

**CITY OF NEW YORK
DEPARTMENT OF FINANCE**

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b), 1043 and 1504.4 of the New York City Charter, I hereby promulgate the within Amendment to Rules Relating to Parking Violations, which is necessary to carry out the powers and duties delegated to the Commissioner of Finance by section 1504.4 of the New York City Charter.

Martha E. Stark
Commissioner of Finance

Note: New Matter is underlined; matter to be deleted is in [brackets].

Section 1. Subdivision (j) of section 39-10 of chapter 39 of title 19 of the Official Compilation of Rules of the City of New York is amended to read as follows:

(j) *Vacatur of dismissals procured by knowing misconduct.* [A determination dismissing a charged parking violation may be vacated where the respondent or his or her agent, employee or representative altered a notice of parking violation or other record, testified falsely or otherwise obtained a dismissal by fraud, misrepresentation or other misconduct and upon a written statement by a hearing examiner, a senior hearing examiner or a supervising hearing examiner setting forth prima facie evidence of fraud, misrepresentation, or other misconduct and upon due notice to the respondent. The notice shall be mailed to the respondent within one year from the time of the discovery of the fraud, misrepresentation or other misconduct, and shall fix the time and place of a hearing to decide if the dismissal shall be set aside and a determination sustaining the charged violation rendered. The notice shall also advise the respondent that a failure to appear at the time and place designated may result in the setting aside of the dismissal and the rendering of a judgment on the charged violation. The disposition of any proceeding instituted under this subdivision shall be determined by a hearing examiner, senior hearing examiner or supervising hearing examiner other than the one who dismissed the charged violation or made the finding of prima facie fraud, misrepresentation or other misconduct. At the hearing, or upon the respondent's failure to appear, the prior dismissal may be vacated and a judgment rendered, the scheduled fine amount may be restored, and additional penalties may be assessed as if there had been no prior plea or appearance by the respondent. The respondent shall have the right to appeal from any adverse decision in accordance with the appeal procedure set forth in §39-12 of this chapter.]

(1) A determination dismissing a charged parking violation that has been procured due to the knowing fraud, false testimony, misrepresentation or other misconduct, or the knowing alteration of a notice of parking violation, by the person so charged or his or her agent, employee or representative may be set aside by a hearing examiner as hereinafter provided.

(2) Notice shall be served on the owner by mail to the last known registered address within two years of the time that the enforcing authority discovers, or could with reasonable diligence have discovered, that the dismissal was procured due to the knowing fraud, false testimony, misrepresentation, or other misconduct, or the knowing alteration of a notice of parking violation, by the person so charged or his or her agent, employee or representative. Such notice shall fix a time when and place where a hearing shall be held before a hearing examiner to determine whether or not dismissal of a charged parking violation shall be set aside. Such notice shall set forth the basis for setting aside the dismissal and advise the owner that failure to appear at the date and time indicated in such notice shall be deemed an admission of liability and shall result in the setting aside of the dismissal and entry of a determination on the charged parking violation. Such notice shall also contain a warning that civil penalties may be imposed for the violation pursuant to this subdivision and that a default judgment may be entered thereon.

(3) Upon a finding by a hearing examiner that the dismissal of a charged parking violation has been procured due to the knowing fraud, false testimony, misrepresentation, or other misconduct, or the knowing alteration of a notice of parking violation, by the person so charged or his or her agent, employee or representative, the dismissal shall be set aside and a determination may be rendered against the owner on the charged parking violation. The hearing examiner may impose monetary penalties for the charged parking violation of up to three times the scheduled fine for the violation pursuant to section 39-05 and three times the additional penalties that may be imposed for failure to respond to a notice of violation pursuant to section 39-07. The hearing examiner shall also impose, without multiplying, the surcharge authorized by section 1809-a of the Vehicle and Traffic Law. For purposes of determining the amount of such additional penalties, the hearing examiner shall disregard the plea that procured the dismissal that has been set aside and shall calculate such penalties as if there had been no plea or appearance in the proceeding. In any proceeding under this subdivision to set aside a determination and to impose penalties for the violation, it shall not be necessary for the hearing examiner to find that the owner personally committed the unlawful acts that procured the dismissal of

the violation.

(4) Failure to appear at the hearing in response to a notice issued pursuant to this subdivision, or to pay, within 7 days, the amount assessed by a hearing examiner pursuant to paragraph 3, shall be deemed to be an admission of liability for the charged parking violation as set forth in the original notice of violation, and a default judgment may be entered against the owner in the maximum amount set forth in paragraph 3 of this subdivision.

(5) A default judgment pursuant to paragraph 4 of this subdivision may be entered more than two years after the expiration of the time prescribed pursuant to subdivision (f) of this section, but no more than two years after the time that the enforcing authority discovers, or could with reasonable diligence have discovered, that the dismissal was procured by fraud, false testimony, misrepresentation, or other misconduct, or the knowing alteration of a notice of parking violation by the respondent or by his or her agent, employee or representative.

(6) The respondent shall have the right to appeal from any adverse decision in accordance with the appeal procedure set forth in §39-12 of this chapter.

Section 2. The amendments set forth in section 1 of this rule shall be applicable to the setting aside of dismissals entered on and after November 1, 2001.

**STATEMENT OF BASIS AND PURPOSE
OF RULE AMENDMENT**

The purpose of this amendment is to implement a new law (Chapter 409 of the Laws of 2001) governing parking tickets whose dismissal was procured by fraud. Before this law was enacted, the only civil penalty that the Parking Violations Bureau could impose in this situation was the restoration of the original fine. While the PVB could refer the violator to a District Attorney for possible prosecution, the clear possibility existed in each case that the District Attorney would choose not to prosecute. Thus, there was little to deter respondents tempted to procure a ticket's dismissal by fraud. The new law permits PVB to impose additional penalties of up to three times the scheduled fine and three times the fine for failure to respond to a ticket. Section 39-10(j) of these Rules is amended to reflect this new law.