

Testimony of Meera Joshi
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Intro Nos. 658, 1080, 1092, 1095 & 1096
City Council Transportation Committee

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Good morning Chair Rodriguez, and members of the Transportation Committee. I am Meera Joshi, Commissioner and Chair of the New York City Taxi and Limousine Commission. Thank you for the opportunity to share the TLC's views on Intros 658, 1080, 1092, 1095 and 1096, many aspects of which overlap with existing TLC rules and practice. At the outset, I want to make clear how much we appreciate the committee's ongoing interest in, and support of, our agency, and reiterate our desire to work together to further improve our City's for-hire service. In particular, and although not addressed in the current set of proposals, we hope to also work together where possible on other priority policy areas, such as increased accessibility and accountability across all of our regulated sectors.

Black Car Retirement (Intro 1092)

I will begin with Intro1092 which would eliminate mandatory retirement for black cars as long as the vehicle passes all inspections required by the State Vehicle Traffic Law, the Administrative Code or TLC rules.

The impact of this Intro would be somewhat less than it appears, because the TLC eliminated retirement requirements for most of the black car fleet in the spring of 2015. As background, the TLC first passed a six year retirement mandate for black cars in April 2008. In April 2015, however, the TLC eliminated the black car retirement requirements for Model Year 2013 vehicles and after. At the same time, the TLC also extended the retirement threshold from six model years to seven, for all vehicles that were Model Year 2012 or earlier. Thus the effect

of this Intro would be to eliminate the retirement requirement for the approximately 28% of black cars in service today that are Model Year 2012 or earlier. In contrast to yellow taxi service, where passengers do not preselect a taxi company or a vehicle model, there is no single operational model in the black car industry, and today we see a much greater range of choice for passengers than in years past. With this variety, we agree that applying a single vehicle retirement schedule for all companies is unnecessary due to existing market incentives to replace vehicles at a rate which satisfies customer demand.

Finally, we know that the Council joins us in our commitment to vehicle safety and environmental health, and for that reason it is important to note that all black cars are subject to regular, updated, safety and emissions inspections, so that even if the retirement requirement is eliminated entirely, unsafe and environmentally unsound black cars will be removed from service by the TLC.

Fare Quotes (Intro No. 1080)

The next Intro, No. 1080, would amend the Administrative Code to include a definition to cover app based dispatch in the FHV sector, “Dispatch Service Provider,” a concept that the TLC added to its rules last year. In addition, Intro 1080 would require that black and luxury limousine bases, as well as dispatchers operating on their behalf, neither quote nor charge a fare greater than the fare listed in the rate schedule filed with the Commission. TLC rules have long required filing of, and compliance with, rate schedules.

Under the Intro, any passenger who requests it would receive a fare quote. A customer could not then be charged more than 120% of the fare quote. Violations of the rule would result

in civil penalties unless the provider reduced the fare to be in compliance with the 120% provision within ten days.

The TLC has always supported fare transparency as a powerful consumer protection tool; it allows passengers to make informed choices from several different modes of transportation. Yellow and green taxis offer metered fares at published rates, and livery bases must provide a binding fare quote. More recently, in June 2015, the TLC adopted rules requiring the provision of fare estimates whenever a “price multiplier” or “variable pricing,” commonly known as “surge pricing” is used. To avoid sticker shock, these rules require that, upon request, the base must provide a fare estimate in dollars and cents, including any surge pricing, and that the customer must affirmatively accept the estimate to initiate service.

The TLC has begun routine testing of black car bases to evaluate their performance on price transparency and consumer protection. Our testing efforts are intended to ensure that the passenger has affirmatively opted in and accepted variable pricing for all dispatches by black car and lux limo bases, and that whenever requested the passenger receives an estimate of the total fare in dollars and cents inclusive of variable pricing. Additionally, we audit to determine whether rates are properly displayed on any website or smartphone app.

Although TLC rules do not specifically mandate a maximum amount by which an actual fare may exceed the estimate, our rules preventing fraud and misrepresentation provide us with the tools necessary to handle overcharge complaints. And under TLC’s rules, Dispatch Service Providers are required to give passengers a printed receipt directing them to contact 311 with complaints. Nonetheless, while the requirement of a fare quote partly overlaps with existing TLC regulation, and while we believe that market-driven customer service concerns will largely prevent companies from charging above a fare estimate, the TLC does not oppose the provision

capping actual fares at 120 percent of the quote. We understand the 120 percent provision applies to all providers of black car and limousine services, not only to those who arrange for transportation by app. We would request that sector-wide application be clarified, so that, as with our rules, the same standards apply to all FHV service providers.

Finally, the TLC does not support the Intro's safe harbor provision, which would allow providers to avoid penalties if they correct a fare overcharge within ten days. The actual mechanics of how the provision would function are unclear and may prove difficult to enforce. More importantly, if the prohibition is important, we believe it should be immediately binding to provide full consumer protection for passengers and include restitution. The TLC always has prosecutorial discretion not to charge if there are mitigating circumstances, but companies that overcharge passengers should not escape having to answer to the TLC for such an overcharge.

Universal License (Intro No. 1095)

Intro 1095 would codify in the Administrative Code the TLC's recent practice of issuing a "Universal License." Until last year, the City offered different drivers' licenses for yellow medallion taxi drivers and for-hire vehicle drivers. Because medallion license drivers had to meet a higher standard, the TLC has long permitted them to drive FHVs, but not the reverse. Until recently FHV drivers have had to obtain an additional medallion license in order to drive a taxi. Last year, the TLC formalized its existing practice with respect to taxi drivers, and upon renewal, issued them all a combination medallion and for-hire driver's license, a "MED-FHV" license. And in December 2015 began providing experienced FHV drivers the option to switch to a MED-FHV license so they can also drive a taxi. I am pleased to note that, since its introduction, over two thousand FHV drivers have received the new MED-FHV license. In this regard, Intro 1095 would align the language of the Administrative Code to TLCs practice and so

we wholeheartedly support these efforts to improve driver mobility and thank Committee Chair Rodriguez for his personal support of this important local law change.

Intro 1095 would also amend the Administrative Code by expanding the existing English proficiency requirement for taxi drivers to all TLC drivers. All drivers “must be able to speak and understand English.” This requirement comes with the proviso, however, that “such an assessment shall not include a written examination.” We believe that the existing requirements serve New Yorkers well by allowing passengers to choose the for-hire service that best meets their needs, including their language needs. In a city with a significant immigrant population, in which for-hire vehicle driving offers employment opportunities for new arrivals, and where some for-hire vehicle service providers may serve those immigrant communities almost exclusively, it is not clear that there is market demand, citywide, for this language requirement.

Additionally, the means by which the TLC would interpret or administer this provision remain unclear, that is, we are not certain how the Council intends for the agency to determine that an applicant is “able to speak and understand English.” Because these licenses are so crucial for so many first generation immigrant families, we would need to work closely with the Council and the Mayor’s Office of Immigrant Affairs to ensure that implementation of this expanded language requirement does not inadvertently harm the newest New Yorkers. At a minimum, the TLC would want to ensure that current licensees are grandfathered in and do not lose their livelihoods by virtue of this expanded language requirement. The TLC looks forward to discussing these policy and operational challenges further with the Council.

Illegal Street Hail (Intro No. 1096)

Intro 1096 would amend the Administrative Code by significantly increasing penalties for green taxi drivers picking up passengers by street hail in Manhattan south of West 110th street

and East 96th street, the “Hail Exclusionary Zone.” The bill would also provide for enhanced penalties for all drivers where those illegal street hails occurred in certain areas within the City, including the airports, the Hail Exclusionary Zone, and the areas around sports stadiums in the Bronx, Brooklyn and Queens.

The sections of the Administrative Code that the Intro would amend with respect to green taxis were added by the State Legislature as part of the HAIL Law, and there may be a State preemption issue to the extent that the Intro would expand or otherwise alter the provision’s scope. Additionally, as to increased penalties for all other illegal conduct, while the Intro amends 19-507 section (b)(1), it does not amend or address the existence of 19-506 section (e), which also empowers the TLC to enforce against illegal street hails, but which would now provide for different penalties. The TLC would need to meet further with Council staff to clarify these issues, as well as to ensure that in each instance the revised penalties provide for a minimum as well as a maximum, so that fines levied are strong enough to be a real deterrent.

Although we welcome additional tools to enforce against illegal street hails, we are unclear why Intro 1096’s first section singles out green taxi drivers for enhanced penalties. Our enforcement experience simply does not support the premise that green taxi drivers are violating the HAIL Law at a rate requiring specific legislative attention. In the beginning of our green taxi program, and in response to complaints, the TLC did several enforcement actions against green taxis picking up street hails in the Hail Exclusionary Zone. Those enforcement actions, combined with public messaging including exterior markings making clear the green taxi’s limited street hail jurisdiction, significantly decreased the amount of illegal green taxi activity, as is born out in our numbers.

For this reason, the TLC's major concern is with livery and black car drivers illegally picking up street hails and unlicensed, or so called "straight plate" operators, doing the same. Unlicensed operators in particular present a serious safety threat to New Yorkers. Their vehicles have not been inspected for safety, they do not carry the proper commercial insurance, and the drivers have not been subject to background checks, including criminal and DMV record checks, as well as ongoing drug testing. In addition to depriving customers of their right to a safe ride, every unlicensed, illegal trip deprives licensed drivers of income, the City and State of revenue, as well as avoiding contributions to make our yellow and green taxis accessible. The TLC regularly enforces against unsafe illegal operators, but, as you are aware, we lost our best tool last October, when a federal district judge ruled that in certain circumstances seizing vehicles used for illegal pick-ups, as authorized under 19-506 of the Administrative Code, was unconstitutional. While that litigation continues we are exploring other enforcement methods. For example, we are summoning for this conduct under provisions of the State Vehicle and Traffic Law where the penalty is suspension or revocation of the driver's DMV license and/or the vehicle owner's registration. Further, under local law, vehicles are subject to forfeiture where the owner has two or more violations in the past 36 months for unlicensed activity. As the federal court decision regarding TLC seizures did not eliminate TLC's ability to seize vehicles that are subject to forfeiture, we are developing a robust plan to utilize this enforcement tool.

Regarding the provision of enhanced penalties for illegal street hails in specified zones, the TLC cannot support the Intro's division of the City into different zones. The most important purpose of the prohibition against illegal street hails is to protect passengers from entering into unsafe cars with drivers that have not been vetted, and to prevent trips that cannot be accounted for if something goes wrong. We believe that passengers citywide deserve the fullest extent of

this protection, not just those in midtown Manhattan, at the airports, Yankee Stadium, Barclays, and Citifield. Notably, a few years ago we testified in favor of a bill sponsored by Council Member Vacca that elevated fines against straight plates to their current levels. So again, we support increased penalties against this egregious conduct and urge the Council to apply the same penalties citywide.

Security/Information (Intro 658)

Intro 658 would amend the Administrative Code to require the Commission to develop a policy on information security and use of personal information, and to make that policy applicable to livery base stations, black car bases and luxury limousine bases. The Intro further specifies that, at a minimum, the policy cover certain described areas such as permitted use and storage of credit card and personal information and trip records. It would also mandatd PCI compliance for credit card payment systems as well as requiring notification of security breaches.

Additionally, the Intro would require the Commission to adopt rules establishing civil penalties of not less than two hundred dollars, nor more than one thousand dollars, for violations of these policies. Because the effective date would be 90 days from enactment, the TLC would have less than three months to evaluate, draft, notice and promulgate any necessary rules.

I note that the Council is not writing on a blank slate. TLC licensees are already subject to a complex set of federal and state laws, as well as TLC rules, governing the use of personal and credit card information. For example, the TLC already requires that all bases that collect private information, as defined by state law, must file privacy and security policies with the TLC that meet industry best practices. Bases must already notify the TLC and impacted parties in the

case of a security breach under the State's General Business Law and under the TLC rules, and bases of course already must comply with all applicable laws. With regard to PCI standards for collection of credit card information, any entity that collects credit card information is already subject to these standards because every credit card company demands it.

The TLC takes these existing safeguards seriously. We are in the process of initiating testing of bases that dispatch rides by app, like Uber and Lyft, to ensure that, if the base collects any passenger information through the app such as a credit card number, name, phone number, address, or email address, it has filed privacy and security policies with the TLC using industry best practices, the key requirement of which is that the data is safeguarded and only used for authorized purposes. Additionally, a base must file any trade or brand names with the Commission that they use in their passenger-facing smartphone apps, so complaints can be linked back to the responsible company. Outside of the TLC there are other enforcement mechanisms in place against market participants to ensure robust security policies. In that regard, I note the State Attorney General's recent settlement with Uber over its alleged breach of State data security law. Against this backdrop of consumer protections, we are supportive of Council's intent to emphasize the importance of privacy and security protections in local law, but we are also somewhat wary of prescriptive codification of testing standards in this rapidly changing field, so we look forward to working with the Council on reinforcing existing protections while also allowing flexibility for future changes.

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Thank you for the opportunity to testify on these bills, and I am happy to answer any questions you may have.