New York Taxi Workers Alliance
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April 25, 2018

Honorable Mayor Bill de Blasio
City Hall
New York, New York 10007

Honorable Council Speaker Corey Johnson
City Hall
New York, New York 10007

Dear Honorable Mayor de Blasio and Honorable Speaker Johnson:

We write to you today in the midst of an unprecedented economic crisis among drivers. We believe that this crisis can be solved with appropriate legislative and regulatory action and that we must protect full-time work and livable incomes for professional drivers in all sectors across the industry, including yellow taxi, green cab, livery, black car, Uber, Lyft and other app-dispatched drivers.

We need to **cap the amount of vehicles** clogging New York City streets, set a **minimum fare rate** in order to establish a **wage floor** in the industry, so no company can lower rates on drivers' backs. We need to **raise rates** so drivers have a chance at economic recovery after five years of straight loss. And we need to establish **labor standards** - such as **caps on driver expenses to end predatory lending -** in this new market which has been unregulated for five years and is setting all drivers off on a race to the bottom.

URGENT CALL FOR ACTION

The New York Taxi Workers Alliance was founded in 1998 by a group of yellow cab drivers tired of low pay, lack of job security, and exploitation by garage owners. Today, we have over 20,000 registered members who work for sectors across the industry.

NYTWA has built a grass-roots movement of drivers who have engaged in strikes and demonstrations to build worker power in an industry with little worker protections or organizing rights.

For more than twenty years, professional drivers, overwhelmingly immigrants and people of color, have come together and created a stable family-supporting profession through their activism. But now, these hard-fought improvements are being stripped away as the workforce descends into a devastating financial crisis.

In the past four months, we have lost four drivers to suicide. Two livery drivers, **Danilo Corporan Castillo** and **Alfredo Perez**, black car driver **Douglas Schifter** and yellow cab owner-driver **Nicanor Ochisor** took their lives because of financial hardship.

We dedicate this struggle and our resolve to win it to our fallen brothers.

Douglas Schifter posted on Facebook shortly before he committed suicide:

> *Companies do not care how they abuse us just so the executives get their bonuses. They have not paid us fair rates for some time now. Due to the huge numbers of cars available with desperate drivers trying to feed their families they squeeze rates to below operating costs and force professionals like me out of business. They count their money and we are driven down into the streets we drive becoming homeless and hungry. I will not be a slave working for chump change. I would rather be dead.*[1]

NYTWA members come into our offices increasingly in need of help with foreclosures and bankruptcies. Some have needed referrals to suicide prevention resources; others to homeless shelters.

As the streets have filled with more and more for-hire-vehicles, drivers are working longer hours, in search of a shrinking pool of passengers. Thousands of our members have shifted from driving yellow taxis, to working for Wall-Street-financed companies such as Uber and Lyft. There is a new revolving door of workers – going from yellow to Uber to Lyft to Via back to yellow or back to Uber or back to liveries. Each turn has been prompted by not opportunity but by desperation. Workers are unable to make ends meet even working 60, 70 or 80 hours a week.

The green cab sector – where only drivers can hold permits, not garages or fleet owners – has been decimated barely five years after it was inaugurated to fanfare. Average driver daily earnings are down 39%, even while there are 37% fewer green cabs on the streets, between 2015 compared to today.[2]

MIT researchers concluded more than half of Uber drivers earn below their state's Minimum Wage.[3] Uber drivers across the country make so little that many sleep in their cars.[4] And because the company offers no healthcare to drivers, Uber drivers have had to use GoFundMe to pay for medical expenses.[5] Lyft even boasted of a female driver working while she was in labor.[6]

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[1] https://www.facebook.com/permalink.php?story_fbid=1888367364808997&id=100009072541151
[2] https://nypost.com/2018/04/01/uber-and-lyft-are-undermining-nycs-green-taxis/
[3] http://www.thedrive.com/news/19039/about-half-of-uber-lyft-drivers-make-less-than-minimum-wage-report
[4] https://www.bloomberg.com/news/articles/2017-01-23/when-their-shifts-end-uber-drivers-set-up-camp-in-parking-lots-across-the-u-s
[5] http://www.businessinsider.com/gofundme-for-an-uber-drive-goes-crazy-2015-4
[6] https://www.newyorker.com/culture/jia-tolentino/the-gig-economy-celebrates-working-yourself-to-death

In 2015, when the Mayor first championed a cap on for-hire-vehicles, Uber famously ran attack ads with images of stranded riders as Uber cars vanished into the air. What has actually disappeared, however, at a rate hard to imagine, are full-time family-sustaining jobs.

This has created a crisis for tens of thousands of drivers and their families. It is a crisis of men and women, some of whom have devoted their entire adult lives to serving this beautiful city, in a hundred-year-old industry. Families are forgoing groceries for mortgage payments or rent. Fathers and mothers don't know how many more holidays and childhood firsts they will miss out because they work every waking hour. It's a crisis of poverty where the most basic necessities of life are out of reach because, despite the long hours and back-breaking work, drivers can no longer earn enough to get by.

New York State now has the highest economic inequality in the country – a shameful feat during an era of historic inequality.[7]

Average CEO earnings are 271 times greater than the average earnings of their employees.[8] In the App world, meanwhile, Uber's CEO is paid an estimated $200 million or more in salary and stock options.[9] Compared to an Uber driver who averages $35,000 in annual income, the Uber driver earns 0.00175% of their company's CEO. Dara Khosrowshahi earns 5,714 times more than the drivers who create his company's wealth.

One needs to look no further than the race to the bottom among taxi and for-hire drivers to see how this inequality is leading to hunger, homelessness, fatigue, and despair. Unless legislators have the courage to regulate Wall Street's latest experiment on workers and on our city, poverty and insecurity will be the future.

We make this urgent call for your action. Below is our detailed policy platform.

NYTWA POLICY PLATFORM

Guiding Principles

The **guiding principles** in our policy platform, are: stop the immediate crisis, protect drivers across all sectors, protect full-time driving jobs across the industry, raise driver incomes, and raise labor standards across the industry. The solutions we propose are to address the financial crisis drivers are experiencing across the industry, including yellow taxi, green cab, livery, black car, Uber, Lyft and other app-dispatched drivers.

For nearly forty years, four factors have determined driver incomes: a) rate of fare, b) operating expenses, c) number of trips and d) number of vehicles on the streets. It's a four factor formula that determines whether at the end of a grueling shift a driver takes home a livable income or

[7] https://www.cnbc.com/2018/03/12/us-states-with-the-highest-levels-of-income-inequality.html
[8] https://www.cnbc.com/2017/07/20/ceos-make-271-times-the-pay-of-most-workers.html
[9] https://www.bloomberg.com/news/articles/2017-08-28/uber-s-new-ceo-may-need-at-least-200-million-to-leave-expedia

sinks into debt. The entry of new companies with an unfettered business model where not one of these factors has been regulated has led to today's crisis of destitution gripping a workforce with once solid full-time jobs.

Capping the vehicles at the current 68,000 affiliated with Uber, though a necessary step, is not sufficient to stop this crisis.[10] We need to lift drivers out of poverty, protect their earnings, and ensure fair labor standards.

Council Legislation and TLC Regulation Required

Given the urgency among drivers, the Council must use its prerogative and leadership to lay the foundation for regulations by either legislating directly or greenlighting TLC rulemaking. Some actions, such as a cap on vehicles, indisputably require council legislation. We call upon you to act urgently.

The desperation among this beleaguered workforce is real. And time is a luxury drivers do not have, with the clock ticking on the congestion pricing surcharge scheduled to go into effect January 2019. The surcharges are going to shatter driver earnings with the anticipated drop-off in ridership at a time when they are facing financial devastation.

Legislative and rule-making changes should be aimed at alleviating drivers in crisis and must not create more economic burdens for drivers.

We need you to act NOW:

- **Regulate the new corporate sector and establish labor standards.** Regulations must include a showing of need to affiliate additional vehicles; minimum rate of fare; the company's responsibilities to drivers; income protections for drivers; and protections against wage theft. Regulations must extend to companies that lease or finance vehicles to App drivers.
- **Cap vehicles** with a moratorium on new vehicle licenses and requirements to meet vehicle license renewal; Enact a formula to add vehicle licenses moving forward.
- **Enact a wage floor** so driver incomes do not plummet; Establish the regulated taxi meter as the minimum rate of fare so no App company can go lower.
- **Enact an immediate raise** of the rates: from $2.50 to $2.60 initial drop; from $2.50 per mile to $3.25 per mile; and a corresponding 18.8% for JFK flat rate, from $52 to $62
- **Stop Congestion Pricing on Drivers' Backs**. The solution to Manhattan congestion is to cap the number of for-hire-vehicles, not take money out of the pockets of drivers facing economic despair.
- **Health & Wellness Fund with Retirement.** City Council must legislate to give the Taxi and Limousine Commission the power to implement the health and wellness fund that drivers won through NYTWA organizing.

[10] https://www.wsj.com/articles/your-ride-to-laguardia-doesnt-just-feel-longer-it-is-longer-1518525001

Several key policy changes should come from TLC rulemaking. We ask you to green light necessary TLC rules that will help to end the economic crisis among drivers. The TLC could certainly promulgate rulemaking to establish the wage floor and authorize a fare raise with capped expenses. The TLC should promulgate rules to establish parity in labor standards in the industry, extending medallion yellow taxicab rules aimed at protecting drivers to the larger FHV sector, strengthen its ability to recover stolen income for drivers, as individuals and as a class, in cases of wage theft, and lower fines so drivers are not left penniless for weeks after minor complaints, in addition to lost income from spending a day in court. TLC's profits from fines and fees from drivers should reflect the current economic conditions rather than serving as another attempt to profit from driver labor in the context of gross economic inequality in this industry. As we compel the Council to use its capacity to address the growing poverty among a sizable city workforce, we also submit to the TLC a Petition to Initiate Rulemaking (attached) to compel agency action.

POLICY DEMANDS

<u>Regulate App Companies as New Entrants into the Market</u>

1. Create a separate subsection to regulate corporate licensing for companies which dispatch fares to TLC-licensed drivers exclusively through an App.
2. Regulations must include a required basis to affiliate vehicles; minimum rates of fare; a company's responsibilities to drivers; income protections for drivers; and protections against wage theft.
3. Require a TLC license for companies that lease or finance For-Hire Vehicles, as is required for medallion taxicabs.

While the TLC has enacted a Universal license for all drivers, doing away with a thirty-year rule whereby a course and exam, including English proficiency, was required only for yellow cab drivers, the corporate license currently governing App-based dispatch companies is the least regulated in the for-hire-vehicle sector. Livery bases require community board, local precinct, City Council and TLC approval. Yellow and green cabs require a medallion or SHL (Street Hail Livery) permit. Black car bases, including those now operated by app-dispatch companies, were originally expected to serve corporate clients when first chartered by the city in the 1980's, and need only be a franchise or driver co-op. App-based FHV bases do not appear to be organized as either.

Chart A: Sector by Sector Regulations Comparison

	Medallion Taxi	Green cab	Livery	Black Car
Number of Vehicles	Capped by legislation; Council must pass Home Rule to authorize state legislature to let city auction new medallions	Capped by state legislation	No cap	No cap
Vehicle License or Permit	Medallion	Permit	None	None
Mileage Requirement	Car must retire after 6 years	None	None	None
Vehicle Model Requirement	Taxi of Tomorrow or approved	None	None	None
Vehicle Inspection Requirement	Every four months Mechanical inspection	Once a year Visual inspection	Once a year Visual inspection	Once a year Visual inspection
Accessibility Requirement	50% of all vehicles accessible by 2020	25% of all vehicles accessible by 2020	Base must dispatch 25% of all trips to accessible vehicles[11]	Base must dispatch 25% of all trips to accessible vehicles[12]
Insurance Requirement	Collision on vehicle $100,000/$300,000 Personal Injury on medallion	Collision on vehicle $100,000/$300,000 Personal Injury	Collision on vehicle $100,000/$300,000 Personal Injury	Collision on vehicle $100,000/$300,000 Personal Injury
Rules on companies financing car sales to drivers	Yes Cap on amount chargeable to drivers	None	None	None
Rate of Fare	Regulated Meter	Regulated Meter	No rate setting regulations	No rate setting regulations

At the time of its chartering, the black car sector was expected to serve corporate clients – taking in 90% of its revenue in non-cash payments, as drivers received vouchers reimbursed by the

[11] Industry has filed litigation to challenge requirement: http://www.crainsnewyork.com/article/20180413/NEWS/180419917/uber-lyft-and-via-sue-to-block-wheelchair-accessibility-mandate

[12] Industry has filed litigation to challenge requirement: http://www.crainsnewyork.com/article/20180413/NEWS/180419917/uber-lyft-and-via-sue-to-block-wheelchair-accessibility-mandate

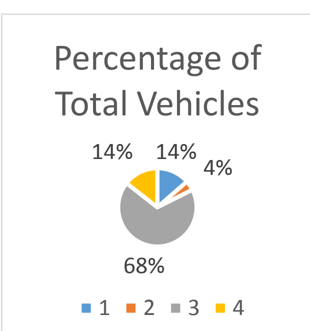
bases through weekly paychecks. The City assumed that Goldman Sachs, for example, could negotiate on its own behalf over fare rates with black car bases. Black cars charged higher fares to a clientele that could afford it, but did less volume in total number of trips. Of the FHV and taxi industry, black cars previously totaled the lowest number of vehicles. The market-dominant yellow taxi sector, on the other hand, was regulated by the City down to the shade of yellow and was expected to charge lower rates to serve a broader public while completing a higher volume of fares.

The vast majority of Uber's business, for example, doesn't come from corporate clients like Goldman Sachs. This old model of regulation is not sufficient for this newly-emerged app-dispatch sector. Further, leaving today's dominant market players unregulated lowers standards for drivers across the industry. As long as Uber, Lyft, and their cohorts are in the same catch-all FHV regulatory category as smaller neighborhood liveries or corporate black cars, there is, in essence, no regulation at all on this sector.

<u>Cap On Vehicles to Protect Full-Time Work</u>

4. For twelve months after legislation is enacted, cap the number of App-affiliated vehicles.
5. Once expired, the FHV vehicle license, the diamond, should be renewed only if driven on average 160 hours per month or average 60 trips per week.
6. No new diamonds to be issued by TLC to replace cars which fail to meet renewal requirement.
7. Establish a formula moving forward where bases must meet requirement in order to affiliate new diamonds:
    a. The base must demonstrate a set number of fares per vehicle per day average in order to meet base license or new license requirements, or be subject to termination or denial, respectively, by the TLC
    b. Individual diamond holder must average 60 trips per week

Any New Yorker needs only to look at the license plate to know which cars are dominant on our streets and causing the congestion.



13,600	1. Yellow Taxis
4,000	2. Green Taxis
68,000	3. Uber-affiliated
14,400	4. Liveries and Corporate Black Cars
100,000	Total

> ***Who Gets Slowed Down***
> Average Car Speed in Manhattan:
> 4.7 MPH (2017)
> v. 6.5 MPH (2011)
>
> 1/3+ of Black Cars & Yellow Taxis empty at any given time
>
> Unoccupied Time:
> FHVs 11 minutes
> v. Yellow Taxis 8 minutes
>
> ***Source: Bruce Schaller***
> "Empty Seats, Full Streets: Fixing Manhattan's Traffic Problem" http://schallerconsult.com/rideservices/emptyseats.pdf

We know firsthand the economic devastation for drivers caused by this over saturation. Drivers work longer days for less pay. Uber drivers spend on average 27% longer cruising without fares in search of passengers than yellow taxi drivers do.[13] Meanwhile, street-hailing yellow cabs lose out on fares when stuck in traffic created by over saturation, because to be hailed, you have to be seen.

The saturation is primarily during rush hours and weekend nights, the hours full-time drivers rely on to earn the majority of their income. Uber prides itself on increasing precarious work – a corporate tactic dominant over the past thirty years to increase profits on the backs of workers.[14] The Uber, Lyft, et al business model of part-timing what has, for generations, been a full-time job is used to justify anti-competitive tactics such as bottomless fares and over-saturation of vehicles.

In summer 2015, during the battle with Mayor de Blasio over imposing a limited cap on For-Hire Vehicles, Uber's then-Chief Strategist David Plouffe claimed the vast majority of the company's drivers have other full-time employment and drove only to supplement income. His implication being, apparently, that this so-called extra cash shouldn't be subject to minimum wage and hour regulations.[15]

A few months later, Plouffe said most drivers work less than 10 hours, barely part-time.[16] Plouffe's words were intentional. As driver incomes have come down, Uber strategically lowers expectations by calling full-time driving "gig work," and claiming what it offers is not a job but "economic opportunities."

What Uber really has on offer is poverty pay. An independent study of 900 Uber drivers found the majority averaged around $300 per week after expenses and before paying for the vehicle, gasoline and insurance.[17] It's not surprising that Uber itself has said 11% of new drivers stop driving within a month and 50% are gone within a year.[18]

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[13] Schaller: "Empty Seats, Full Streets: Fixing Manhattan's Traffic Problem" http://schallerconsult.com/rideservices/emptyseats.pdf

[14] "In 1990, there were 98.67 million full-time employees which had increased to 116.31 million employees in 2013. After the recession, the number of full-time employees dropped and part-time employment increased significantly. There were about 27.62 million part-time employees in the country as of December 2017." https://www.statista.com/statistics/192356/number-of-full-time-employees-in-the-usa-since-1990/

[15] https://www.theatlantic.com/business/archive/2015/11/uber-is-not-the-future-of-work/415905/

[16] http://qz.com/540480/ubers-credibility-as-a-jobs-creator-is-going-to-be-tested-mainly-by-uber/ In Nov 2015, the reporter paraphrases Plouffe, "Half of those drivers work less than 10 hours a week—barely a part-time job, really."

[17] http://www.sfgate.com/business/article/Lyft-Uber-drivers-turnover-high-wages-low-6585229.php

[18] http://www.forbes.com/sites/ellenhuet/2015/01/22/uber-study-workforce/#30c6bfac1244

Uber, Lyft and other app-dispatch companies allow drivers to wait for trips on multiple apps at the same time to avoid being held responsible for drivers' wait time. They argue that minimum wage calculations should be based only on trip time as the drivers' *wait* time could be due to lack of fares from any of the Apps the driver is signed into. As a means to establish legal cover for minimum wage and overtime violations, the argument further gives them carte blanche to flood the streets with vehicles if it is drivers who bear all of the risks of the oversaturation. App companies rely on drivers working on multiple Apps so they can disclaim responsibility when a driver falls below Minimum Wage due to lack of work or below-cost fares. The companies also seek cover from having to compensate for drivers' wait time. But the time drivers spend cruising is work time. And the more vehicles on the streets, the more that unpaid work time grows.

Boosting a business model which depends on unemployment, underemployment, and poverty wages that force workers to hold multiple jobs is not the way to build our city. Precarious work should not be romanticized. Full-time jobs need to be protected.

Establish Wage Floor So Companies Can't Cut Rates on Drivers' Backs

8. When calculating the Passenger Fare, no FHV company can use rates lower than the regulated taxi meter or the set flat rate for JFK fares. The TLC-regulated yellow and green cab meter rate must function as the wage floor across all sectors. No company can go lower than the regulated rate. No more slashing rates on drivers' backs. Uber & co. should also not be able to base driver pay on a lower rate of fare than what the companies actually charge the passengers.

The fare is the most significant and, for the majority, the only, source of income for drivers. Uber and Lyft have been given a free hand to cut rates at will, destroying standards we organized for years to establish.

It took more than 14 years of organizing for us to establish a fare and lease cap structure in the taxi industry that would give drivers a livable income. In 2012, we finally achieved a formula whereby the fare went up while the cap on leasing charges stayed the same going back to 2004 and new caps were promulgated to address loopholes and the wage theft that followed the 2004 raise.

By the time Uber entered the NYC market in 2013, driver incomes were expected to go up by $10,000 a year as a result of our 2012 historic achievement. Unlike every other city Uber entered, in NYC, Uber could not start off at fare rates yielding poverty incomes because the company needed to lure drivers in a market that had just started to guarantee decent pay. But soon after defeating the city's efforts to temporarily cap the soaring number of vehicles clogging our streets, Uber started to cut rates for drivers. Between 2013 and 2016, the mileage rate was slashed by 41.67%, while the commission was raised 150%.

Chart B: Uber Mileage Rate and Commission Percentage Through the Years

Year	Mileage Rate	Commission Percentage
2013	$3.00	10%
2014	$2.55	20%
2015	$2.15	20%
2016	$1.75	25%

Between 2013 & 2016

Rate Cut 41.67%

Commission Increased 150%

**** Since 2017, Uber (and Lyft) has engaged in Upfront Pricing, actually charging the passenger more than the above rates, but continuing to calculate pay to the driver at these rates.*

Uber drivers took a hit during these rate cuts. Stories became commonplace of black car companies lowering fares to keep corporate clients, and passengers haggling with yellow and green cab drivers for lower off-the-meter fares. The race to the bottom was on.

Maintaining the regulated taxi meter as the minimum rate across the industry gives drivers maximum collective power to bargain over the most significant economic factor in the industry.

In an industry where workers yellow cab drivers have been found to be Independent Contractors and For-Hire Vehicle drivers are often misclassified as ICs, regulation must lay a foundation for worker incomes. Bottomless fares are this industry's version of a workplace without minimum wage laws. TLC regulation or council legislation needs to make up for the laws that protect 126 million American workers but exclude tens of thousands of drivers and provide a safety net for drivers who have been wrongfully misclassified. The fare structure we struggled for years to establish should not be destroyed.

Raise the Rates to Give All Drivers a Chance at Economic Recovery

For All Drivers

9. Raise the initial rate from $2.50 to $2.60. Raise the mileage rate from $2.50 per mile to $3.25 per mile; and a corresponding 18.8% for JFK flat rate, from $52 to $62.
10. Require that charge backs due to suspected customer fraud cannot be deducted from driver pay by bases, TPEP and LPEP vendors[19], E-hail vendors[20], or taxi garages or agents.

[19] TPEP (Taxicab Passenger Enhancements Project) is a program by which the TLC mandates a set of technology in all medallion yellow taxicabs. LPEP (Street Hail Livery Taxicab Passenger Enhancements Project) is the equivalent mandate for green cabs (officially designated at SHLs, Street Hail Liveries, in TLC regulations.) Vendors must meet TLC regulations to operate.

[20] E-Hail, electronic hail, is the authorization by TLC to request a street hailing medallion yellow taxicab or green cab through Smartphone.

11. Driver-Owned-Vehicle Operators must be paid back any insurance claim recovered by the agent or medallion owner where the driver paid for the repairs or suffered injury.

For App Drivers

12. Require that App-based drivers receive 80% of the higher of the fare paid by the passenger or based on default time and distance rates calculated by the company. So, if Uber or Lyft engage in Upfront Pricing and the quoted fare is higher than the fare calculated by the meter, the driver is entitled to 80% of the fare. If the metered fare is higher than the Upfront Pricing quoted fare, the driver is entitled to 80% of the metered fare.
13. On group rides, require that drivers receive 80% of the full fare plus an additional $1 for each additional pick up (On non-group rides, drivers are to receive 80% of the fare; when the company charges the fare at Upfront Pricing, the driver must receive 80% of whatever would be the higher fare amount – the quoted base rate or the rate calculated as per the regulated meter rate)
14. On Weekly Rental Leases: Lease cap of $350 per week
15. On Driver-Owned-Vehicles Financing: Lease cap of $275 per week and the total payments cannot exceed $42,900
16. For both Leased Vehicles and Driver Owned Vehicles, after deducting the week's lease, the leasing agent or the base may not leave the driver with less than 60% of the driver's income after collecting any outstanding lease balance.[21]

For All Yellow and Green Cab Drivers

17. Cap TPEP credit card processing fee to drivers and owners at 3.75%
18. Prohibit medallion owners and agents from charging a weekly driver the credit card rate for two shifts if they are the only driver working the taxi
19. Prohibit TPEP vendor processing fee on tolls and taxes
20. Enact a cleaning fee of flat $100 (vomit fee)
21. Increase Taxicab Improvement Fund reimbursement to drivers to $1.00 per fare and $5 for each additional dispatch fee.
22. All medallion lease caps must be frozen. Any increase in the cap would wipe out the raise for drivers.
23. Require that all taximeters display the total cost of the fare at the end of the trip.

[21] https://www.timesunion.com/tuplus-opinion/article/For-this-ex-driver-Uber-gig-was-ticket-to-10819835.php

24. The next shift driver must be credited against the lease any late payments collected from the returning driver.
25. Require E-Hail apps to store a passenger's pre-set payment method, and check the payment method's eligibility before allowing the Passenger to e-hail.

Uber and Lyft are already charging passengers 20.61% above the current taxi meter through Upfront Pricing. The regulated taxi meter rate should be raised so that yellow and green cab drivers can also get a benefit of higher fares. By setting the regulated taxi meter rate as the minimum rate the companies can charge passengers and further requiring Uber, Lyft, etc. pay drivers 80% of the highest fare collected by the company when utilizing Upfront Pricing, the city can ensure that App drivers receive a raise. For both groups of drivers, the current leasing expenses must be capped and the caps must be strictly enforced.

We propose the current metered fare to be raised by 18.8%, or $1.98 more on a typical trip of 2.5 miles with 5 out of 13.1 minutes in slow traffic.

Trip: 2.5 miles, 13.1 minutes with 5 minutes in slow traffic

Meter	**Current Rates**	**FARE AMOUNT at current rates**	**FARE AMOUNT AFTER RAISE**	**Difference**
Initial Drop	$2.50	2.5	2.6	
Mileage and Time	$2.50 per mile	6.25	8.125	
Time	OR $0.50 per minute in slow traffic	2.5	2.5	
MTA Tax	$0.50	0.5	0.5	
Improvement Surcharge [22]	$0.30	0.3	0.3	
Night Surcharge 8pm - 6am	$0.50	0	0	
Rush Hour 4pm to 8pm (weekdays only and not on holidays)	$1.00	0	0	
		$12.05	$14.03	$1.975

Raising App-based Driver Incomes:

Uber and Lyft utilize "Upfront Pricing" where they quote a fare amount for passenger before the start of the trip. The drivers, meanwhile, are paid at rates lower than the conventional 80% share of what the customer actually paid to the company under Upfront Pricing.

[22] Industry fund to subsidize conversion to 50% (yellow) or 25% (green) accessible vehicles by 2020

Ironically, Uber itself couldn't turn a profit on the low fares. Surge Pricing was highly unpopular among riders and a PR disaster. But during surges, drivers knew they could make more. Nine out of ten times, the Upfront Pricing fare is higher than the metered taxicab rate of fare used to calculate driver pay.

A 2017 review of data from one NYC Uber driver showed that "(o)ver 165 trips from early March to early April, Uber overcharged this driver's passengers by a total of $85.54. In other words, the total upfront fares paid by riders were that much higher than the fares used to calculate driver pay."[23]

Meanwhile, Uber publicizes the metered fare that determines driver pay, not what passengers are actually charged, in order to attract customers by claiming that Uber rates are cheaper than taxis or other services .[24] There may be other ways the companies generate higher fare revenue[25], but given the lack of fare transparency on the part of the companies and lack of regulation over rates, it's Uber drivers who take the financial hit.

The fare games are played by these companies to outcompete taxis, fellow app-dispatch companies and even mass transit. While charging rates at below cost constitute anticompetitive predatory below-cost pricing, what concerns us is that it's drivers who pay the price. Uber starves the Uber driver to starve the taxi driver. The city must require that the regulated yellow and green cab meter be used to calculate minimum fares for app-based companies, especially given that these companies are already charging customers more.

Our preliminary review of 60 randomly selected UberX trips from three different Uber drivers between Fall 2017 to Winter 2018, found:

- **Uber's Upfront Pricing fare was 20.61% higher than what the fare would have been under the current regulated taxi meter rates.**
- **Uber's Upfront Pricing fare was 25.88% higher than the published default rates for UberX services.**

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[23] https://qz.com/974892/ubers-upfront-pricing-is-helping-it-overcharge-passengers-on-uberx-and-other-private-rides/

[24] Uber and Lyft have been bleeding money and have yet to turn to a profit. Steven Hill wrote in The New York Times: "*Most customers who love Uber don't realize that the company subsidizes the cost of many rides. This is likely a major factor in Uber's annual losses surging from 2.8 billion in 2016 to $4.5 billion in 2017. This seemingly nonsensical approach is actually Uber's effort to use its deep pockets to mount a predatory price war and shut out the competition. That competition is not only taxis and other ride-sharing companies, but public transportation."*[24]

[25] An analysis by The Rideshare Guy suggested that Uber is charging frequent users more: https://therideshareguy.com/uber-is-ripping-off-frequent-riders-and-heres-how-to-avoid-it/

- **Uber charged drivers a 27.68% commission vs. the 20% for which Uber had previously contracted.** An Uber driver earning $35,000 per year would lose an extra $2,453.94 in annual income.

Under our proposal, Uber drivers would regain the $2,453.94 and further gain through the raise, raising incomes from $14.98 to $16.95 per hour.

HOW MUCH APP DRIVERS WILL EARN UNDER OUR PROPOSAL:

Typical Fare Increase	ACTIVE TRIPS	Raise/Shift	6-SHIFT WEEK	4-WEEK MONTH	48-week Year
$1.975	**10**	$19.75	$118.50	$474.00	$5,688.00
$1.975	**12**	$23.70	$142.20	$568.80	$6,825.60
$1.975	**15**	$29.63	$177.75	$711.00	$8,532.00
$1.975	**18**	$35.55	$213.30	$853.20	$10,238.40
$1.975	**20**	$39.50	$237.00	$948.00	$11,376.00

Current Annual	Number of trips per shift	INCOME TO DRIVER WITH NO MORE UP DIFFERENTIAL	NEW ANNUAL	Increase	New Hourly
$35,000.00	10	**$ 2,453.94**	**$43,141.94**	23.26%	$14.98
$35,000.00	12	**$ 2,453.94**	**$44,279.54**	26.51%	$15.37
$35,000.00	15	**$ 2,453.94**	**$45,985.94**	31.39%	$15.97
$35,000.00	18	**$ 2,453.94**	**$47,692.34**	36.26%	$16.56
$35,000.00	20	**$ 2,453.94**	**$48,829.94**	39.51%	$16.95

Raising Yellow and Green Driver Incomes:

For a driver with 10 fares for the shift, that's an additional $19.75, or $118.50 more per week for a typical 6-shift work week. Over a 48-week year, that is potentially $5,688 additional income. A reduction in the credit card processing from 5% to 3.75% would give drivers 16 cents more on a typical fare. It is also a nominal increase, but both combined will put drivers back on the path toward recovery.

Since 2007, the rate of credit card processing has been 5%. The vendors select the processor, and drivers, whether they are lease drivers or owner-drivers, lose pay at this calculated amount.

Typical Fare Credit Card Fee @ 5%	$14.03 $0.70
Processing @ 3.75% Difference	$0.53 $0.175

For lease drivers, the TLC calculates how much the average daily processing cost would be by multiplying the average daily fare paid by credit card by 5%. In 2018, rates across the processing industry have come down. Some companies process at rates as low as 2%. The 16 cent difference on an average fare is not very much. But it's an example of how drivers are nickeled and dimed. Drivers who are working alone (so their vehicles sit parked while they rest or take off a shift) actually get charged the processing rate for two shifts. Beyond unfair, it's just preposterous and should be prohibited. The processing fee is even calculated on taxes, tolls and tips. Drivers end up subsidizing the cost of the MTA surcharge when the fare is paid by credit card. Vendors and big fleets meanwhile earn interest on the money as it is deducted from the driver on a daily or weekly basis and held in bank accounts for four months before payment is made to the MTA. The interest dividends alone could absorb the nominal reduction we seek, along with the cost of processing taxes, tolls and tips.

Protecting Taxis' Accessible Vehicles Mandate

The TLC must also authorize an increase for drivers who operate wheel-chair accessible vehicles. While there has been recent action by the TLC to require the For-Hire-Vehicle (FHV) sector, including Uber and Lyft, to dispatch 25% of fares to wheel-chair-accessible vehicles as a means to incentivize the growth of WAVs in the sector, the city must help ensure that the yellow and green cab industry's historic mandate of 50% accessible vehicles by 2020 is met. That percentage should grow over time. We take great pride in the industry finally fulfilling this civil rights mandate and it should not be jeopardized.

With a modest 18.8% fare raise and a reduction in the credit card processing rate, drivers could see an increase in annual pay 16.9% to 33.9%, to help alleviate the devastating poverty they are now facing.

HOW MUCH YELLOW AND GREEN DRIVERS WILL EARN UNDER OUR PROPOSAL:

Typical Fare Increase	**ACTIVE TRIPS**	**Raise/Shift**	**6-SHIFT WEEK**	**4-WEEK MONTH**
$1.975	**10**	$19.75	$118.50	$474.00
$1.975	**12**	$23.70	$142.20	$568.80
$1.975	**15**	$29.63	$177.75	$711.00
$1.975	**18**	$35.55	$213.30	$853.20
$1.975	**20**	$39.50	$237.00	$948.00
If Credit Card Processing Lowered from 5% to 3.75%	If 50% paid by credit card	**Raise/Shift**	**6-SHIFT WEEK**	**4-WEEK MONTH**
10	5	$0.88	$5.25	$21.00
12	6	$1.05	$6.30	$25.20
15	7.5	$1.31	$7.88	$31.50
18	9	$1.58	$9.45	$37.80
20	10	$1.75	$10.50	$42.00
Number of trips per shift	**TOTAL RAISE PER SHIFT**	**6-SHIFT WEEK**	**4-WEEK MONTH**	**48-week Year**
10	$20.63	$123.75	$495.00	$5,940.00

12	$24.75	$148.50	$594.00	$7,128.00
15	$30.94	$185.63	$742.50	$8,910.00
18	$37.13	$222.75	$891.00	$10,692.00
20	$41.25	$247.50	$990.00	$11,880.00
Current Annual	**Number of trips per shift**	**NEW ANNUAL**	Increase	New Hourly
$35,000.00	10	**$40,940.00**	16.97%	$14.22
$35,000.00	12	**$42,128.00**	20.37%	$14.63
$35,000.00	15	**$43,910.00**	25.46%	$15.25
$35,000.00	18	**$45,692.00**	30.55%	$15.87
$35,000.00	20	**$46,880.00**	33.94%	$16.28

Authorize TLC to Enforce Against Wage Theft

26. Make any Improper Charge actionable by the TLC
27. Make restitution provisions mandatory so drivers may always recover stolen wages after a violation has been found
28. Enable a private right of action for violations so that drivers may retain the right to file action in civil court to recover damages
29. Allow TLC prosecution for class recovery when its investigation finds the wage theft practice has been systemic and wide-spread

A May 2017 report by the Economic Policy Institute found 2.4 million workers in the 10 most populous states in the country suffered minimum wage violations, a collective loss of $8 billion annually.[26] Worker wages are stolen in staggering amounts in our unequal economy even with State and Federal wage laws. Imagine the level of poverty and wage theft in an industry where workers have no protections under the law. That is the reality that 100,000 taxi and FHV drivers in New York City face.

Recovering stolen wages for drivers and holding companies accountable in the industry has been a hallmark of our 20-year advocacy. In September 2013, because of our organizing, the TLC and the New York State Attorney General's Office announced a collaboration to investigate and prosecute lease cap violations. The TLC subsequently established a "Driver Protection Unit" to which we frequently refer cases of wage theft - from drivers' credit card monies not being remitted by taxi garages to leasing charges in excess of the TLC caps. To date, our organizing has led to $2.7 million in recovery for yellow cab drivers.[27]

[26] https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/

[27] There have been several large scale settlements and recoveries reached as a result of our initial complaints to the Labor Bureau of the NYS AG's office and the TLC. In December 2013, $1.25 million was recovered, with $750,000 in restitution to drivers. In August 2014, the NYS AG's office announced a

In 2016, a group of NYTWA members filed a federal lawsuit (*Haider v Uber Technologies, Inc.,* 16-cv-04098-AKH (S.D.N.Y.)) against Uber for 1) misclassifying drivers as independent contractors, 2) violating Federal and NYS minimum wage and overtime laws, and 3) engaging in massive systemic wage theft by unlawfully deducting the cost of a sales tax and injured workers' fund surcharge from drivers' incomes. In May 2017, one week after the drivers filed an amended complaint detailing the wage theft in the context of state sales tax law, Uber started returning money to drivers and claimed in the media that Uber's army of lawyers did not realize the overcharge was in violation of the Uber contract which they had written. As *The New York Times* reported, [28] the pay-out was actually in response to NYTWA's members' case, and an attempt by Uber to admit to the lesser violation in our claim (wrongfully charging a commission fee on the sales tax and surcharge), with the hopes of burying the larger wage theft violation (taking the tax and surcharge out of driver pay.) The drivers continue to seek full restitution as the case proceeds.

In the absence of actual regulations to allow for prosecution and recovery, the "Driver Protection Unit" is just a paper tiger and without wage theft protections, none of these gains will actually go to the drivers. TLC must also engage in proactive class recovery when there is evidence of five or more drivers suffering under the same practice scheme of wage theft. While state agencies, such as the AG's office or Department of Labor, hold such authority and practice, the TLC as the industry regulator must build its capacity and moral imperative to protect drivers against systemic wage theft violations.

Given that a state court held in 2012 in a case filed by a group of NYTWA yellow cab members that drivers do not have private right of action where TLC regulation governs an infraction, the TLC must promulgate a rule granting drivers such a right. Everyone deserves their day in court. It's a matter of most basic fairness.

<u>Cap TLC Fines</u>

30. Place caps on TLC fines. Fines should be in relation to how much drivers earn, and should not punish drivers for being poor. Follow the Chicago proposal of maximum $400 fine per violation, and $800 per incident
31. Forbid the imposition of fines simultaneous with suspension or revocation
32. Eliminate discretionary penalties at OATH Hearings Division

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settlement of $1.6 million; with $1.2 million in restitution to drivers. In March 2016, $845,000 was settled, with $750,000 in restitution to drivers. In each case, we filed the lead complaints after first being approached by drivers. We engaged in pickets outside the taxi garages, held 12-hour intake days, compiled evidence for the regulators and publicly pressured for the investigations. Once the recoveries were made, we held intake days for several days, making sure the AG's office had the right contact information and that all eligible drivers were aware of their rights.

[28] https://www.nytimes.com/2017/06/01/business/uber-driver-commissions.html and https://www.nytimes.com/2017/05/23/business/economy/uber-drivers-tax.html

There is a problem of gross inequity in TLC fines levied against drivers vs fines levied against its corporate licensees. The TLC can fine a driver **$300** for *not providing it with an email address* and *suspend the driver's license until compliance*.

The fines are not commensurate with driver earnings. The city takes no financial hit when drivers suffer. When those fines are levied along with suspensions or revocations, the driver must find a way to pay for the fine, the lease, and household expenses from rent to food, all with no income coming in. Drivers are facing an unprecedented economic hardship in the current climate. They need to regain stability. They need to recover. They need to earn enough to pay for rent and food and health care and other living expenses. They should not lose $300 for not having an email address or be suspended until they have one. More than fines on individual infractions, there is a larger problem of $2,000 - $4,000 in fines from a single hearing.

Extend Labor Standards for App Drivers in Parity with Protections for Yellow Cab Drivers

Below are protections that we won through our 20-year organizing for yellow cab taxi drivers and seek to extend to FHV drivers. We want parity across the industry on labor standards – including on transparency, distribution of expenses to drivers, and notification to drivers of their rights.

FARE Rules

33. Establish clear formula for driver pay to prevent unlawful deductions
    a. Driver must be paid an enumerated percentage of the fare paid by the passenger: defined as all costs paid by the customer for transportation services, including wait time, fare multiplier, cancellation fees and any other fees associated with the cost of transportation.
    b. The passenger fare will not include sales tax, Black Car Fund surcharge, toll or any charge paid to the base for the cost of splitting the ride between two or more payment methods. These surcharges must be paid by the passenger in addition to the fare.
        i. Example:
        FARE: $100
        Initial Charge: $250
        Mileage: $72.50
        Time: $25.00
        SALES TAX: $9.39
        BCF: $2.64
        TOLL: $5.76
        TOTAL: $117.79

In this example, the driver pay must be calculated on the $100 amount. Consistent with state law, tax and BCF amounts be stated separately and in addition to the price of the Fare.

34. Require Fare Payment Receipt (“Receipt”) to driver on every transaction

VEHICLE FINANCING Rules

35. Leased vehicles (when driver leases the vehicle for use from a TLC-certified leasing agent)
    i. Lease cap of $350 per week
    ii. Lease must include:
        1. Use of car
        2. TLC diamond
        3. DMV TC plate
        4. Insurance
        5. Maintenance and service of the vehicle
        6. If the car is not available due to no fault of the driver, the lease must be pro-rated
    iii. Security deposit of no more than one week’s lease
        1. Deposit must be held in an interest-bearing account
        2. Minus only parking or red light camera tickets issued to the leasing agent for which the driver is responsible, the deposit and interest must be returned to driver within one week after the last week worked
36. Driver Owned Vehicles (when driver is leasing to purchase the vehicle from a TLC-certified leasing agent)
    ii. Leasing term cannot be longer than 156 weeks
    iii. Lease cap of $275 per week and the total payments cannot exceed $42,900
    iv. Lease must include:
        1. Use of car
        2. TLC diamond
        3. DMV TC plate
        4. Insurance
        5. Full vehicle purchase costs, including sales taxes
    v. Up to two drivers can contract and use the vehicle for hire
    vi. A vehicle leasing agent may offer full coverage insurance at no more than $50 per week
    vii. The deductible cannot be greater than $250
    viii. The leasing agent must reimburse the driver in full if the driver paid for the repairs of the car in case of any insurance proceeds

ix. Security deposit of no more than one week's lease
    1. Deposit must be held in an interest-bearing account
    2. Minus only parking or red light camera tickets issued to the leasing agent for which the driver is responsible, the deposit and interest must be returned to driver within one week after the last week worked in all circumstances, including if the driver cancels the contract early

x. Cancellation charge of the vehicle lease to purchase agreement between the leasing agent and the driver cannot carry more than a $500 fee to the driver

xi. Deposit on vehicle purchase of no more than $2,500, to be paid back to the driver on a weekly basis.

TRANSPARENCY Rules: Contracts/Agreements and Bill of Rights postings

37. Require written and signed copy of contract or lease agreement be given to driver
38. Drivers must be given a hard copy or via email a printable copy of contracts, addendum or terms of employment with the base or leasing company
39. Drivers must be given a hard copy or printable copy of each receipt payment of weekly payment statement.
40. Require that a driver may always electronically access all contracts applicable to drivers' time affiliated with the base
41. Require that a base must keep a copy of all signed agreements, including amendments, for up to six years
42. Require a posting of Drivers' Bill of Rights at all bases and leasing agent premises

In the absence of paychecks and in an industry where drivers receive earnings after cost deductions, "Receipts" (as outlined in TLC rules) function as paystubs for drivers.

Congestion Pricing

43. **No Congestion Pricing on Drivers' Backs**:

Any gains drivers make from the implementation of these proposals will soon be wiped out if the congestion pricing surcharge is enacted. The fees will crush drivers who are already suffering an unprecedented financial crisis. Advocates have called out Albany's failure to pass a comprehensive plan.[29] The yellow cab industry, which has actually contributed close to $1 billion to the MTA, will, in particular, be devastated by the fees.[30] The state statute allows FHV companies to charge the lowest surcharge, $0.75, for vehicles *available* for group rides. Uber, Lyft and Via famously banded together for this particular final hour lobbying which virtually gives them cover to charge the lowest rate for every trip as every car is required to be available for group rides (and the provision is only for FHV cars.)

Yellow and green taxis have been paying their fair share to the MTA for years.

- Yellow cabs have contributed close to $1 billion toward the MTA since 2009.
- Yellow and green cabs are already required to pay a $0.50 surcharge[31] per fare that is earmarked for the MTA.
- In 2015 alone, it was estimated that yellow cabs contributed $94 million to the MTA through the $0.50 surcharge.[32]
- On top of the existing surcharge, yellow cab lease drivers pay a sales tax of $4.77 per shift on the vehicle lease which is also earmarked for the MTA.
- DRIVERS themselves have subsidized the $1 billion - paying the full amount even when the passenger pays by credit or debit card and the driver loses 5% on the transaction and paying for gasoline, and maintenance of the car.

Uber, Lyft & co. have been responsible for the drop in MTA revenue and congestion.

- While yellow and green cabs pay the $0.50 surcharge, Uber and Lyft only pay sales tax, of which 3/8 of 1% goes to the MTA.[33]
- In one day, a double-shifted taxi that makes 25 trips per shift collects $34.54 in tax revenue, of which $27.40 directly funds the MTA. One the other hand, in one day of full-time work, an Uber car may bring in $20 in general sales tax, handing over only $0.75 to the MTA.

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[29] https://www.nytimes.com/2018/04/09/nyregion/congestion-pricing-manhattan-albany-fail.html
[30] https://www.wsj.com/articles/new-york-taxi-drivers-see-state-fee-as-blow-to-battered-industry-1522620969
[31] https://www.nytimes.com/2009/11/02/nyregion/02mta.html?mtrref=www.nytwa.org&gwh=7E70F7298A4CE92A00C81A0B1F4C1EB8&gwt=pay
[32] http://www.nydailynews.com/opinion/ron-sherman-yellow-cabs-uber-tale-tax-tape-article-1.2338390
[33] http://council.nyc.gov/budget/wp-content/uploads/sites/54/2017/03/MTA.pdf

- Uber and Lyft meanwhile have targeted MTA passengers, further undercutting mass transit revenue.[34]
- Uber, Lyft and other App-based dispatch companies operate a business model that depends on saturating the streets with vehicles so they can be the first to monopolize.
- Uber alone has 68,000 affiliated vehicles.[35] Of the 13,500 taxis licensed in NYC, less than 10,000 are operational as bankruptcies and foreclosures spread.

Instead of holding them accountable, Albany is rewarding them.

- Given Uber, Lyft and co. subsidize fares to charge riders at below-cost [36]- and that's despite having less than half the costs of regulated taxis - and because they operate group trips, the companies know a surcharge will not have the same effect on their ridership. These companies are also new entrants into the market, unlike regulated taxis which have expenses prior to their entry and are going through a crisis.
- Any further loss of revenue would devastate the taxi industry, giving Uber and Lyft a higher chance at monopolization.
- Until May 2017, Uber profited off the sales tax by charging its commission on the tax amount.[37] Uber also passed the cost of the tax onto the drivers, rather than adding it to the passenger's fare. For years, a tax obligation was turned into a windfall for Uber. Any congestion pricing charges in the FHV industry should not be passed onto the drivers and must come with strict enforcement against wage theft.
- Uber has spent $100,000 lobbying for a version of CP[38] that would give it an advantage against both taxi, livery and black car competitors, as well as against the MTA itself. Albany, once again, got bought by Wall Street.

The Council should resolve to right this wrong by the state legislature. The real impact of the state’s expedient vote needs to be examined.

Health and Wellness Fund with Retirement

44. Health & Wellness Fund with Retirement

In 2012, NYTWA organized for and won a vote by the TLC to establish a benefits fund for taxi drivers. The first of its kind, the financing for the Fund was to come from a deduction of 6 cents from every fare. In 2013, NYTWA and our partners won the administration of the Fund after a public Request for Proposals process.

Taxi companies financed a lawsuit and the court struck down the fund down on the grounds that such it required council legislation to empower the TLC’s rulemaking. Beyond a moral

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[34] https://www.nytimes.com/2017/02/23/nyregion/new-york-city-subway-ridership.html?mtrref=www.nytwa.org&gwh=CA5F56C53A70BE44DE3BE6F69D8C413D&gwt=pay
[35] http://newyork.cbslocal.com/2017/12/27/ride-sharing-vehicles-congestion/
[36] https://motherboard.vice.com/en_us/article/9a3vye/uber-true-cost-uh-oh
[37] https://www.nytimes.com/2017/05/23/business/economy/uber-drivers-tax.html
[38] https://qz.com/1240817/uber-thinks-congestion-pricing-will-be-great-for-its-uberpool-business/

beckoning, the industry could not understand that it only thrives with if its drivers are healthy. Over the past twenty years in our city, a predominantly immigrant workforce of color has given stability to the taxi and for-hire-vehicle industry, collectively serving a million people each day.

It is unconscionable that drivers must end their twenty – thirty – some, even forty or fifty – year tenures with little to no financial stability and in poor health. There is not only an urgency around stress and depression, core mental health issues among drivers, but there is also the crisis for thousands of working longer hours for more years and for less money while aging or continuing to fight serious, even chronic illness. No one should have to live this way. The City Council can and must ensure that this workforce of 100,000 can dawn a new day and enjoy retirement in dignity after years of service to our city.

In his final words, Douglas Schifter wrote:
The whole purpose of life is to learn, teach and love.

No more fallen angels. As Douglas implored, *"Wake Up and Resist!"*

Respectfully Submitted,

Bhairavi Desai

Bhairavi Desai, Executive Director
New York Taxi Workers Alliance

New York Taxi Workers Alliance
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Date: April 25, 2018

To: Honorable Chairperson Meera Joshi
New York City Taxi and Limousine Commission
33 Beaver Street, New York, NY 10004

From: The New York Taxi Workers Alliance

Hereby submitted for your promulgation of rules is our

Economic Justice

Petition to Initiate Rulemaking

Respectfully Submitted by:

Bhairavi Desai

Bhairavi Desai, Executive Director
On behalf of:
New York Taxi Workers Alliance

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

App-dispatched rides account for more trips on a daily basis than yellow and green cab fares combined. The majority of drivers and passengers are affected by the fares and service provided by these companies. As the market dominant companies, they also set the standards for working conditions for drivers across the industry. Yet, since entering the market in 2013, this business model and service has remained largely unregulated. Today, five years later, there has been a massive rise in bankruptcies and evictions among drivers as incomes erode across the industry. The crisis has resulted in tragic losses for four driver families in particular. Two livery drivers, Danilo Corporan Castillo and Alfredo Perez, black car driver Douglas Schifter and yellow cab owner-driver Nicanor Ochisor took their lives because of financial hardship. The medallion has fallen by 80% in value and foreclosures have been rampant for individuals in particular. Less than 25% of Street-Hail-Livery permits are operational. Drivers across the industry are in a race to the bottom. During a TLC public hearing in April 2017, over two hundred drivers appeared, calling for urgent action and many speakers warned of the growing despair among drivers, as well as offering testimony of their own desperation. The Taxi and Limousine Commission, empowered legally and called upon morally to regulate the industry seeks to address the crisis by promulgating regulations to lift up driver incomes across the industry, extend labor standards and protections for App-dispatched drivers in parity with the regulated medallion taxicab sector, and expand agency enforcement capability to protect drivers against wage theft.

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 by addressing the regulatory vacuum in the For-Hire Vehicle Sector, which has allowed Base Owners and vehicle brokers license to operate without regard to drivers' welfare. In large part, the following proposals seek simply to extend to corporate licensees in the FHV sectors the same standards regulating transparency and fair pay that have governed the yellow taxi sector for years.

FHV Base Rules: Driver Earnings

Drivers in the FHV sector have, for years labored with no TLC pay protections. Unlike in the taxi sector, where Owners' ability to make deductions from driver pay are clearly circumscribed, For-Hire Vehicle owners are under no regulatory obligation to pay drivers any minimum fare amounts, or even the earnings due under their contracts. In the app-based FHV sector, driver pay formulas change overnight and often without notice. Volatile pay structures have left drivers unable to cover expenses that were negotiated with expectations of steady earnings in mind.

From the entry of app-based FHVs into the market in 2012 until today, FHV drivers have faced a steady decline in their earnings, despite the fact that the FHV sector now commands ever greater market share. This market dominance has failed to mean steady pay for drivers, who have 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 a %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 be generate reliable, family-supporting incomes for drivers. Drivers who have entered into long-term lease agreements (sometimes even mediated by FHV bases themselves), have found pay declining, as FHV bases slashed rates and continue to take an ever-higher proportion of the amount of the fare paid by the customer.

After generally under-selling black cars, taxis, and street-hail liveries, app-based FHV companies have mostly abandoned the use of static rates, and 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 preliminary analysis of 60 fares, charged after the introduction of "up-front pricing," shows that, on average, one app-based FHV company charged riders 25.88% more than its published default rates, and 20.61% more than the taxi fare for the same trip. 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.

Problems with driver pay have been compounded by the fact that FHV bases are not currently required to provide drivers with contracts applicable to their working conditions and rates of pay. In some cases, drivers have worked without any written contract, with various expenses changing from week to week. For months, drivers were paid as a result of upfront pricing, their only indication of the practice found in the fluctuating amount of sales tax deductions on driver receipts for trips that ostensibly cost the same amount. One major app-based FHV never provides drivers with a copy of their contract, merely referring drivers to the company's website, leaving drivers completely unable to access prior versions of the contract.

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

With tens of thousands of drivers working under the same conditions, wage theft in the FHV sector has often been systematic and widespread, yet arbitration clauses in FHV company contracts have left most workers unable to pursue a remedy in court. This occurs even when one company, voluntarily admitted underpaying drivers by tens of millions of dollars. By regulating driver pay terms, TLC would extend the jurisdiction of its Driver Protection Unit, which can on its own respond to complaints and seek restitution for TLC licensees, unencumbered by arbitration agreements which may bind drivers. Crucially, the TLC would have the power to investigate instances of wage theft that appear to be systematic and to pursue class-wide relief when a wrongful pay practice has affected a large group of drivers. This procedure is an essential check on corporate malfeasance, considering that current contracts in the FHV industry would otherwise require 60,000+ New York FHV drivers to seek redress for the same admittedly widespread violations, in 60,000+ individual arbitrations.

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 80% of the fare paid by the passenger, prohibiting the practice of raising rates on passengers exponentially, without sharing revenue with drivers. If bases do charge flat rates, the driver must be paid the higher of 80% of the flat rate paid by the passenger or 80% of the fare if calculated based on default rates based on time and distance.
- FHV base owners must pay drivers weekly and may only deduct certain enumerated costs from driver pay.
- FHV base owners must provide drivers with 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 For-Hire Vehicles has emerged at a scale not previously seen. Unlike its counterpart in the taxi industry, this market is completely unregulated, with no caps on the amount owners may charge for the lease of a vehicle. 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 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.) Failure to provide copies of lease agreements to drivers; 4.) Charging drivers for regulatory summonses without first letting drivers contest such summonses. Most significant, though 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.

The TLC must regulate 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
- A maximum lease cap of $275/week for the conditional sale of a For-Hire Vehicle.
- Rules capping the amount of driver earnings 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.
- Requirements that Owners provide lessees with contracts and detailed accountings of lease payments and deductions.
- Rules allowing for TLC enforcement and restitution when Vehicle Owners overcharge drivers.

Taxi Owner Rules

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

Rate of Fare Changes

After nearly six years without a raise, the proposed rules require an increase in the metered fare by $0.10 to the initial charge and $0.75 a mile. This raise will not only benefit yellow taxi and stree-hail livery drivers, but drivers in every sector as NYTWA proposes establishing taxi meter rates as the floor for taxi and FHV fare prices, below which no company may charge.

Driver Expenses and Credit Card Processing

Currently, taxi drivers pay credit card processing surcharges that are fare higher than that required by most vendors, at a weekly charge designed to reflect 5% of each transaction. The proposed rules would lower this rate to 3.75%.

Currently, many drivers do not receive payment for credit card fares, when a passenger's card has insufficient funds or may have engaged in fraud. In such cases, it cannot be the driver who bears the risk of loss; NYTWA proposes rules that ensure that when drivers have provided transportation in good faith, they will receive payment for their services.

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. Further, the proposed rules clarify that taxi owners must remit proceeds from insurance companies to DOV drivers who have already paid for vehicle repairs out-of-pocket.

Enforcement & Driver Protection

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

Make Restitution Provisions Mandatory

Currently, the penalty provisions in Chapter 58 do not require the ALJ to order restitution where an improper charge has been established. Even when ALJ's have made convictions, but not explicitly stated the need for restitution, drivers have been unable to recover money stolen from them. NYTWA proposes amendments that would make restitution mandatory when an owner has pleaded guilty or been found guilty of any violations of these rules which caused a driver financial loss.

Late Fees, Shift Change Rules

NYTWA proposes rules that would prohibit any weekly lease agreement from specifying where drivers may change shifts. Any late fee collected for a late return of a vehicle will be forwarded to the driver working the same medallion on the following shift.

The following section, §59A-36 shall be added to Chapter 59A of the TLC Rules.

59A-36 Leasing a For-Hire Vehicle

(a) An Owner can lease a For-Hire Vehicle to a Licensed Driver, or to Licensed Drivers working different shifts or days if the Owner complies with the provision of this section.

(1) Regardless of the terms of the lease, the Owner is responsible for complying with all laws, rules and regulations governing Owners.

(2) An owner must not authorize or allow a lessee of a For-Hire Vehicle under sections 59A-36(c)(1) to sublease the For-Hire Vehicle to another party.

§59A-36(a) Fine: $75-$150 for the first violation,$150-$300 for a second violation,$300-$500 for a third violation within 24 months, and Suspension until compliance Appearance Required

(b) **Service and Maintenance of Leased For-Hire Vehicles.**

(1) Service and maintenance of a leased For-Hire Vehicle under sections 59A-36(c)(1) is the responsibility of the Owner/lessor, and the cost of the service and maintenance of the Vehicle cannot be charged to the Driver/lessee.

(2) A lessor under Section 59A-36(c)(2) must not require the lessee to obtain service and maintenance from any particular provider, including, but not limited to, the For-Hire Vehicle Owner or any agent of the For-Hire Vehicle Owner. 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.

§59A-36(b) First violation $500. Second and subsequent violations: $1000. In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the driver, equal to the excess that was charged to the driver. Appearance Required

(c) **Rate Rules.**

(1) **Standard Lease Cap Rates.** 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 Vehicle for one shift will not exceed $350 for any one-week period, 24-hour shift.

(ii) The lease of a For-Hire Vehicle under this paragraph 59A-36(c)(1) includes service and maintenance. Service and maintenance of the vehicle is the responsibility of the lessor and the 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-36(c)(1), 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-36(c)(1), the lease includes costs for collision and other damage coverage, including repairs of physical damage to the vehicle.

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

(i) A Lease is covered by this paragraph 59A-36(c)(2) 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 C 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.

C. 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.

(v) A lease, and payment of the Lease Cap under this section includes (and the following must be provided to the lessee, except that items G and H 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 taxicab 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. If the For-Hire Vehicle Owner receives any 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 for repair for said damages, must be refunded to the driver.

H. A For-Hire Vehicle lessor or Agent can agree with a driver to provide services or accommodations on an arm's-length basis outside the lease. A Medallion 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.

(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.

(3) **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 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 subdivision (e) 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, including attorneys' fees and costs. Fines paid to the Commission by an Owner or Agent cannot be recovered from a driver as reasonable damages, except for

A. fines incurred as a result of a sublease prohibited by Rule 59A-36(a)(2), or,

B. for drivers leasing under 59A-36(c)(2), fines incurred as a result of unauthorized operation by a suspended or revoked driver, or

C. 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.

§58-21(c) Fine: First violation: $500 and restitution to the Driver, equal to the excess that was charged to the Driver. . Second and subsequent violations; $1,000-$2,000 and restitution to the Driver, equal to the excess that was charged to the Driver.

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

(1) **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 subdivision (d).

(2) **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) For drivers with leases under 59A-36(c)(2), damage to the vehicle if the lease clearly and prominently states that drivers will be responsible for repairs, and the Owner is in compliance with Rule 59A-36(c)(2)(v)(F)(iii).

(iii) Any parking tickets issued during the lease, if the driver has first been given the opportunity to contest the tickets.

(iv) 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.

(3) **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.

§59A-36(d)(3) Fine: First violation: $250; Second violation: $350;Third and subsequent violations $500-$1500 .In addition to the penalty payable to the Commission, the ALJ must order the Owner to pay restitution to the Driver, equal to the excess that was withheld from the Driver, or equal to the amount that the Driver paid, at the requirement of the Owner, to satisfy any summons against the Owner Appearance Required

(4) **Limits on Amount of Deposit.** An Owner must not require a Driver to post any security deposit that is greater in amount than the rate for one lease term. However, if the lease term is for more than one week, an Owner must not require a Driver to pay a security deposit in an amount greater than the lease rate for one week. Examples include:

(i) An Owner who leases a For-Hire Vehicle for one week at the rate of $350 a week can require up to a $350 security deposit.

(iii) An Owner who leases a For-Hire Vehicle for six months at the rate of $1400 a month can require up to a $350 security deposit.

(iv) **Special Rule for Long Term leases under Paragraph 59A-36(c)(2).**

A. A Lease under Section 59A-21(c)(3) can include a refundable deposit of up to $2500, which may be collected at the beginning of the lease or in scheduled payments over time as specified in the lease. An Owner or an Owner's Agent must not accept any deposit in excess of this amount.

B. The weekly lease payment specified in Section 59A-36(c)(2) must be credited by an amount equal to the prorated value of the refundable deposit, except that until the lease ends, a deposit of $500 can be retained by the Owner/lessor or his or her Agent.

C. If the deposit is not fully credited against the lease because of a cancellation by the Vehicle Owner, any remaining, uncredited deposit shall be refunded to the lessee/driver within 30 days of termination or cancellation of the lease by the lessor or an Agent of lessor. Note: this does not apply when the driver breaks or terminates the lease prior to the term. The deposit shall be held, and interest shall accrue, in the manner prescribed by section 59A-36(e)(7).

§59A-36(d)(4) Fine: $200 Appearance NOT Required

(5) **Provide Driver Written Receipt and Accounting for Security Deposit.**

(i) An Owner must provide written receipts for any security deposits made by a Driver.

(ii) An Owner must provide a Driver with a written itemization of any items withheld or deducted from a security deposit.

§59A-36(d)(5) Fine: $50 Appearance NOT Required

(6) **Return Deposit within 30 Days of Lease Termination.**

(i) An Owner must return a security deposit no later than 30 days after the end of the lease term.

(ii) An Owner must return a security deposit either by check or by cash exchanged for a written receipt from the Driver.

§59A-36(d)(6) Fine: $50 Appearance NOT Required

(7) **Interest on Security Deposit.**

(i) An Owner who requires a security deposit must secure the funds in an interest-bearing account in a bank or credit union within the City of New York, in an account devoted to security deposits and not commingled with funds of the Owner.

(ii) The Owner must indicate in writing provided to the Driver the name and address of the bank or credit union and the applicable account number.

(iii) Interest on the security deposit must accrue to the benefit of the Driver furnishing the security, except, however, that the Owner can retain one percentage point of any interest, as compensation for bookkeeping expenses.

§59A-36(d)(7) Fine: $50, and Restitution to the Driver. Appearance NOT Required

(e) Lease Deductions from Driver Pay

(1). If a driver agrees, an Owner may contract to receive lease payments directly from a Driver's associated base, per Rule 59B-18.01(c)(4)(i)

(2). If an Owner agrees to receive payment via direct deposit from the Driver's Associated Base and the amount of Driver Payments during a week do not cover the cost of the lease, the Owner may, during one week, receive no more than 60% of a driver's net Driver Pay, as that term is defined in Rule 59B-03(w).

(3). No interest shall accrue on unpaid lease amounts if paid off during the term of the lease. If, at the end of a lease under 59A-36(c)(2), a Driver owes a Base Owner an outstanding balance, the Driver shall have thirty (30) days to pay the outstanding balance before any interest my accrue.

§59A-36(e) Fine: First violation: $500 and restitution to the Driver, equal to the excess that was charged to the Driver. Second and subsequent violations; $1,000-$2,000 and restitution to the Driver, equal to the excess that was charged to the Driver.

(f) **Receipts to Drivers for All Payments.**

(1) An Owner (or Owner's Agent) must give a Driver a written receipt for every payment or deduction made under the lease and these Rules.

(2) The receipt must include the name of the Driver and the number of the Medallion subject to the lease.

(3) The receipt must clearly state the following information with respect to the payment or deduction:

(i) The date

(ii) The name of the recipient

(iii) The amount

(iv) The purpose

(v) The number of the section of this chapter that authorizes the payment or deduction

(vi) For leases under paragraph 59A36c)(2) of these Rules, the following additional information:

A. The weekly amount received, itemized by the amount paid for TLC and DMV licensing expenses and the amount paid for the conditional purchase of the vehicle;

B. The cumulative amount paid towards the conditional purchase of the vehicle;

C. The remaining amount to be paid for the conditional purchase of the vehicle; and

D. The remaining number of weekly payments for the conditional purchase of the vehicle based on the current contract terms.

§58-21(f) Fine: 200

(g) **Lease Must Be in Writing.**

(1) Every For-Hire Vehicle operating lease (including any amendments), must be in writing, and must be signed by the Owner (or a person authorized to act on behalf of the Owner), and by the leasing Driver or Drivers.

(2) A copy of the fully executed lease must be provided to the leasing Driver or Drivers at the time of execution.

(3) If an Owner provides an electronic, rather than a paper contract, the Owner must provide a copy of the executed contract in PDF form, showing all parties signatures or proof of electronic signature, by emailing the contract to the Driver's e-mail address.

§58-21(g) Fine: $500 Appearance NOT Required

(h) **Terms.** Every lease must contain the following terms:

(1) **The type and term of the lease.** The lease must state the beginning date and time of the lease and the ending date and time of the lease.

(2) **Costs covered by the lease.** The lease must state the total lease amount, and must itemize that total cost, including:

(i) The amount of the lease vehicle.

(ii) The amounts, if any, of the security deposit.

(iii) Any other costs that the Driver will be charged.

(3) **Reference Authorizing Rule Sections.**

(i) For each itemized cost listed above (in subparagraph (2)), the lease must include a reference to the Commission Rule authorizing the Owner to charge the cost to the Driver.

(ii) The lease 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.

(4) **Overcharges.** Every lease must contain clearly legible notice that overcharging a lessee/Driver is prohibited by the Commission's Rules, and that complaints of overcharges may be made in writing to the Commission or by telephone call to 311.

(5) **Charges Upon Cancellation.**

If an Owner demands the return of a For-Hire Vehicle, the Driver has theright to request the Owner to provide a replacement Vehicle and, if the Agent provides another Vehicle, the Driver will not be responsible for any additional costs, and shall have the right to continue in the current lease, minus any credits for periods in which no vehicle was available for the Driver.

(ii) Any cancellation charge contained in the lease may not exceed $500 and will not be permitted unless the lease also provides that:

A. If the, Owner cancels the lease, the Owner is not permitted to charge a Driver a cancellation charge if the Driver is not late in making lease payments at the time the Owner cancels the lease.

B. When a cancellation payment is made, the Driver's obligation to make lease payments terminates immediately.

(6) **Deposit information.** Each lease must include the information regarding deposits required by §59A-36(d) of this chapter.

§58-21(h) Fine: First violation $500 restitution to the driver, equal to the excess or non-authorized charge that was charged to the driver.. Second and subsequent violations: $1000-$2000 and restitution to the driver, equal to the excess or non-authorized charge that was charged to the driver. Appearance Required.

(i) **Retaliation.**

(1) An Owner must not retaliate against any Driver for making a good faith complaint against any Owner for violation of the leasing provisions in §59A-36 of this chapter.

(2) "Retaliation" will be broadly construed, and will include imposing any adverse condition or consequence on the Driver or withholding or withdrawing any beneficial condition or consequence from the Driver.

§58-21(i) Fine: $1,000 plus restitution to the driver for losses for the first offense and a fine of $10,000 plus restitution to the driver for the second offense within five years. Appearance NOT Required

(j) 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.

NEW FHV BASE RULES: RESPONSIBILITIES TO DRIVERS

59B-03 **Definitions Specific to This Sub-Chapter**

(u) *Passenger Fare.* The passenger fare is the 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, as well as any charges for fare multipliers, waiting time, cancellation fees. The passenger fare does not include tolls, tip, sales tax, the Black Car Fund surcharge, or any other applicable taxes or surcharges.

(v) *Base Fee*. The Base Fee is the amount is the amount of each Passenger Fare which the Base retains and does not remit to the Driver.

(w). *Driver Pay*. Driver Pay shall be no less than an enumerated percentage of each Passenger Fare to be paid by the Base to the Driver.

(x) *Associated Driver*: and For-Hire Vehicle Driver who performs a trip dispatched by a For-Hire Vehicle base shall be considered an Associated Driver of that Base.

59B-18.01: **Payment Obligations to Drivers of FHVs.**

(a) *Rates of Fare:*

(1). Time and Distance Rates. A Base Owner may not calculate a Passenger Fare using rates less than those contained in Rule 58-26.
(2). Quoted Rates: a Base Owner may charge passengers a flat rate for the trip, provided the flat rate is at least equal to the estimated cost for the trip, using the rates found in Rule 58-26.

(b) *Fare Payments*:

(1). *Weekly Pay:* For any trips performed by any Driver, the Base Owner must pay the Driver, on no less than a weekly basis, the total of amount of the Driver Pay for fares performed during that week. Access to these funds must be provided at no cost to the Driver.
(2). *EZ Pass.* In addition to Driver Pay, the Base must remit all amounts charged to passengers for EZ Pass to the Driver on no less than a weekly basis.

(c) *Driver pay: Rates of Pay*

(1). Driver Pay Standard Trips: for trips in which the base charges the Passenger on the rates set forth in sub-section (a)(1), the Base must pay the Driver no less than 80% of the Passenger Fare
(2). Driver Pay for Flat Rate Trips: for trips in which a Base charges a Passenger, using a flat rate as set forth in sub-section (a)(1), the Base must pay the driver either 80% of the Passenger Fare or the amount the Fare would have been using the Base's Fare rates for standard trips per sub-section (a)(1), whichever is greater.
(3). Driver Pay for Shared Rides: For all shared rides, the Driver must be paid at least 80% of the "metered rate" for the actual trip, pursuant to the Bases rates filed in accordance with sub-section (a)(1).
    i. For each additional pick-up in a chain of shared rides, the Base must pay the driver an additional amount of no less than $1.00.

(4). No Deductions: The base may not make any deductions from driver pay other than those or expressly permitted by this sub-section
    i. *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.

A. 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 Driver Pay towards the cost of the weekly lease payment.
B. 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 the Owner's deduction still complies with sub-section (c)(4)(i)(A) above.
C. Unpaid lease amounts shall not be subject to interest as long as a Driver and Base remain in an ongoing lease. If at the end of a lease, a Driver still owes any remaining amounts, the driver shall have thirty (30) days to pay any such amounts, without any interest accrued.

ii. *Garnishments*: If a driver's pay is subject to wage garnishments, a Base Owner may not remit more than ten (10) percent of the driver's net Driver Pay during a week to satisfy the debt, in accordance with state law.

(d) *Weekly Payment*:

1. A base must pay each associated driver directly on no less than a weekly basis, the total amount of all Fare Payments received during that period, minus the Base's Fee, as described in sub-section (c) of this section.
   A. It shall be a violation of this rule for a Base to remit a Driver's pay to anyone other than the Driver, except for licensed Vehicle owners and agents, when the driver has agreed to such deductions pursuant to Section 59A-36(e).
   B. Garnishments and 10%.

(e) *Trip Records and Driver Receipts*:

(1). A Base Owner (or Owner's Agent) must give a Driver a written receipt for every payment or deduction made under the Contract and these Rules

(2). A Base Owner (or Owner's Agent) must give a driver a written record for each trip. Such individual trip records must include:
   A. The name of the Driver.
   B. The license plate number of the vehicle driven.
   C. The amount the customer paid for the trip, the "Passenger Fare."
   D. The amount of Driver Pay for the trip.
   E. Trip mileage
   F. When the trip began and when the trip ended.
   G. What rate was applied, e.g. standard, flat rate, or shared rate, including any fare multiplier applied to the trip's fare.
   H. If a rate other than flat rate was used, an itemized description of how the fare amount was calculated.
   I. The amount of sales tax assessed on the cost of the trip, if any.
   J. The amount of the Black Car Fund surcharge assessed on the cost of the trip, if any.
   K. Tolls, if any
   L. Any other surcharges imposed by the Base.
   M. Any deductions from the fare payment.

(3). The receipt must include the name of the Driver and the license plate number of the Vehicle driven for each trip.

(4). Weekly pay statement: At the time of each of weekly payment a Base Owner must provide a driver with a 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 by e-mail in PDF format, at the time payment is made to the Driver.

A. *Changes to Driver Payments*. Any changes to fare payments must be noted on pay statements, in a separate section explaining the reason for the change in fare payment, and must comply with sub-section (5) of this rule below.

(5). Reference Authorizing Rule Sections:

A. For any itemized deductions, the Receipts must include a reference to the Commission Rule authorizing the Owner to charge a cost to the Driver or to make a deduction from Driver Pay.

B. 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.

(f) *Contracts*

(1). At the beginning of association between a driver and a base, a base must provide each Associated Driver with a written agreement that notifies the Driver of, at a minimum:

A. The Base's rates of fare for standard rides

B. The Base's rates of fare for shared rides.

C. The Base's percentage pay structure between the driver and the Base.

(2). Prior to the opportunity to execute the contracts described in this sub-section, the Base must provide a Driver with a hard copy or, via e-mail, a printable copy of every contract, addendum, or term affecting the drivers' relationship with the Base.

(3). Changes, Addendums: 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.

(4). The base must maintain records of drivers' contact for at least six years from the last date of each contract's applicability.

(5). A base shall provide each driver with unlimited electronic access to all contracts applicable to a driver's tenure with the Base.

(g) *Additional Remuneration*

(1). Bases may offer drivers payment incentive agreements, of a limited duration, that provide for higher pay than that provided for by compliance with this section.

(2). Such agreements shall not be subject to the procedural requirements for "Contracts" set forth in sub-section ### of this section.

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

(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 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.

YELLOW AND GREEN CAB RULEMAKING ADDITIONS

§58-21 Leasing a Taxicab or Medallion

(c) *Rate Rules*

(1) *Standard Lease Cap Rates* …

(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.]

(2) *Cost Adjustments for the Lease of Hybrid-Electric and Diesel-Fueled Vehicles*

(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.]

(4) *Standard Medallion Lease Cap including Long Term Vehicle Lease/Conditional Purchase*

(v)

H. A Medallion lessor or Agent holding title to the vehicle during the term of a lease under 58-21(c)(4), who does not pay for the costs of repairing a vehicle as a result of a traffic accident, must remit to the Driver any compensation for damages to the vehicle incurred from an entity other than the driver

(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 lease amount below the Standard Lease Cap.

(vi) For any vehicle leased pursuant to 58-21(c)(1) or 58- 21(c)(2) a late charge not to exceed $25.00 per hour for the late return of a vehicle. The total late charge for the late return of a vehicle from any one shift may not exceed the cost of one shift. When the vehicle is leased to a second-shift Driver on the following Shift, the second-shift Driver's lease payment for that shift must be credited an amount equal to the amount paid as a late charge by the first driver.

(xi) Credit Card Processing Surcharge for Leases entered into pursuant to 58-21(c)(1), 58-21(c)(2), 58-21(c)(3), or 58-21(c)(4) of these Rules:

C. For leases under 58-21(c)(3) and 58-21(c)(4), an owner of a Taxicab can charge a $132 surcharge per week for credit card processing if two or more drivers are on the lease. When only one driver is on the lease, an Owner of a Taxicab can only charge a $66 surcharge per week for credit card processing.

D. Beginning on January 1, 2013, each June and December, the TLC will review the TPEP systems' data to determine average credit card usage per shift. The TLC will review only the data for shifts at least seven hours long. Payments made by credit card shall be the entire amount paid by the passenger, as determined from the TPEP records reviewed. If, under this review the amount of the average credit card usage per daily shift exceeds $200, the TLC will propose and support:

A rule seeking adjustment to the Credit Card Surcharge for daily leases under 58-21(c)(1), 58-21(c)(2), 58-21(c)(3) and 58-21(c)(4) so that it is equivalent to [5%] 3.75% of the average credit card usage per shift for the preceding four months, rounded to the nearest whole dollar.

For the purposes of determining an amount equivalent to 3.75% of the average credit card usage per shit for such a rule, the TLC will consider gross credit card usage per shift, net of tolls and the MTA tax or any other applicable taxes.

(i) *Terms*

(5) *Charges Upon Cancellation*

(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:

(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.

§58-26 Operations—Rates & Tolls

(a) *Metered Rates of Fare*

(1) *Metered Rate of Fare*. The rate of fare for Taxicabs is as follow, regardless of the number of passengers or stops:

(i). The charge for the initial unit is [$2.50] $2.60 plus[, on and after January 1, 2015,] the Taxicab Improvement Surcharge of $0.30 for a total of [$2.80] $2.90.

(ii) The charge for each additional unit is $0.65

(iii.) The unit of fare is:

A. One-fifth of a mile, when the Taxicab is travelling at 12 miles an hour or more; or

B. 60 seconds (at a rate of [$0.50] $0.65 per minute, when the Taxicab is traveling at less than 12 miles an hour.

(k) *Clean-up Fee.* In addition to the metered rate of fare, a Driver may add a $50 clean-up fee in the event that a passenger vomits in the Taxicab.

§67-10 Requirements for Hack-up – Taximeters

(c) *Other Technical Requirements*

(4) The Taximeter must, at the end of the trip, display the total combined cost of the fare and any extras, taxes or surcharges assessed on the trip.

§75-21 Business Requirements for Maintaining Authorization – Compliance with TPEP Requirements and Service Levels

(a) *Payment by Credit, Debit and Prepaid Card, E-Hail App that Provides for E-Payment, and Digital Wallet Application*

(2) A TPEP Provider must ensure that when Passengers pay by credit, debit, or prepaid card, an E-Hail App that provides for E-Payment, or a Digital Wallet Application (to the extent that the E-Hail App that provides for E-Payment or Digital Wallet Application provides credit/debit/prepaid card payment data to the TPEP Provider for processing the transaction), the Medallion Owner receives deposit of funds within forty-eight (48) business hours, excluding banking holidays, of transmission of a batch close transaction from the TPEP, except for incidents when there is a fraud investigation.

i. A Medallion Owner must receive deposit of funds within one (1) week when a Driver has performed a trip without any involvement in any alleged fraud.

ii. If an E-hail App accepts a Passenger for service, the Medallion Owner shall receive payment and the E-Hail App shall deposit funds with the Medallion Owner regardless of whether the cardholder had sufficient funds to pay for the trip.

§75-25 Technical Requirements – Taxicab Technology System (TPEP)

(1) Paying Drivers Directly. TPEP Providers may offer to pay a Taxicab Driver directly for fares processed via or passed through the TPEP. The Taxicab Driver can receive funds directly from the TPEP Provider if both the Taxicab Driver and the Medallion Owner elect to have the Taxicab Driver paid directly by the TPEP Provider.

(i) If the TPEP Provider pays the Taxicab Driver directly and the TPEP Provider is the merchant for the transaction processing, any fees withheld by the TPEP Provider for processing the credit/debit/prepaid card, E-Hail App that provides for E-Payment, or Digital Wallet Application must not exceed three and three-quarters [five] percent (3.75 [5]%).

§78-21 Technical Requirement – E-Hail Application

(a) *Payment*

(v) An E-Hail application must store a Passenger's pre-set payment method, and check the payment method's eligibility before allowing the Passenger to e-hail.