

E-470 PUBLIC HIGHWAY AUTHORITY

TOLL COLLECTION, EVASION AND ADMINISTRATIVE ADJUDICATION RULES

(Amended and Restated Effective August 13, 2020)

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**E-470 PUBLIC HIGHWAY AUTHORITY
TOLL COLLECTION, EVASION AND ADMINISTRATIVE
ADJUDICATION RULES
(Amended and Restated Effective August 13, 2020)**

These rules are promulgated by the Board of Directors (“Board”) of the E-470 Public Highway Authority (“Authority”), a political subdivision of the State of Colorado, for the enforcement of toll collection and evasion and assessment of civil penalties and fees related thereto and the establishment and operation of an administrative adjudication process pertaining thereto, pursuant to the Colorado Public Highway Authority Law, Sections 43-4-501 *et seq.*, C.R.S., as amended from time to time (“PHA Law”), in connection with the use of the E-470 public highway (“E-470”), and are subject to and to be interpreted in the context of the PHA Law.

Section 1.0 – Establishment of administrative adjudication process

These administrative rules are hereby established for the purposes of enforcement of toll collection and evasion and assessment of civil penalties and fees related thereto on E-470 and the establishment and operation of an administrative adjudication process pertaining thereto.

1.1 – Delegation and instruction to Authority staff

The Board hereby delegates and instructs its executive director and staff to establish, organize and operate an administrative adjudicative system for the determination of alleged toll evasion on E-470, which system shall be consistent with constitutional protections of due process, the PHA Law, these rules and such policies and actions as may be adopted from time to time by the Board.

1.2 – Administrative hearing officers

The Authority shall retain one (1) or more impartial administrative hearing officers, which officers may be state-employed administrative law judges or independent contractors of the Authority, shall be attorneys at law admitted to the practice of law in good standing in the courts of the State of Colorado and shall not be employees of the Authority. The arrangements and contracts therefor shall state that the Authority has granted to the hearing officers the same degree of independence as is granted by the State to its administrative law judges.

1.3 – Hearing facilities

The Authority shall establish and maintain hearing facilities, in the nature of a courtroom or courtrooms, for the conduct of toll enforcement hearings. The facilities shall be located in the Denver Standard Metropolitan Statistical Area and may be facilities of other public entities or of the Authority.

Section 2.0 – Payment of tolls; toll evasion; civil penalty assessment

The Board has established and, from time to time, may change tolls to be paid for use of E-470 by any motor vehicle.

2.1 – Payment of tolls

A toll imposed for the use of E-470 by a motor vehicle must be paid by or on behalf of the operator and/or registered owner of a motor vehicle in one of the following manners:

- 2.1.1 The operator and/or registered owner has entered into and adequately funded a user agreement with the Authority for an account for that vehicle for payment of tolls through the use of a transponder, sticker tag or other Authority-approved technology or device (“EXpressToll Account”), from which EXpressToll Account the Authority has deducted payment;
- 2.1.2 By making payment to the Authority within thirty (30) days of the Authority’s issuance of a bill or statement to the registered owner of a motor vehicle, which is not the subject of an EXpressToll Account, for use of E-470, which bill or statement is based upon vehicle identification photography or other technology or device and is sent to the vehicle’s registered owner’s address of record (a “License Plate Toll Statement”); or
- 2.1.3 Such other means as, from time to time, may be approved by the Authority.

2.2 – Toll Evasion

Any person who operates or is the registered owner of a motor vehicle for which vehicle the prescribed toll has not been paid and which vehicle is operated on E-470 commits toll evasion and a violation of the PHA Law and these rules (“Toll Evasion”). Toll Evasion includes, without limitation:

2.2.1 – *Toll Evasion; nonpayment*

- 2.2.1.1 Failure by the operator and/or registered owner of a motor vehicle to pay an E-470 toll by EXpressToll Account or by a means permitted pursuant to Section 2.1.3.
- 2.2.1.2 Failure by the operator and/or registered owner of a motor vehicle to pay the E-470 toll(s) billed in a License Plate Toll Statement within thirty (30) days after the issuance of the License Plate Toll Statement by the Authority.

2.2.2 – Toll Evasion; use of a delinquent EXpressToll Account

Use or attempted use of a delinquent or cancelled EXpressToll Account.

2.2.3 – Toll Evasion; use of electronic devices or equipment

Use or attempted use by the operator and/or registered owner of a motor vehicle of any electronic devices or equipment not authorized for use by the Authority in connection with identification of vehicles for purposes of toll payment.

2.2.4 – Toll Evasion; obfuscation

Obfuscation, alteration or obliteration of license plates or maintaining a license plate in violation of Section 42-3-202(2)(b), C.R.S. by an operator and/or registered owner of a motor vehicle to prevent identification of a motor vehicle without effective payment pursuant to Section 2.1 hereof.

2.2.5 – Toll Evasion; tampering

Tampering with or failing to maintain a transponder so as to cause it to not operate when driving on E-470.

The Board hereby establishes a civil penalty of Twenty-Five (\$25.00) per Toll Evasion (each a “Civil Penalty”) (which Civil Penalty is assessed once per Toll Evasion cycle, not per toll). The Board authorizes and directs its executive director and staff to process such Civil Penalties through its administrative adjudication process and assess the Civil Penalties, which, from time to time, may be changed by the Board; provided, however that the executive director, in the interest of efficiency in billing and collection and the programs therefor, may systematically waive the assessment of such Civil Penalties.

Section 3.0 – Costs of toll collection, adjudication and administration

3.1 – Late, Collection and Adjudication Fees

Except in the interest of systematic efficiency in billing and collection and the programs therefor or except in the instance that any person that commits Toll Evasion pursuant to Section 2.2.1.2 and subsequently agrees to open an EXpressToll Account, the Authority may recover the costs of administering and operating its toll collection and administrative adjudication process by assessing in the case of each person (a) who has failed to pay the full amount of the first License Plate Toll Statement within the time specified therein, a late fee of \$ 5.00 (“Late Fee”) (which Late Fee is assessed once per Toll Evasion cycle, not per toll), (b) who has failed to pay the full amount of a subsequent License Plate Toll Statement within the time specified therein and has been referred to a collection agency, a collection fee of \$ 20.00 (“Collection Fee”) (which Collection Fee is assessed once per Toll Evasion cycle, not per toll) and (c) who has been found liable for an unpaid toll and/or Civil Penalty, including if the person has failed to appear at a hearing on liability for an

unpaid toll, Civil Penalty, Late Fee and/or Collection Fee, a fee of \$ 20.00 (“Adjudication Fee”) (which Adjudication Fee is assessed per hearing officer’s final order, not per toll).

The Late Fee, Collection Fee and Adjudication Fee are calculated to allow the Authority to recover its costs and to encourage compliance with the tolling provisions of the PHA Law. Provided, however, no Late Fee, Collection Fee or Adjudication Fee may be assessed against a person in a case in which the hearing officer determines there is no liability for an unpaid toll and/or a Civil Penalty.

3.2 – Administrative Fees

The Authority may recover the costs of administering and operating its toll collection process by assessing in the case of each person who has (a) had a payment rejected by his/her bank or other credit provider, whether by returned check, rejected credit card payment or other means, a rejected payment fee of \$ 30.00 (“Rejected Payment Fee”) (which Rejected Payment Fee is assessed once for rejected payment, not per toll); (b) requested that monthly statements be provided via U.S. Mail instead of electronic mail, a monthly service fee of \$ 2.00 (“Monthly Service Fee”); and (c) failed to notify the Authority of a transfer of a transponder, sticker tag or other Authority-approved technology or device to a different motor vehicle or of any change to the license plate or registration of any motor vehicle currently registered to use a transponder, sticker tag or other Authority-approved technology or device, a status change fee of \$10.00 (“Status Change Fee”).

Section 4.0 – Toll Evasion Enforcement Procedures

4.1 – Notice of Civil Penalty

The Authority shall notify a person liable for an unpaid toll, Civil Penalty, Late Fee, and/or Collection Fee either by a civil penalty assessment notice pursuant to and in the manner prescribed by Section 43-4-506.5(3)(b) of the PHA Law or pursuant to and in the manner prescribed by Section 43-4-506.5(6)(a) of the PHA Law (in either case, “Notice”).

4.2 – Content of Notices

Each Notice shall contain:

4.2.1 – Notice issued by peace officer

Each Notice pursuant to Section 43-4-506.5(3)(b) of the PHA Law shall state the name and address of the person operating the motor vehicle, the license number of the motor vehicle involved, the number of such person’s driver’s license, the nature of the Toll Evasion, the amount of the Civil Penalty prescribed for the Toll Evasion, the date of the Notice, a place for such person to execute a signed acknowledgement of receipt and liability and such other information as may be required by law for the Notice to serve as a complaint to appear for an administrative adjudication

proceeding if the prescribed toll, Civil Penalty, Late Fee and/or Collection Fee are not paid within twenty (20) days of issuance of the Notice.

4.2.2 – Notice issued via technology not involving a peace officer

Each Notice pursuant to Section 43-4-506.5(6)(a) of the PHA Law shall state the name and address of a registered vehicle owner of the motor vehicle involved, the license number of the motor vehicle, the time and location of the Toll Evasion, the amount of the Civil Penalty prescribed for the Toll Evasion, a place for the registered owner to execute a signed acknowledgement of liability and such other information as may be required by law to constitute such Notice as a complaint to appear for an administrative adjudication proceeding if the prescribed toll, Civil Penalty, Late Fee and/or Collection Fee are not paid within thirty (30) days of the issuance of the Notice pursuant to Section 43-4-506.5(6)(a) of the PHA Law.

4.2.3 – Contents of Notice and Process

Each Notice shall state that such person must pay the unpaid toll, Civil Penalty, Late Fee and/or Collection Fee within twenty (20) days of issuance of the Notice in the case of a Notice pursuant to Section 43-4-506.5(3)(b) of the PHA Law or within thirty (30) days of issuance of the Notice in the case of a Notice pursuant to Section 43-4-506.5(6)(a) of the PHA Law, after which, if not paid, the Notice will be deemed a complaint to appear for adjudication of a Toll Evasion in an Authority administrative adjudication proceeding; that the registered owner of the vehicle will be the respondent (“Respondent”) to the complaint; that the Respondent may contest the complaint by filing an answer and requesting a hearing any time after the issuance of a Notice and up to the date that is five (5) days after the date that the Notice becomes a complaint; and that, absent an answer and request for a hearing, Respondent will be deemed to have admitted liability and have waived the right to a hearing, such that a hearing officer’s final order of liability in default against the Respondent shall be entered. Each Notice shall state the media and procedure by which an answer is to be filed and a hearing requested.

4.3 – Acknowledgement of liability and payment of Civil Penalty

Upon execution and delivery to the Authority of an acknowledgement of liability and payment of the unpaid toll, Civil Penalty, Late Fee and/or Collection Fee stated in a Notice, an administrative adjudication proceeding shall be deemed concluded.

4.4 – Failure to acknowledge and pay

If, within twenty (20) days of the issuance of a Notice pursuant to Section 43-4-506.5(3)(b) of the PHA Law or within thirty (30) days of the issuance of a Notice pursuant to Section 43-4-506.5(6)(b) of the PHA Law, the recipient of the Notice has not acknowledged liability and paid the unpaid toll, Civil Penalty, Late Fee and/or Collection Fee associated

therewith and the Authority has not dismissed the unpaid toll, Civil Penalty, Late Fee and/or Collection Fee associated therewith, the Notice shall, at the end of such twentieth (20th) or thirtieth (30th) day, as applicable, constitute a complaint to appear for an administrative adjudication proceeding for the unpaid toll, Civil Penalty, Late Fee and/or Collection Fee (the “Complaint”), in which adjudication the Authority shall be the complainant (the “Complainant”) and the alleged violator shall be the Respondent.

4.5 – Exceptions to liability

In addition to the exceptions contained in Section 43-4-506.5(6)(a.5) of the PHA Law (which apply to leased and rental cars), the registered owner of the vehicle involved in a Toll Evasion shall not be liable for the unpaid toll, Civil Penalty, Late Fee and/or Collection Fee imposed by the Authority if the registered owner proves that the vehicle involved was sold to another prior to the date of the Toll Evasion, or if the registered owner proves that the vehicle involved was not subject to the custody and control of the registered owner due to theft at the time of the Toll Evasion.

4.6 – Answer and request for hearing; failure to request

If a Respondent files a written answer and requests a hearing any time after the issuance of a Notice and up to the date that is five (5) days after the date that the Notice becomes a Complaint, the Authority shall notify the Respondent of the time, date and place of the hearing and shall set the matter for hearing before a hearing officer on a date no later than forty-five (45) days from the date of the Respondent’s answer. The Respondent’s failure to raise a defense or objection in the answer shall constitute a waiver of that defense or objection.

If a Respondent has not answered and requested a hearing any time after the issuance of a Notice and up to the date that is five (5) days after the date that the Notice becomes a Complaint, pursuant to the Notice, Complaint and these rules, Respondent shall be deemed to have admitted liability and to have waived the right to a hearing, and a hearing officer’s final order of liability in default shall be entered upon submission of an Affidavit re: Toll Evasion Violations in Default For Failure to Answer and Request a Hearing.

Section 5.0 – Administrative Adjudication Proceeding

5.1 – Hearing administration

Hearings shall be held in accordance with the “Administrative Procedural Rules” in **Appendix A** attached hereto.

5.2 – Failure to appear

If a Respondent who has answered and requested a hearing fails to appear at the hearing as originally set or as continued by the hearing officer, upon proof that notice of the hearing

was given by the Authority to the Respondent, the Respondent will be deemed to have admitted liability and have waived the right to a hearing, and a hearing officer's final order of liability in default for the unpaid toll, Civil Penalty, Late Fee and/or Collection Fee and Adjudication Fee shall be entered against the Respondent.

5.3 – Decision of hearing officer a final order

A decision by the hearing officer of liability or no liability for the Civil Penalty shall be final for purposes of the administrative adjudication process. At the conclusion of the hearing, the hearing officer shall issue a hearing officer's final order setting out the unpaid tolls, Civil Penalties and all applicable fees for which the Respondent is liable and also setting out the unpaid tolls, Civil Penalties and applicable fees for which the Respondent is not liable.

5.4 – Payment of hearing officer's final order

A Respondent shall pay the amount set forth in a hearing officer's final order within thirty (30) days of entry.

Section 6.0 – Appeal of Decision of Hearing Officer

Subject to judicial review, the decision of the hearing officer shall be final and binding upon the parties and shall be an order of the hearing officer. There shall be no appeal to Authority personnel or the Board. The hearing officer's adjudication may be appealed as to matters of law and fact to the county court for the county in which the Toll Evasion occurred within thirty (30) days of the entry of an order of liability. By law, the appeal shall be de novo.

Section 7.0 – Remedies, Costs and Enforcement

7.1 – No limitation

Neither the existence or utilization of an administrative adjudication process nor these rules shall be construed to limit the Authority's rights or remedies available under the PHA Law, the statutes of the State of Colorado or the common law.

7.2 – Hearing Officer's Final Order a judgment

The Authority may make the hearing officer's final order a judgment of the county court, as provided in Section 43-4-506.5(4)(e) of the PHA Law.

7.3 – Nonrenewal of vehicle registration

The Authority may certify a hearing officer's final order to the State Department of Revenue for nonrenewal of the vehicle registration of the motor vehicle giving rise to a complaint pursuant to Section 43-4-506.5(7) of the PHA Law. The Authority may recover

the reasonable costs associated with such certification by assessing the registered owner of the motor vehicle a fee (“Vehicle Registration Nonrenewal Processing Fee”).

Section 8.0 – Tolling Interoperability and Toll Processing Hubs

MAP-21, the Moving Ahead for Progress in the 21st Century Act (PL 112-141), enacted in July of 2012, requires the implementation of interoperable electronic toll collection technologies or business practices, without providing specific direction on how the country’s myriad tolling providers are to attain interoperability. As a result, and following considerable discussion and negotiation, public tolling agencies and authorities around the United States have formed and joined, and are forming and joining, central toll processing hubs aimed at attaining the requisite interoperability to the benefit of tolling customers and operations. The Authority shall be empowered to join any such hub, and to take additional actions in furtherance of electronic toll collection interoperability as the Board may, from time to time, determine to be in the best interest of the Authority’s customers and operations.

Section 9.0 – Effective Date

These E-470 Public Highway Authority Toll Collection, Evasion and Administrative Adjudication Rules shall be effective as of August 13, 2020 and all prior versions hereof shall be deemed amended and restated consistent herewith.

Appendix A
to
Toll Collection, Evasion and Administrative Adjudication Rules

Administrative Procedural Rules

ADMINISTRATIVE PROCEDURAL RULES

1 – Hearing officer

An administrative adjudication proceeding or hearing shall be held before a hearing officer appointed pursuant to Section 1.2 of the E-470 Public Highway Authority Toll Collection, Evasion and Administrative Adjudication Rules. A motion to disqualify a hearing officer for bias or impropriety shall be made prior to commencement of a hearing. The hearing officer will preside over the hearing, explain to the parties the procedures to be followed in the hearing, administer oaths, rule on admissibility of and take evidence, examine witnesses and permit the parties to examine and cross-examine witnesses. The hearing officer shall make a finding as to whether Respondent is liable for an unpaid toll, Civil Penalty, Late Fee and/or Collection Fee and, if applicable, Adjudication Fee and render a decision in the form of a hearing officer's final order.

2 – Conduct of hearing

- 2.1 All hearings shall be electronically recorded.
- 2.2 The hearing officer shall render a decision based upon the evidence presented at the hearing. The Rules of Evidence of the Colorado and Federal courts shall not apply to the hearing. The hearing officer may exclude evidence which is irrelevant, immaterial or repetitious and may admit evidence commonly relied upon by reasonably prudent persons in the conduct of their affairs. Evidence admitted shall be under oath and may be oral or written, and in the case of oral testimony shall be under oath. The hearing officer's decision shall be based on a preponderance of the evidence.
- 2.3 A Notice of Additional Evidence listing all exhibits and witnesses, and including copies of all exhibits, must be provided to the hearing officer and opposing party no later than five (5) days prior to the date of the hearing. Notwithstanding anything else herein, with the exception of evidence offered in rebuttal, the hearing officer shall not admit into evidence written exhibits or hear testimony from witnesses not listed in a timely filed Notice of Additional Evidence.
- 2.4 Each party is entitled to representation of his or her own choosing at his or her own expense, consistent with applicable laws and the rules of the State of Colorado and the rules of Colorado Supreme Court concerning the unauthorized practice of law. The Respondent may, at his or her option, proceed *pro se* without representation.
- 2.5 The hearing officer shall take official notice of the scientific principles underlying technology utilized by the Authority to produce automatic vehicle identification imagery, the foundation of which may be presumed, subject to rebuttal.
- 2.6 Each party may make opening and closing statements, examine and cross-examine witnesses timely identified in a Notice of Additional Evidence and may also offer documentary evidence timely identified in a Notice of Additional Evidence. The hearing officer may examine witnesses as permitted by Colorado law.
- 2.7 Statements, including admissions, made in settlement discussions shall not be

admitted into evidence.

- 2.8 Written stipulations of the parties shall be submitted at the commencement of a hearing and shall become part of the record of the proceeding.
- 2.9 Objections to offers of evidence shall be noted in the record, as shall rulings thereon.
- 2.10 The hearing officer or the Authority shall make and preserve, until a case is finally concluded, a verbatim record of the hearing.
- 2.11 Each party may have written discovery of documents the other party intends to introduce and of the identity of witnesses the other intends to call at hearing. Respondent may view automatic vehicle identification imagery evidence by appointment with the Authority on a date prior to that of the hearing at a time and location designated by the Authority.
- 2.12 The hearing officer may receive and consider the evidence of witnesses by affidavit, giving it only such weight as the hearing officer deems proper after consideration of any objection made to its admission.

3 – Continuances

A Respondent may obtain a hearing continuance on a single occasion in the event of an unanticipated personal emergency, i.e. illness, inability to obtain childcare, or to seek representation of counsel. A request for continuance to seek representation of counsel must be filed no less than five (5) days prior to the hearing. A request for continuance for any other unanticipated personal emergency must be filed prior to the hearing. If a request for continuance is timely filed, a continued hearing shall be scheduled at the next available hearing date no sooner than thirty (30) days from the original hearing date and notice provided to the Respondent of the new date and time.

If a hearing must be rescheduled due to a disruption of an automated or electronic adjudicatory file or processing system, the hearing will be automatically rescheduled for the next available hearing date no sooner than thirty (30) days from the original hearing date and notice provided to the Respondent of the new date and time; in such case, the rescheduling will not bar Respondent's right to request a continuance in accordance with this Section 3.