

ENVIRONMENTAL CONTROL BOARD

RULES AND REGULATIONS

**{Incorporating all Amendments and Additions
through April 17, 2018}**

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BOARD RULES AND REGULATIONS

ARTICLE 1
GENERAL RULES

§ 1-01. Definitions.¹

(a) *In general.*

In these rules and regulations, the following terms shall have the meanings indicated.

(b) *Administrative hearing officer.*

“Administrative hearing officer” means an individual designated by the Director to conduct hearings or proceedings.

(c) *Board.*

“Board” means the Environmental Control Board of Baltimore City.

(d) *Charging agency.*

“Charging agency” means the department, bureau, agency, or other unit of City government that issues a citation.

(e) *Citation.*

“Citation” means a prepayable citation issued for violation of a law or regulation under the jurisdiction of the Board.

(f) *Director.*

“Director” means the Executive Director of the Board or the Director’s designee.

(g) *Party.*

“Party” means a charging agency or a respondent.

(h) *Person.*

“Person” means:

- (1) an individual;

¹ **Editor’s Note:** See also notes below for “translations” (adapted from *Black’s Law Dictionary*) of various technical, legal terms used in these rules and regulations.

- (2) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind; and
- (3) a partnership, firm, association, corporation, governmental agency, or other entity of any kind.

(i) *Respondent.*

“Respondent” means the person to whom a citation is issued.

§ 1-02. Scope of Rules.

These rules and regulations govern all proceedings under:

- (1) Article 1, Subtitle 40, of the Baltimore City Code; or
- (2) any other relevant provisions of the City Code.

§ 1-03. Filings with Director.

All documents permitted or required to be filed with the Board shall be filed at the office of the Director.

§ 1-04. Form and Service of Documents.

(a) *Captions.*

Each document filed with the Board shall contain a caption that sets forth:

- (1) the title of the action;
- (2) the citation number or the docket number assigned to the proceeding; and
- (3) a brief descriptive title of the document that indicates its nature.

(b) *Signature – By attorney.*

- (1) Every document of a party represented by an attorney shall be signed by at least one attorney who has been admitted to practice law in this State.
- (2) The signature of an attorney constitutes a certification that:
 - (i) the attorney has read the document;

- (ii) to the best of his or her knowledge, information and belief, there is good ground to support it; and
- (iii) it is not interposed for delay.

(c) *Signature – By party.*

Every document of a party who is not represented by an attorney shall be signed by the party.

(d) *Signature – Sanctions.*

If a document is not signed as required (except inadvertent omission to sign, if promptly corrected) or is signed with intent to defeat the purpose of this rule, it may be stricken, and the action may proceed as though the document had not been filed.

(e) *Service.*

- (1) This subsection applies to all documents, except for citations, that are required to be served on other parties.
- (2) If service is required on a party represented by an attorney, service shall be made on the attorney unless service on the party is ordered by the Board.
- (3) Each document shall be accompanied by a signed certificate of service that specifies the date and manner of service.

§ 1-05. Computation of Time.

(a) *Computation of time after an act, event, or default.*

- (1) In computing any period of time prescribed by these rules and regulations, the day of the act, event, or default after which the designated period of time begins to run is not included.
- (2) If the period of time allowed is more than 7 days, intermediate Saturdays, Sundays, and legal holidays are counted.
- (3) If the period of time allowed is 7 days or less, intermediate Saturdays, Sundays, and legal holidays are not counted.
- (4) The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(b) *Computation of time before a day, act, or event.*

- (1) In determining the latest day for performing an act that is required by these rules and regulations to be performed a prescribed number of days before a certain day, act, or event, all days preceding that day, including intervening Saturdays, Sundays, and legal holidays, are counted in the number of days so prescribed.
- (2) The latest day is included in the determination unless it is a Saturday, Sunday, or legal holiday, in which event the latest day is the first preceding day that is not a Saturday, Sunday, or legal holiday.

(c) *Mailing.*

When mail is used for service of any document (other than a citation) on an opposing party, the opposing party has 3 additional days within which to take any action or make any response required or permitted by these rules and regulations.

§ 1-06. Appearances.

(a) *In general.*

Persons are permitted to participate in proceedings before the Board as provided in this section.

(b) *Individuals.*

An individual respondent may appear:

- (1) in person, in his or her own behalf;
- (2) by an attorney licensed to practice in the State of Maryland; or
- (3) by another individual who has a notarized authorization from the respondent to represent the respondent in the proceedings.

(c) *Businesses, etc.*

A business, non-profit organization, or government agency may appear:

- (1) by an attorney licensed to practice in the State of Maryland; or
- (2) to the extent allowed by law, by any officer, employee, or authorized agent.

§ 1-07. Records.*(a) Director to keep.*

The Director shall maintain files containing all documents, evidence, and other items and information submitted to or produced by an administrative hearing officer or the Board during the course of a proceeding.

(b) Files to be public.

These files shall be available for public inspection in accordance with the Maryland Public Information Act.

ARTICLE 2
PRE-HEARING PROCEDURES

§ 2-01. Citation.

(a) *Proceedings commenced by citation.*

All proceedings shall be commenced by the issuance of a citation on a form approved by the Board.

(b) *Contents.*

The citation shall contain:

- (1) the name of the respondent;
- (2) the violation with which the person is cited, including a reference to the specific law in question;
- (3) the date and address of the violation;
- (4) the amount of the applicable fine;
- (5) information on whether the offense is a repeat offense;
- (6) the manner and time in which the respondent must either:
 - (i) pay the fine; or
 - (ii) request a hearing on the violation; or
 - (iii) if eligible, submit documentation and request for hearing by mail.
- (7) the time within which the violation, if ongoing, must be abated;
- (8) a notice that, if the offense involves real property, a lien will be placed on the property; and
- (9) a notice that failure to act in the manner and time indicated in the citation may result in a default decision and an order entered against the respondent.

(c) *Service.*

A citation shall be served on a respondent as provided in Article 1, § 40-7(c) of the Baltimore City Code.

(d) *Filing.*

A copy of the served citation:

- (1) shall be made accessible to the Board;
- (2) shall be filed with the Bureau of Treasury Management;
- (3) may be filed with other departments, bureaus, agencies, or other units of the City;
and
- (4) shall be maintained by the charging agency.

§ 2-02. Admissions and Payments.

(a) *In general.*

A respondent may admit to the violation charged and pay the fine indicated on the citation in the manner and time directed by the citation.

(b) *Effect of payment.*

Payment in full is deemed an admission of liability and no further administrative hearing or subsequent appeal to the Board will be allowed.

§ 2-03. Pre-Hearing Requests to Reschedule.

(a) *Director may grant.*

On written application to the Director and for good cause shown, the Director may postpone a scheduled hearing for a brief period or reschedule the hearing.

On written application to the Director and for good cause shown, the Director may extend the due date for a hearing by mail.

(b) *Subsequent requests.*

In the case of a request for a subsequent postponement or rescheduling, the Director may:

- (1) deny the request;
- (2) require that the respondent appear at the scheduled hearing; and
- (3) allow the respondent to present his or her request for rescheduling to the administrative hearing officer.

§ 2-04. Consolidation.

In the interest of convenient, expeditious, and complete determination of cases involving the same or similar issues or the same parties, the administrative hearing officer may consolidate two or more citations for adjudication at one hearing.

§ 2-05. Discovery by Respondent.*(a) In general.*

- (1) On timely, written request, a respondent is entitled to receive from the charging agency:
 - (i) a list of the names of witnesses intended to be called; and
 - (ii) copies of documents intended to be submitted into evidence.
- (2) To be timely, the request must be submitted to the Director at least 15 days before the scheduled hearing.
- (3) The Director shall forward the request to the charging agency within 48 hours of submission.
- (4) Within 7 days after it receives the request from the Director, the charging agency shall serve a written response on the respondent, with a copy to the Director.

(b) Limitations.

- (1) Pre-hearing discovery is limited to the matters enumerated in subsection (a) of this section.
- (2) All other applications or motions for discovery, including depositions on oral examination, shall be made to the administrative hearing officer at the start of the hearing, and the administrative hearing officer may order further discovery as it finds appropriate.
- (3) Hearings by mail are not subject to subsection (a).

(c) Supplementation.

If a party has responded to a request for discovery and, before the hearing, obtains further material information, the party shall supplement the response promptly.

(d) *Sanctions.*

If any party fails to properly respond to a lawful discovery request or order or wrongfully refuses to answer questions or produce documents, the administrative hearing officer may take appropriate action, including, but not limited to, precluding evidence or witnesses of the offending party or striking the pleadings or defenses of that party.

ARTICLE 3
HEARING PROCEDURES

§ 3-01. Scheduling; Notice.

(a) *In general.*

If a respondent timely requests a hearing, the Director shall:

- (1) set the date, time, and place for the hearing before an administrative hearing officer; and
- (2) provide the parties with at least 20 days' notice of the hearing.

(b) *Contents of notice.*

The notice shall state:

- (1) the date, time, place, and nature of the hearing;
- (2) the right of a party to be represented, at the party's own expense, by an attorney or, if permitted by law, other representative;
- (3) the right of a party to seek discovery under § 2-05;
- (4) the right of a party to call witnesses and submit documents or other evidence under § 3-13 of this article; and
- (5) that failure to appear for the scheduled hearing may result in an adverse action against the party.

(c) *Hearings by mail.*

If a respondent qualifies for a hearing by mail and submits a request for a hearing by mail, all materials and documentation must be submitted by the due date listed on the citation. A hearing date will not be scheduled.

§ 3-02. Timing of Hearing.

(a) *In general.*

Absent a showing of good cause, the hearing date shall be within 180 days of the citation's service.

(b) *Accelerated hearing.*

If the respondent waives the 20 days' notice and requests an accelerated hearing, the

Director may assign the case for immediate hearing, on appropriate notice to the charging agency and opportunity for the charging agency to appear.

§ 3-03. General Nature of Hearing.

(a) *Orderly but informal.*

All hearings shall be conducted in an orderly but informal manner.

(b) *Expedition.*

(1) Hearings shall proceed with all reasonable expedition and, to the extent practicable, shall be held at one place and continue without suspension, except for brief recesses, until concluded.

(2) The administrative hearing officer may grant brief adjournments, for good cause shown and consistent with the requirements of expedition.

§ 3-04. Record.

The Board shall arrange for a stenographic or mechanically-created record of all hearings.

§ 3-05. Order of Proceedings.

(a) *In general.*

Subject to modification by the administrative hearing officer for good cause, all hearings shall be conducted in the following order:

(1) presentation and argument of motions preliminary to a hearing on the merits;

(2) presentation of opening statements, if any;

(3) charging agency's case in chief;

(4) respondent's case in chief;

(5) charging agency's case in rebuttal;

(6) respondent's case in rebuttal;

(7) respondent's closing argument; and

(8) charging agency's closing argument.

(b) *Hearings by mail.*

(1) For specified violations, the hearing officer may conduct all or part of a hearing by mail, provided each party has an opportunity to participate in writing.

- (2) The hearing officer or Director may deny the request for adjudication by mail upon a finding of good cause, and direct the respondent to appear for a hearing in person.
- (3) An application for a hearing by mail shall set forth all facts and arguments relied on by the respondent and may not be supplemented once received by the agency.
- (4) An application for a hearing by mail may be supported by affidavits and other documentary evidence which must be received with the original application for hearing by mail.

(c) *Hearings by phone.*

- (1) For specified violations, the hearing officer may conduct all or part of a hearing by telephone or other similar audio-electronic means, provided each party has an opportunity to participate in and hear the entire proceeding.
- (2) The hearing officer or Director may deny the request for adjudication by phone or other similar audio electronic means upon a finding of good cause, and direct the respondent to appear for a hearing in person.
- (3) Evidence to be offered shall be mailed, delivered, or emailed by the respondent at least 5 days before the hearing and must be marked with the challenged citation number. Failure to comply with this subparagraph may result in the hearing officer not considering the offered evidence.

(d) *Hearings by video.*

- (1) For specified violations, the hearing officer may conduct all or part of a hearing by video or other similar audiovisual electronic means, provided each party has an opportunity to participate in, hear, and see the entire proceeding.
- (2) The hearing officer or Director may deny the request for adjudication by video or other similar audiovisual electronic means upon a finding of good cause, and direct the respondent to appear for a hearing in person.
- (3) Evidence to be offered shall be mailed, delivered, or emailed by the respondent at least 5 days before the hearing and must be marked with the challenged citation number. Failure to comply with this subparagraph may result in the hearing officer not considering the offered evidence.

§ 3-06. Oaths.(a) *In general.*

Before testifying, a witness is required to declare that he or she will testify truthfully.

(b) *Administration.*

The declaration shall be by oath or affirmation, administered:

- (1) in the form of Maryland Rule 1-303; or
- (2) in special circumstances, in some other form or affirmation calculated to impress on the witness the duty to tell the truth.

§ 3-07. General Duties and Powers of Administrative hearing officer.(a) *General duties.*

The administrative hearing officer has the duty to:

- (1) conduct a fair and impartial hearing;
- (2) take all necessary action to avoid delay in the disposition of proceedings; and
- (3) maintain order.

(b) *General powers.*

The administrative hearing officer has all powers necessary to these ends, including the power to:

- (1) administer oaths and affirmations;
- (2) issue discovery orders and rule on objections to those orders;
- (3) receive evidence and rule on offers of proof;
- (4) regulate the course of the hearing and the conduct of the parties and their representatives;
- (5) hold conferences for simplification of issues or for any other proper purpose;
- (6) interrogate witnesses;

- (7) consider and rule on all procedural and other motions, including requests for adjournment; and
- (8) make and file recommended decisions and orders.

§ 3-08. Ex Parte Communications.

An administrative hearing officer may not receive any ex-parte communication from the charging agency or from individual members of the Board about a proceeding, other than communications limited to ministerial matters.

§ 3-09. Impartiality.

(a) *Scope.*

This section is in addition to any applicable requirements of City Code Article 8 {"Ethics"}, § 4-2 {"Conflicts of interest; disqualification"}.

(b) *In general.*

An administrative hearing officer should disqualify him- or herself from any hearing in which his or her impartiality might reasonably be questioned, including any instances in which the administrative hearing officer:

- (1) has a personal bias or prejudice about a party;
- (2) has personal knowledge of disputed evidentiary facts in the proceeding;
- (3) served as a lawyer in the matter in controversy or was professionally associated with another person while that person served as a lawyer in the matter in controversy;
- (4) has been a material witness to the matter;
- (5) has a financial interest in the subject matter in controversy or in a party to the proceeding;
- (6) has any other interest that could be substantially affected by the outcome of the proceeding; or
- (7) knows that his or her spouse or dependent child:

- (i) is serving as a lawyer in the matter in controversy or is professionally associated with another person who is serving as a lawyer in the matter in controversy;
- (ii) is likely to be a material witness in the proceeding;
- (iii) has a financial interest in the subject matter in controversy or in a party to the proceeding; or
- (iv) has any other interest that could be substantially affected by the outcome of the proceeding.

(c) *Motion to disqualify.*

- (1) A party may request that an administrative hearing officer disqualify him- or herself for good cause shown. The request shall be ruled on by the administrative hearing officer in the proceeding.
- (2) If the administrative hearing officer denies the request, the party may obtain a brief adjournment to seek review by the Director.
- (3) If the Director affirms the denial, the party may raise the issue on appeal to the Board.

(d) *Notice of disqualification.*

When an administrative hearing officer disqualifies him- or herself from a proceeding, he or she shall do so on the record and shall notify the Director of the recusal.

(e) *Replacement.*

On disqualification of an administrative hearing officer, the Director shall appoint another administrative hearing officer to conduct the hearing.

§ 3-10. Maintaining Discipline.

(a) *Power of administrative hearing officer.*

After a warning, the administrative hearing officer may bar any person, including a party or an attorney or other representatives of a party, from continued participation in a hearing if that person refuses to comply with the administrative hearing officer's directions or behaves in a disorderly, dilatory, or obstructionist manner.

(b) *Review by Director.*

- (1) Any person so barred may promptly apply to the Director for a review of the administrative hearing officer's action.
- (2) Unless the Director orders that further proceedings be stayed pending a decision on the application, the hearing may continue at the administrative hearing officer's discretion without the person's participation,.
- (3) The Director's decision to grant or deny the application is not subject to an interlocutory appeal to the Board. ²

§ 3-11. Amendments to Citation.

(a) *Administrative hearing officer may allow.*

If doing so will facilitate the determination of a controversy on the merits, the administrative hearing officer may allow appropriate amendments to a citation, subject to conditions necessary to avoid injustice or unfair surprise to a party.

(b) *Conformance to evidence.*

When issues reasonably within the scope of a citation, but not expressly raised by the citation, are tried by the express or implied consent of the parties:

- (1) the issues shall be treated in all respects as if they had been raised by the citation; and
- (2) amendments of the citation may be made at any time as necessary to make it conform to the evidence.

§ 3-12. Burden of Proof.

(a) *In general.*

The charging agency has the burden of proof in establishing by a preponderance of the evidence that the respondent has committed the violation charged in the citation. ³

² As to interlocutory appeals, generally, *see* § 3-14 below and accompanying note.

³ "Preponderance of the evidence" denotes the greater weight of the evidence – evidence that, though not sufficient to free the mind from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

(b) *Citation as prima facie evidence.*⁴

If a citation is sworn to or affirmed, the citation constitutes prima facie evidence of the facts stated in it.

§ 3-13. Evidence.

(a) *In general.*

Except as otherwise provided by these rules and regulations, formal rules of evidence and trial procedures do not apply.

(b) *Right to submit.*

On a genuine issue of fact, a party is entitled to:

- (1) call witnesses;
- (2) offer evidence, including rebuttal evidence;
- (3) cross-examine any witness that another party calls; and
- (4) present summation and argument.

(c) *Scope.*

The administrative hearing officer:

- (1) may admit probative evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs and give probative effect to that evidence;⁵
- (2) may not exclude evidence solely on the basis that it is hearsay;
- (3) shall give effect to a privilege recognized by law;

⁴ “Prima facie evidence” denotes evidence sufficient to establish a fact or sustain a judgment unless contradictory evidence is presented.

⁵ “Probative” means tending to prove or disprove a point in dispute.

- (4) may take official notice of a fact that is judicially noticeable or that is general, technical, or scientific and within the specialized knowledge of the administrative hearing officer;⁶ and
- (5) may exclude evidence that is:
 - (i) incompetent;
 - (ii) irrelevant;
 - (iii) immaterial; or
 - (iv) unduly repetitious.
- (d) *Exceptions.*⁷

Formal exception to an adverse ruling is not required at the time of the ruling.

§ 3-14. Interlocutory Appeals.⁸

- (a) *Leave required.*

Interlocutory appeals from rulings of an administrative hearing officer may be filed only if leave to file has been obtained from the administrative hearing officer.

- (b) *Criteria for leave.*

Leave to appeal will not be granted except on a showing that:

- (1) the ruling complained of involves substantial rights and will materially affect the final decision; and
- (2) a determination of its correctness before hearing ends is essential to serve the interests of justice.

⁶ “Official notice” (in an administrative proceeding) and “judicial notice” (in a court proceeding) refer to the acceptance, for purposes of convenience and without requiring a party’s proof, of a well-known and indisputable fact.

⁷ As to exceptions, generally, *see* § 4-01 below and accompanying note.

⁸ An “interlocutory appeal” is one taken on a particular issue in a case before a ruling has been made on the entire case.

(c) *Board's discretion.*

In its discretion, the Board may refuse to hear an interlocutory appeal, even though leave to appeal was obtained from the administrative hearing officer.

(d) *Effect.*

Unless the administrative hearing officer orders otherwise, an interlocutory appeal does not stay the proceeding or extend the time for the performance of an act.

§ 3-15. Stipulation Instead of Hearing.⁹

(a) *Stipulation authorized.*

At any time before the administrative hearing officer issues a recommended decision and order, the charging agency may offer the respondent a settlement of the matter by stipulation instead of further hearing.

(b) *Required elements.*

The stipulation shall:

- (1) be in the manner and form set by the Director; and
- (2) contain:
 - (i) an admission of the violation;
 - (ii) the facts stipulated to;
 - (iii) the amount of the penalty to be imposed; and
 - (iv) the compliance to be ordered, if any.

(c) *Before initial hearing.*

- (1) If the stipulation is entered into and filed with the Board before the initial hearing on the matter, the stipulation shall be reviewed by the Director.
- (2) Within a reasonable time after the stipulation has been filed, the Director shall:

⁹ A "stipulation" is a voluntary agreement between opposing parties.

- (i) issue a final decision and order that incorporates the terms of the stipulation;
or
- (ii) if the stipulation is not acceptable to the Director, order the matter to be rescheduled for hearing by an administrative hearing officer.

(d) *During hearing.*

If the stipulation is entered into during the course of a hearing and if the administrative hearing officer approves the stipulation, it shall be incorporated into the administrative hearing officer's recommended decision and order.

(e) *Stipulation not appealable.*

Decisions and orders based on stipulations are not appealable.

§ 3-16. Recommended Decisions and Orders.

(a) *Administrative hearing officer to prepare.*

The administrative hearing officer shall prepare a recommended decision and order within 30 days of completion of a hearing or submission of a hearing by mail.

(b) *Recommended decision.*

The administrative hearing officer's decision shall set forth:

- (1) findings of fact and conclusions of law; and
- (2) the administrative hearing officer's reasons for its findings on all material issues.

(c) *Recommended order.*

If the administrative hearing officer recommends that the charges in the citation be upheld, the administrative hearing officer shall prepare a recommended order that sets forth:

- (1) the proposed penalty; and
- (2) if the Board is authorized by law to impose remedial relief or other sanction, the proposed remedial relief or sanctions.

(d) *Filing.*

The recommended decision and order shall be filed with the Director and served on all parties.

(e) *Finality.*

If timely exceptions are not filed under § 4-01, the administrative hearing officer's recommended decision and order:

- (1) may be adopted by the Board, without further action; and
- (2) constitutes the Board's final action in the matter.

ARTICLE 4
ADMINISTRATIVE AND JUDICIAL REVIEW

§ 4-01. Exceptions to Recommended Decision and Order. ¹⁰

(a) *Filing.*

- (1) Any party aggrieved by the recommended decision and order may file written exceptions with the Board.
- (2) Except as otherwise provided in § 4-02 of this article, the exceptions must be filed within 30 days after the recommended decision and order is delivered or mailed to the parties.
- (3) The exceptions must contain:
 - (i) a concise statement of the issues presented;
 - (ii) specific objections to the findings of fact and conclusions of law set forth in the recommended decision and order; and
 - (iii) arguments that present clearly the points of law and facts relied on in support of the position taken on each issue.
- (4) The exceptions must be accompanied by payment in full of both of the following, to the extent not previously paid:
 - (i) the fine imposed by the recommended decision and order; and
 - (ii) the fee for any transcript requested under § 4-02 of this article.

(b) *Answer.*

- (1) Within 20 days after the exceptions have been served on a party, that party may file an answer in support of the recommended decision and order.
- (2) The answer must comply with the requirements of subsection (a) of this section for contents and service.

(c) *Replies.*

Further briefing is not permitted unless the Board otherwise directs.

¹⁰ An “exception” is a formal objection to a ruling by a party who wants to preserve the objection for future appeal.

§ 4-02. Transcripts.

(a) *In general.*

A party may apply in writing for a written copy of the transcript of the hearing at any time:

- (1) within the period allowed for filing exceptions; or
- (2) if later, within 30 days after the other party has filed exceptions.

(b) *Extension of time.*

If an application is timely made under subsection (a) of this section, the time within which exceptions must be filed is extended to 20 days from the date when the transcript is delivered or mailed to the party who requested it.

(c) *Fee.*

The Board may charge the person who requested the transcript a fee for the transcript, including the expense of transcription.

§ 4-03. Applications to Extend Time.

An application to extend the time for filing exceptions or answers for any reason must be:

- (1) made in writing to the Director; and
- (2) supported by evidence of impossibility or other explanation of inability to file timely.

§ 4-04. Review Panels.

(a) *Panels authorized.*

From time to time, the Board may establish panels from among its members to undertake the review of exceptions to administrative hearing officers' recommended decisions and orders.

(b) *Subsequent review by Board.*

If a review is undertaken by a panel, that panel shall report its findings to the Board for final resolution.

§ 4-05. Review to be on Record.*(a) In general.*

When exceptions have been filed, the Board shall consider the entire matter on the basis of the record before it.

(b) Record elements.

(1) For all hearings other than hearings by mail, the record comprises:

- (i) The citation;
- (ii) The transcript of the hearing;
- (iii) All briefs filed and exhibits received in evidence; and
- (iv) The administrative hearing officer's recommended decision.

(2) For hearings by mail, the record comprises:

- (i) The citation;
- (ii) All evidence submitted; and
- (iii) The administrative hearing officer's recommended decision.

(c) Witness credibility.

The Board shall give due regard to the administrative hearing officer's opportunity to judge the credibility of any witnesses.

(d) Additional evidence or argument.

If the Board or a panel of the Board considers it necessary or appropriate, it may:

- (1) order further testimony or evidence to be taken or submitted; or
- (2) order oral argument on any or all of the questions raised on appeal.

§ 4-06. Decision and Order.*(a) In general..*

(1) After review, the Board shall issue its decision and order in the matter.

(2) In its decision and order, the Board may:

- (i) concur with, reverse, or modify the administrative hearing officer's recommended decision and order; or
- (ii) remand the matter for further proceedings.

(b) *Decision.*

The Board's decision shall contain findings of fact and conclusions of law.

(c) *Order.*

The Board shall issue an order that:

- (1) is consistent with its decision; and
- (2) exercises those powers of the Board that the Board considers appropriate.

§ 4-07. Corrections to Board Decision and Order.

(a) *In general.*

To correct ministerial errors or errors due to mistake of fact or law, any party may apply to the Board for a superseding appeal decision.¹¹

(b) *Time for filing.*

The application must be filed within 10 days after the mailing of the Board's final decision and order.

§ 4-08. Impartiality.

(a) *Scope.*

This section is in addition to any applicable requirements of City Code Article 8 {"Ethics"}, § 4-2 {"Conflicts of interest; disqualification"}.

(b) *In general.*

A Board member should disqualify him- or herself from any hearing in which his or her impartiality might reasonably be questioned, including any instances in which the Board member:

- (1) has a personal bias or prejudice about a party;
- (2) has personal knowledge of disputed evidentiary facts in the proceeding;

¹¹ A "ministerial error" is an error in the course of obeying instructions rather than in the exercise of some special discretion, judgment, or skill.

- (3) served as a lawyer in the matter in controversy or was professionally associated with another person while that person served as a lawyer in the matter in controversy;
- (4) has been a material witness to the matter;
- (5) has a financial interest in the subject matter in controversy or in a party to the proceeding;
- (6) has any other interest that could be substantially affected by the outcome of the proceeding; or
- (7) knows that his or her spouse or dependent child:
 - (i) is serving as a lawyer in the matter in controversy or is professionally associated with another person who is serving as a lawyer in the matter in controversy;
 - (ii) is likely to be a material witness in the proceeding;
 - (iii) has a financial interest in the subject matter in controversy or in a party to the proceeding; or
 - (iv) has any other interest that could be substantially affected by the outcome of the proceeding.

(c) *Motion to disqualify.*

- (1) A party may request that a Board member disqualify him- or herself for good cause shown. The request shall be ruled on by the Board.
- (2) If the Board denies the request, the party may raise the issue on judicial review.

§ 4-09. Judicial Review.

(a) *In general.*

Any party who is aggrieved by a final decision and order of the Board may appeal that decision as provided in Article 1, § 40-10 of the Baltimore City Code and Title 7 of the Maryland Rules.

(b) *No stay.*

The filing of an appeal does not stay the Board's order, unless the Circuit Court for Baltimore City grants a stay.

§ 4-10. Agency Application for Reduction in Fines, Penalties, and Interest.

(a) *Application.*

Notwithstanding a final decision of the Board, where penalties are a lien against a property and where judicial review has not been undertaken, the charging agency may apply to the Board for a reduction in fines, penalties, and interest for the express purpose of effecting the transfer of property.

(b) *Approval.*

The Board, panels of the Board, the Executive Director, or other authorized agent may reduce fines, penalties, and interest where said amounts are hindering the transfer of property and transfer of the property would better serve the purpose of the Board in enforcing the environmental, health, safety, and other quality of life provisions under its jurisdiction or said reduction would otherwise be in the best interests of the City.

ARTICLE 5
DEFAULT PROCEEDINGS

§ 5-01. Acts Constituting Default.

A respondent is in default if:

- (1) the respondent fails to pay the prescribed fine,
- (2) Fails to request a hearing within the time specified on the citation, or
- (3) If eligible, fails to submit a hearing by mail within the time specified on the citation.
- (4) having requested a hearing:
 - (i) the respondent fails to appear at the hearing; or
 - (ii) the respondent appears and willfully disrupts or obstructs the proceedings so as to cause him or her to be barred from the proceedings under § 3-10 of these rules and regulations.

§ 5-02. Default Penalty.

On a respondent's default, the Board may:

- (1) impose a default decision and order against the respondent; and
- (2) impose a civil penalty of 3 times the amount of the prescribed fine, subject to the maximum allowed by law.

§ 5-03. Notice of Default.

(a) *Notice required.*

Before a default order becomes final, the Board shall mail a Notice of Default to the respondent.

(b) *Contents.*

The Notice shall:

- (1) contain a copy of the default decision and order;
- (2) specify the amount of all penalties imposed; and
- (3) notify the respondent of the right to request a waiver of penalties for good cause shown.

§ 5-04. Request for Waiver.

(a) *In general..*

A request for a waiver must be made in writing within 30 days after the mailing of the Notice of Default.

(b) *Delayed request.*

If a request is made later than the time required by subsection (a) of this section but within 90 days after the mailing of the Notice of Default, the Director may process the request if the respondent shows good cause for his or her delay in making the request.

§ 5-05. Consideration of Request.

(a) *First default.*

For a first default, the Director may:

- (1) grant the waiver for good cause shown; or
- (2) refer the request to the Board.

(b) *Second or subsequent default.*

For a second or subsequent default on the same citation, the Director shall refer the request to the Board.

§ 5-06. Action by Board.

The Board may waive or reduce a default penalty after considering:

- (1) the nature and severity of the underlying violation;
- (2) the respondent's history of past violations; and
- (3) any mitigating or aggravating circumstances.

**ARTICLE 6
ENFORCEMENT**

§ 6-01. Fines and Penalties.

(a) *As personal debt.*

Fines and penalties imposed by the Board are:

- (1) personal debts owed by the respondent to the City; and
- (2) collectable from and enforceable against any of the assets of the respondent.

(b) *As lien.*

If the violation involves real property owned by the respondent, fines and penalties imposed by the Board, whether on hearing, on default, or otherwise, are liens on that property in favor of the City.

§ 6-02. Abatement Orders.

(a) *Payment does not relieve obligation to correct.*

- (1) Payment of a fine does not relieve the respondent of the obligation to correct ongoing violations by the date specified in the citation.
- (2) Additional citations may be issued for uncorrected violations.

(b) *Correction does not relieve obligation to pay.*

The correction of a violation does not relieve the respondent of the obligation to pay the prescribed fine.

§ 6-03. Citation not Exclusive.

The issuance of a citation does not preclude pursuit of any other remedy or enforcement action authorized by law.

§ 6-04. Application to Court.

The Board may apply to a court of competent jurisdiction for enforcement of any decision or order of the Board.

Adopted: July 30, 2003

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February 25, 2015