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PUBLIC MEETING
NEW YORK CITY TAXI & LIMOUSINE COMMISSION
40 RECTOR STREET, 5TH FLOOR
NEW YORK, NEW YORK
FRIDAY, FEBRUARY 20, 2009
2:30 P.M.

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P R E S E N T :
CHARLES FRASER
DAVID KLAHR
CHRISTOPHER WILSON
Also Present :
David Pollack

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P R O C E E D I N G S
(Time noted: 2:30 p.m.)
MR. FRASER: We will get started. My

5 name is Charles Fraser, I'm the general counsel to
6 the Taxi and Limousine Commission.

7 To my left is Christopher Wilson, who's
8 an assistant general counsel for the commission,
9 who is working on the rules revision project.

10 To my right is David Klahr, who's the
11 chief of staff to the first deputy commissioner,
12 who's coordinating the project.

13 We are in the second phase of the rules
14 revision project; the second phase being the one we
15 have been calling the zero sum phase, which means
16 we're rewriting the rules to make them clearer,
17 plainer English, simplified, more accessible, more
18 user friendly; but not changing the substance of
19 the existing rules, or at least changing the
20 substance as little as possible.

21 Phase 3 of the rules revision will
22 involve substantive changes, but that's not what we
23 are doing now.

24 So, for those of you who have comments
25 that are asking, essentially, for changes in the

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2 rules, please by all means submit them, but please
3 understand that we will not be making those changes
4 at the current time. At some future time we will
5 be considering the changes you request at some
6 future time in the project.

7 Also, we submitted a notice with a
8 deadline time to comment. For those of you here
9 and for those who may read the transcript later
10 online, feel free to submit comments at any time
11 during the process, because we will continue to
12 consider them as we go forward until we finally
13 complete the project.

14 I have two people signed up to speak.

15 How many people are planning to speak,
16 please raise your hands?

17 (A show of hands.)

18 Just one speaker. Mr. Pollack, you are
19 it. If you have prewritten your comments, you can
20 hand them up, read them or both. Hand them up and
21 we'll put them in the file.

22 (Indicating.)

23 MR. POLLACK: Good afternoon. I'm David
24 Pollack. As you know, I'm the executive director
25 of the Committee for Taxi Safety.

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2 The committee is not opposed to these
3 rules. Nonetheless, we respectfully suggest that
4 the rules not be approved until further
5 clarification and discussion with the industry, so
6 that the intent of these proposed rules is
7 fulfilled with clear, concise and understandable
8 language.

9 We simply ask that until the language

10 changes can be discussed with the industry, that
11 the implementation of the rules be delayed.

12 I refer to the letter of our counsel,
13 David Byer, that was previously submitted to Mr.
14 Fraser by mail, with detailed explanations of the
15 changes and clarifications we believe need to be
16 made.

17 However, as a very brief summary and
18 highlight of certain of those changes, we believe
19 the following modification should be made:

20 Fines should not have to be paid the
21 day the fine is levied.

22 MR. FRASER: That's a change that we
23 caught after we published the rules. We will be
24 making substantive changes to the rules as to that,
25 because there is now a Local Law that requires a

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2 30-day period within which to pay.

3 We didn't catch that by the time we
4 published these rules, but we have caught it since
5 then. So that change will be made in the rules.

6 MR. POLLACK: Local Laws should be
7 followed.

8 Thank you.

9 Limited liability companies should be
10 allowed to be licensed as agents. The language of
11 proposed Section 13-7B needs to be clarified to
12 insure that the unlawful act prohibited is related
13 to the agent acting as an agent, as opposed to an
14 unlawful act committed while the agent is licensed,
15 having nothing to do with the agency. An unlawful
16 act could be jaywalking.

17 13-07D: The way this section is
18 worded, the potential penalty of revocation for a
19 violation, whether or not revocation is imposed,
20 would be sufficient to deny renewal of a license.

21 13-07E: Again, the wording here sets
22 forth that any findings of a rule violation, even
23 if the fine was paid, results in an automatic
24 denial of application.

25 "The commission will deny any

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1 Proceedings

2 application if the applicant has violated any
3 provision of Section 19-530 of the administrative
4 code or any applicable rule of the commission.

5 Note that the words in the section are
6 "will deny an application." There is no
7 discretion.

8 13-088: Unfortunately, there are
9 individuals who are unlicensed agents. But the TLC
10 has no jurisdiction over those agents, as they are
11 not licensed. One cannot suspend or revoke a
12 license that was never issued, nor can one fine or
13 penalize someone who is not under the jurisdiction
14 of the agency.

15 We believe that the TLC should have a
16 remedy to protect the public against unlicensed
17 agents, but that an effective remedy is not set
18 forth in these proposed rules.

19 13-08E: One: Although the agent must
20 truthfully answer all questions, sometimes an agent
21 is not given truthful information. This regulation
22 shall be qualified by language such as "to the best
23 of its ability."

24 E: 2: Inspections must be upon
25 reasonable notice, as the agent may need specific

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2 persons present, or professionals, such as an
3 accountant or lawyer present. The agent is running
4 a business and he cannot simply be expected to drop
5 everything with no notice from the TLC.

6 The TLC's habit of unannounced business
7 is atypical in the business today.

8 G: Threats, harassment abuse. These
9 terms are vague and sometimes meaningless. At the
10 very least, they need to be qualified for good
11 cause shown. If the agent is being harassed or
12 abused and responds by saying, "Get out of here or
13 else," is that a threat?

14 If an agent yells at somebody that
15 should not be a basis for suspension.

16 1311B" double shift requirement. All
17 an agent can do is to attempt to insure that
18 vehicles are operated for a minimum of two shifts,
19 12 hours each day.

20 What if the agent doesn't have drivers?
21 Nonetheless, there are no excuses allowed, because
22 the agent "must insure that taxicabs are operated
23 double shifts."

24 C: On a practical basis, the vehicle
25 could be dispatched with all equipment working, and

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2 in 2 hours, or even 10 minutes later, certain
3 equipment may not be in good working order. There
4 should be a grace period provided to correct the
5 condition.

6 Even the NYPD provides a grace period
7 for certain equipment violations, such as if a
8 summons is issued for a headlight not working.
9 Although a summons is issued, if you go to the
10 police precinct within 24 hours with proof of
11 correction, the summons is automatically dismissed.

12 Additionally, we request the number of
13 summonses that will be issued for the same
14 violation. Do we have a summons issued to the
15 driver, the agent and the owner? It is one
16 violation, there should only be one summons.

17 13-11D2: The problem here is that
18 there really is no way to check the status of both
19 hack and state driver's licenses. Suspensions of

20 either license can occur at any time. The TLC does
21 not notify agents or list the suspensions that can
22 be accessed by the industry.

23 Yet the violation is potentially
24 suspension for up to 30 days. If the TLC wants to
25 make the agent responsible, it must provide a way

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2 for the agent to know that hack license is
3 suspended.

4 We thank you for your attention to this
5 matter. Again, we urge promulgation of the rules
6 be delayed so that the language of the proposed
7 regulations can be modified to clarify and correct
8 the same.

9 Thank you.

10 MR. FRASER: Thank you.

11 Does anyone else want to speak today?

12 For those who are present and may read
13 the transcript later online, the process that we
14 are applying here is, we will now review the
15 comments and the testimony and determine whether we
16 want to make any changes to the zero sum; in other
17 words, the rules without substantive changes.

18 David Klahr will be following up with
19 people who submitted comments or testified today,
20 if further clarification is needed of their
21 comments and suggestions.

22 As to those comments and suggestions
23 which went to substantive changes, we'll be setting
24 them aside for the time being, but coming back to
25 them after the zero sum phase of the project is

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2 completed, when we will then be looking at the
3 rules for substantive discharges.

4 What I anticipate is that we will
5 review this phase of these two chapters, Chapters 2
6 and 13, and present them to the commission at the
7 March meeting. The commission is presently
8 scheduled for March 26. And the staff will
9 recommend, as we did for the previous chapters at
10 the previous commission meeting, we will recommend
11 that the commission conditionally approve the
12 rules; the condition being that a further approval
13 will be needed after all of the chapters have been
14 reviewed, so that the rules as a whole can then be
15 looked at both by the staff and the industry and
16 anyone interested.

17 So, approval of the rules is not
18 imminent. Approval of the rules, I'm not
19 anticipating until at least July. And I'm also
20 anticipating we'll probably have at least one
21 further opportunity for public input in some form
22 before we do the final approval.

23 Mr. Gionato [sic] will also offer some
24 comments from Chapters 2 or 13 for consideration

25 today.

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MR. GIONATO: I'll start with the agent's rules. Thank you.

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For the record, my name is Joseph Gionato, the director of business development for the Metropolitan Taxicab Board of Trade.

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I'm here today to read testimony prepared by Peter Mazer, MTBOT's general counsel, who couldn't be here today. He prepared testimony on behalf of the Metropolitan Taxicab Board of Trade, a 55-year old trade organization representing owners of approximately 3500 medallion taxicabs, as well as taxicab agents, drives and others in the transportation industry.

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MTBOT has consistently reiterated its support for the efforts of the TLC's consultant, TATC, to revise the TLC rules to make them clearer, more consistent and easier to understand.

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MTBOT also recognizes that in the future, the TLC will be considering amendments to its rules to reflect changes in policy.

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MTBOT reserves the right to provide additional comments relating to these rules where necessary.

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rule-making is a complex and deliberative process, subject to the provisions of the Citywide Administrative Procedure Act, and further specifically limited by the specific powers conferred upon the TLC by both the New York City Charter and the administrative code.

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Each rule promulgated by the commission must be considered both in light of the CAPA procedural requirements governing rule-making, as well as charter and code provisions that delineate the power of the commission.

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In the case of licensing and regulating agents, the TLC is constrained by the plain language of Section 19-530 of the administrative code, which authorizes the licensing and regulation of taxicab agents.

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Rule-making with the intent of furthering vague public policy considerations not firmly grounded in the charter or the administrative code, or that exceeds the specific powers of the commission is always subject to challenge; and each rule of the commission, whether an existing or proposed change, must be viewed by that standard.

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The commission has stated that prior to any final rule-making, there will be further

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4 opportunity for public comment. At that time,
5 MTBOT may submit further comments regarding
6 substantive rules, policies and procedures,
7 including such rules, policies and procedures that
8 have not been amended, and which the commission is
9 not intending to amend.

10 Inasmuch the purpose of today's hearing
11 is, as noted in the statement of basis and purpose,
12 to enhance their clarity and accessibility without
13 substantive change, we did not address any concerns
14 with the rules that MTBOT members may have, expect
15 where it appears that those rules are contrary to
16 law.

17 Accordingly, my specific comments will
18 be limited to providing examples of instances where
19 the proposed rule-making appears to differ
20 significantly from existing rules or the
21 administrative code.

22 With respect to the specific rule
23 revisions before the commission today, I would like
24 to make the following observations:

25 The definition of "agent." Proposed

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2 rule 13-03A defines agent. This definition is at
3 variance with the definition of agent contained in
4 Section 19-502 sub S of the administrative code in
5 several important respects.

6 In the rule, an agent is defined as an
7 individual or business entity that is licensed to
8 operate or facilitate the operation of one or more
9 taxicabs.

10 The administrative code defines an
11 agent as "an individual or a business entity." And
12 a business entity is further defined as "A sole
13 proprietorship, partnership or corporation."

14 Again, it is defined as "an individual
15 or business entity that acts by contract,
16 employment or otherwise on behalf of one or more
17 owners to operate or provide for the operation of a
18 taxicab."

19 By including the words "contract or
20 employment in its definition, the administrative
21 code envisions a formalized arrangement between
22 owner and agent. The proposed rule seems to
23 capture all sorts of informal arrangements within
24 the definition of "agent."

25 The code uses the term "provide for the

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2 operation of a taxicab," while the proposed rules
3 contain the more expansive term, "facilitate."

4 The code also specifically excludes
5 attorneys, hearing representatives and licensed
6 drivers from the definition of agent, while the
7 rules do not.

8 The effect of these changes in the

9 language may be to include within the definition of
10 an agent entities that the administrative code did
11 not envision to be included.

12 For example, under the proposed TLC
13 rules, an entity that is engaged in the business of
14 repairing taxicabs on behalf of owners may be an
15 individual or business entity that facilitates the
16 operation of one or more taxicabs; while such an
17 entity would not be an entity that operates or
18 provides for the operation of taxicabs.

19 So the definition in the rules should
20 use the same language contained in the
21 administrative code. Former rule 12-01 contained
22 such a definition that was consistent with the
23 administrative code.

24 The definition of "limited business
25 entity person." The administrative code authorizes

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2 the chief executive officer of agents and other
3 types of business entities, other than an
4 individual, sole proprietorship, partnership or
5 corporation, to execute applications.

6 A person in such a business entity who
7 is not the chief executive officer is also a
8 limited business entity person.

9 Next, the scope of the chapter. The
10 scope of the chapter, proposed Section 13-011A,
11 does not establish that certain entities must be
12 licensed by this commission. This requirement
13 exists in the administrative code.

14 The chapter not only sets forth
15 qualifications for licensure, but also sets forth a
16 code of conduct for licensed agents. The chapter
17 also may clarify what activities constitute acting
18 as an agent.

19 Penalties. Proposed rule 13-02B
20 requires that penalties be paid by the close of
21 business on the date the fines are assessed. This
22 is contrary to the administrative code, which
23 provides certain temporary waivers of penalties
24 such as when an appeal is filed.

25 Requirements for licensure. Proposed

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2 Rule 13-04E, Paragraph 4, authorizes the TLC to
3 require that a surety bond, authorized by the code,
4 remain in effect for one year after the expiration
5 or revocation of a license.

6 The administrative code does not
7 authorize this or require non-licensees to maintain
8 bonds. Although this is not a change from existing
9 rules, it appears to exceed the authority granted
10 to the TLC by the administrative code.

11 Next, licensing fees. The license fee
12 is due at the time the license is filed. There is
13 no provisions in the rules for refunding fees if

19 Jurisdiction of powers of the
20 commission. Sections 2-02 and 2-03 may create some
21 confusion describing the types of licenses issued
22 by the commission.

23 In Section 2-02, the commission states
24 that it will "issue licenses and adopt and enforce
25 rules regulating the businesses and industries of

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2 the following for-hire transportation services."
3 It goes on to list medallion, for-hire vehicles,
4 para transit and commuter van services.

5 This appears to be in conflict with
6 Section 2-03A, which describes the types of
7 licenses the commission may issue, which includes
8 licenses to entities such as brokers, agents and
9 taxi meter businesses.

10 Since this appears to be new language
11 not reflected in existing TLC rules, a better
12 approach would be to simply list the types of
13 businesses that the TLC may license and regulate,
14 rather than clarify licenses by the type of
15 transportation service.

16 Section 2-02D states that "the TLC
17 licenses and regulates commuter van services."
18 This is not entirely correct, since the TLC can
19 issue licenses to commuter van operators only after
20 a certificate of convenience and necessity has been
21 issued by the New York City Department of
22 Transportation in accordance with New York State
23 law.

24 Section 2-03A, Paragraph 7, authorizes
25 the TLC to issue a license called a taxi meter

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2 manufacturer authorization. That terms does not
3 appear in existing rules. It also does not appear
4 in the administrative code provision authorizing
5 the licensing of taxi meter businesses.

6 The proposed taxi meter business rules
7 do not mention a taxi meter manufacturer's
8 certification as a license separately issued by the
9 TLC.

10 Section 2-03 does not include the
11 category of authorized representations who are not
12 licensees of the TLC, but who are regulated by the
13 agency through a chapter of the TLC rules.

14 Section 2-04C indicates that the
15 commission sets rates of fares for all licensed
16 transportation activities. This is contrary to
17 existing rules which provide that only people
18 medallion taxicab fares are set by the commission.

19 This section is also contrary to the
20 City Charter, which empowers the commission to set
21 rates of fare for taxicabs pursuant to Section
22 2304.

23 This section also sets forth specific

24 criteria for reviewing changes to taxicab rates of
25 fare. While Section 2303B, Paragraph 1 of the

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charter empowers the commission to regulate and
3 supervise rates of fare to be charged and
4 collected, proposed Rule 2-04C constitutes a
5 substantive change in TLC rules by applying the
6 same standard for rate-making applicable to
7 taxicabs through specific charter provisions to
8 other segments of the industry.

9 Proposed Section 2-04C as it applies to
10 taxicab rates of fare is incomplete, since it does
11 not include a reference to the burden of proof
12 necessary to change rates of fare, contained in
13 Charter Section 23-04E, as well as the presumptions
14 contained in the Charter that current rates are
15 reasonable.

16

Rule-making petitions. Section 2-15A,
17 Paragraphs 3 and 4, authorize the chairperson to
18 either deny a rule-making petition or present the
19 petition for consideration by the commission.

20

This language differs from Section
21 1043F of the New York City Charter, which
22 authorizes the chairperson to either deny the
23 petition or state the agency's intention to
24 initiate rule-making.

25

While this charter language does appear

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in proposed Rule 2-15C, Paragraph 1; Sections
3 2-15A, Paragraphs 3 and 4, should be clarified to
4 show if the chair does not deny the rule-making
5 petition, we will not only present the petition to
6 the full board of commissions, but will
7 affirmatively begin the rule-making process.

8

Lastly, pilot programs. The proposed
9 rules relating to pilot programs do not differ from
10 existing rules. Accordingly, MTBOT reserves the
11 right to make substantive comments regarding the
12 pilot program procedure in the future.

13

Again, respectfully submitted, signed
14 by Peter Mazer. Thank you for your consideration.

15

MR. FRASER: Thank you.

16

I previously went over the procedure
17 rule we follow from here; so I won't repeat that.

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Is anyone else here to testify?

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Thank you very much.

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(Time noted: 3:00 p.m.)

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I, Jeffrey Shapiro, a Shorthand Reporter and Notary Public, within and for the State of New York, do hereby certify that I reported the proceedings in the within-entitled matter, on Friday, February 20, 2009, at the offices of the NEW YORK CITY TAXI & LIMOUSINE COMMISSION, 40 Rector Street, 5th Floor, New York, New York, and that this is an accurate transcription of these proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2009.

JEFFREY SHAPIRO