

THE PHILADELPHIA PARKING AUTHORITY

In Re: Proposed Rulemaking Order :
Philadelphia Taxicab and :
Limousine Regulations : Docket No. 126-3
:
:

PROPOSED RULEMAKING ORDER

BY THE AUTHORITY:

In accordance with of the act of July 16, 2004, (P.L. 758, No. 94), *as amended*, 53 Pa.C.S. §§5701 *et seq.*, (the “act”),¹ the Authority formally commences its rulemaking process to promulgate regulations to provide more specific procedures related to the impoundment of vehicles, equipment and medallions by the Authority pursuant to the act. The Authority seeks comments from all interested parties on these proposed regulations, which are found at Annex A to this Order.

A. Background

Pursuant to Section 23 of the Act, the Authority initiated regulatory oversight of taxicab and limousine service providers in Philadelphia on April 10, 2005. The Authority’s regulations may be found at 52 Pa. Code Part II. On January 6, 2012, the Commonwealth Court of Pennsylvania determined that the Authority was not authorized to impound a vehicle acting as a taxicab in Philadelphia without rights to do so, provided that the vehicle was authorized to be a taxicab elsewhere in the Commonwealth.² Thereafter, the Legislature enacted the act of July 5, 2012, (P.L. 1022, No. 119) (“Act 119”) specifically amending the provisions of the act relied upon by the Commonwealth Court in *Sawink*, among other things.

DISCUSSION

The Authority has been granted broad powers by the Legislature to regulate the operation of taxicabs and limousines in Philadelphia. Among those powers is the ability to immediately impound vehicles, equipment or medallions used to provide taxicab or limousines service in violation of the act or orders or regulations of the Authority.³ Such impoundments are from time-to-time the only way to provide for “a clean, safe, reliable, and well regulated taxicab and limousine industry...” in Philadelphia. 53 Pa.C.S. § 5701.1 (2).

¹ See 53 Pa.C.S. §§ 5722 and 57 .

² *Sawink, Inc. et al., v. Philadelphia Parking Authority*, 34 A.3d 926 (Pa. Cmwlth. 2012), *affirmed*, 2012 Pa. LEXIS 2897 (Pa. 2012)

³ See 53 Pa.C.S. §§ 5714 (g) and 5741 (f).

The manner in which taxicabs and limousines intimately and continuously interact with the public has long necessitated the ambient regulation of these industries. Nevertheless, due process rights certainly apply in these cases, particularly after the threat to public safety has abated.

The Legislature has enabled the Authority to both conduct these impoundments and promulgate regulations to assure public safety and the property rights of regulated parties are duly protected. Members of the regulated community have noted the need for a clarification of the criteria that may lead to a regulatory impoundment. We agree. Also, while the Authority has always permitted immediate emergency hearings related to the justification of an impoundment and to review the need to continue an impoundment, we believe it is crucial to identify a clear process for such prompt post-impoundment hearings through regulation. We believe this proposed regulation provides these important safeguards and now propose the following changes to the Authority's regulations at 52 Pa. Code §§ 1017.51, 1017.52, 1055.31 and 1055.32 in order to implement the Authority's statutory impoundment powers as modified by Act 119.

B. The regulation.

§ 1017.51. General.

We proposed adding two additional definitions to this subsection. The definition of "impoundable offense" identifies only five scenarios in which an impoundment may be made as provided in § 1717.52. These limited circumstances pose immediate and potentially irreparable harm to the public.

In *Sawink*, the Commonwealth Court agreed that even the pre-Act 119 version of the section 5714 (g) of the act permitted the impoundment of unauthorized taxicabs as identified in section 5714 (f). The use of unapproved or manipulated taxicab meters also represents the type of grave malfeasance necessitating immediate impoundment to stop further public abuses. Permitting the offending taxicab to simply drive off with a citation and the bad meter would undermine public confidence in all fares charged by taxicabs and permit, if not encourage, the continued abuse by the offending party and others. Meter rigging is exactly the type of egregious conduct that merits immediate impoundment.

Similarly, the determination by the Enforcement Department officer that a vehicle's condition or the condition, or behavior of a driver, will create an immediate threat to public safety if permitted to continue operation merits impoundment. This is a high standard for impoundment and exceeds the standard employed in the existing "out of service" designation process founded on a "public safety concern". See 52 Pa. Code § 1003.31.

Finally, the use of a counterfeit medallion constitutes a serious regulatory infraction and is a crime. See 53 Pa.C.S. § 5714 (h). Given the statutorily limited number of authorized taxicab medallions and the importance placed on the health of the medallion system by the Legislature, this violation merits immediate impoundment. See 53 Pa.C.S. § 5712.

The definition of “unauthorized taxicab” is necessary because the term is used in the definition of “impoundable offense”. The fact that every taxicab that is authorized to provide call or demand service within Philadelphia must have a current TLD inspection sticker attached by the Authority creates a bright-line distinction between authorized taxicabs and all other vehicles on the road. *See* 52 Pa. Code § 1017.32. An exception to this condition is made for PUC authorized taxicabs observed operating in Philadelphia as permitted by section 5714(d)(1) of the act. A vehicle observed providing or attempting to provide taxicab service although it, or the certificate through which it is authorized to provide taxicab service, has already been placed out of service by the Authority is also an unauthorized taxicab.

§ 1017.52. Impoundment of vehicles and equipment.

We propose the deletion of the language previously provided in this section and the insertion of provisions which take into account the new definitions provided in section 1017.51 and more detailed post-impoundment hearing deadlines and procedures. The new language will restrict impoundments to impoundable offenses only. A specific impoundment notice process is also included.

The registered owner of the impounded vehicle may petition for an impoundment hearing at any time to contest the validity of the impoundment. The hearing must be immediately scheduled by the Clerk to occur within two days of the petition, although from past experience hearings of this nature are often conducted on the same day that the petition for hearing is filed, which is often the date of impoundment. An Authority presiding officer may determine that the impoundment was appropriate, but order the release of the impounded property upon certain terms and conditions. If dissatisfied with the presiding officer’s decision, the registered owner may seek interlocutory review as provided in § 1005.131.

The Enforcement Department must initiate a formal complaint in furtherance of the violation necessitating the impoundment within five days. If the impounded property remains in the Authority’s custody, the respondent’s filing of an answer or request for a hearing, as appropriate, will automatically stay the auction deadlines provided for in the impoundment notice. A registered lienholder or medallion lienholder may seek to intervene as provided in § 1005.31, a process that will permit the registered owner to contest either the intervention or the proposed intervenor’s request for relief.

If the presiding officer determines that the respondent is liable for a violation issued in relation to the impoundment, the impounded property will be scheduled for auction after notice of the time, date and location of the auction is duly provided. This notification process often takes approximately 30 days to complete. Upon a determination that the respondent is not liable for the violation, the impounded property will be available to be reclaimed without payment of any fee, penalty or cost.

The registered owner may reclaim the impounded property at any time by paying the penalty demanded in the Enforcement Department’s complaint or the presiding officer’s final adjudication.

§§ 1055.31 and 1055.32.

The changes to sections 1055.31 and 1055.32, relating to limousines, are identical to those applicable to taxicabs in sections 1017.51 and 1017.52, except that references to medallions have been removed and language applicable to limousines has been inserted in place of that related to taxicabs.

CONCLUSION

The Authority, therefore, formally commences its rulemaking process to promulgate this regulation to become part of 52 Pa. Code Part II in a manner consistent with Annex A to this Order. The Authority seeks comments from all interested parties on this proposed body of regulations, which are found at Annex A to this Order. The Authority hereby advises that all comments submitted in response to this Order will be posted, without redaction of name, address, or other personal information or comment provided, on the website of the Independent Regulatory Review Commission, which may be reached at 717-783-5417.

Accordingly, under sections 13 and 17 of the Act, 53 Pa.C.S. §§ 5722 and 5742; section 5505(d) of the Parking Authorities Act, act of June 19, 2001, (P.L. 287, No. 22), *as amended*, 53 Pa. C.S. §§ 5505(d)(17), (d)(23), (d)(24); sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P.S. 732.204(b); section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5 we are considering adopting the proposed regulations set forth in Annex A⁴, attached hereto;

THEREFORE,

IT IS ORDERED:

1. That a proposed rulemaking be opened to consider the regulation set forth in Annex A.
2. That the Executive Director shall submit this proposed rulemaking Order and Annex A to the Office of Attorney General for review as to form and legality.
3. That the Executive Director shall submit this proposed rulemaking Order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.
4. That the Secretary of the Board shall certify this proposed rulemaking Order and Annex A and that the Executive Director shall deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

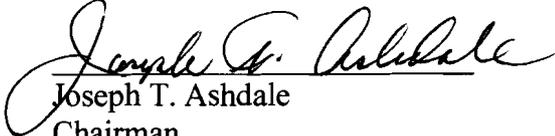
⁴ The Authority does not receive money from the State Treasury and is; therefore, not subject to section 612 of the Administrative Code of 1929, 71 P.S. § 232.

5. That an original and 15 copies of any written comments referencing the docket number of the proposed regulation be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Philadelphia Parking Authority, Attn: General Counsel, 3101 Market Street, 2nd Floor, Philadelphia, PA 19104.

6. That a copy of this proposed rulemaking Order and Annex A shall be served on the City of the First Class Taxicab and Limousine Advisory Committee and a copy shall be posted on the Authority's website at www.philapark.org/tld.

7. That the contact person for this proposed rulemaking is James R. Ney, Director, Taxicab and Limousine Division, (215)-683-9417.

**THE PHILADELPHIA PARKING
AUTHORITY**


Joseph T. Ashdale
Chairman
(SEAL)

Certified:


Alfred W. Taubenberger
Vice-Chairman/Secretary
(SEAL)

ORDER ADOPTED: January 28, 2013

ORDER ENTERED: January 28, 2013

ANNEX A

Subchapter E. IMPOUNDMENT OF VEHICLES AND EQUIPMENT

§ 1017.51. General.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Impoundable offense—The Authority may immediately confiscate and impound a vehicle, equipment, or medallion, pursuant to section 5714(g) of the act (relating to certificate and medallion required) when used in any of the following circumstances:

- (1) When an unauthorized taxicab provides, or attempts to provide, call or demand service in Philadelphia.
- (2) When a taxicab provides, or attempts to provide, call or demand service in Philadelphia through the use of a meter not approved by the Authority as provided in § 1017.23 (relating to approved meters) or a meter that has been manipulated to charge a fare not authorized by the Authority as provided in section 5703 or 5720 of the act, or both (relating to rates; and wages).
- (3) When the condition of a taxicab will create an immediate threat to public safety if permitted to continue operation.
- (4) When the continued operation of a taxicab by the driver will create an immediate threat to public safety, except when the certificate holder is able to promptly provide an alternate adult individual with a valid driver's license to assume control of the vehicle.
- (5) When a vehicle provides, or attempts to provide, call or demand service in Philadelphia with a counterfeit medallion.

Unauthorized taxicab —

- (i) Every vehicle without a current and valid TLD inspection sticker affixed as provided in § 1017.32 (relating to TLD inspection sticker required).
- (ii) A taxicab that has been placed out of service as provided in § 1003.32 (relating to out of service designation).
- (iii) A taxicab that is operated pursuant to a certificate of public convenience that has been placed out of service as provided in § 1003.32.
- (iv) The term shall not apply to a vehicle that provides call or demand service as provided in section 5714(d)(1) of the act pursuant to current authorization from the PUC.

* * * * *

§ 1017.52. Impoundment of vehicles and equipment.

(a) *Impoundments generally.* The Authority may impound vehicles, medallions and equipment used to provide call or demand service as provided in section 5714(g) of the act (relating to certificate and medallion required).

(b) *Enforcement proceedings.* The Enforcement Department or trial counsel will initiate an enforcement proceeding as provided in § 1005.11 (relating to formal complaints generally) against the regulated party or owner of the impounded property, if other than a regulated party, related to an impoundment made under this section and the act.

(c) *Notice of impoundment.* The Authority will issue a notice of impoundment to the registered owner of the vehicle and registered lienholder of the vehicle or medallion, or both, if any, as provided in section 5714(g)(2)(ii) of the act.

(d) *Recovery of impounded property.* Except as provided in subsection (g), the owner or lienholder of the property impounded as provided in this section may recover the impounded property by paying all penalties, fines and costs required under section 5714(g)(1) of the act.

(e) *Public auction.* Confiscated property may be sold at public auction as provided in section 5714(g)(2)(i) of the act.

(f) *Return of funds.* If the enforcement proceeding initiated as provided in subsection (b) results in a determination that the respondent was not liable for the violations referenced in the complaint and that the grounds for the impoundment were unsubstantiated, the costs of towing and impoundment paid by the respondent as provided in subsection (d) will be refunded.

(g) *Stay of auction.* Upon motion of the respondent or a registered owner or a registered lienholder as an intervening party as permitted under § 1005.31 (relating to initiation of intervention), the presiding officer may enter an order staying the public auction of the impounded property for a period as the presiding officer deems just. Costs of impoundment will continue to accrue during the period of any stay imposed through this subsection.

(h) *Emergency hold on impounded property.*

(1) To advance the interests of the act or to protect the public good, the Enforcement Department or trial counsel may motion the presiding officer to stay the return of property impounded as provided in this section through the conclusion of the

enforcement proceeding, although requirements for recovery as provided in subsection (d) have been met.

(2) The presiding officer will issue a decision in support of the determination required under this section.

(3) The decision of the presiding officer issued as provided in paragraph (2) will constitute a recommended decision and will be reviewed by the Authority as provided in §§ 1005.211—1005.215 (relating to exceptions to recommended decisions).

(4) If the release of impounded property is stayed, the enforcement proceedings will be conducted on an expedited basis.]

(a) Impoundment. Upon observation of an impoundable offense, the Enforcement Department may direct the immediate impoundment of a vehicle, equipment or medallion and have the impounded property removed to a place of safe storage under the control of the Authority.

(b) Notice of impoundment. The Authority will serve immediate notice of impoundment on the registered owner and registered lienholder, if any, by first class mail as provided in section 5714(g)(2) (relating to certificate and medallion required). The notice of impoundment will include the following information:

(1) The location of the impounded property.

(2) The manner in which the impounded property may be reclaimed.

(3) The date the impounded property will be sold at public auction if action is not taken to reclaim the impounded property or stay the auction as provided in this section.

(4) Such other information required by section 5714(g)(2)(ii) of the act.

(c) Impoundment hearing.

(1) The registered owner may file a hearing request with the Clerk at any time after impoundment solely to regain possession of impounded property by contesting the compliance of the impoundment with this section or the act, or both.

(2) Upon request as provided in paragraph (1), the Clerk will immediately schedule an impoundment hearing to be conducted within two days before a presiding officer.

(3) In the event the presiding officer determines, by order, that the impoundment was not proper, the impounded property may be immediately reclaimed by the registered owner without need to pay any penalty or cost associated with the impoundment.

(4) Where the impoundment is determined to have been appropriate, the presiding officer may, by order, establish terms for the release of the impounded property including the posting of collateral and inspections by the Enforcement Department.

(5) An order of the presiding officer entered as provided in this subsection is subject to the interlocutory appeal procedure in § 1005.131 (relating to interlocutory review generally).

(d) *Formal complaint.* The Enforcement Department will file a formal complaint with the Clerk against the registered owner averring any violation forming the basis of the impoundment within five days of the impoundment.

(e) *Stay of auction.* The public auctioning of all impounded property will be stayed if the respondent contests the Enforcement Department's formal complaint by doing one of the following:

(1) Filing an answer to the complaint with the Clerk within 20 days as provided in § 1005.41 (relating to answers to complaints, petitions, motions and other filings requiring a response).

(2) If a citation complaint is filed by the Enforcement Department, filing a request or a hearing within 15 days as provided in § 1005.13(b)(2) (relating to citation complaints by the Authority).

(f) *Intervention.* A registered lienholder or medallion lienholder may request the impounded property be released into its possession only through a motion to intervene as permitted under § 1005.31 (relating to initiation of intervention).

(g) *Final disposition of impounded property.*

(1) If the respondent is found not liable for each violation averred in the Enforcement Department complaint, the impounded property may be reclaimed by the registered owner within 30 days of the adjudication without payment of any penalty, fee or cost.

(2) If the respondent is found liable for any violation averred in the Enforcement Department complaint, the impounded property will be scheduled for public auction in not less than 30 days. A notice of the time, date and location of the auction will be provided to the registered owner and registered lienholder by first class mail.

(h) *Immediate repossession.* The registered owner may reclaim the impounded property at anytime upon payment of the penalties requested in the Enforcement complaint or the penalties assessed in the presiding officer's order, along with the fees and costs associated with the impoundment.

* * * * *

§ 1055.31. General.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Impoundable offense—The Authority may immediately confiscate and impound a vehicle or equipment pursuant to section 5741 (f) of the act (relating to certificate of public convenience required) when used in any of the following circumstances:

- (1) When an unauthorized limousine operates as a limousine or offers to operate as a limousine in Philadelphia.
- (2) When the condition of a limousine will create an immediate threat to public safety if permitted to continue operation.
- (3) When the continued operation of a limousine by the driver will create an immediate threat to public safety, except when the certificate holder is able to promptly provide an alternate adult individual with a valid driver’s license to assume control of the vehicle.

Unauthorized limousine—

- (i) Every vehicle without a current, valid and properly affixed remote carrier sticker issued by the Authority as provided in § 1053.43 (f) (relating to certain limousine requirements) or limousine rights sticker issued by the Authority as provided in § 1055.2 (relating to limousine rights sticker).
- (ii) A limousine that has been placed out of service as provided in § 1003.32 (relating to out of service designation).
- (iii) A limousine that is operated pursuant to a certificate of public convenience that has been placed out of service as provided in § 1003.32.
- (iv) The term shall not apply to a vehicle that provides common carrier service as provided in section 5741 (a.3) of the act pursuant to current authorization from the PUC.

§ 1055.32. Impoundment of vehicles and equipment.

[(a) *Impoundments generally.* The Authority may impound vehicles and equipment used to provide limousine service as provided in section 5741(f) of the act (relating to certificate of public convenience required).

(b) *Enforcement proceedings.* The Enforcement Department or trial counsel will initiate an enforcement proceeding as provided in § 1005.11 (relating to formal complaints

generally) against the regulated party or owner of the impounded property, if other than a regulated party, related to an impoundment made under this section and the act.

(c) *Notice of impoundment.* The Authority will issue a notice of impoundment to the registered owner of the vehicle and registered lienholder of the vehicle, or both, if any, as provided in section 5741(f)(2)(ii) of the act.

(d) *Recovery of impounded property.* Except as provided in subsection (g), the owner or lienholder of the property impounded as provided in this section may recover the impounded property by paying all penalties, fines and costs required under section 5741(f)(1) of the act.

(e) *Public auction.* Confiscated property may be sold at public auction as provided in section 5741(f)(2)(i) of the act.

(f) *Return of funds.* If the enforcement proceeding initiated as provided in subsection (b) results in a determination that the respondent was not liable for the violations referenced in the complaint and that the grounds for the impoundment were unsubstantiated, the costs of towing and impoundment paid by the respondent as provided in subsection (d) will be refunded.

(g) *Stay of auction.* Upon motion of the respondent or a registered owner or a registered lienholder as an intervening party as permitted under § 1005.31 (relating to initiation of intervention), the presiding officer may enter an order staying the public auction of the impounded property for a period as the presiding officer deems just. Costs of impoundment will continue to accrue during the period of a stay imposed through this subsection.

(h) *Emergency hold on impounded property.*

(1) Even if the requirements for recovery under subsection (d) have been met, to advance the interests of the act or to protect the public good, the Enforcement Department or trial counsel may motion the presiding officer to stay the return of property impounded as provided in this section through the conclusion of the enforcement proceeding.

(2) The presiding officer will issue a decision in support of the determination required under this section.

(3) The decision of the presiding officer issued as provided in paragraph (2) will constitute a recommended decision and will be reviewed by the Authority as provided in §§ 1005.211—1005.215 (relating to exceptions to recommended decisions).

(4) If the release of impounded property is stayed, the enforcement proceedings will be conducted on an expedited basis.]

(a) Impoundment. Upon observation of an impoundable offense, the Enforcement Department may direct the immediate impoundment of a vehicle or equipment and have the impounded property removed to a place of safe storage under the control of the Authority.

(b) Notice of impoundment. The Authority will serve immediate notice of impoundment on the registered owner and registered lienholder, if any, by first class mail as provided in section 5714(g)(2) (relating to certificate and medallion required). The notice of impoundment will include the following information:

- (1) The location of the impounded property.
- (2) The manner in which the impounded property may be reclaimed.
- (3) The date the impounded property will be sold at public auction if action is not taken to reclaim the impounded property or stay the auction as provided in this section.
- (4) Such other information required by section 5741(f)(2)(ii) of the act.

(c) Impoundment hearing.

- (1) The registered owner may file a hearing request with the Clerk at any time after impoundment solely to regain possession of impounded property by contesting the compliance of the impoundment with this section or the act, or both.
- (2) Upon request as provided in paragraph (1), the Clerk will immediately schedule an impoundment hearing to be conducted within two days before a presiding officer.
- (3) In the event the presiding officer determines, by order, that the impoundment was not proper, the impounded property may be immediately reclaimed by the registered owner without need to pay any penalty or cost associated with the impoundment.
- (4) Where the impoundment is determined to have been appropriate, the presiding officer may, by order, establish terms for the release of the impounded property including the posting of collateral and inspections by the Enforcement Department.
- (5) An order of the presiding officer entered as provided in this subsection is subject to the interlocutory appeal procedure in § 1005.131 (relating to interlocutory review generally).

(d) Formal complaint. The Enforcement Department will file a formal complaint with the Clerk against the registered owner averring any violation forming the basis of the impoundment within five days of the impoundment.

(e) Stay of auction. The public auctioning of all impounded property will be stayed if the respondent contests the Enforcement Department's formal complaint by doing one of the following:

(1) Filing an answer to the complaint with the Clerk within 20 days as provided in § 1005.41 (relating to answers to complaints, petitions, motions and other filings requiring a response).

(2) If a citation complaint is filed by the Enforcement Department, filing a request for a hearing within 15 days as provided in § 1005.13 (b) (2) (relating to citation complaints by the Authority).

(f) Intervention. A registered lienholder may request the impounded property be released into its possession only through a motion to intervene as permitted under § 1005.31 (relating to initiation of intervention).

(g) Final disposition of impounded property.

(1) If the respondent is found not liable for each violation averred in the Enforcement Department complaint, the impounded property may be reclaimed by the registered owner within 30 days of the adjudication without payment of any penalty, fee or cost.

(2) If the respondent is found liable for any violation averred in the Enforcement Department complaint, the impounded property will be scheduled for public auction in not less than 30 days. A notice of the time, date and location of the auction will be provided to the registered owner and registered lienholder by first class mail.

(h) Immediate repossession. The registered owner may reclaim the impounded property at anytime upon payment of the penalties requested in the Enforcement complaint or the penalties assessed in the presiding officer's order, along with the fees and costs associated with the impoundment.