Public Meeting convened at 9:35 a.m.

PRESENT:

MATTHEW W. DAUS, COMMISSIONER/CHAIR
ELIAS AROUT, COMMISSIONER
HARRY GIANNOLIS, COMMISSIONER
IRIS WEINSHALL, COMMISSIONER
LAUVIENSKA POLANCO, COMMISSIONER
EDWARD GONZALES, COMMISSIONER
JEFFREY KAY, COMMISSIONER
CHARLES FRASER, GENERAL COUNSEL

CHAIRMAN DAUS: Good morning everyone.
Sorry we are starting a little late.
We are actually are going to lose one of the Commissioners so I am going to skip out of order on the agenda.

I would like to go directly to Item 4, For Commission Action, Medallion Transfer Rules. I will turn it over to Chuck Fraser.

MR. FRASER: These proposed rules would govern the transfer of Taxicab Medallions. The proposed rules would comprehensively specify the requirements of each type of Medallion transfer, including the requirements for a buyer or the transferee of a Medallion to become licensed by the TLC to own a Medallion.

The proposed rules were published for comment on October 24, 2007 and a public hearing was held on January 10, 2008. At the public hearing it was announced that based on a written comment received, the staff was proposing a revision that would provide notice of a transfer to taxi technology vendor in a new paragraph of Section 1-80.1.

As a result of further consideration of comments received to this proposed revision, the staff recommends a further revision to the new paragraph. Staff recommends expanding the new paragraph in Section 1-80.1 to provide (1) notice of transfer must be given to the taxi technology vendor at least 30 days prior to the date of the transfer; (2) the seller or transferor must provide at the closing a statement of intent to either cancel the existing contract and return the equipment to the vendor or assign the existing contract to the Medallion buyer; and (3) the buyer must provide at the closing either a statement of intent to assume the seller's taxi technology contract or identification of the approved taxicab technology vendor with which the buyer will contract.

Finally, as a result of the passage of time, the staff is recommending changing the effective date of a provision in the proposed rules for a new requirement for tort plaintiffs to file claim letters. Staff recommends that the effective date be changed to February 1, 2009. Copies of these revisions have been distributed to the Commissioners and are available to the public at the back of the room.

CHAIRMAN DAUS: This is a process that has been going on for over a year. We had a public hearing back in January earlier this year. There have been extensive memos, a lot of discussion. If you recall, I had tabled this matter in January to sit down and listen to some additional concerns raised by the industry. We
did that. Obviously, we are not going to meet
eye-to-eye on every single item, but will I will
say is that it is very, very important, in my
view, that we actually pass these rules and get
them codified so that we have an operating
system in place so that there is clarity and
stability in the industry that they know what
the rules are with these transfers.

However, we are open to looking at
specific issues moving forward, not only as part
of the rules project, but also if certain things
and issues that were claimed by the industry end
up happening, such as not being able to appoint
an administrator within a certain number of
days, I am certainly open to fixing that if we
need to. Obviously, there is the trust issue,
which there were some valid arguments on both
sides which I think we should further explore.
And there is also the Ad Code issue. I think it
is important.

OATH was here last time, if you
remember, and the Chief Judge had testified that
they are ready, willing and able to handle these
cases. I believe that they are. That's the
only real major change from what we have been
doing for the last 10, 20 years, as far as I
know, that the hearings to evaluate the tort
claims will be going instead of to one our
judges, to OATH. However, as we stated to the
Committee for Taxi Safety and some other
industry groups that were interested, we are
open to exploring an even better solution, if
there is one, to protecting the rights of
injured plaintiffs. However, we are constrained
by the Administrative Code, so that will require
Council legislation. But we are open to looking
at whatever comes out of it.

That is basically how I feel. I am
otherwise okay with the rules. I don't know if
any other Commissioners have any questions,
comments or concerns?
(No response.)
meeting, there was some, I think, valid concerns
raised by Commissioner Giannoulis and seconded
by Commissioner Polanco that maybe we could be a
little more clear in exactly what we are
approving. And also which I agree with, we
should have the practice of whenever we vote on
matters, we should have not just a PowerPoint
presentation, we should have a resolution. I
think it is good practice.
And as a result, David is going to
update us very briefly with some pictures and
photos so we know exactly what is involved with
this Pilot, and also we have a resolution that
has been forwarded to the Commissioners.

MR. KLAHR: Good morning,
Commissioners. As was just stated, this is a
revision from the presentation we did at the
last meeting that was tabled to this meeting.
The proposal is for interior mounted
cameras for data collection, and the concept
that we are discussing are vehicle-mounted
cameras that can record images that can be used
by either owners, the Commission itself, or
other industry partners to improve safety and
encourage responsible driving.
So what can be recorded? And there
are a lot of different options out there in the
marketplace right now: Continuous images, video
images, triggered video clips and they triggered
by certain events and would not necessarily be
recording continuously. It can also record
emissions data and other types of data such as
speedy acceleration, deceleration, G Forces,

things like that.
The Pilot proposal we have on the
table is from DriveQuest Technologies for their
Mac-Box Dual System. This is a camera and an
integrated computer that would be installed in
the vehicle. It can store short video clips
generated by either triggered events which
would, for instance, an accident or a crash,
excess G forces, and also there will be a button
available for the driver so if there is an
incident occurring they want to record, they can
just hit the button and record that.

It is an exterior facing and an
interior facing camera. And it has one other
interesting feature which is that it can
transmit the date via Wifi, so, for instance,
if you are a garage owner you can have a video
monitor and have the data transmitted to you
that way. It doesn't just rely on the vehicle
coming back to the base and then downloading it.
DriveQuest is not the only
manufacturer of recorders out there, although
they are the one with the proposal on the table.
VerifEye, DriveCam Corporation, Bosh Diagnostics, Delta Solutions, there are a lot of firms out there that do this.

CHAIRMAN DAUS: By the way, David, I just received a fax, which I distributed to the Commissioners, from VerifEye. They have also requested a Pilot proposal as well. So there is interest out there and the word is apparently getting out. That is another company.

MR. KLAHR: Okay, so it looks like there is already an interest in this.

So why would we want to do this? What we would like to test is to see if it cam improve safety in the industries that we regulate. We think it might be a possible deterrent to poor driving for drivers to see the unit in the car. We think that it might provide more accurate accident information to have an actual recording of an incident on the road, rather than to rely on just people's memories, which can sometimes be inaccurate. And it is possible that it might provide a better assessment of risk, for example, for insurance companies to see what people are actually doing out there on the road.

So, again, the proposal that is on the table if for a Pilot lasting up to 13 months for the Mac-Box III. And, of course, since we are approving a concept, other firms that are interested can get in on this. It is for vehicle-mounted cameras that record vehicle activity or diver behavior. It would allow up to 20 vehicles per manufacturer and it would require data sharing with TLC, so we can actually see what is going on and see what interesting information is developed from this.

So I thank you very much for your time, and, yes, there was a resolution appended to the statement of outline which should be in your books.

CHAIRMAN DAUS: Any questions?
(No response.)
CHAIRMAN DAUS: Do I have a motion to approve the resolution?
COMM. WEINSHALL: So moved.
CHAIRMAN DAUS: Is there a second?
COMM. AROUT: Second.
CHAIRMAN DAUS: All in favor?
(Chorus of "Ayes.")
CHAIRMAN DAUS: Thanks, it's unanimous. Now we are going to jump to Item 3, the Base Licensing Review.
Thank you very much, David, good job.
MS. STEELE-RADWAY: Good morning.
Licensing would like to present before the Commission 13 bases with a recommendation for approval.

CHAIRMAN DAUS: Do I have a motion to approve?

COMM. GONZALES: Motion to approve.

CHAIRMAN DAUS: A second?

COMM. WEINSHALL: Second.

CHAIRMAN DAUS: All in favor?

(Chorus of "Ayes.")

CHAIRMAN DAUS: Thank you. No denials today, right?

MS. STEELE-RADWAY: No.

CHAIRMAN DAUS: Great. Now we are jumping to Item 2, Adoption of the Minutes of the November 20, 2008 Commission Meeting. Any questions, concerns, comments or changes to the minutes?

COMM. AROUT: Motion to accept the minutes as read.

CHAIRMAN DAUS: There is a motion to accept on the floor. Is there a second?

COMM. KAY: Second.

CHAIRMAN DAUS: All in favor?

(Chorus of "Ayes.")

CHAIRMAN DAUS: Okay, it's unanimous. Now we are back to where we are supposed to start, The Chair's Report.

First, I want to just let the industry know if you don't know already, there is a holiday enforcement initiatives that is done every year in conjunction with the NYPD of which the TLC participates. It's a primarily geared towards safety traffic infractions, including making sure that cabs as well as other motorists do not block the box, abuse the bus lanes or talk on cell phones. So in addition to enforcing those laws, our uniformed inspectors are also in zero tolerance gear as well for enforcing the rules against the illegal street hails. So we are out there on the streets and this will continue throughout the holidays.

Item 2, Vehicle Retirement Extensions. There will be more details in an industry notice that will follow, but I just want to announce that with respect to the 25 miles per gallon rules that were involved with the lawsuit and that we had passed, there is an ancillary issue of inspections and extensions of vehicle retirement. And I just want to announce that any owners of Medallion cabs that are still in service but were scheduled to be replaced from October 1, 2008 through January 19 of 2009,
may remain in service until January 20th.

Now each one of these vehicles will need to undergo an inspection, a visual, so we would need for you to come in at your scheduled inspection time and we will be noticing you of when you can and should do that. There will be an industry notice that will probably go out today at the latest and we will make sure we get in touch with each of you on the details of when particular cabs need to come in for their inspections.

We also announced since the last meeting that in light of the economy, economic downturn as well as the financing well drying up with respect to the black car 25 MPG program, that it would be a prudent thing for us to defer the implementation of that program until January 1, 2010. That includes not just the requirement that all black cars need to be 25 MPG or better, but also the vehicle retirement provisions of the rules. And there will be more details to follow on that and we will monitor that closely over the coming year.

Also just an update on the rules review project. In the coming year, in the new year we will be spending a lot of time on the rules project in a public setting. Possibly voting and discussing the rules. Right now we have started the public hearing process, which the first hearing was held on I think December 5th, Chaired by Chuck Fraser. We are not expecting a lot of comment because this is not the part of the Rules Revision Project that involves many, many substantive changes. It is really just reorganizing, renumbering, putting things in the right places.

So we only had, I think, two comments and there was an agency record of a public hearing that listed less than five minutes. We have provided the entire transcript of the hearing to the Commissioners. We are not voting on it, but we are going to have a second public hearing on January 23rd, regarding the Taxi Business Rules Chapter 14. The hearing that was held December 5th concerned industry representatives and Medallion sales.

So in the coming year we will probably be voting on some of these changes on a month-to-month basis and you will be learning more about it. But, again, if you want to provide your comments, you can do so at any time. There is a link on our website where you can do that at your leisure. If you would like to come to one of these hearings, you are welcome to do that as well. And all of these
comments will be summarized for the Commissioners and we will vote on them publicly.

As promised our monthly accessible dispatch report, there are 236 accessible vehicles on the road as of now. There have been 800 dispatches, almost 800 dispatches. About 74 cancellations, 308 drivers have been trained, and 143 vehicles and drivers have been equipped with their Blackberries. An average of 20 to 30 vehicles are logged on at any time receiving calls from persons who use wheelchairs.

Our next tentative, very tentative date for a Commission meeting, is January 8, 2009. And last but not least, I certainly would like to welcome some new Administrative Law Judges who were not able to make our swearing in last month. So the rest of the class is here. I am very, very pleased, as we all should be, with the quality of their backgrounds. We have many Judges with private sector experience, but also with public sector experience including the Environmental Control Board, the Probation Department, DEP, Finance, Buildings, FDNY, Sanitation, Parks, Health, DOT, Department of Consumer Affairs, the DA's office, NYPD, New York State Attorney General's office and the Board of Ed. So very, very impressive resumes. And welcome and best of luck to you.

I would now like to introduce our Chief Administrative Law Judge Carmena Schweke, who will administer the oath of office and swear you in.

JUDGE SCHWECKE: Good morning, Commissioners. I present to you eight ALJs to be sworn in.

When I call your name, please stand up: James Drury, Roxanne Wild, Tom Flynn -- I'm sorry, that's Joseph Flynn, Igor Oberman, George Hindy, Naomi Sheiner, Greg Lehner and James Plotkin.

Would you each raise your right hand and repeat after me.

(Whereupon, the Administrative Law Judges were sworn in.)

JUDGE SCHWEKE: Congratulations.

(Appplause.)

CHAIRMAN DAUS: Congratulations, and congratulations to the staff of Judge Schweke, Deputy Chief ALJ Sherry Cohen as well as, of course, Pita Minelli. We will have a new Deputy Commissioner in charge of that department that will be starting in January. His name is Ray Scanlon and he comes to us from the Environmental Control Board. We will be meeting him in person.
And basically I know you have been through a lot of training and now is the time to hit the bench and start making decisions. I am very sorry that all the rules that you have learned, thousands and thousands, the numbers will be changed and reorganized, but it is probably for the better. It will probably make your lives and your jobs easier and better in the coming year. So congratulations, Godspeed.

That concludes my report. Any questions?

COMM. WEINSHALL: Mr. Chairman, can I ask a question?

CHAIRMAN DAUS: Sure.

COMM. WEINSHALL: I read in the newspaper yesterday regarding the Governor's budget about a 4 percent tax on taxi rides and I was wondering if either the Administration or your office have gotten any guidelines from the Governor's office?

CHAIRMAN DAUS: We have not other than what was in the budget, so we haven't formulated a response to it yet, but it is very, very fresh.

COMM. WEINSHALL: Thank you.

CHAIRMAN DAUS: We will obviously be guided by the Mayor's budget office with respect to the implications on the city and reports on our regulated industries.

COMM. WEINSHALL: And we would have to regulate rules, I guess. Jeff, do you know?

COMM. KAY: I don't know.

CHAIRMAN DAUS: I apologize for jumping out of order but that was very quick. We are now going to Item 5B, the Lease Cap Rule Revisions.

As you know, Mayor Bloomberg had announced some suggested changes for the Commission to consider with respect to the Lease Cap involving clean air vehicles. As promised, although this is not a public hearing, we won't be voting today, as we traditionally do at our public meetings, we are going to have a presentation to remind the Commissioners of what our rules say, some of the rationale and some of our research behind why they were passed, and also to go over in detail what the Mayor and the Mayor's office has proposed, along with the TLC staff to the Commission.

So I would like to turn it over to David Klahr who is going to walk us through this presentation.

MR. KLAHR: Good morning again.

Just to give a brief run over of what I am going to cover here, I will talk a little
about where we stand now on cleaner vehicles and leases, we will talk about possible Lease Cap changes, the vehicle purchase cost, as well as incentives that we feel are misaligned. I will talk a little about the City Council's efforts in this regard and their incentive and disincentive plans. And, finally, kind of generically about leasing language and some suggestions for clearer terms for that and some general principles that staff thinks will be very helpful when thinking about leases.

So where are we now? As you are already aware, the TLC did not prevail in the lawsuit and Judge Crotty ruled that we are preempted from mandating minimum mileage standards for taxicabs. So we will propose rules to repeal the earlier mandate, but the City and the Commission are still committed to a cleaner city and a more efficient fleet.

We had a lease hearing earlier this year that was attended by many people in the industry, and the Mayor has asked us to develop incentives and disincentives to induce people to invest in these cleaner vehicles. The City Council is also thinking along the same lines and they also discussed incentives and disincentives. You will hear a lot about incentives and disincentives in this presentation.

We are thinking about all different options to improve the fleet to include these cleaner vehicles and it looks like this might be the way to go. Just so you know, there are 1,683 hybrids out of the 13,023 Medallions. That is a pretty large jump in the last couple of years.

Just to review for a minute what the current Lease Caps are, your daily rate is going to range from about $105 to $129, and that is the maximum per shift. And the weekly average is going to be $113 per shift. So if you are running the car for every shift at the maximum amount of money that you can get for it, you are grossing a little less than $83,000 per year. And we have a chart with the current Lease Caps.

There is also weekly Lease Cap and for the weekly cap for a Medallion with a vehicle, it is $666 for seven shifts a week so sometimes people lease it out for the morning shift and then do a different lease for the afternoon shift. And that brings in about 69,000 gross per year. And then there is Medallion only weekly Lease Caps, and that is $800 for just the Medallion. The car is a separate deal, so that's a little less than
$42,000 per year.

So if you are asking people to purchase cleaner cars, they do cost a little bit more, and we know, thanks to the recent court case, that people pay about $5,000 more for a hybrid car than they would for a Crown Victoria, and it costs about a $1,000 more to hack it up than it does a Crown Victoria. So the number we are working with here is it costs about $6,000 more than to purchase one of these cars than your other choice.

So that works out to be $3.00 per shift over the course of three years. And how we came to this number is you take the $6,000, you divide it by the three years, you get $2,000 a year, and there are 728 shifts for owners a year. So there are 14 shifts a week, 52 weeks a year, and our rules do require that double-shifted cars are out for every shift.

So if we are going to make this change, the Lease Cap should be altered to reflect the higher cost and we should do it fairly quickly because the number of hybrids and the number of cleaner cars is increasing very rapidly. And this would also, in theory, affect the weekly lease. So if you are adding the money along the same rate, the average would increase to 116 per shift or $42 per vehicle, so that brings the gross up 84,700 per year. And that is a gain of about $2,100. And the same thing for a weekly Medallion with vehicle.

So what are the misaligned incentives that I mentioned earlier. And this has to do with the way that leases are structured and how the industry is working right now. We have three types of drivers out there. We have the owner drivers, and they pay for the gas but they also pick what vehicle they drive. We have DOVs, and they pay for their gas and they also in general pick what vehicle they drive. If you are a fleet driver, though, you pay for the gas in almost every case, but the Medallion owner is the one who chooses the vehicle, so there is a disconnect there between the person who is purchasing the fuel and the person who is purchasing the vehicle.

And what this means is that they are price insensitive when it comes to gas, and this chart illustrates that. Gas prices have changed a lot in the last year, year and a half. I am sure I don't have to tell you that. So if gas prices are relatively low, like they are now,
New York area is about 2.18 a gallon. So if you are Crown Victoria driver, you are paying about $20 to fill up your tank for your shift. And if you are a hybrid driver, you are paying a little less than $9. So there is a differential there.

If you go back to earlier this year when gas prices were very, very high, more than $4 per gallon, the price difference is even more dramatic. You see that a Crown Victoria driver is paying almost $40 to fill their tank and the hybrid driver is paying less than $17. But at the same time, if you are not paying for gas, none of this matters. You are still paying zero. So sometimes prices go up, sometimes prices go down. But at the same time, if you are not connected to the gas price in any meaningful way, you are indifferent to this.

And we have seen evidence of this in vehicle purchases. And so, what we have noticed is, going through the data, if you have to pay for the gas it strongly influences what car you choose if you are able to choose what car you want to purchase. And you can see that what we did was we compared the first half of 2007 to the first half of 2008. And the reason we did that is because something really important happened with gas prices in early 2008. They went up to record, record levels. And also this before the mandate to purchase the hybrid cars came into effect. So we took two situations where people had free choice as to what car they bought.

So we examined if you have an unrestricted Medallion. We put aside the Medallions where you are required to buy an accessible vehicle, where you can't buy a hybrid, and we put aside the Medallions where you have to buy a hybrid vehicle because obviously you don't have a choice there. And we noticed that if you are an owner driver or a DOV, when gas prices go up, your interest in buying a hybrid goes up a lot as well. But if you are a fleet owner, your interest doesn't go up as much. It went up, we also noticed that a small number of fleets accounted for almost all the growth in the hybrid purchases. And there are fleets out there that specialize in accessible vehicles, in hybrid vehicles, and so on.

So what we are proposing is that we make that connection between the person who buys the gas and the person who buys the car for everyone. And if you go by the average price over the last two years for gas in the New York area, it is $3.05. So if you work from that
number and you assume that there is about 135
miles driven per shift, and we got this from
actual data from the T-PEP system. We figured
out what is the average number of miles that a
driver is driving.

And we know that the Ford Escape
Hybrid gets about 34 miles per gallon and the
Crown Victoria gets about 15 miles per gallon.
So working from these numbers, you find out
there is a difference in the amount of gas you
have to buy per shift of about $15. And that's
every shift that you are driving. And so, if we
are thinking about making an adjustment for
owners who have to spend more money and it works
out to about $3 per shift for them to buy the
cars, but at the same time, it is more expensive
for the driver to go to the alternative, to the
Crown Victoria, if you take the $15 shift
difference and take out the $3 we are mentioning
for the increased cost, you work out a $12
adjustment per shift. And that's what we are
asking you to think about. That if you reduce
the Cap for the Crown Victoria or any other
non-clean vehicle by $12 a shift, what you do is
you are equalizing the purchasing economics for
the owner. They have to buy a more expensive
car, but they are getting an extra $3.00 a shift
for that. You are covering the driver for the
extra burdens of paying for the gas and it kind
of equalizes the fairness a little bit.

So this is what the realigned Lease
Cap would look like with the numbers. And I
won't necessarily go into every number, we have
a lot of material to cover. You can see that it
is the current Lease Cap minus $12 for each
shift. So what does this mean if we actually do
this?

Well, if you are fleet owner and you
buy a hybrid, you are getting an extra $2,184
per year, per car. And that is over the
lifetime of the car. If you are leasing a Crown
Victoria on a daily basis, you are having your
cost reduced by $12 per shift. And we assume
people will go and spend that on gas or they can
do whatever they want with it. But if you are a
hybrid driver, you are going to pay $3 more per
shift. So how does this align with the
incentives and the disincentives that the City
Council is talking about.

What they have is Intro 876. These
are the disincentives that they are proposing.
They are proposing that dirty cars, the
non-hybrid, non clean diesel cars be off the
road much more quickly than they are now. And
that is a very strong disincentive to how things
are done right now, because the Crown Victoria
would no longer be the cheapest option out
there.

It wouldn't be the default option
anymore because if you look at the price of the
vehicle and you amortize over the three years of
the life of the vehicle, it is about $10,000 a
year now. And then if you reduce the term that
you retire it by about half, it goes to $20,000
per year. And that is a very strong
disincentive. And it is anticipated that this
would change the purchase behavior of someone
who has a free choice of which car they want to
buy.

There is also some incentives
included for vehicle retirement which is that it
would allow the cleaner cars to be on the road a
third longer and the acknowledgment that we
really want to induce people to buy these
vehicles so we will give them something in
return. We've know from our experience from the
Safety and Emissions Division that we have seen
enough hybrid vehicles now to know we think they
are performing as well, even better in some
cases, than the standard fleet. In many cases
they passed their first inspections at a higher
rate.

And so there is a real thing to think
about whether we want to think about having that
be the new standard, that you have the hybrid
vehicle, it has its term, and not offer specific
incentives for specific things. So this
actually ties into the lease hearings that we
held earlier this year. And I will illustrate a
couple of examples and talk about leasing
language and how leasing in general works in the
industry.

One thing that we noticed when we
were preparing for the lease hearing and were

doing some research into leasing was that leases
were in many cases very ambiguous, difficult to
understand, and had provisions in them that
looked unusual. If you indulge me a minute, I
would like to read you some samples from some
leases that we pulled to give you a real
illustration of what we are talking about. I am
not going to mention any names. I will just
read a couple of clauses so I won't bore you to
tears reading the entire leases.

In this particular lease, this is
clause number 10, it says, and I quote, "If this
agreement is broken before the car is paid," and
then in all caps, "all money paid by the lessee
will be forfeited." This is a DOV agreement.
This is an agreement allegedly for the purchase
of a car. So if you have been making your payments for two years and you miss one payment, you are out all the money.

In this particular lease, we have an example, clause number 10, where the lessee acknowledges, and I am quoting, "That lessor may at any time replace the Medallion used in this agreement." Sometimes, as we know, agents lose the right to a particular Medallion. We don't think there is anything strange or unfair about that. It is a separate business agreement. However, this lease goes on to say that, "In the event of such occurrence, the lessee will be responsible to perform all tasks, duties and pay all fees required by the TLC to hack up another Medallion." So in other words, if you lose the Medallion as a driver, through no fault of your own, you now have additional expenses to hack up the car when you are given the next Medallion.

Just a couple of other leases. This one had an interesting clause in it. Under "Driver's Responsibilities," the very first responsibility listed for the driver is, and I am quoting, "The driver shall receive the vehicle with a full tank of gas and the driver must return the vehicle with a full tank of gas." Sounds reasonable so far. Then it goes on to say, "The gas must be filled up at," and then it names two specific gas stations at two specific addresses. I am not sure how you would enforce such a clause or how you can tell which gas they are putting in the car, but, remember, that the driver is paying for the gas.

Just a couple of other quick examples of ambiguous or unusual language. One lease that I have here offers a price sheet, and it lists that the Lease Cap for a Monday day shift is $105. And that's correct, that is the Lease Cap. Then it goes on and says, "Plus $3 New York sales tax must be added to every shift price." So they are basically advertising we will charge you more than the Lease Cap.

Then within the contract it states that drivers are independent contractors. Sounds great. Then later on in the contract it notifies that if the driver wants to take a day off, one week written notice must be given. As well as the fact that if the driver is not going to work a holiday they must also give written notice. It doesn't seem consistent to us with independent contractor.

One more contract. This one is a two-and-a-half years DOV contract. The term of the contract is for two-and-a-half years and it includes purchase of a vehicle. Then states,
clause number 3 under the terms of the contract, I quote, "Driver must complete a detailed time sheet for each trip he or she makes with said vehicle. Lunch breaks and personal use must also be entered in the time sheet. Driver must submit the weekly time sheet every week together with his or her weekly payment to management."

Again, this is for a DOV contract where allegedly they own the car but they are required to report all use of the car to the manager's liking.

And just one more that I would like to highlight one individual clause. This is a contract where there is no expiration date and no length of the contract. It also doesn't state whether it is for a daily lease, weekly lease or a DOV contract. Clause number 8, and I am quoting, and this is italicized to highlight it for anyone looking at it, "A fare increase will result in an increase in lease payment"

I am assuming that when the Commission passes fare increases sometimes they might want to give to certain parties. And also, it doesn't mention anything about the Lease Caps.

So, as you can see, it is very unclear from a lot contracts that are in effect in the field right now what the exact terms are, what the definition of the Lease Cap is, and what it covers and other items like that. So we feel that leases should have very clearly defined terms and definitions for all of this. And that leases should follow a standard, clear format, so that everyone who is involved in the process understands what is going on.

We also feel that Lease Caps should be the maximum for all fees, taxes, expenses and so forth, and that drivers should always get a clear, detailed receipt every time they make a payment, including for declining balances, and that TLC should have the ability enforce all these rules on the basis of complaints and inspections.

That is all I have for you today and I am happy to answer any questions that you might have about what I just covered.

CHAIRMAN DAUS: Good job, David.

Any questions?

COMM. POLANCO: I have a question. What does the rules say about increasing or decreasing Lease Cap amounts? I think there is a specific rule that deals with as to when is it that they can increase or decrease the amount.

MR. KLAHR: Chuck, you will have to back me up if I am reading it wrong here. My
understanding is that the rules state that the
Commission holds periodic hearings to look at
the Lease Caps. I think it's every two years;
is that correct?
   MR. FRASER: Lease Cap hearings must
be held every two years.
   MR. KLAHR: And a Lease Cap hearing
can be called if there is a substantial change
in the expenses in the industry.
   MR. FRASER: If I may supplement
that. The rules currently require that the
Commission change Lease Caps based on one factor
and one factor only. One factor is essential
and only one factor, and that is Medallion
operation costs.
   What we are proposing is to say that
other factors besides Medallion operation costs
may be taken account of, including driver
income, our policy preferences, for instance,
here as to what car a buyer might buy, and so
on. As of right now, the essential and only
essential criterion is owner earnings.
   COMM. KAY: Just a couple of
thoughts on what we have to deal with over the
next months or so. One is when the Mayor
announced the suggestion, and one thing we have
all been talking about and I think we should
think about is how to phase in some of these
Lease Caps to ensure that there are some owners,
there are some purchases of vehicles that, in
fact, follow the rules as they are on the books.
And we need to really understand and work with
the industry of how we can possibly phase this
in over a period of time.
   The second thought is one where I
have to be honest, one I haven't wrapped my head
around, that you saw some numbers that David
pointed out about how a lot of DOVs, the numbers
are increasing at increasing rates. I think
that's a good thing. I think that explains how
the incentives are aligned. But there are
circumstances, and like I said, I don't have
mind wrapped around it yet, where in some cases
even though they are not fleets, that, in fact,
the incentives are not necessarily aligned due
to the business practices of the agents.
   And I don't have an answer to that.
I don't know if TLC should or can play a role in
it, but I would be very interested in hearing
ideas of how to do that.
   I am also assuming that we can have
that conversation over the next couple of weeks
or so because I would like to be able to come to
some sort of consensus working with the TLC,
Commissioner Daus and everybody else so we can
move forward on this.

Lastly, on the issue of the Lease Caps and what's in the Lease Cap, I guess I want to point out that we do need to be careful as a Commission in understanding what is the TLC's role in regulating the industry and getting involved. The difference between regulating an industry, protecting the various constituencies of the industry, while at the same time getting involved in a business transaction between two private parties where it is not our role, I think that's a delicate balance. I think that is one that as we continue to talk about streamlining or defining those Lease Caps and how you enforce it, that we need to be mindful of. That's just sort of a last parting thought.

CHAIRMAN DAUS: I concur with all those comments. Any other questions?

COMM. GIANNIOULIS: The Council legislation would allow hybrids to be on the road 33 percent longer. Did the TLC testify to that issue?

CHAIRMAN DAUS: Yes, I had testified, Harry, and I had said that we are open to exploring these issues but we rather have a discussion with our Commissioners since it is something that was started by rule making. I had asked the Council basically to defer consideration of their Bill until we had a chance to discuss it. That's why we had this staff presentation. And I was curious to see what your thoughts were on that.

Council Member Yatsky was the sponsor of that Bill. I attended and testified at a hearing at the Transportation Committee, chaired by John Lu. And there is no further indication that it is moving as of yet. Council Member Yatsky indicated that he would like to come here and discuss this with us and testify at our public hearing in the new year.

Andy, do you want to add something?

MR. SALKIN: I want to also point out that part of what the Commissioner was asking about was the rule that allows hybrids to get extra years. That rule passed several years ago by City Council and the Commission followed. So that rule that allows for extensions is already on the books.

MR. FRASER: To clarify, what the Commissioner was referring to in the presentation was that the Bill Intro 876, or whatever, would repeal the provision in the existing law that enables us to qualify that extension on passing two out of three of your first inspections in the last year of your
regular lifetime.

CHAIRMAN DAUS: Right.

MR. FRASER: So there is a conditional extension in the existing law and existing rules. The proposed Bill, the current Bill proposes to eliminate that condition or make extension automatic. Obviously not if you fail your ultimate inspection, but not requiring that you have to pass your first inspection.

CHAIRMAN DAUS: Right. The Council passed a law a while back, Harry, that said you will get extra years on your vehicle if you put a clean vehicle, and the cleaner the vehicle the more time you get. And it is a little convoluted how it works.

They passed that law. Then we passed rules that mirrored those laws. Part of those rules, I think, exposed an inequity which we are going to be looking at and proposing a change to based upon Council Member Yatsky's concerns. I don't think he intended, though the Council law gave us the option to take somebody's car during that extension period off the road if they fail an inspection, take it out of service. The obvious unfairness of that in some situations, it may be a perfectly viable hybrid that has been performing well in its extra years of life, and it fails an inspection because of a broken taillight.

Now, is it really fair to take a car off the road and put it out of service and require them to buy a new vehicle? No. So we are going to be proposing changes to that particular nuance so that if you fail for such a minor defect, we will obviously take it off the road until it is fixed, but you will be able to bring it back onto the road. I think that's a fair thing.

With respect to the general tenor of the Council Member's Bill, he had also proposed shortening the vehicle retirement for non-hybrid vehicles I think to 18 months. It is currently three to five years. He wanted to shorten that as a disincentive for people buying Crown Vics to get them off the road. So that portion of the Bill, I had asked to bring before you to get your opinion on it. And we will see if the Council will move on it or whether we deal with the issue here.

Does anybody have any comments on that concept? Do you feel it's an appropriate exercise of our authority to shorten the Crown Victoria's vehicle retirement time? That's the question.

COMM. GIANNOULIS: If I can ask a
question before we talk about that, in the court
decision was there any recommendations,
admonitions, anything to the TLC Commission?
Did the judge say, "By the way, you guys
shouldn't have done this. You should have done
this," because I didn't read it.
MR. FRASER: He obviously said 25
mile per gallon mandate was notice valid. He
didn't go beyond that. Judges typically don't
go beyond the exact issue in front of them. And
so, he didn't say what we should do or anything
further than that.
CHAIRMAN DAUS: It was also not a
final decision. It was a decision on a
preliminary injunction motion. So the lawsuit
is still technically pending and we are working
with the parties and discussing with the
parties --
COMM. GIANNOLIS: The parties
haven't withdrawn the lawsuit?
CHAIRMAN DAUS: No. In fact, the
extensions that I announced previously at the
beginning of the meeting with the industry
notice, that is part of an ongoing discussion we
are having, their counsel with our counsel. And
there is an actual court stipulation which if I
haven't sent it to you, I am happy to give a
copy.
COMM. GIANNOLIS: No.
CHAIRMAN DAUS: You don't want
anymore paper?
COMM. GIANNOLIS: No.
CHAIRMAN DAUS: Good environmental
choice.
COMM. GONZALES: I just want to make
a comment. I do share Commissioner Kay's view
about trying to strike that delicate balance
between business and regulation. Although based
on what was presented to us, in particular, when
you read the various lease agreements, I think
there are certain minimum standards and
disclosures that I think we should be able to,
as a Commission, propose in these agreements.
Something simple like a term of contract, I
think, is a something that should be in every
lease agreement.
Thank you.
CHAIRMAN DAUS: Any other questions?
COMM. POLANCO: I have one other
question. When you mention that in terms as to
why -- the factor, Chuck, you mentioned the only
factor that is considered in order to increase
or decrease the Medallion is Medallion operation
cost.
MR. FRASER: No, it's the only
factor that is essential. There are other
factors. Once that threshold is met, other
factors can come into play.

COMM. POLANCO: So this proposed
rule basically wants to bring in other factors
that are considered also as a threshold.

What are those factors specifically?

MR. FRASER: I don't know that we
have anything specific. I think the concept is
to say that the Commission may raise and lower
the Lease Caps when they think it is appropriate
to raise and lower the Lease Caps. It does not
have to be triggered solely by owner cost.

I think the reason for that is
obviously in 2002, or no, 1996 when they passed
that provision, it was not anticipated that gas
costs would get to $4.11 a gallon.

COMM. POLANCO: But now the gas has
gone down.

MR. FRASER: Well, that is true.
But, nonetheless, unforeseen things happen. And
the Commission rules should permit the
Commission to act when something that they did
not contemplate happens.

I should also point out that we need
not elevate this rule beyond what it is. The
Commission passed the rule. The Commission can
alter its own rules, we do this all the time.
So we need not to imagine that this is some kind
of statutory or constitutional constraint. This
is just a rule that the Commission passed in
1996 and we are proposing to amend it.

CHAIRMAN DAUS: Actually this is a
question that came up during the City Council
hearing, and I think the answer is, I don't
envision that there will be language that says
these are more factors that we are adding to the
Lease Cap Rule.

The best way to answer the question,
in my view, is to say we are not basing it on
what the prior rule says. We have two new
policy reasons for changing the rule and the
distribution. Number one is to promote hybrids
and cleaner vehicles. And, number two, to hold
the driver harmless when they don't have the
choice necessarily as to what vehicle they are
going to be driving and they are earning less
money.

Those are two policy reasons. You
always need a policy underlying a rule changes.
Those are two new policies that were not part of
the Commission's reasoning or anticipated when
it passed the rules in '95 or '96, whatever it
was. But certainly we have the authority to do
it, and I think it is the essence of the
COMM. GIANNOUNIS: I have a few short questions. I assume somebody should know this or could be able to guess.

In terms of vehicles on the road, driving time, what would be the percentage that you would divide owner driver, DOV and fleet? Not Medallion ownership because obviously fleets are running more time. I mean, if we are talking about we are attempting to do this to create a cleaner environment, I am just trying to get a sense, range, percentagewise, of time that taxis are on the road. How would you divvy it up between owner driver vehicles, DOV vehicles, and fleet vehicles? Is it a third, a third, a third?.

MR. SALKIN: The first question is: Out of the actual Medallions on the road, how are they run? Basically it is close to about a third, a third, a third. The number of pure fleets is a little bit less than a third and the others are move. I believe DOVs are the biggest at this time. I think they are about, give or take, 5,000, and there is about 4,500, 5,000 individual operators, and then there is about 4,000ish, 3,500 pure fleets. Now it varies and cars change all the time.

In terms of the vehicles that are on the road and how many miles they are actually doing, typically we estimate individual operators go about 60,000 miles a year, and then we say DOV and fleets go between 75 and 100,000 miles, depending on the true form of operation and type of year. Obviously, that is information we are able to track more closely.

One thing we are looking at is when someone is driving full time, in terms of what hours are they actually on the road. And the driver is driving more than eight hours. We find they drive on average about nine and half hours. That seems to be the average time of cars over a 12-hour period.

COMM. GIANNOUNIS: That's good. Higher powers than me are going to decide where everybody will go with this, but it just seems kind of obvious to me if we are talking about incentives and disincentives, if these statistics are true -- I mean, I know they are true, but if they are consistent, incentives will create massive purchases for two-thirds of the vehicles -- two-thirds of driving time have already expressed enormous interest in purchasing hybrid vehicles by the 404 percent and the 844 percent.
So it seems if you have incentives in the program, that will only increase. So any disincentive program seems punitive. It will seem punitive to anybody who is looking at it. That's just my personal opinion. But it seems that if the numbers are right, if you are adding incentive to a group of people who already are moving in this direction in massive numbers, and they represent two-thirds of vehicles on the road driving time, I would take that as a win and I would be happy I did something for the environment.

CHAIRMAN DAUS: I assume that you would feel the same way about a disincentive for vehicle retirement, reducing it?

COMM. GIANNOULIS: I haven't thought it all out, but it just seems, again -- and I have had this conversation with Councilman Yatsky like 25 times. Every time I see him, we talk about this, but I just think appearance matters.

MR. SALKIN: Can I comment on that? I think one thing to be clear about, the alliance proposed through the Mayor's proposal is predominantly focused on the relationship between the owner and the driver where the driver is not the individual purchasing the vehicle, which is the group we have seen least likely to change their behavior as other operating factors have changed.

What we are proposing to do is bring into consideration the cost of operation for the driver, the cost of operation for the vehicle actually on the road, the emissions of the vehicle on the road, and other factors that seems to be immune to that group. And we just want them to consider that.

And the idea is the way the leases are currently structured, they don't have to. And what we just want to do is just allow that to be part of the equation as they think through it, similar to the rest of the industry. Because you would expect if one group is going up 400 percent, the other group is going up more than 400 percent, that the other group is likely to behave that way. And they are not.

COMM. GIANNOULIS: The group that is not being?

MR. SALKIN: Pure fleets, where the individuals who own the cars and don't pay for gas are giving cars to people who pay for gas that have to pay a lot more for gas.

COMM. GIANNOULIS: Again, maybe this is simplistic, but Mayor Bloomberg wants to do something to X amount of the pollution that is
being caused that is being generated by taxis.
We have, according to your statistics,
two-thirds of the people who are driving cars on
the street have shown immense interest in hybrid
purchases. I am just not sure why disincentives
have to be put into place. Specifically for the
fleets, why disincentives would have to be put
into place.

And I just looked at this, this is
the first time I have seen this, I didn't read
it earlier, quite honestly, but I am not sure
this kind of notion of a need to maintain
equality amongst -- in terms of gas prices
amongst drivers. I mean, there are different
business models. So it's an argument, I
understand that, but I don't know how great an
argument it is at the end of the day. But
that's the information.

CHAIRMAN DAUS: I don't know what
all of the motives are for the lawsuit and the
opposition to it. But I would just assume that
the fleets, as well as every other industry
member, even though they have their reasons,
everybody wants to have a better environment,
everybody wants to help out.

So I think Commissioner Kay's point
about what we will discuss for phase-in, for
fairness and so forth, I think is critical. And
I am sure that the parties to the lawsuit will
be discussion those issues.

But here, as a Commission,
Commissioner Giannoulis, you said at some point
it will be an authority higher than you that
will be deciding these things. Well, not
really. It will be the Commission. We will be
discussing this. We will be deciding this.
The Mayor put a proposal to us. This
is an open debate and a process which is just
starting. Sometime in the new year we will be
having a public hearing and we will be hearing
from the stakeholders. There is obviously a
huge world outside of the fleets that brought
this lawsuit. We want to hear from them as well,
the drivers, the DOVs, the agents, the rest of
the industry, and the passengers.

I think this is just the beginning.
These are the ideas, the thoughts, the concepts.
We wanted to get feedback from you before we
actually draft the rules and put them out for
public comment. So that's why we are here
today.

Does anybody else have any
suggestions other than Commissioner Giannoulis
and Commissioner Kay?
(No response.)
CHAIRMAN DAUS: Okay, so we heard from some folks and we will take a look at, you know, Commissioners Polanco and Gonzales had some suggestions. I guess, in particular, we have to strike that correct balance. I don't know if we want to necessarily turn into a regulated industry like the Insurance Department where you have an insurance policy that has thousands and thousands of clauses that are mandated. I don't know if we want to go down that road, but certainly, there should be some clarity as to what the definition of a lease is at least, and maybe some consumer protection issues.

It just seems a little troubling, you are an independent contractor. If you have an independent contractor coming to work on your home, they usually could to you with the contractor. The home owner doesn’t go to the independent contractor saying, "Here is my contract." So it's an interesting concept.

Any other questions?

(No response.)

CHAIRMAN DAUS: Great. I want to wish everybody a happy holiday, Happy Hanukah, Merry Christmas, Happy Kwanzaa, whatever else people are celebrating. Just getting some downtime I hope. And a Happy New Year.

We will now be convening in executive session, which I will not be present at, to deal with the case of TLC versus Kwansa Jonathan/Hack License No. 433940. That is in executive session.

Do we a have motion to go into executive session to consider that appeal.

COMM. AROUT: I make a motion.

CHAIRMAN DAUS: Do we have a second?

COMM. POLANCO: Second.

CHAIRMAN DAUS: All in favor?

(Chorus of "Ayes.")

CHAIRMAN DAUS: Okay, thank you.

(Time Noted: 10:35 a.m.)
CERTIFICATION

I, MARGARET EUSTACE, a Shorthand Reporter and a Notary Public, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.

____________________
MARGARET EUSTACE,
Shorthand Reporter