



New York Taxi Workers Alliance

AFL-CIO, Int'l. Transport Workers' Federation

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July 18, 2019

Acting Commissioner Bill Heinzen
New York City Taxi and Limousine Commission
33 Beaver Street
New York, New York 10004

PETITION TO INITIATE RULEMAKING

Dear Acting Commissioner Heinzen:

Greetings. On behalf of the New York Taxi Workers Alliance, I submit the attached petition to Initiate rulemaking to secure a living wage for over 85,000 app-dispatched drivers, and wage protections for drivers in the remaining sectors.

The petition calls on the TLC to regulate High-Volume For-Hire Vehicle, or “app-based” driver earnings so that the minimum driver payment rates in effect do not become the both floor and the ceiling for driver earnings, and drivers are not cut out of fare revenue as the sector grows and companies continue to charge more to passengers. We further petition the TLC to enact protections against predatory vehicle financing and lease rates for For-Hire-Vehicle (FHV) drivers, in the same way the TLC has protected taxi drivers since 2012.

While the *entirety* of the crisis facing 20,000 taxi drivers, with 6,000 owner-drivers among them, and 3,000 green cab drivers is beyond the scope of this petition, we call on you to stop the sophisticated wage theft in the name of “upfront pricing,” where the e-hail provider or app company charges passengers one (higher) rate and pays drivers at a different lower rate on the trip. We also ask you to support City Council legislation to provide app drivers protections against unjust firings (“deactivations”) and to call on the Council to authorize your enforcement of FHV vehicle finance and lease rates.

In many ways, we seek to bring to the app-based sector the protections and gains our years of organizing won for taxi drivers, and stop the unregulated app-base pioneered techniques that a race to the bottom from creeping further into other parts of the industry. The road to full recovery, stability, anti-poverty, and self-sufficiency remains long and hard for this workforce in crisis. If the TLC does not act now, the crisis will only deepen and the ability for drivers to climb out of it will be delayed, if not made impossible. We urge you to act swiftly.

Key NYTWA Petition Proposals

Living Wage + Job Security for App Drivers and Raise for ALL Drivers!

- **Set one MINIMUM passenger rate of fare across the industry so no company can cut rates!** App companies *cannot set minimum rates less than* the current yellow cab meter: \$2.50 initial charge + \$2.50/mile + \$0.50/minute in slow traffic.

- Same meter rules for **out-of-town fares: Double the “meter”** for app drivers (like Rate 4 for yellow cabs)
- **Require companies to pay app drivers whichever is higher: 85% of passenger fare or total of current TLC driver payment rates**
- **Cap FHV Financing and Lease Rates:** MAXIMUM \$350/week rental lease, including accidents and maintenance. \$275/week financing and no more than \$42,900 in total for vehicle purchase.
- **Stop upfront pricing by e-hail companies** where passengers pay more but the company pays driver less (like Access-A-Ride trips)

Join Our Call for City Council Action:

- **Stop Unfair Deactivations** with no notice, cause or appeal!

While not in the scope of this petition, I also write to express our strong support of the proposed rules to extend the cap on FHV vehicles and additional utilization rules for the Central Business District in Manhattan. Without the cap and utilization rules, driver poverty would be a foregone conclusion and the goals of a living wage and financial stability, simply fiction. The presence of a cap on new cars and rules to ensure more work for every driver allow us to have a foundation to build upon and aim for a living wage for app drivers, and further stability for yellow, green, livery and black car drivers.

Of course, at this stage, given that the companies themselves are not taking new drivers, have seemingly increased deactivations (fancy Silicon Valley speak for firing workers), are forcing drivers to log off, and admit to loss of trips – but meanwhile, not loss of revenue – the wisdom of the proposed extension of the cap and additional utilization rules are self-evident. The companies’ objections appear to be purely ideological, and were the TLC to compromise, the agency’s failure would appear to be purely political. We will not go back to the days where Wall Street-financed companies remain unregulated, especially when they are still *under*-regulated. The TLC must extend the cap and pass the proposed utilization rules then move forward with the proposals in our Petition. Drivers have a right to a life with dignity and a future without poverty. The passage of the cap and utilization rates and the proposals in our Petition will put this workforce back on that path.

And finally, in loving memory, we dedicate this rulemaking petition to a true champion of the working class and a brother to all taxi and FHV drivers, Hector Figueroa, President of SEIU Local 32BJ. May the principles of fairness, compassion, and love of workers, the poor, and immigrants, which guided President Figueroa’s lifelong commitment to economic and racial justice serve as guidance to all who have power over this petition, from the city officials that will propose the rules and cast the votes, to the driver brothers and sisters determined to seize our destiny for labor with justice, rights, respect, and dignity.

We await your response. Thank you.

Respectfully Submitted,



Bhairavi Desai, Executive Director
New York Taxi Workers Alliance

CC: TLC Board of Commissioners: Lauvienska Polanco, Nora Constance Marino, Jacques Jiha, Bill Aquado, Kenneth C. Mitchell, Thomas Sorrentino, Steve Kest

Statement of Basis and Purpose

These proposed rules amend the Taxi and Limousine Commission (TLC) Rules (Title 35 of the Rules of the City of New York).

Background

New York City is home to the largest Taxi and For-Hire-Vehicle industry in the country. TLC-licensed drivers collectively serve over one million fares every day, and remain the lifeblood for the city's airports, central business district, tourism, and entertainment industries and the vibrant, unique culture that is the City of New York. Over the past seven years, as the industry has shifted from dominance by the highly regulated medallion taxi sector to the loosely regulated app-dispatched High Volume FHV sector, drivers have lost many regulatory protections which once set industry standards for livable income, job security, and healthy and safe working conditions.

Over the past several years, driver earnings have plummeted into crisis poverty, with reports of evictions and bankruptcies. Nine drivers took their own lives in less than 12 months, with media reports citing financial distress as the cause. Over eighty-five percent of app drivers were found to be earning below the minimum wage, while yellow cab driver revenue had fallen by over 30% since 2012 and the value of the medallion, effecting up to 6,000 owner drivers, had fallen by 80%. The green cab sector never met its potential, with less than 3,000 of the 6,000 issued permits operational, or a fraction of the anticipated 18,000. App drivers were found to be empty 42% of the time, while vehicle over-saturation slowed down traffic, affecting drivers in all sectors, commercial and private cars, and public buses.

The cap on the issuance of new FHV vehicle licenses imposed by the City Council in August 2018 and TLC-regulated minimum driver payment rates in effect since February 1, 2019 were aimed at lifting drivers out of this crisis and restoring some semblance of stability and labor protections. While the continuance of a vehicle cap is a necessary foundation to provide stability for drivers across the industry, more must be done to bring all drivers out of crisis and restore earnings to livable incomes as the City has committed to since 2004.

The rules proposed herein aim to do just that, by addressing regulatory vacuums in labor protections, industry parity, TLC driver protection enforcement, and transparency between companies and drivers. After the TLC's actions on the medallion taxi fare and lease caps in 2012, taxi drivers were able to earn a livable income and earn the majority share of the fare revenue. TLC also promulgated first-time protections against wage theft, making it easier for drivers to file complaints and seek damages on some claims. The proposed rules continue that work and allow a workforce of over 85,000 High Volume FHV-dispatched drivers to earn a living wage, and offer medallion taxi and Street Hail Livery drivers wage protections in the growing E-hail market, allowing them to also earn more.

The Proposed Rules

NYTWA proposes these amendments to TLC rules to ensure economic justice across all sectors of the taxi and For-Hire Vehicle industries. These rules continue the work that the City Council

and TLC began last summer by amending driver pay rules to provide drivers with a true living wage. The rules do so, in part, by setting minimum rates of fare, bringing pricing clarity to consumers, and along with rules giving app-based drivers a set share of such fares, potential for higher earnings. These rules also regulate the amounts FHV owners may charge to lease or sell their vehicles, in line with current TLC regulations for the lease and sale of taxicab vehicles, helping ensure that FHV drivers can retain a fair portion of their gross income.

Other proposed rules protect taxicab drivers from unfair charges and ensure that taxicab drivers receive full fare payment regardless of whether they find fares on the street or through e-hail.

FHV Base Rules: Fare Rates and Driver Earnings

For years, drivers in the FHV sector labored with no TLC pay protections. Last year, the City Council and TLC took a historic step forward by setting minimum pay rates per mile and minute. These rules importantly brought driver pay up from historic lows, but after years of driver pay diminution, drivers deserve more than a minimum wage; they deserve a real New York City living wage. Working one of the City's most dangerous jobs, at odd hours, and after investing significant expense and risk in vehicle costs, working as a for-hire driver cannot simply be seen as another minimum-wage job. Currently, according to the TLC and DOT's June 2019 report, most peak-time high-volume FHV fares are now higher than taxi fares, but drivers have not seen any benefits from this increase. NYTWA proposes rules that would require drivers to share in the companies' increased revenues.

From the entry of app-based FHV's into the market in 2012 until earlier this year, FHV drivers had faced a steady decline in their earnings, despite the fact that the FHV sector now commands a dominant share of the market for for-hire transportation. This market dominance failed to mean steady pay for drivers, who watched pay rates decrease, while their employers have continued to take a growing percentage of each fare for themselves. Drivers were initially lured to join the app-based FHV companies by commission rates as low as 10% on fares that were higher than taxi rates. Over time, commission rates increased to 20% and then 25%, while fare rates dropped well below taxi rates. While drivers' earnings were once buoyed by subsidies at the outset, and sustained by dynamic pricing, neither of those revenue streams have proven to generate reliable, family-supporting incomes for drivers. Drivers found pay declining, as FHV bases slashed rates and continued to take an ever-higher proportion of the amount of the fare paid by the customer.

After generally under-selling other for-hire sectors, app-based FHV companies have mostly abandoned the use of static rates, and now charge passengers flat rates that are ostensibly determined by formulas that factor in default rates, yet often inflate fares far beyond those rates. Indeed, NYTWA's analysis of one company's fare rates for standard fares, charged after the introduction of "up-front pricing," showed that, on average, passengers paid more than the taxi fare rates for the same trip and significantly more than the company's own previously advertised rates. However, compared to previous increases of the fare through methods such as "surge pricing," in which drivers continued to earn a consistent percentage of each fare, drivers are now paid at the same low rates regardless of passenger payment. That is, on a 5-mile, 30-minute trip, the driver will now earn the same amount regardless of whether the passenger paid \$20 or \$50.

The TLC's driver pay rules have provided an important first step in improving driver pay, but essentially adopted Uber's "up-front pricing" model in which drivers earn the same static per-mile and minute rates, regardless of what the passenger pays. While the increase in driver pay has been welcome, the simple pay formula alone has been insufficient to bring drivers to a living wage.

Regulate FHV Driver Pay Terms, and Create TLC Enforcement Over Driver Pay, in Parity with the Taxi Sector

NYTWA proposes the following rules regarding driver pay:

- FHV bases may not charge rates of fare below those of yellow taxis and street-hail liveries.
- FHV Base Owners must pay drivers no less than the greater of: 1.) the pay due to the driver under the current pay formula; or 2.) 85% of the fare paid by the passenger, designed to generate a true living wage. This would prohibit the practice of raising rates on passengers significantly, without sharing that added revenue with drivers.
- Out-of-town pay rates will increase to "double-meter" rates to compensate drivers for the full cost of time and distance for returning to the City.
- FHV base owners must pay drivers weekly and may only deduct certain enumerated costs from driver pay that are permitted by TLC rules.
- FHV base owners must provide drivers with static versions of documents that contain all of the terms and contracts under which they are paid and work with the company and any contracts drivers had previously agreed to, going back at least six years.
- FHV Base Owners must provide drivers with clear, static versions of earning statements at the time drivers receive each weekly payment.
- Rules allowing for TLC enforcement and restitution when Base Owners overcharge drivers and requiring class-wide investigation and enforcement when the TLC receives evidence that an unlawful practice may be widespread.

FHV Owner Rules

Regulate FHV Lease Costs and Provide Overcharge Protection

In recent years, a market for the financing and leasing of For-Hire Vehicles has grown to a scale not previously seen. There is currently no regulation of the financial terms for the TLC-FHV leasing market, meaning there are no limits to how much FHV dealers may charge drivers for the sale or lease of an FHV. Where regulation of expenses has, in the taxi sector, always been a crucial part of the formula that ensures decent pay rates are not entirely consumed by a driver's expenses, no such rules exist in the FHV sector. Some examples of current FHV owner practices that would violate TLC rules for taxi owners include: 1.) Charging a \$100/week differential for a hybrid vehicle over the standard version of the same vehicle; 2.) Requiring drivers to have all repairs performed at a specific repair shop; 3.) Charging more than \$42,900 for the sale of a TLC-licensed vehicle. Most significant is the lack of lease caps which has allowed brokers to charge rates for vehicles far above the vehicle-only caps provided for taxis under TLC rules.

Since the implementation of Local Law No. 147 of 2018, FHV dealers have played on fears of vehicle scarcity to raise rental prices even higher. High-Volume FHV companies and their lobbyists have tried to leverage fears of scarcity and increased lease costs to call for unlimited licensing of FHV's that would hurt the ability of all FHV drivers to earn a living. Yet, these

dealers have hundreds, if not thousands, of available vehicles, and the large FHV companies are no longer accepting new drivers; there is no scarcity of vehicles. Current drivers don't need more cars on the road in order to keep expenses down; they simply need parity with TLC rules limiting the cost of vehicle leases and sales that put an end to the industry's current exploitative and usurious rates.

The TLC must regulate TLC vehicle owners to protect drivers from subprime auto lenders, opaque billing practices, and exorbitant lease rates. NYTWA proposes regulations capping the rates at which FHVs may be leased or sold. In large part, these rules mirror TLC rules which cap the financed sales price of a vehicle, limit the amount to be charged for weekly rentals, and prohibit any charges above the regulated lease caps. Among other regulations, NYTWA proposes the following:

- A maximum lease cap of \$350/week for the rental of a For-Hire Vehicle; cost of maintenance included.
- A maximum lease cap of \$275/week for the conditional sale of a For-Hire Vehicle, and maximum sales price of \$42,900, in line with TLC rules for the sale of a taxicab vehicle.
- Rules capping the amount of driver earnings, per week, that a base can deduct from driver pay for the payment of lease amounts. This ensures that drivers will be left with some earnings at the end of each work week.

Further, similar to taxi drivers, FHV drivers who lease vehicles but will never own them should not have to pay any costs for maintenance. FHV drivers should be able to benefit from the trade-off of convenience and predictability of expenses that a maintenance-included lease provides, while companies retain title to the vehicle.

Taxi Owner Rules

Although taxi driver revenue and expenses have generally been well regulated, NYTWA proposes new regulation to close loopholes by which Owners continue to exploit drivers with unjust expenses.

Accident and Repair Expenses

As all fleet taxicab vehicles are fully insured by the fleets, taxicab drivers should not bear the cost of vehicle repairs. TLC rules that allow fleets to pass on repair costs to drivers disincentivize drivers from entering into steady, weekly lease agreements with fleets. NYTWA proposes an amendment removing language that allows for fleets to pass on the cost of vehicle repairs to drivers.

Rule Enforcement and Driver Protection

While TLC enforcement has been crucial to economic justice in the taxi industry and the Driver Protection Unit ("DPU") has recovered millions of stolen earnings for drivers, TLC prosecution is currently the only remedy for a violation of TLC rules resulting in driver wage theft. This means that whether or not a driver has a remedy against wage theft is solely in the TLC's discretion. The proposed rules, while preserving and bolstering the TLC's enforcement over owner violations, also create a private right of action to allow drivers the option to pursue overcharge complaints independently through private litigation.

Fair Pay Rules for Taxi Drivers:

New rules ensure that:

- Drivers will receive full payment of taxicab fares, at the taximeter rates, for all e-hail dispatched trips.
- Drivers may collect a clean-up fee when passengers vomit in the taxicab.
- Taxicab owners and agents may not charge drivers any unauthorized fees, even when they are leasing taxicabs at rates below the TLC lease cap amounts.

What authorizes the Commission to make these rules? Sections 1043 and 2303 of the City Charter and Section 19-503 of the City Administrative Code authorize the Commission to make this proposed rule.

New material is underlined.

[Deleted material is in brackets]

Section 1. Subparagraph (vi) of paragraph (1) of subdivision (c) of section 58-21 of Title 35 of the Rules of the City of New York is amended to read as follows:

(vi) For a driver with a weekly lease under 58-21(c)(1)(i)(E) or 58- 21(c)(1)(i)(F), the lease includes costs for collision and other damage coverage, including repairs of physical damage to the vehicle, , except that it shall not be considered an overcharge prohibited under these Rules if the Owner of a Taxicab or his or her Agent and the driver agree in writing that the driver will make payments for damage to the vehicle caused by the driver's negligence and such agreement will remain in effect for only so long as the driver is leasing a medallion from the Owner or the Agent, provided that the lease contains language informing the driver that he or she will be responsible for physical damage to the vehicle caused by his or her negligence if such damage was in fact caused by the negligence of the driver. If the Owner receives compensation for damages to the vehicle incurred from an entity other than the driver, any amount previously paid by the driver as compensation for damages, must be refunded to the driver.]

Section 2. Subparagraph (vi) of paragraph (2) of subdivision (c) of section 58-21 of Title 35 of the Rules of the City of New York is amended to read as follows:

(vi) For a driver with a weekly lease under 58-21(c)(2)(i)(E) or 58- 21(c)(2)(i)(F), the lease includes costs for collision and other damage coverage, including repairs of physical damage to the vehicle, , except that it shall not be considered an overcharge prohibited under these Rules if the Owner of a Taxicab or his or her Agent and the driver agree in writing that the driver will make payments for damage to the vehicle caused by the driver's negligence and such agreement will remain in effect for only so long as the

driver is leasing a medallion from the Owner or the Agent, provided that the lease contains language informing the driver that he or she will be responsible for physical damage to the vehicle caused by his or her negligence if such damage was in fact caused by the negligence of the driver. If the Owner receives compensation for damages to the vehicle incurred from an entity other than the driver, any amount previously paid by the driver as compensation for damages, must be refunded to the driver.]

Section 3. Paragraph (5) of subdivision (c) of section 58-21 of Title 35 of the Rules of the City of New York is amended to read as follows:

(5) *Limits on Additional Charges.* In addition to a lease amount no greater than the Standard Lease Cap (as adjusted), an Owner/lessor (as well as any agent or employee of the Owner/lessor) must not request of or accept from any lessee any money or thing of value, except for the following. [(this means an Owner/lessor must not charge any tip, tax, surcharge or other fee of any kind above the Standard Lease Cap (as adjusted)] This means an Owner/lessor must not charge any tip, tax, surcharge or other fee of any kind, above, in addition to amounts collected for lease payments; any such charges are prohibited, even if the Owner/lessor contracts for a lease amount below the Standard Lease Cap.

Section 4. Subparagraph (ii) of paragraph (5) of subdivision (i) of section 58-21 of the Rules of the City of New York is amended to read as follows:

(ii) Any cancellation charge contained in the lease must [be reasonable] not exceed the cost of one least payment, and will not be permitted unless the lease also provides that:

Section 5. Section 58-21 of Title 35 of the Rules of the City of New York is amended by adding a new subdivision (k), to read as follows:

(k) Enforcement

(1) Private Right of Action: Any person who shall be injured by the violation of this rule shall have a right to recover actual and exemplary damages. Such action may be brought in any court of competent jurisdiction.

(2) Commission Enforcement: Nothing in this sub-section (k) shall limit the right of the Commission to pursue enforcement of any section of this rule, pursuant to Chapter 68 of the TLC Rules.

(i) Upon a sufficient showing that an Owner has violated any sub-section of this rule through a common practice affecting five (5) or more similarly situated drivers, the TLC may initiate an investigation of the Owner to determine the extent of such practices, and may seek to recover restitution for the entire class of drivers.

Section 6. Section 58-26 of Title 35 of the Rules of the City of New York is amended by adding a new subdivision (k), to read as follows:

(k) *Clean-up Fee.* In addition to the metered rate of fare, a Driver may add a \$100 clean-up fee in the event that a passenger vomits in the Taxicab.

Section 7. Section 59B-03 of Title 35 of the Rules of the City of New York is amended, by adding the following subdivisions (y) through (cc), as follows:

(y) *Passenger Fare.* The passenger fare is the total retail price paid for transportation services by the Customer. The Passenger Fare includes any base charges for transportation services, whether based on a flat rate, or an amount for distance and time, and including, but not limited to, any charges such as fare multipliers, waiting time, or cancellation fees. The Passenger Fare does not include tolls, tip, sales tax, the Black Car Fund surcharge, or any other applicable taxes or surcharges.

(z) *Base Fee.* The Base Fee is the amount is the amount of each Passenger Fare which the Base retains.

(aa). *Driver Trip Pay.* Driver Pay is the amount a for-hire vehicle driver is paid for performing a trip.

(bb) *Associated Driver:* a For-Hire Vehicle Driver who performs trips, or is eligible to perform trips dispatched by a For-Hire Vehicle base shall be considered an Associated Driver of that Base.

(cc) *Electronic Signature.* An Electronic Signature means a computer data compilation of any symbol or series of symbols executed, adopted, or authorized by a natural person attached to or logically associated with an electronic record and executed or adopted by a natural person with the intent to sign the record. An electronic signature is considered to be “attached to or logically associated with an electronic record” if the electronic signature is linked to the record during transmission and storage.

Section 8. Paragraph (5) of subdivision (b) of section 59A-21 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (5) *Standard Lease Cap Rates.* [RESERVED (limitations on costs and fees related to the lease of a For-Hire Vehicle)] An Owner of a For-Hire Vehicle can charge a lease rate to a Driver that is not greater than the following Standard Lease Caps:
- (i) The Standard Lease Cap for a For-Hire will not exceed \$350 for any one-week period.
 - (ii) The lease of a For-Hire Vehicle under this paragraph 59A-21(b)(5) includes service and maintenance. Service and maintenance of the vehicle is the responsibility of the Owner/lessor and the Owner/lessor and his or

her Agent must not charge the lessee for service and maintenance costs for the vehicle.

- (iii) For a driver with a weekly lease under 59A-21(b)(5), if the vehicle is unavailable for use for any reason that is not the lessee's responsibility during any part of any week, the payment of the Lease Cap must be pro-rated.
- (iv) For a driver with a weekly lease under 59A-21(b)(5), the lease includes costs for collision and other damage coverage, including repairs of physical damage to the vehicle.

Section 9. Subdivision (b) of section 59A-21 of Title 35 of the Rules of the City of New York are amended to add new paragraph (6) through (8), to read as follows:

(6) *Standard For-Hire Vehicle Lease Cap including Long Term Vehicle Lease/Conditional Purchase.*

- (i) A Lease is covered by this paragraph 59A-21(b)(6) if it includes all of the following:
 - A. The conditional purchase agreement for a vehicle; and
 - B. The vehicle is being conditionally sold to the driver/lessee by any of:
 - 1. The Owner of the For-Hire Vehicle or any employee of the Owner, and/or
 - 2. The Owner's Agent or any employee of the Agent, and/or
 - 3. Any Business Entity of which a Business Entity Person of the Owner or Agent, or an employee of Owner or Agent, is a Business Entity Person
 - 4. For purposes of this paragraph, an individual, business entity or business entity person covered by sub-items one through three of this item B who is leasing a For-Hire Vehicle to a lessee and who holds more than 2% of the shares in a publicly held corporation that sells, leases or finances vehicles and has accepted a payment from such lessee related to the sale, lease or finance of such lessee's vehicle is deemed to be a party to the vehicle financing arrangement. Accordingly, the total amount charged to the lessee for the sale, lease, or financing of the vehicle cannot exceed the amount of the Standard Lease Cap set forth in subparagraph (ii) of this paragraph.
- (ii) The Lease Cap under this section for a For-Hire Vehicle is
 - (A) \$ 275 weekly for the portion of the lease covering the conditional purchase of the vehicle, as well as \$15, which shall be paid to cover the cost of TLC and DMV registrations during the duration of the lease.
 - (B) This Standard Lease Cap cannot be charged at any time after title to the vehicle passes (or could have passed) to the lessee such that

total payments by the lessee for the vehicle shall not exceed \$42,900.

- (iii) Title to the leased vehicle must pass to one or more of the lessees, if the lessees request, after all vehicle financing costs have been paid. The conditional seller is not required to transfer title if the lessees have failed to pay all payments due for the vehicle purchase and lease until all such payments have been made.
- (iv) A lease, and payment of the Lease Cap under this section includes (and the following must be provided to the lessee, except that items F and G are optional):

 - (A) Use of the For-Hire Vehicle;
 - (B) All applicable TLC and NYS DMV fees except for TLC vehicle inspection fees;
 - (C) Insurance required by Section 59A-12;
 - (D) All Vehicle purchase and/or finance costs and vehicle sales tax and related costs;
 - (E) Up to 2 drivers on a lease at the request of the drivers, which request cannot be unreasonably denied.
 - (F) A For-Hire Vehicle lessor or Agent can offer coverage for collisions and physical damage to the vehicle to the lessee/purchasers in an amount not to exceed \$50 per week, but cannot require that the lessee/purchasers purchase such coverage.

 - i. The For-Hire Vehicle lessor or Agent can require that a deductible of up to \$250 per incident be met before covering or reimbursing costs identified in item G.
 - ii. For any incident for which a driver has paid a deductible amount authorized under this subsection, if the For-Hire Vehicle lessor or Agent of the For-Hire Vehicle which is the subject of the damages claim receives insurance claim proceeds, litigation proceeds or other proceeds to cover the cost of repair, the lessor must reimburse the driver for the amount previously remitted as a deductible.
 - (G) A For-Hire Vehicle Owner or Agent can agree with a driver to provide services or accommodations on an arm's-length basis outside the lease. A For-Hire Vehicle lessor or Agent who provides services or accommodations outside the lease to a leasing driver must keep records of all transactions with that driver and such records must be available for inspection by the Chairperson or his or her designee.
 - (H) If the Driver does not opt to receive coverage for collisions and physical damage pursuant to F above, and a Vehicle owner or Agent receives compensation for damages to the vehicle incurred from an entity other than the Driver, any amount previously paid

by the Driver as compensation for damages or paid by the Driver in order to repair damages to the vehicle must be refunded to the Driver.

(vi) If the vehicle is unavailable for use for any reason that is not the lessee's responsibility during any part of any week, the lessee's payment of the Lease Cap must be pro-rated. As an example, a vehicle is not unavailable for purposes of this rule if the vehicle is undergoing required maintenance, undergoing repairs as a result of not being properly maintained, or required to appear for inspection at the TLC.

(7) *Limits on Additional Charges.* In addition to a lease amount no greater than the Standard Lease Caps set forth in 59A-21(b)(5), (6) (as adjusted), an Owner/lessor (as well as any agent or employee of the Owner/lessor) must not request of or accept from any lessee any money or other thing of value, except for the following (this means an Owner/lessor must not charge any tip, tax, surcharge or other fee of any kind above the Standard Lease Cap (as adjusted):

- (i) A security deposit and deductions from the security deposit no greater than the amount allowed under paragraph (8) below;
- (ii) The discount toll amount for use of the Owner's EZ-Pass, if the Owner has provided Driver with the use of an EZ-Pass.
- (iii) A reasonable cancellation charge, of no more than \$500.
- (iv) Parking tickets and red light violations permitted to be deducted from the security deposit described in subdivision (e) below, provided that the Driver/lessee is allowed to challenge any ticket or violation; and
- (v) State and local sales and rental taxes on vehicle rentals.
- (vi) If contained in the lease, a provision for the recovery of reasonable damages for a breach of the lease contract. Fines paid to the Commission by an Owner or Agent cannot be recovered from a driver as reasonable damages, except for

- A. fines imposed on the owner for violation of Rule 59A-26(a), provided that such fine was assessed because of the conduct of the driver and provided the owner is able to show that the driver had notice of the inspection date.
- B. for drivers leasing under 59A-21(b)(6), fines incurred as a result of unauthorized operation by a suspended or revoked driver.

(8) *Security Deposit on For-Hire Vehicles.*

- (i) *Security Deposit Provision Permitted.* An Owner can include a lease provision for a security deposit from the Driver, provided it complies with the requirements of this paragraph (8).
- (ii) *Permitted Withholdings from Security Deposit.* At the termination or expiration of a lease an Owner may be reimbursed from the security deposit only for the following:
 - (i) Any unpaid but owing lease charges.

- (ii) Any parking tickets issued during the lease, if the driver has first been given the opportunity to contest the tickets.
- (iii) Any red light violations issued to the Owner during the lease, under the NYC Department of Transportation's camera surveillance system, if the driver has first been given the opportunity to contest the tickets.
- (iii) Deposit Not to be Used for Owner Violations. An Owner must not require a Driver to pay any summons that is written to the Owner as Respondent, other than those specified above.

Section 10. The penalty provision box following subdivision (b) of section 59-21A of Title 35 of the Rules of the City of New York is amended to read as follows:

§59A-21(b)(3-[5]8)	Fine: First violation: \$500; Second and subsequent violations: \$1,000 and/or suspension for up to 30 days. In addition to the penalty payable to the Commission, the Hearing Officer must order the Base to pay restitution to the Driver or Vehicle Owner, equal to the amount charged to the Driver or Vehicle owner in violation of this rule.	Appearance REQUIRED
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Section 11. Subdivision (f) of section 59B-18 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (f) *Base Agreements.*
 - (1) *Agreements Must Include All Terms.* Any terms or conditions a Driver or Vehicle owner must accept or agree to in order to receive a dispatch from a For-Hire Base or to remain an Associated Driver of the Base, any terms or conditions a Driver or Vehicle owner must accept or agree to in order to receive payment from a For-Hire Base or the entity designated by the For-Hire Base to process and disburse payments to Drivers and Vehicle owners, any costs a Driver or a Vehicle owner must pay a For-Hire Base, and any formulas used by a Base to calculate Driver or Vehicle owner earnings must be included in a Base Agreement that complies with the provisions of this subdivision.
 - (a) Written records required under this subdivision may be maintained in hard copy or electronically.

§59B-18(f)(1)	Fine: First violation: \$500; Second and subsequent violations: \$1,000 and/or suspension for up to 30	
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	days. In addition to the penalty payable to the Commission, the Hearing Officer must order the Base to pay restitution to the Driver or Vehicle Owner, equal to the amount charged to the Driver or Vehicle owner in violation of this rule.	
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(2) *Base Agreements Must be in Writing*

- (i) All base agreements, including any amendments, must be in writing and signed by the Base and the Driver or Vehicle owner. Electronic signatures are permissible for electronic Base Agreements.
- (ii) Prior to the opportunity to execute the contracts described in this sub-section, the Base must provide a Driver and/or Vehicle Owner with a hard copy or, via e-mail, a printable copy of every contract, addendum or term affecting Drivers’ relationship with the Base. When offering new or updated terms to Drivers, a Base must provide a Driver with a hard copy or printable copy via e-mail of each contract at least fourteen (14) days prior to requiring acceptance in order to remain associated with the Base.
- [ii](iii) A copy of the fully executed Base Agreement must be provided at the time of execution to the Driver and/or Vehicle owner in paper copy, or as a Portable Document Format (PDF) file and be made available on-demand at the Driver’s and/or Vehicle Owner’s request and if the Base is subject to the minimum driver-payment requirements of Section 59B-24(a), the base shall provide each driver with unlimited electronic access to all contracts applicable to a Driver’s tenure with the Base.
- [iii](iv) A Base Owner must ensure that all Base Agreements are maintained in accordance with paragraph (6) of this subdivision and made available for inspection by Commission representatives during regular business hours.

§59B-18(f)(2)(i-ii)	Fine: 500	Appearance NOT REQUIRED
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[iii](iv) *Terms.* The Base Agreement must provide:

- (A) All costs and fees that may be charged by the Base.
 - (1) For each cost or fee that will be charged, the Base Agreement must provide in clear and unambiguous language an explanation of the cost or fee.
 - (2) For each cost or fee that may be charged, the Base Agreement must provide in clear and unambiguous language an explanation of the conditions that will result in the imposition of such cost or fee.
- (B) An explanation of how the Driver’s earnings will be calculated, including but not limited to a percentage of fares paid by passengers that will be forwarded to the Driver or a formula used by the Base.
- (C) All requirements the Driver or Vehicle must meet in order to receive a dispatch

[iv](v) *Overcharges.* Every Base Agreement must contain a clearly legible notice that overcharging a Driver or Vehicle owner is prohibited by the Commission’s Rules, and that complaints of overcharges may be made in writing to the Commission or by telephone to 311.

[v](vi) *Plain Language.* Base Agreements must be written in clear and unambiguous language.

59B-18(f)(2) <u>(ii)-(vi)</u> <u>[(iii)-</u> <u>(v)</u>	Fine: First violation: \$500; Second and subsequent violations: \$1,000 and/or suspension for up to 30 days. In addition to the penalty payable to the Commission, the Hearing Officer must order the Base to pay restitution to the Driver, equal to the amount charged to the Driver in violation of this rule.	Appearance REQUIRED
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(3) *Driver Payments.*

- (i) A Base may require payment of only those costs and fees specified in the Base Agreement. Requiring payment of costs and fees not specified in the Base Agreement is an overcharge.

- (ii) A Base cannot charge, request or accept a tip.
- (iii) A Base cannot require payment by a Driver of a summons not written to the Driver.

§59B-18(f)(3)	Fine: First violation: \$500; Second and subsequent violations: \$1,000 and/or suspension for up to 30 days. In addition to the penalty payable to the Commission, the Hearing Officer must order the Base to pay restitution to the Driver or Vehicle Owner, equal to the amount charged to the Driver or Vehicle owner in violation of this rule.	Appearance REQUIRED
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(4) *Driver Earnings.*

- (i) A Base must remit all earnings to the Driver or Vehicle owner. A Base may not make any deductions from Driver Pay other than those explicitly authorized by this sub-section: [only deduct costs and fees from the earnings if those costs and fees are specified in the Base Agreement as required in paragraph (2) of this subdivision and the Base Agreement further provides that such costs and fees will be withheld from the earnings.]

A. *Vehicle Leases:* If available, a driver may elect to pay a For-Hire Vehicle Owner for the cost of a vehicle lease through deductions from weekly Driver Pay.

1. If a Driver elects to pay a lease through Driver Pay Deductions, the Base may not remit more than 60% of a Driver's net weekly Driver Pay towards the cost of the weekly lease payment.
2. If a driver's earnings are not sufficient to pay for the full cost of a lease payment during one week, the Base Owner may deduct any owing amount from the following week's earnings provided that such deduction still complies with sub-section (c)(4)(i)(A) above.
3. Unpaid lease amounts shall not be subject to interest as long as a Driver and the Vehicle Owner/lessor remain in an ongoing lease. If at the end of a lease, a Driver still owes any remaining lease amounts, the driver shall have thirty (30) days to pay any such amounts, without any interest accrued.

B. *Garnishments:* If a driver's pay is subject to wage garnishments, a Base Owner must not deduct amounts from driver's net Driver Pay in excess of those permitted by N.Y. C.P.L.R. § 5231.

§59B-18(f)(4)(i)	Fine: First violation: \$200 Second violation: \$300 Third violation: \$500 In addition to the penalty payable to the Commission, the Hearing Officer must order the [lessor] <u>Base</u> to pay restitution to the Driver, equal to the amount charged to the Driver in violation of this rule.	Appearance REQUIRED
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- (5) *Written Receipts.* For every financial transaction under the Base Agreement or these Rules, the Base must give a written receipt to the Driver or Vehicle Owner.
- (i) The receipt must include, as applicable, the name of the Driver and the Vehicle license number subject to the Base Agreement.
 - (ii) The receipt must clearly state the following information with respect to the payment or deduction:
 - (A) The date and time;
 - (B) The name of the recipient;
 - (C) The amount;
 - (D) The purpose of the payment or deduction;
 - (E) The number of the section of this chapter or provision of the Base Agreement and TLC Rules that authorizes the payment or deduction; and
 - (F) If the Base is subject to the minimum driver-payment requirements of Section 59B-24(a), the applicable minimum [per minute and per mile rates] driver pay rates for the time period covered by the receipt.
 - (iii) When reference is made to TLC rules authorizing or permitting certain charges, the Receipt must either recite the complete text of each rule or state the address of the Commission’s Web page on which the Rule is published.
 - (iii) For Driver and Vehicle owner earnings, in addition to the items specified in subparagraph (ii) of this paragraph, the receipt must also include the amount paid by passengers for trips during the time period covered by the receipt and any calculation used to determine the earnings, including the per-trip minutes and miles for which the Driver is being paid and the number of shared rides subject to the Shared Ride Bonus provided in Section 59B-24(a)(3), if applicable. Such calculation must conform to the applicable policy, formula or schedule provided in the Base Agreement.

§59B-18(f)(5)	Fine: \$200 per missing receipt	Appearance REQUIRED
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- (6) *Weekly Pay Statement.* At the time of each weekly payment a Base Owner must provide a Driver with a total written receipt for every payment or deduction made under the Driver Agreement and under these Rules, and total

pay and deductions for the pay period. The weekly pay statement must be provided to the Driver either in a hard copy or by-email, in PDF format, at the time payment is made to the Driver.

- (i) Where a base makes any changes, corrections, additions or deductions to trips contained in a weekly pay statement, the base must provide a driver with an additional amended pay statement, marking the changes. When a base issues an amended pay statement it must still make available to the driver and the Commission, the the original pay statement.

§59B-18(f)(6)	Fine: \$200 for each missing pay statement	Appearance REQUIRED
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[(6)](7) *Records Maintenance.* A Base must maintain for a period of [three] six years from the date a Base Agreement expires or is cancelled or from the last trip dispatched to the Driver or Vehicle, whichever is later:

- (i) A copy of the executed Base Agreement and any amendments;
- (ii) Records of all itemized earnings paid to Drivers and Vehicle owners; and
- (iii) Records of all itemized payments received from Drivers and Vehicle owners.

§59B-18(f)[(6)](7)	Fine: \$100 for each missing item	Appearance REQUIRED
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[(7)](8) *Form 1099-K.* If a Base subject to Section 59B-24(a) is required to provide a Driver with a Form 1099-K, the Base must also provide the Driver:

- (i) The total mileage for trips covered by the Form 1099-K, and
- (ii) An itemization of the items deducted from the gross amount reported on the Form 1099-K

[(8) *Collective Bargaining Exception.* The provisions of this subdivision do not apply to Bases and Drivers whose business relationship is governed by the terms of a collective bargaining agreement.]

Section 12. Section 59B-18 of Title 35 of the Rules of the City of New York is amended by adding a new subdivision (h), to read as follows:

(h) Other Agreements Related to the Driver-Base Relationship. The Base must make available to all Drivers any document that sets forth any other terms or obligations of the Driver-Base relationship, including, but not limited to, any agreements between a Base and any labor organization, advocacy group, or works council that purports to represent driver interests.

59B-18(h)	<u>Fine: First violation: \$500; Second and subsequent violations: \$1,000 and/or suspension for up to 30 days. In addition to the penalty payable to the Commission, the Hearing Officer must order the Base to pay restitution to the Driver, equal to the amount charged to the Driver in violation of this rule.</u>	<u>Appearance REQUIRED</u>
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Section 13. Section 59B-24 of Title 35 of the Rules of the City of New York is amended to read as follows:

(a) *Driver Payment Rates.* A Base that, on average, dispatches ten thousand or more trips per day, or a Base that is part of a group of Bases operating under the same public-facing trade, business or operating name that collectively dispatches more than ten thousand trips per day, must, at a minimum, pay Drivers, for each trip dispatched by the Base, the greater of 1.) the Driver Pay amount as calculated pursuant to sub-section (a)(1) of this rule, or; 2) the Driver Pay amount as calculated pursuant to sub-section (a)(2) of this rule [at a minimum, the following amounts]

(1) Payment Based on Mileage and Time

[1](i) *Per Mile Rate.* Beginning January 1, 2019, for each mile a Driver transports a Passenger in the City on a trip dispatched by the Base, the Base must pay the Driver no less than \$0.631 per mile for a trip dispatched to a Vehicle that is not an Accessible Vehicle and \$0.818 for a trip dispatched to an Accessible Vehicle, divided by the Base’s Utilization Rate, and for trips that begin in the City but end outside of the City, the Base must pay the Driver no less than \$1.262 per mile for a trip dispatched to a vehicle that is not an Accessible Vehicle and no less than \$1.636 per mile for a trip dispatched to an Accessible Vehicle, divided by the Base’s Utilization Rate, for each mile a Driver transports a Passenger outside of the City;

[(i)]A. RESERVED – (expense formulation for luxury vehicles)

[(2)](ii) *Per Minute Rate.* Beginning January 1, 2019, for each minute a Driver transports a Passenger in the City on a trip dispatched by the Base, the Base must pay the Driver no less than \$0.287 per minute, divided by

the Base's Utilization Rate, and for each minute a Driver transports a Passenger outside of the City on a trip dispatched by the Base that began in the City and ended outside of the City, the Base must pay the Driver no less than \$0.574 per minute, divided by the Base's Utilization Rate, and

[(3) *Shared Ride Bonus*. For each separate pick up on a trip where a Passenger shares the Vehicle for part or all of the trip with a Passenger from a separately dispatched call, the Base must pay the Driver the Shared Ride Bonus, in addition to the per mile and per minute rates.]

(iii) *Consumer Price Index Adjustments*. Beginning January 1, 2020, and continuing each calendar year thereafter, the dollar amounts in the per mile rates and per minute rates contained in this subdivision will be adjusted using the 12-month Percentage Change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the NY-NJ-PA metro area. The Consumer Price Index adjusted per mile and per minute rates will be posted on the Commission's website.

(2) *Payment Based on the Passenger Fare*. The Base must pay the Driver no less than 85% of the Passenger Fare.

(3) *Shared Ride Bonus*. For each separate pick up on a trip where a Passenger shares the Vehicle for part or all of the trip with a Passenger from a separately dispatched call, the Base must pay the Driver the Shared Ride Bonus, in addition to the payments required under subsections (a)(1) and (a)(2) of this Rule.

(4) *Hourly Payments*. If a Base subject to this section pays drivers on an hourly basis, the payment the Driver receives for each hour the Driver accepts dispatches from the Base must be at least the sum of [the Per Mile Rate for all miles the Driver transported Passengers during the hour, the Per Minute Rate for all minutes the Driver spent transporting Passengers during the hour and the hour, and the Shared Ride Bonus] any payments required under subsections (a)(1)-(3) of this Rule for each applicable pick up performed during the hour.

(5) *Additional Payments*

- (i) Bases may offer drivers agreements of a limited duration, that provide for higher pay rates or additional payments beyond those provided for by compliance with sub-sections (a)(1)-(4) of this Rule.
- (ii) Such agreements shall not be subject to the procedural requirements for "Contracts" set forth in section 59B-18(f) of this chapter.

(iii) Once offered, a Base must pay a driver any amount promised by such offers for additional remuneration, if the driver meets the terms for additional remuneration.

§59B-24(a)	Fine: \$500 per instance of under payment. In addition to the penalty payable to the Commission, the Hearing Officer must order the Base to pay restitution to the Driver, equal to the amount not paid to the Driver in violation of this rule.	Appearance REQUIRED
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- (b) *Utilization Rate:* The Commission will assess, and post on its website, the Utilization Rate for each Base subject to this section every six months. A group of Bases operating under the same public-facing trade, business, or operating name will be assessed one Utilization Rate, applicable to each individual Base in the group, calculated using the collective Driver availability and passenger trip times for all Bases in the group.
- (1) *Initial Utilization Rate.* For the twelve (12) months following the effective date of section 59B-24 of these Rules, the Utilization Rate for all Bases subject to subdivision (a) of this section will be the aggregate Utilization Rate of all Bases subject to subdivision (a), as calculated by the Commission. A Base subject to subdivision (a) may petition the Commission to calculate a Utilization Rate specific to the Base prior to the expiration of the twelve month Initial Utilization Rate period, but in no event will a Base subject to subdivision (a) of this section have a Utilization Rate lower than the aggregate Utilization Rate of all Bases subject to subdivision (a) for the twelve (12) months following the effective date of section 59B-24 of these rules.
- (c) *Daily Average Trip Volumes:* The daily average trip volume for each Base and each group of Bases operating under the same public-facing trade, business or operating name will be assessed every six months. Bases that average over ten thousand trips per day over the most recent assessment period, and Bases that are parts of a group of Bases operating under the same public-facing trade, business or operating name that collectively average over ten thousand trips per day over the most recent assessment period, will be subject to the requirements of subdivision (a) of this section until such time as the next assessment occurs.
- (d) *Evaluation by the Commission.* No less than annually, the Commission will review Driver, Vehicle Owner, and Base expenses, Driver earnings, the impact on Utilization Rates of Drivers making themselves available to accept dispatches from multiple Bases, service levels, and any other information it deems relevant to determine if adjustments need to be made to the rates set forth in subdivision (a) of this section.

(1) Living Wage Standard. In reviewing rates as required by subdivision (d) above, the Commission shall endeavor to set rates that will earn Drivers an income that will allow them to meet their basic needs, in New York City, without help from public subsidies or private assistance.

(e) Enforcement

(1) Private Right of Action: Any person who shall be injured by the violation of this rule shall have a right to recover actual and exemplary damages. Such action may be brought in any court of competent jurisdiction.

(2) Commission Enforcement: Nothing in this sub-section (k) shall limit the right of the Commission to pursue enforcement of any section of this rule, pursuant to Chapter 68 of the TLC Rules.

(i) Upon a sufficient showing that a Base Owner has violated any sub-section of this rule through a common practice affecting five (5) or more similarly situated drivers, the TLC may initiate an investigation of the Base Owner to determine the extent of such practices, and may seek to recover restitution for the entire class of drivers.

Section 14. Subdivision (a) of section 59D-17 of Title 35 of the Rules of the City of New York is amended to read as follows:

(a) Permissible Rates [Rates Must Not Exceed Scheduled Rates] A High-Volume For-Hire Service must not charge or quote a Fare using rates less than those contained in section 58-26 of these Rules. A High-Volume For-Hire Service must not quote or charge a fare, or allow a Base through which it dispatches trips to quote or charge a fare, that is more than the fare listed in the Rate Schedule filed with the Commission.

Section 15. Paragraph (2) of subdivision (a) of section 66-19 of Title 35 of the Rules of the City of New York is amended by adding a new subparagraph (i), to read as follows:

(i.) A Merchant or a Merchant's authorized payee must receive deposit of funds within one (1) week when a Driver has performed a trip without any involvement in any alleged fraud.

Section 16. Paragraph (3) of subdivision (a) of section 78-17 of Title 35 of the Rules of the City of New York is amended, to read as follows:

(3) An E-Hail Application must [not] provide a Driver compensation for a trip, not including tolls and tip if any, that [exceeds the fare for the trip plus tolls and tip if any] is no less than the amount of the Fare for the trip taken, as calculated by the Taximeter, per §58-26 and §82-26 of these Rules.