
- (B) Each application will be assigned a number by the Permits Administrator of the Commission or his/her designee, and be placed on a docket for hearing in chronological order, unless, the Commission orders otherwise pursuant to the Code or these rules.
- (C) All applications must be accompanied by all required materials necessary to be considered complete and compliant, in order for the Permits Administrator to prepare and schedule the case.
- (D) For Certificate of Public Convenience and Necessity applications, the City of Memphis Permits Administrator as the Executive Secretary of the Memphis Transportation Commission (the "Commission") shall schedule public hearings before the Commission as needed, but no later than thirty (30) days after an application is deemed complete and compliant in the instance of applications to be reviewed for the grant of a certificate of public convenience and necessity.

### **3. WITHDRAWALS, REFILINGS AND FAILURE TO APPEAR**

- (A) Any applicant may withdraw his/her application without prejudice at any time prior to the public hearing on the case. A public hearing is deemed to

have begun after any opening remarks requiring evidence by the applicant has been heard.

(B) Each public hearing will begin promptly at the place, time and date publicly noticed, absent exigent circumstances. In any case where the applicant has failed to appear at the time stated in the notice of hearing, the Commission shall dismiss the application for lack of prosecution, unless continued. Appellants will be eligible to re-apply after one dismissal.

(C) All cases shall be advertised for public hearing in a publication of general circulation.

4. **PREVIOUSLY DECIDED ISSUES**

(A) The Code shall govern reapplication conditions for permits after revocation.

(B) An applicant cannot request a hearing upon any matter which was actually determined in a prior hearing. If such an application is submitted, the Commission shall review the instant request and any other previous similar request and then make a finding on the record:

(1) whether the issue decided in the prior adjudication was identical with the issue presented in the present action;

(2) whether the prior case resulted in a final judgment on the merits;

(3) whether the party was the complaining party or in privity with that party to the prior adjudication; and

(4) whether the party had been given a full and fair opportunity to litigate the issue in the prior hearing.

5. **CONFLICT OF INTEREST/ETHICS**

(A) Each member of the Commission shall conduct his/herself in accordance with the currently applicable City of Memphis Code of Ethics.

(B) **Ex Parte Contact:** It shall be the policy of this Commission that no member shall discuss the merits of any pending case with any person having an interest in the case prior to the public hearing. Any interested party wishing to provide written information to the Commission prior to the public hearing (including electronic communications) must place such

information in the public record through the staff of the Commission prior to providing such information to Commission members.

- (C) Ex Parte Site Visits: No Commission member shall visit a site under consideration unless a Site Visit by the Commission shall have been publicly noticed and conducted pursuant to these rules.

6. **PROCEDURE**

(A) Meetings generally

- (1) All meetings of the Commission shall be open to the public pursuant to T.C.A. §8-44-101, et seq.
- (2) Meetings shall be scheduled for the first Thursday of each month each calendar year unless otherwise voted on by the Commission. In cases where meeting dates conflict with holidays or political elections, the *Administrator* may schedule only one meeting within a twenty-eight (28) day cycle to avoid conflict with these dates. Meetings shall be scheduled in City Hall unless an alternate site is needed due to circumstances beyond the control of the Commission's Staff.
- (3) As provided by Ordinance, the presence of four (4) members of the Commission shall constitute a quorum and a quorum must be present to vote on any case. Abstentions are counted as "No" votes.

(B) Public Hearings Generally

- (1) When applicable, any person wishing to speak at a Public Comment portion of the public hearing must enter his or her name on the speaker sign-up list. This must be done before the public hearing begins. The list shall be placed at the entry to the room where the public hearing is being held or at some other convenient and conspicuous place. Each speaker will have a maximum of two (2) minutes to speak and will be called to speak in the order in which their name appears on the speaker sign-up list.
- (2) No public hearings (where the general public is invited to comment) shall be held unless required by law.

7. **HEARING**

- (A) Each case, which is listed on the Commission's agenda for the meeting, shall be taken in the order listed on the agenda. The Commission may prompt a discussion with any interested party for purposes of clarification, but may only be questioned by the Commission during the hearing.
- (B) Those cases that were deferred by the Commission prior to the public hearing, at the request of an applicant shall be heard at the end of the regularly scheduled docket when rescheduled. The Commission, when deferring a case after opening the public hearing shall indicate in the motion to defer whether the item will be taken up at the front or the rear of the docket on the date it is back before the Commission.
- (C) All other business, such as cases tied on votes, requests for rehearing, and other business before the Commission, shall be taken up at the rear of the docket unless it is determined that the necessity for participation of particular members is required at a specific time during the course of the public hearing to conduct the business of the Commission.
- (D) The Code shall be considered a part of the record in every case coming before the Commission even though not read verbatim into the record unless the parties object, in which case, the relevant sections of the Code shall be read into the record and the remainder of the Code will be made a part of the proceedings before the Commission upon any appeal to the Court of Law or equity as if read verbatim into the record.
- (E) The Commission will base its decision only on information presented in public hearing.
- (F) Each case shall be introduced by the Executive Secretary, or his/her designee, including:
  - (1) A brief explanation of why the case is before the Commission and a statement, either orally or in writing, by a representative of the City of Memphis Permits Department as to the Department's position; in other matters, the Department may take a position if it so desires;
  - (2) A presentation of maps and photographs, and other exhibits, if necessary; and
  - (3) Any fact witnesses in support of the application.

- (G) After the Executive Secretary's introduction, the applicant shall present his/her case, including:
- (1) The applicant's name and address;
  - (2) A statement of why the applicant believes the relief sought should be granted;
  - (3) A presentation of maps and photographs, and other exhibits, if necessary; and
  - (4) Any fact witnesses in support of the application.
- (H) When applicable, anyone appearing in opposition to the application shall present his/her case immediately following the close of the applicant's proof, including:
- (1) The opponent's name and address;
  - (2) A statement of why the opponent believes the relief sought should not be granted.
- (I) Witnesses appearing before the Commission shall be required to affirm or swear under oath, and all witnesses shall be made aware if it is determined that false information has been presented to the Commission, the Commission has the right to reconsider its decision. Any member of the Commission may directly question any witness appearing before the Commission at any time during his/her testimony.
- (J) All exhibits presented to the Commission for consideration by a witness must be submitted as evidence and made a part of the record unless the Commission otherwise deems it unnecessary. All bulky exhibits must be photographed by the person presenting exhibit and submitted on a suitable size for the permanent file. All applications and their supporting materials must be submitted in electronic Adobe .pdf format.
- (K) Strict rules of evidence shall not apply, but evidence must be relevant to the issues and hearsay evidence shall be avoided whenever possible. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in the courts of Tennessee. Hearsay evidence may be used only for the purpose of supplementing or explaining other evidence,

but it shall not be sufficient, in and of itself to support a finding unless it would be admissible over objection in civil actions. Any public records must be authenticated by a seal or signature of an individual in his or her official capacity which indicates that the records are true copies from a public record.

- (L) Upon the conclusion of all the testimony and evidence, the public hearing will be closed and no further evidence admitted except as the Commission may permit on motion. After a public hearing is closed, no one will be allowed to speak unless the Commission re-opens the case.
- (M) The time limit on the presentation of testimony and proof for each side shall be a maximum of twenty-five (25) minutes in the aggregate, unless the Commission, by a majority vote and for good cause shown, approves a timed extension equally applicable to all sides.

8. **CASE DECISIONS**

- (A) The Commission has the power to review, issue, alter, deny, suspend or revoke all applications for permits and/or certificates of public convenience and necessity. Upon the conclusion of the public hearing of each case, a Commission member shall make a motion to approve, disapprove or approve with modifications the terms and conditions of an application as the Commission deems necessary. All motions shall reference facts and applicable standards to support the decision. If seconded, the Commission shall discuss and vote on that case.
- (B) The item shall be approved, disapproved or approved with stated modifications if it receives a majority of those Commission members present votes for approval or denial. If the Commission deems more information is needed, by majority vote, an application may be continued and/or remanded to the Permits Administrator.
- (C) Where an application does not receive a majority vote, the application shall be considered denied.
- (D) Each certificate of public convenience and necessity issued hereunder shall be signed by the Executive Secretary of the Commission and shall contain, in addition to the name and address of the applicant, a statement of the type of service authorized and the number of permits authorized. The certificate shall also have stated thereon such additional conditions, and/or limitations as the Commission may deem necessary.

- (E) Guidelines. When the Commission considers whether or not to approve the Permit Administrator's decision, its members may refer to the attached Appendix A, Guidelines for Civil Penalties ("the Guidelines"). Such guidelines are intended to guide, but not obligate, the Commission in its assessment of penalties, where applicable. Consideration of aggravating or mitigating factors in each case may be considered by the Commission and an appropriate civil penalty, designed to remediate or prevent further violations of the Code, rules and regulations—not to punish—shall be determined. The civil penalties suggested by the guidelines have been established reasonably by enacting a schedule that reflects proportionately the gravity of the offenses found in the Code.

9. **POST-HEARING REQUESTS**

- (A) Request for rehearing:
- (1) Any aggrieved party may, within ten (10) days of the entry of any order, in a case he/she participated in, request a rehearing, subject to the requirements of this section.
  - (2) No such request to grant a rehearing shall be considered, unless new evidence is submitted which could not have reasonably been presented at the previous hearing.
  - (3) The request must be in writing and it must recite with specificity the new evidence and the reasons for the request.
  - (4) The request must be duly verified and accompanied by the required supporting materials (i.e., necessary plans and diagrams).
  - (5) A request for a rehearing shall be acted upon by motion of a member of the Commission who voted in the majority as to the disposition of the case.
  - (6) The affirmative vote of the majority of members present for the motion is necessary to grant a rehearing.
  - (7) If the request is denied, an appropriate order shall be prepared by the Executive Secretary and sent to the parties making the request.
  - (8) If the request is granted, an appropriate order shall be prepared by the Executive Secretary, a copy shall be sent to the parties making the request, the case will be set for another public hearing — upon receipt of a new filing fee (minimum fee).



10. **APPEAL OF COMMISSION DECISION**

Unless otherwise provided by law, any aggrieved party may within sixty (60) days of the entry of an order appeal a finding of the Commission under common law writ of certiori in accordance with TCA §29-8-101 and §29-8-202.

11. **ENTRY OF ORDERS**

- (A) As soon as possible after the decision of the Commission in a particular case, the Chairperson shall enter an Order describing the action taken, the reasons, therefore, and vote.
- (B) The Order shall be dated and signed by both the Chairperson and the Executive Secretary; however, the Executive Secretary is hereby authorized to affix the chairperson's signature to the Order.
- (C) After the Order has been duly executed, a copy shall be placed in the Commission's files and shall be sent to the applicant informing them of the decision of the Commission, along with information about appealing the decision.

12. **MINUTES AND RECORDS**

Each action of the Commission shall be recorded by Order and supporting documentation retained in the appeal file. The entire proceedings shall be tape recorded and that record shall be retained a minimum of one year following a final decision by the Commission. All such records shall be available to the public. The Executive Secretary, or the Secretary's designee, may transcribe the proceedings, if requested by any party, for a fee. The transcriber shall certify the record with the following, or similar certification:

"CERTIFICATION: Transcribed from audio tape of Hearing; I have indicated those places where I have a question about the exact wording. I have transcribed this to the best of my ability and do affirm that I have represented each speaker as accurately as I am able. I do not affirm that this transcript is without error; only that it is without intentional errors.

\_\_\_\_\_  
Signature of Executive Secretary

\_\_\_\_\_  
Date"

13. **ABSENCE OF A RULE**

When an issue arises which is not specifically covered by these rules, the Commission will be governed by Robert's Revised Rules of Order.

14. AMENDMENTS

These rules may be amended at any regular or special meeting of the Commission by a positive vote of a majority of Commission members present, provided all members have been notified of the amendment at least ten (10) days prior to the meeting.

15. INTERPRETATION OF THE COMMISSION'S RULES

- (A) The Commission is the final authority as to the meaning of these rules.
- (B) The Commission may, from time to time, make an exception in these rules for extraordinary cases, setting out the reasons therefore.

16. FILING AND EFFECTIVE DATE

These rules shall become effective, after adoption, upon the filing of these rules with the City Recorder.

17. REPEAL OF PREVIOUS RULES OF PROCEDURE

Any other Rules of Procedure previously adopted by this Commission are hereby repealed.

APPROVED AND ADOPTED ON THIS 4<sup>th</sup> DAY OF OCTOBER, 2012.

  
CHAIRPERSON

  
: SECRETARY

  
PERMITS-LICENSES ADMINISTRATOR

Sent to City Council for Approval

Approved by City Council

## EXHIBIT A

### Civil Penalty Guidelines

These guidelines are intended to guide, but not obligate, the Commission in its assessment of penalties, where applicable. Consideration of aggravating or mitigating factors in each case may be considered by the Commission and an appropriate civil penalty, designed to remediate or prevent further violations of the Code, rules and regulations—not to punish—shall be determined. The civil penalties suggested by the guidelines have been established reasonably by enacting a schedule that reflects proportionately the gravity of the offenses found in the Code.

Violations	Taxicabs, Limousines, Pedicabs	Penalty
Sec. 39-7	Operating without a current certificate	\$1,000.00
Sec. 39-10	Operation without meeting financial requirements/insurance	\$1,000.00
Sec. 39-11	Failure to notify of ownership/control of a certificate	\$200.00
Sec.39-14	Not maintaining records in accordance to the ordinance	\$1,000.00
Sec. 39-17	Illegal increase in number of vehicles	\$500.00
Sec.39-24	Driving without a current vehicle for hire license or TN driver's license	\$200.00
Sec. 39-28	Failure to notify of arrest or indictment	\$500.00
Sec. 39-29	Failure to notify company change	\$200.00
Sec. 39-32	Permit not displayed	\$100.00
Sec. 39-35	Using a false or altering a temporary permit	\$200.00
Sec. 39-37	Unacceptable appearance and inappropriate conduct	\$100.00
Sec. 39-41	Drivers exceeding work hours	\$100.00
Sec. 39.44	Use of television in front seat	\$100.00
Sec. 39-222	Accepting in-kind payment	\$100.00

**Civil Penalty Guidelines – Wreckers (cont'd)**

These guidelines are intended to guide, but not obligate, the Commission in its assessment of penalties, where applicable. Consideration of aggravating or mitigating factors in each case may be considered by the Commission and an appropriate civil penalty, designed to remediate or prevent further violations of the Code, rules and regulations—not to punish—shall be determined. The civil penalties suggested by the guidelines have been established reasonably by enacting a schedule that reflects proportionately the gravity of the offenses found in the Code.

Sec.41-3	Operating a wrecker business without a license	\$1,000.00
Sec.41-3b	Operating a wrecker without a Wrecker Driver's Permit	\$500.00
Sec.41-4	Operating a wrecker without the proper equipment	\$200.00
Sec.41-5	Operating a wrecker without proper identification on the wrecker	\$200.00
Sec.41-6	Over charging – first offense	\$100.00
Sec.41-6	Over charging - second offense	\$200.00
Sec.41-6	Failure to drop a vehicle when warranted	\$250.00
Sec.41-6	Failure to display rate card in full view	\$100.00
Sec.41-10	Failure to report private property tow prior to towing	\$250.00
Sec.41-11	Failure to tow vehicle according to destination requirements	\$125.00
Sec.41-14	Solicitation/Patrolling	\$500.00
Sec.41-13	Failure to remove accident debris	\$75.00

Approved

## MEMPHIS TRANSPORTATION COMMISSION RULES AND REGULATIONS

1. Pursuant to Certificate of Public Convenience and Necessity applications, the City of Memphis Permits Administrator as the Executive Secretary of the Memphis Transportation Commission (MTC) shall schedule public hearings before the MTC as needed, but no later than thirty days after an application is deemed complete and accurate in the instance of applications to be reviewed for the grant of a certificate of public convenience and necessity.
2. The MTC shall conduct all public hearings per the procedures adopted in these rules.
3. All testimony provided during the public hearings shall be taken under oath and officially recorded by a Court Reporter. The fees for such Court Reporter shall be paid by the Permits Office.
4. Each public hearing will begin promptly at the time and date stated in the notice of the hearing, unless continued for cause.
5. The MTC will commence the public hearing and make opening statements as deemed necessary.
6. Any person wishing to speak at the public comment portion of the public hearing must enter his name on the speaker sign-up list. This must be done before the public hearing begins. The list shall be placed at the entry to the room where the public hearing is being held or at some other convenient and conspicuous place.
7. Each person who places their name on the speaker sign-up list will be called to speak. Each speaker will have a maximum of two (2) minutes to speak and will be called to speak in the order in which their name appears on the speaker sign-up list.
8. A speaker may only be questioned by the MTC during the hearing.
9. All testimony provided by Applicants and Permittees during the public hearing shall be taken under oath of affirmation.
10. Strict rules of evidence shall not apply, but evidence must be relevant to the issues and hearsay evidence shall be avoided whenever possible. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in the courts of Tennessee. Hearsay evidence may be used only for the purpose of supplementing or explaining other evidence, but it shall not be sufficient, in and of itself to support a finding unless it would be admissible over objection in civil actions. Any public records must be authenticated by a seal or signature of an individual in his or her official capacity which indicates that the records are true copies from a public record.
11. The MTC, upon completion of the public hearing may, approve, disapprove, or approve with modifications the terms or conditions of an application as the MTC deems necessary in the instance of a request to grant a certificate of public convenience and necessity.
12. The MTC may take such other appropriate actions the body may deem necessary to obtain the information needed to complete its report and recommendation concerning a pending application, including continuing the proceedings and requesting the

MTC staff to conduct further factual investigation with respect to a pending application.

13. The original application and supporting documentation, all written opinions and supplemental documentation, evidence presented at the public hearing, the transcript of the public hearing, and the original documentation setting forth the report and decision of the MTC, shall be maintained by the MTC staff in a separate file in custody of the Permits Administrator as the Executive Secretary of the MTC.
14. If a Permittee appeals a decision of the City Permits Administrator or his designee to the MTC following an administrative hearing before the Permits Administrator, the following rules shall apply:
  - a. A written appeal to the MTC must be filed within ten (10) business days of the decision of the Permits Administrator or his designee.
  - b. Facts not presented to the hearing officer shall not be considered by the MTC at the public hearing. However, if new and relevant facts are presented to the MTC upon a finding by the MTC that certain relevant facts were not adequately ascertained at the administrative hearing, then the MTC may direct that the administrative hearing be reopened to consider or ascertain such facts.
  - c. MTC shall base its decision regarding the appeal solely on the evidence that was offered during the administrative hearing and the written findings of the hearing officer.
15. With regard to applications for certificates of public convenience and necessity, the MTC may question an Applicant on any matters related to the application and may request additional information from the Applicant as deemed necessary to demonstrate public convenience and necessity will be served by granting the application. The Applicant may present testimony in support of the application at the public hearing.
16. Each certificate of public convenience and necessity issued hereunder shall be signed by the Executive Secretary of the MTC and shall contain, in addition to the name and address of the applicant, a statement of the type of service authorized and the number of permits authorized. The certificate shall also have stated thereon such additional conditions, and/or limitations as the MTC may deem necessary.
17. The certificate will be provided to the applicant when all administrative requirements have been fulfilled such as payment of permit fees.

### Civil Penalty Guidelines

<b>Violations</b>	<b>Taxicabs, Limousines, Pedicabs</b>	<b>Penalty</b>
Sec. 39-7	Operating without a current certificate	\$1,000.00
Sec. 39-10	Operation without meeting financial requirements/insurance	\$1,000.00
Sec. 39-11	Failure to notify of ownership/control of a certificate	\$200.00
Sec.39-14	Not maintaining records in accordance to the ordinance.	\$1,000.00
Sec. 39-17	Illegal increase in number of vehicles	\$500.00
Sec.39-24	Driving without a current vehicle for hire license or TN driver's license	\$200.00
Sec.39-28	Failure to notify of arrest or indictment	\$500.00
Sec. 39-29	Failure to notify company change	\$200.00
Sec. 39-32	Permit not displayed	\$100.00
Sec. 39-35	Using a false or altering a temporary permit	\$200.00
Sec. 39-37	Unacceptable appearance and inappropriate conduct	\$100.00
Sec. 39-41	Drivers exceeding work hours	\$100.00
Sec.39.44	Use of television in front seat	\$100.00
Sec. 39-222	Accepting in-kind payment	\$100.00

### **Civil Penalty Guidelines – Wreckers**

Sec.41-3	Operating a wrecker business without a license	\$1,000
Sec.41-3b	Operating a wrecker without a Wrecker Driver's Permit	\$500.00
Sec.41-4	Operating a wrecker without the proper equipment	\$200.00
Sec.41-5	Operating a wrecker without proper identification on the wrecker	\$200.00
Sec.41-6	Over charging – first offense	\$50.00
Sec.41-6	Over charging - second offense	\$100.00
Sec.41-6	Failure to drop a vehicle when warranted	\$125.00
Sec.41-6	Failure to display rate card in full view	\$125.00
Sec.41-10	Failure to report private property tow prior to towing	\$125.00
Sec.41-11	Failure to tow vehicle according to destination requirements	\$125.00
Sec.41-13	Failure to remove accident debris	\$75.00