

TO: Central Staff Legal

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The Legal Basis for NYC's Authority to Set For-Hire Vehicle License Fees

NYC is well within its legal authority under the NY State Constitution, and under the scope and authority of administrative law in general, to create a separate For-Hire Vehicle license that governs companies such as Uber and Lyft. At the same time, the City-within this same legal purview-also has the right to set a commensurate fee that appropriately addresses the administrative burden that the unchecked proliferation of these vehicles has caused on NYC's health and public safety.

Background

It is well-settled administrative law that a local government may impose a fee to pay the expense of a regulatory program. See *City of Buffalo v. Stevenson*, [207 N.Y. 258, 100 N.E. 798 \(1913\)](#). The only caveat to a fee program in government is that the amount charged must approximate the cost of the program. *Jewish Reconstructionist Synagogue of North Shore, Inc. v. Incorporated Village of Roslyn Harbor*, [40 N.Y.2d 158, 163, 386 N.Y.S.2d 198, 201, 352 N.E.2d 115, 118 \(1976\)](#). Only a fee far exceeding the cost of a regulatory program or that is used for purposes unrelated to the program as a general revenue-raising device is an unlawful tax. See *City of Buffalo v. Stevenson, supra*, [207 N.Y. at 258, 100 N.E. at 798](#).

Fees must be reasonable [and] related to the "specific costs of administering (its) application for such a license," [and], regulatory fees may lawfully be assessed by a regulatory agency in order to fund the cost of a regulatory program generally, and need not be limited to the costs of processing the licensing application for that business entity. *American Independent Paper Mills Supply Co v. County of Westchester*, 2005 WL 6510408 (N.Y.A.D. 2 Dept). As we shall see, it is in the "cost of a regulatory program generally," where the city's legal prerogative for licensing For-Hire Vehicles lies.

NY State Delegation of Authority

Under NY State law, NYC is granted the right to regulate all manner of taxis and For-Hire vehicles: "The New York City Taxi and Limousine Commission (T&LC) regulates taxi drivers and livery drivers in New York City." (<https://dmv.ny.gov/driver-license/get-license-drive-taxi-or-livery-vehicle>) In addition, under the State's Municipal Home Rule statute, localities like NYC have the authority to, "fix," "levy," and "collect," rates or fees-and; "This provision shall include but not be limited to the power to adopt local laws providing for the regulation or licensing of occupations or businesses..." (<https://www.nysenate.gov/legislation/laws/MHR/10>)

Local Authorization

Under the NYC Charter, the regulation of taxis and other cars for hire is delegated, pursuant to NY State statute, to the NYC Taxi and Limousine Commission. (TLC) Therefore, pursuant to the Creation and Purpose of the Commission and §§2300 and 2301 of the New York City Charter, the nine-member New York City Taxi and Limousine Commission (the

“Commission” or the “TLC”) whose overall purpose will be to continue, further develop, and improve taxi and limousine service in New York City, and promote public comfort and convenience, and taking into account the overall public transportation network of the City, may establish an overall public transportation policy governing for-hire transportation services in the City, including Uber, Lyft, Via, and its imitators alike and may implement such a licensing fee upon entry into the market. The Commission, pursuant to the statutes noted above, further has the power to define and adopt licensing standards for each License that is set forth in these Rules. Provided below are the general powers of the Commission on the matter of issuing licenses. (Emphasis added)

General Powers of the Commission (a) Issuance of Licenses. The TLC has the power to issue and regulate Licenses or Authorizations that include, but need not be limited to the following: (1) TLC Driver License; (2) Medallion Taxicab Owner’s License; (3) Stand-by Taxicab Vehicle License; (4) Medallion Taxicab Broker License; (5) Medallion Taxicab Agent License; (6) Taximeter Business License; (7) Taximeter Manufacturers Authorization; (8) For-Hire Vehicle Base License 3; **(9) For-Hire Vehicle License;** (10) Paratransit Base License; (11) Paratransit Driver License; (12) Paratransit Vehicle License; (13) Commuter Van Service Authorization; (14) Commuter Van Driver License.

Understanding administrative costs

When examining the full extent of the administrative costs that have arisen as a result of Uber, Lyft, and their imitators’ entry into the transportation market, we find that there is a remarkable amount of collateral damage being caused to the health and safety of New Yorkers. Subsequent to Uber’s entry, the unchecked proliferation of licensees being granted is being felt at every level, and it shows no evidence of slowing down. As a result, the number of cars on the road has risen tenfold. This has resulted in the following impact:

1) \$20 billion loss to city businesses (<http://pfnyc.org/wp-content/uploads/2018/01/2018-01-Congestion-Pricing.pdf>);

2) Public Safety impact: The externality costs of unchecked proliferation of licenses resulting from dramatic increase in the number of crashes and concomitant fatalities (http://www.nyc.gov/html/tlc/downloads/excel/vz_tlc_lic_veh_crash_data_ll_31.xlsx);

3) Decline in funding for mass transit: *“The MTA estimates that the rise of Uber and Lyft will mean a net loss of \$10 million a year due to fewer yellow and green taxi trips — which charge a 50-cent fee to support the transit agency. “It seems that market share is coming away from the medallion cabs, going to the app-based services,” MTA financial chief Bob Foran said. “We were hoping that the whole pie would grow.”* <http://www.nydailynews.com/new-york/mta-uber-lyft-loss-10m-year-article-1.2439242>);

4) Impact on public health and the environment: “A critical mass of scientific evidence shows a health risk zone close to major roadways. The risk zone extends from about 500 to 1500 feet, varying by pollutant and health effect. For New York this means that people living within two to six blocks of a busy road are likely at higher risk. The core scientific studies that point to the health implications outlined in this report are divided into two categories. Some studies measure the actual street-level air pollutant exposures; others document the impaired health of people living close to roads. **The health effects seen with greater intensity closer to busy roads include cancer, heart disease, impaired childhood lung development, asthma attacks and lung disease** in **adults** ([https://www.edf.org/sites/default/files/6117 AllChokedUp NYCTrafficandHealthReport.pdf](https://www.edf.org/sites/default/files/6117_AllChokedUp_NYCTrafficandHealthReport.pdf));

5) Cost of enforcement: As a result of the huge increase in for hire vehicles and drivers, the capacity of the TLC to enforce existing law is stretched beyond its capacity-and would likely need the addition of thousands of new inspectors just to enforce existing laws. This is especially true of illegal street hails that have increased exponentially since Uber and its imitators entered the city’s transportation network. As one industry representative remarked at a recent hearing: “Illegal street hails are always the result of people not having enough work. Drivers don’t want to engage in illegal street hails. Not only are they vulnerable to a summons but also there is no coverage of insurance and lesser security in case the passenger commits an act of violence.” (<https://www.amny.com/transit/tlc-black-car-taxi-1.16723002>)

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Office of CM Diaz 18th CD Chair FHV Committee

Intro No. XXXX

A local law to amend the administrative code of the city of New York in relation to the licensing and regulation of app-based for-hire transportation services and vehicles.

By Council Member xxxx

Be it enacted by the council as follows:

Section 1. Legislative Intent.

Chapter 65 of the New York City Charter confers upon the Taxi and Limousine Commission the power to license and regulate the business and industry of transportation of persons for hire within the city of New York. The administrative code has established distinct classes of demand-responsive transportation services, each with unique licensing and regulatory requirements. These classes include medallion taxicabs, which are fixed in number, have transferable licenses, and regulated, metered rates of fare. Taxicabs may accept hails from passengers in the street, and must accept all passengers, with limited exceptions. One-half of all new vehicles operating as medallion taxis and placed into service must be accessible to persons with disabilities.

The code also authorizes community car services to operate through base stations, licensed and regulated by the commission, dispatching affiliated and licensed vehicles. These businesses are typically radio dispatch services that have customarily served specific neighborhoods. Vehicles affiliated with these base stations may accept passengers only by prearrangement through the base station. Base stations can be approved only if they meet specific, enumerated criteria such as adequate off-street parking for affiliated vehicles, a demonstrated need for service as described in an operating plan approved by the commission setting forth service requirements and the methodology by which the business will fulfill its responsibilities. In addition, each new

or relocated base station must complete an environmental review and receive city council approval prior to licensure.

Black cars are for-hire vehicles but businesses dispatching these vehicles are exempt from virtually all of the base station requirements applicable to community car services.. They have been traditionally licensed to serve corporate clients transporting passengers using a voucher billing system. While black cars need not comply with base station requirements, they must be established and operate either as a franchise, with the agreement approved by the New York State Attorney General, or as a cooperative with affiliated drivers and vehicle owners participating directly in the ownership and operation of the of the black car cooperative business as shareholders. Most traditional black car businesses have chosen the franchise model, while the newer, app-based businesses have typically designated their businesses as cooperatives, but without drivers possessing management or voting rights. Neither base stations and their affiliated vehicles, nor black cars, have a meaningful obligation to provide on-demand accessible transportation.

The commission also regulates other specialized on-demand transportation services such as luxury limousines, commuter vans and paratransit vehicles. In addition, the state enacted legislation to create a new class of businesses and vehicles, street hail liveries, which have street hail rights outside the airports and the central business district, charge metered rates of fare on all hail trips, but are also affiliated with community car service base stations and may accept pre-arranged calls where permitted..

Recently, a number of so-called transportation network companies have become licensed by the commission, almost exclusively as black car cooperatives and vehicles, to provide on demand transportation to passengers who are able to access their services through smart phone applications (“apps”). These businesses do not fit within the traditional black car or community car service model. These businesses do not conduct business in the same manner as most base stations, since they do not serve limited geographic areas, do not have a dispatch place of business that may be used by the public, and do not accept cash fares. The transportation providers also do not resemble black car businesses since they generally do not service

corporate clients, do not accept reservations, and, significantly, do not utilize a business model that affords participants shareholder or franchisee rights. . Arguably, these app-based businesses are not performing “pre-arrangement” at all, but, instead, are really providing on-demand transportation and are simply leveraging pre-existing base/black car terminology to avoid being considered taxicabs, street hail livery vehicles, or even traditional car service vehicles. These app-based businesses have been growing, both with respect to the number of vehicles and the number of passengers transported. Presently, the commission licenses more than 105,000 for-hire vehicles (not including medallion taxicabs). App-based services which do not fit the traditional black car or community car service model nonetheless represent more than 70,000 of these vehicles, and transport nearly 300,000 passengers on average each day, far more than are transported by traditional base station vehicles or black car services.

Clearly, there is a desire on the part of the public to utilize this type of service. However, there is no body of law or regulations that provides the necessary protections for the public and ensure that the supply of these vehicles meet the public demand without overburdening the already congested streets of New York. A new classification of license for these businesses and vehicles, which acknowledges that these businesses are neither black cars nor community car service businesses, together with appropriate regulation, is needed to protect the public health and safety and enable the commission to fulfill its Charter mandate.

Section 2.

Section 19-502 of the administrative code of the city of New York is amended by adding a new subsection ff to read as follows:

ff. “App-based for-hire service” shall mean an individual, partnership, limited liability company or business corporation that offers transportation for hire to passengers by prearrangement, utilizing software that allows a passenger or prospective passenger to arrange for transportation of passengers for-hire using a smartphone or similar electronic device; allows the passenger to identify the location of available vehicles; and allows the driver of the vehicle to receive a request for transportation from said passenger. An app-based for-hire service shall include an entity that operates under a single brand across multiple “base stations” or which allows drivers

from multiple “base stations” to operate on its platform to receive app-based trips. However, an app-based for-hire service does not include an entity licensed as, and meeting all of the requirements of, a “base station” as defined in subsection t of this section, or an entity that owns, operates or services exclusively medallion taxicabs or street hail livery vehicles. An app-based for-hire service shall not offer any transportation for hire services other than those services specifically set forth in this subsection.

Section 3.

Section 19-502 of the administrative code of the city of New York is amended by adding a new subsection gg to read as follows:

gg. “App-based for-hire vehicle” shall mean a vehicle licensed by the commission and authorized to accept requests for and provide transportation through an app-based for-hire service. An app-based for-hire vehicle shall not include a medallion taxicab or a street hail livery vehicle.

Section 4.

Chapter 19, Article 5 of the administrative code of the city of New York is amended to add a new section 19-548 to read as follows:

Section 19-548. Licensing and Operation of App-based For-hire Services and Vehicles.

- (a) It shall be unlawful for any person or business to operate an app-based for-hire service unless duly licensed by the commission. The annual fee for an app-based for-hire service license shall be twenty thousand dollars (\$20,000), plus an annual fee of two thousand dollars (\$2,000) for each app-based for-hire vehicle affiliated with said service. Fees shall be due and payable on the day the license application is filed with commission, and annually on June 30th of each year thereafter. Licenses shall be valid for one year, from July 1st to June 30th, except that the first license issued to a new app-based for-hire service or app-based for-hire vehicle shall expire on the June 30th following license issuance. The licensee fee shall be prorated to the term of the license. The penalty for

operating an app-based for-hire vehicle or a an app-based for-hire service without a current, valid license issued by the commission, or for operating an app-based for-hire service or an app-based for-hire vehicle in a manner beyond the scope of the license, shall be the same as the penalty provided in this Chapter for operating a vehicle for-hire without a license.

(b) No license shall be issued by the commission for a new app-based for-hire service unless the applicant has demonstrated to the satisfaction of the commission that it:

- a. Operates from a business address in a commercially zoned area within the city of New York where such business can lawfully operate. No more than one app-based for-hire vehicle service license shall be issued to a single location.
- b. Demonstrates to the satisfaction of the commission that there exists a need for this app-based for-hire service. In connection with such application, the applicant shall provide a detailed business plan which shall include an analysis of the geographic area it intends to be served, a complete description of all transportation services available to the public in the proposed service area, including, but not limited to available public transit, neighborhood car services, existing black car businesses serving the area, taxicabs, street hail liveries and other licensed app-based for hire-service providers currently providing service within the proposed geographic area of operation.
- c. Provides a projection for the number of affiliated app-based for-hire vehicles needed to deliver service as set forth in its business plan, and the average number of fares per vehicle that is anticipated will be provided by the service. It shall be a rebuttable presumption that there is no demonstrated need for new or additional service unless the average number of trips per app-based for-hire vehicle affiliated with the service exceeds ten (10) per day.
- d. Complies with all requirements of the City Environmental Quality Review Act (CEQRA), and has demonstrated to the satisfaction of the commission that the approval of this license will not have an adverse impact on traffic, congestion or quality of life within the city.
- e. Has provided a detailed description of all commissions, lease fees, and other charges which it proposes to charge either the app-based for-hire vehicle owner or

the driver. Included in this description of charges shall be an estimate of the average hourly earnings of a driver, based upon actual or anticipated trips and fares.

- (c) No renewal of a license for an app-based for-hire service shall be approved unless the licensee has, upon submission of a renewal application, demonstrated to the satisfaction of the commission that it continues to comply with each of the requirements as set forth in subsection (b) herein. To that end, current trip and revenue data shall be included with each renewal application.
- (d) A copy of each new or renewal application shall be furnished to the chairperson of the community board and the city council member where the business is to be located and all such renewal applications shall be accompanied by a comprehensive report of the number of trips conducted by the app-based for-hire service during the prior year. The commission shall not conditionally approve any new or renewal application without consideration of any feedback submitted by the community board or city council member.
- (e) No new or renewal app-based for-hire service license shall be conditionally approved except by majority vote of the commission at a meeting where a quorum of commissioners is present and voting. Upon conditional approval of the license by the commission, the application shall be transmitted to the city council which may disapprove or modify such conditional approval within ninety (90) days of transmittal from the commission.
- (f) An app-based for-hire service may only dispatch or provide requests for transportation to an app-based for-hire vehicle affiliated with said service. A vehicle may be affiliated with only one app-based for-hire service. Each app-based for-hire service licensed by the commission shall have no fewer than ten (10) nor more than two hundred fifty (250) app-based for-hire vehicles affiliated with it at any time.
- (g) At least twenty-five percent (25%) of all app-based for-hire vehicles affiliated with an app-based for-hire service provider shall be accessible to persons with disabilities, including wheelchair users.
- (h) An app-based for-hire service shall comply with all of the rules of the commission, including, but not limited to rules prohibiting the acceptance of hails from passengers in

the street, service refusals, and overcharges. An app-based service shall ensure that a driver is not provided with a passenger's destination prior to acceptance of the trip.

- (i) An app-based for-hire service shall file its rates of fare with the commission annually, and whenever there is any change in the rates. These rates shall be based on mileage, time, or a combination thereof. No rate of fare less than \$2.50 per mile, or fifty cents per minute, may be filed with the commission or charged to any passenger.
- (j) An app-based for-hire service shall not charge an app-based for-hire vehicle owner or driver any commission, lease fee, or other charge unless said charge has been filed with and approved in advance by the commission. The commission shall review any request for a charge which an app-based for-hireservice proposes to charge either an app-based for-hire vehicle owner or a driver, and shall not approve said charge unless the commission determines that such a charge is in the best interests of both the public and the driver or app-based for-hire vehicle owner, and such charge shall not prevent said vehicle or owner from earning a reasonable income operating said vehicle.
- (k) No driver or vehicle shall receive calls from any app-based for-hire service unless said vehicle shall be licensed by the commission as an app-based for-hire vehicle, and the operator of the vehicle is licensed as a for-hire vehicle driver by the commission. An app-based for-hire vehicle service shall take all necessary actions to ensure that a driver not licensed by the commission as an app-based for-hire driver cannot accept passengers for hire in an affiliated app-based for-hire vehicle. A vehicle shall not be licensed unless it meets all of the insurance and vehicle specification requirements set forth in commission regulations. No vehicle shall be permitted to be licensed as an app-based for-hire vehicle until the vehicle is insured by a company authorized to do business in the state of New York with insurance coverage levels that, at a minimum, meet the insurance requirements for black cars. The fee for a license for an app-based for-hire vehicle shall be the same as the current licensing fee set by the commission for a for-hire vehicle license.
- (l) All app-based for-hire vehicles affiliated with an app-based for-hire service must prominently display on the exterior of the vehicle approved trade dress identifying the brand and/or name utilized in the mobile application affiliated therewith, as well as a unique, permanently affixed alpha-numeric identifier approved and assigned by the

commission and which shall be no less prominent than those required on medallion taxicabs.

(m) A driver of a vehicle licensed as an app-based for-hire vehicle may not accept hails from passengers in the street, or dispatches, whether through radio, telephone, app-based service or any other means, from any business or entity except the app-based for-hire service to which the vehicle is affiliated. An app-based for-hire vehicle may not be affiliated with more than one app-based for-hire service.

(n) No driver shall operate an app-based for-hire vehicle unless said driver is licensed by the commission to operate a vehicle for-hire.