Testimony of Meera Joshi
Chair and Commissioner, New York City Taxi & Limousine Commission
Intro. No. 748
Governmental Operations Committee
April 26, 2018

Good afternoon Chair Cabrera, and members of the Governmental Operations 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 Intro. 748.

TLC licenses and regulates 130,000 vehicles and 180,000 drivers who transport approximately one million passengers a day. The laws passed by the Council and rules promulgated by TLC play a vital role in protecting these passengers, their drivers, and the general public. For example, TLC summonses are issued for violations of City Council laws including important Vision Zero legislation, and for violations of TLC rules governing safe driving, prohibiting sexual harassment and service refusals, and ensuring that important consumer protection standards are met. Most of our drivers never end up at an OATH hearing, but when they do it is for serious reasons, and the failure to appropriately penalize them harms not only passengers, but also other New Yorkers who drive or walk across the City's streets every day.

TLC develops its rules and penalties based on its experience regulating a complex industry, and they take effect only after undergoing the process mandated by the Citywide Adminstrative Procedure Act (CAPA), including notice to the public, a public hearing, and then a public vote by the Commission. This process that typically takes at least ninety days.

Having our summonses heard before an OATH hearing officer ensures that licensees who are issued a TLC summons receive independent adjudication of their cases. Both TLC and OATH recognize that a driver's time spent at OATH is time not spent on the road and earning

money. Each day, TLC prosecutors are available and ready to appear at OATH hearings to ensure that no driver has to wait for TLC to appear. OATH too has focused on making improvements in the hearing process intended to reduce case backlogs and wait times.

Intro. 748

I will now turn to Intro. 748, which would amend the Administrative Code by adding several new sections. The bill would require TLC to appear at hearings on TLC summonses in person, by a representative who is either an attorney admitted to practice, or by another representative authorized by OATH. In the event the petitioner fails to appear, OATH would be prohibited from holding a hearing, and OATH would be required to dismiss the violation unless TLC makes a timely request to reschedule.

Intro. 748 would also give OATH hearing officers the added task of considering reductions to penalties set forth in TLC rules and in local law. The proposed legislation would also require that hearings on violations of TLC regulations or local law begin within three hours of the hearing time set in the summons. If that deadline is not met, OATH would then have to reschedule or dismiss the violation. Intro 748 would also require the hearing officer to dismiss a "duplicate" notice of violation.

Finally, Intro. 748 would establish that, in any case in which a respondent is charged with violating a provision of law or rules enforced by TLC, a determination by the appeals unit of the OATH hearings division is final unless the respondent seeks review by TLC to further reduce the penalty. This provision conflicts with established authority and precedent that designates the TLC chair as the final arbiter of policy interpretation.

I want to highlight some additional concerns with Intro. 748. TLC's regulatory system is established by the Charter. Section 2303 of the Charter vests TLC with broad authority over the

"the regulation and supervision of the business and industry of transportation of persons by licensed vehicles for hire in the city." To that end, the Charter requires TLC to set policy and make rules governing the industry, including bases, drivers and vehicle owners, also subject to the notice and comment requirements of CAPA. Intro. 748 is thus not written on a blank slate. The proposed legisation however, ignores these regulatory and adjudicatory powers by giving OATH hearing officers—and not TLC—the ability to establish appropriate penalties for violations of rules and laws designed to protect millions of daily passengers, tens of thousands of drivers and the general public.

It is also important to remember that in many cases the penalties for violations of TLC rules are set by local law, and Intro. 748 would put the onus on OATH hearing officers to second-guess penalties set by this Council, not just those set by TLC. Hearing officers are charged only with finding facts and applying the law, not with making independent policy determinations. While we understand the intention may have been to minimize the impact on some communities perceived to have received disproportionate summonses, this bill instead sends a message to the public that grave infractions need not be taken seriously.

Additionally and practically the many factors that hearing officers would be required to review in considering a penalty reduction will unquestionably add a significant amount of time to the administrative justice process because the bill will in effect create a two-part proceeding: one in which the respondent's guilt or innocence is determined, and, in the case of a finding of guilt, a penalty phase as the hearing officer examines each and every factor specified in the bill and, presumably, takes evidence on many of them.

In sum, Intro. 748 would dangerously compromise TLC's policymaking authority to determine the violations that pose a threat to public safety, and our ability to specify the

appropriate level of punishment for violations of TLC regulations by substituting TLC's policymaking and enforcement determinations with the decisions of individual OATH hearing officers, who are finders of fact, not legislators or regulators. By diminishing TLC's authority in this area, the bill would remove critical safety and consumer protections for passengers and the general public.

Intro. 748 also specifies who may represent TLC in administrative proceedings, limiting such representation to attorneys admitted to practice law. This would be in contravention of the practice in administrative hearings throughout the City of allowing appearances by both recent law school graduates awaiting admission to the bar and law students, all of whom operate under the supervision of experienced agency attorneys. It also threatens the current practice of allowing law enforcement officers from the Police Department and Port Authority to appear in prosecutions of summons that they write for violations of TLC laws and rules. We are unaware of any other agency whose ability to represent itself in an administrative proceeding to adjudicate violations of its rules and regulations is limited in this way, and we are not aware of any stated public purpose for this limitation to apply only to TLC.

The bill would further impact the exercise of administrative justice by providing for TLC summonses, including those issued for violations of local laws enacted by the Council, to be dismissed if a hearing is not held within three hours. We are not aware that OATH has experienced difficulties in scheduling hearings in a timely manner. In fact currently, even drivers who show up as much as six hours late for a hearing are given the opportunity by OATH to be heard, rather than face a default judgment against them.

Based upon consultation with the Law Department, we also note that Intro. 748 raises significant legal conflicts. Among them is one raised by the provision of the bill that would,

with one narrow exception, make rulings of the appeals unit of the OATH Hearings Division, which exercises powers of the former TLC Tribunal, the final determination of the Tribunal, in any case where a respondent is charged with violating a provision of law or rules enforced by the TLC. This appears to misconstrue the function of the Charter-mandated Chair review, which is significantly limited to review of interpretations of TLC rules and applicable laws. The TLC is an operational and regulatory agency, charged with regulating the for-hire transportation industry, while OATH is an adjudicatory agency, charged with resolving disputes. The power to make final determinations in matters other than findings of fact was assigned to agencies by voter referenda enacting and amending the City Administrative Procedure Act (CAPA) in 1988 and 2010. Moving this important power from TLC to OATH would be a fundamental structural alteration, raising serious questions concerning its consistency with the balance of power within City government set forth by the Charter.

In conclusion, TLC is concerned that Intro. 748 will not shorten or simplify the OATH process for drivers but instead will extend that time because of the long list of determinations hearing officers will be required to make, time when drivers could be out making money or with their families. And perhaps most important, it will not protect New Yorkers against the rare but all too real occurrences when they are victimized by dangerous driving, outright denials of service, sexual and other forms of harassment from a TLC licensee, or from a driver or business operating unlawfully without a license.

Thank you for allowing me to testify today. I would be happy to answer your questions.

Testimony of Emily W. Newman on A Local Law to Amend the New York City Charter in Relation to an Online List of Required Reports
In Front of the Committee on Governmental Operations
April 26, 2018

Good afternoon, Chair Cabrera and other members of the Governmental Operations Committee. My name is Emily Newman, and I am the Acting Director of the Mayor's Office of Operations. Thank you, Chair Cabrera, and the rest of the Governmental Operations Committee for the opportunity to discuss the Council's reporting requirements. We agree with the Council on the importance of transparency in government and public reporting, and we prioritize these values. I am here today to testify on the work that Operations does in evaluating reports and advisory boards and provide context on the landscape of reporting throughout the City.

As you know, the Mayor's Office of Operations is Charter mandated to convene and chair the Report and Advisory Board Review Commission, which is intended to, among other things, review current reporting requirements, assess the usefulness of reports, and make recommendations about reporting requirements that should be removed, consolidated, or otherwise streamlined.

The Charter requires members to include the Speaker of the City Council, two additional Council Members chosen by the Speaker, the Corporation Counsel, the Director of the Office of Management and Budget, the Commissioner of the Department of Information Technology and Telecommunications, and the Director of the Mayor's Office of Operations. A memo standing up the Commission was sent to the Council earlier this week, and the Commission will reconvene in May.

This Commission is a great example of the good government efforts in which Operations engages – helping agencies maximize their time and impact, increasing transparency through Open Data and performance management, and improving customer service to the public. The Commission allows us to work with agencies and the Council to get a better understanding of the reporting requirements that currently must be adhered to routinely, and to understand whether those reporting requirements remain a smart use of agency resources. In addition, the Charter already requires that mayoral agencies provide the Municipal Library with digital version of all reports required by executive order or local law. We admire the work DORIS does to help make sure reports are as available and accessible as possible.

As you know, agencies work hard, often with limited resources, to meet their mandates while fulfilling numerous reporting requirements. Introduction 828 would impose a new reporting procedure and inventorying requirement, creating additional administrative burden. With the continuous addition of legislated reports required of City agencies, we recognize the need to ensure

strong administrative practices to support agency compliance. However, we do not believe that Introduction 828 identifies the most effective approach – and that it is not in the City's best interest to mandate a new process in advance of any relevant recommendations of the Report and Advisory Board Review Commission. Therefore, we cannot support the passage of Introduction 828 at this time. However, we look forward to continuing to work with the Council to identify a more practicable solution.

Thank you again for the opportunity to testify today. We look forward to answering any questions you may have.

Statement by Fidel F. Del Valle, Commissioner & Chief Administrative Law Judge at the NYC Office of Administrative Trials and Hearings, to the City Council in Connection with the Int. 748

April 26, 2018

Introduction:

The Office of Administrative Trials and Hearings ("OATH") is the City's independent administrative law court. In 1979, Mayor Koch established OATH by executive order with the goal that there would eventually be one centralized City Administrative Law tribunal to adjudicate cases. In accordance with Mayor de Blasio's overall commitment to provide City residents and small businesses with an administrative law process that is impartial and fair, OATH has established a Trials Division and Hearings Division to ensure a more streamlined administrative law tribunal.

OATH's Trials Division Administrative Law Judges serve five year terms, one more year than the Mayor, and adjudicate the more complicated cases including NYC civil servant disciplinary cases, Loft Law cases, City contracts disputes, City-issued licenses, discrimination cases under the City's Human Rights Law, and cases involving the City's Lobbying Law. The OATH Hearings Division adjudicates summonses issued to residents and small businesses by agencies including the Department of Health and Mental Hygiene, the Department of Transportation, the Department of Sanitation, the Department of Environmental Protection, the Department of Buildings, the Taxi and Limousine Commission, and New York City Police Department. Over the past 10 years, the Health Tribunal, Taxi and Limousine (TLC) Tribunal, and Environmental Control Board have been transferred into OATH. For cases involving summonses issued by the TLC, however, the TLC Chairperson reserves the authority to adopt, reject or modify a final determination of the Hearings Division.

OATH's mandate is to foster judicial professionalism, fairness, impartiality, equality, and a commitment to the integrity of the administrative law decision-making process. As the City's administrative law tribunal, OATH is dedicated to providing due process in cases that originate with the City's numerous enforcement agencies in a fair and impartial forum that is also convenient and accessible to the public. OATH has been working for the past three years to consolidate adjudications and improve services to ensure greater transparency, equity, and fairness for City residents and small businesses.

Int 748

This bill seeks to amend the Administrative Code to grant discretion to OATH ALJs and hearing officers to reduce penalties established by the Taxi and Limousine Commission "in the interest of justice" after considering factors set forth in the bill. It would put a difficult burden on the respondent to have to prove the existence of these factors. It may also convey the appearance of being arbitrary and capricious, and therefore should also require the hearing officer to be provided with guidance as to the levels of reduction if s/he should find that respondent's application for reduction has merit. Such guidance would come from either the TLC or this Council.

This bill also would make a determination of the appeals unit of the OATH Hearings Division the final determination, in cases involving summonses issued by the TLC, thereby taking away authority from the TLC Chairperson to adopt, reject or modify those determinations. According to the Law Department, the proposal to move this power from the TLC to OATH apparently alters the present Charter structure of powers of elected officials, especially in light of the very different appointment structures of TLC and OATH. This issue may be exacerbated by the bill's provision authorizing OATH hearing officers to reduce the penalties "in the interest of justice" without further review by TLC.

Concerning the provision of the legislation that requires a hearing officer to dismiss a summons that would impose a duplicate penalty for a violation already charged under another provision of law, OATH already adheres to this practice where the respondent apprises the hearing officer of such duplicative charges. However, there remains some vagueness as to whether the duplicative summons includes summonses returnable to another venue such as DMV. OATH is committed to ensuring that individuals appearing before its tribunals are given a fair hearing, which includes the imposition of penalties authorized by law or rule.

Finally, the legislation appears to also limit the amount of time necessary for a hearing to begin. OATH is committed to providing greater access to justice by improving the efficiency and timeliness of adjudications without impairing due process. The Chair and members of this committee are commended for the work they have done to further this commitment. OATH has concerns about whether the time restriction as prescribed in the legislation will result in enhancing OATH's commitment to efficiency and timeliness without impairing due process. OATH's concerns center around issues involving the cause of a delay and whether any such

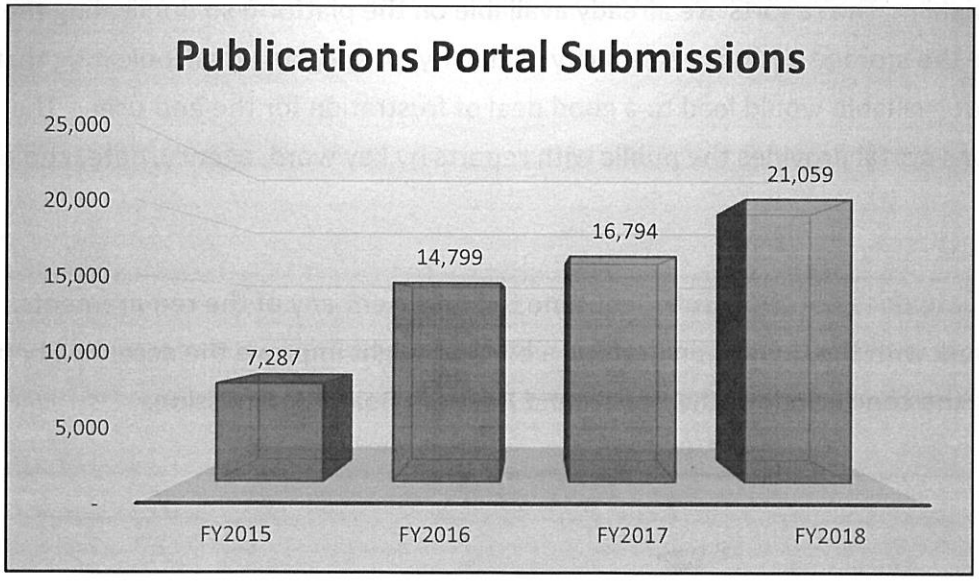
delay was reasonable. Moreover, OATH is currently undertaking a review of its procedural rules, and is drafting amendments to improve efficiency and fairness of the hearings. Nevertheless, as an administrative law tribunal exclusively having adjudicatory power, OATH has always remained consistent with its mandate to follow the law.

Testimony of Department of Records and Information Services Commissioner Pauline Toole
To the Committee on Governmental Operations on Introduction 828
April 26, 2018

Good afternoon, Chair Cabrera and members of the Governmental Operations Committee. I am Pauline Toole, Commissioner of the Department of Records and Information Services, commonly known as DORIS. Thank you for giving me the opportunity to provide input on Intro 828 which proposes making additional information available about City government reports.

One of the agency's three divisions, the Municipal Library, has begun to pivot from a "bricks and mortar" research facility to one that increasingly offers digital content, with a goal of building a robust online library by 2020. The foundation for this online library is the publications portal hosted by DORIS, mandated by section 1133 of the City Charter as amended in 2003 by Local Law 11. The Charter requires mayoral agencies to provide the Municipal Library with digital versions of all reports required by executive order or law, as well as hard copies of other published material. In 2014, the existing platform was virtually impossible to navigate so we built a platform using open source code to improve public access.

In previous testimony I reported to the Council that between 2003 and 2014, only 48% of agencies had submitted reports in electronic format to the portal. By April 2015, all agencies had submitted electronic publications. At the same time, the library staff developed a list of all reports that agencies were required to produce and began a program of continuous outreach to obtain the reports. Due to these efforts, the quantity of submissions continues to increase. As of today, 21,059 reports have been submitted to the government publications portal, up from 7,287 in 2014.



In 2015 we re-launched the newly- developed portal with enhanced searching capabilities. Agencies submit the reports along with metadata that enhances the search capacity. We will soon introduce a one-stop submissions portal for agencies to add reports and metadata directly to the site. This will further streamline the process of making the publications available to the public. We view the reports platform as a critical component in our efforts to build an online library and archives.

We understand the impetus for the proposed legislation under consideration today. However we believe it is premature, for reasons that have been addressed by my colleagues from the Office of Operations. As you know, the Report and Advisory Board Review Commission will be convened shortly. We recommend that this proposal be held until the Commission completes its review.

In addition, Intro 828, as drafted, includes requirements that would be onerous for DORIS to undertake in real-time. The legislation would require DORIS to post a list of all required reports and include, on the list, a copy of the report, the frequency of publication, the date received, and the date the report will next be issued. Some agencies submit reports on a weekly basis, some monthly, some quarterly, and updating the list for each submission would require extensive resources and, ultimately, not provide the public with a worthwhile service. DORIS provides a searchable database listing all of the reports that have been submitted to the Open Data Portal and updates the data on a regular basis.

If deemed necessary, the data fields enumerated in the proposed legislation should be required on an annual basis, which would take into account all of the new reports required. And this data set would be better placed on the Open Data Portal, rather than the DORIS website, because it likely would be in a searchable database and not a PDF. The draft further requires that the list include a copy of the report, which is not viable. The reports are already available on the platform so duplicating the post would require double the storage and access capacity. Similarly, posting an email indicating that a particular report is not available would lead to a good deal of frustration for the end-user. The searchable publications portal provides the public with reports by key word, agency, date, and other search terms.

Finally, the effective date does not allow sufficient time to implement any of the requirements. We would be happy to work with the Council on drafting a bill that might improve the accessibility of reports incorporating the conclusions of the Report and Advisory Board Commission.

Thank you.

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Testimony of Amy Loprest
Executive Director
New York City Campaign Finance Board

City Council Committee on Governmental Operations
April 26, 2018

Thank you for the opportunity to submit written testimony regarding Int. No. 14 of 2018, which would require the CFB-sponsored debates for citywide offices to be broadcast on a city-owned or operated television channel.

As we testified in December 2017, the Board supports this legislation. Our aim is to help all New Yorkers watch the debates and learn more about the candidates for these important city offices. In 2017, we required our debate broadcast sponsors to stream all of the debates they carried, for free, on their own website and on their stations' social media accounts. Those streams were also available on the CFB's website. More than 175,000 viewers tuned into the 2017 mayoral debates via those online streams.

While the CFB supports this legislation, we have heard some concerns from our broadcast partners that we want to share with the Council. At our post-election hearing on January 26, 2018, Dan Forman, managing editor of CBS New York said the following:

> "We understand going forward the city's public broadcasting station will be permitted to simulcast debates. This might be understandable when a debate sponsor/consortium airs on a cable outlet such as NY1 or other organization that is not available to all viewers over free airwaves with an antenna. However, it doesn't seem fair to dilute a broadcast audience when a broadcast sponsor such as ABC, NBC, or CBS spends significant resources in time, money, talent and much more to stage and distribute such a commercial free event."

The CFB has administered the Debates program since 1997 and it has been a critical piece of the city's campaign finance and voter empowerment efforts in every citywide election since. The Debates are an opportunity for city voters to compare the candidates, side-by-side. The Board appreciates the Council's interest in strengthening the program by working to ensure that all New Yorkers can view them in real time.

TRANSPORTATION ALTERNATIVES

April 26, 2018

Testimony on Intro 748-2018
TLC-Issued Violations Adjudicated by OATH

Testimony before the New York City Council Committee on Governmental Operations
Testimony by: Marco Conner, Legislative & Legal Director, Transportation Alternatives

Chairman Cabrera and Committee members, thank you for the chance to testify. For 45 years, Transportation Alternatives has advocated on behalf of New Yorkers for safer and more livable streets. With more than 150,000 people in our network and over 1,000 activists throughout all five boroughs, we fight to promote biking, walking, and public transportation as alternatives to the car.

In the interest of justice and for the safety of all New Yorkers we implore that you do not further authorize OATH to reduce safety-based penalties issued by the New York City Taxi and Limousine Commission(TLC), particularly when such penalties are related to dangerous driving.

We are highly sympathetic to the challenging work environments and economic situations that many for-hire vehicle (FHV) drivers confront as they seek economic opportunity for themselves and their families. Drivers deserve a living wage and there are many things that could and should be done – including raising fare rates and further regulating the app-based for-hire vehicles that have started operating in recent years. But sacrificing safety, and the deterrence that comes from dangerous driving penalties, cannot be an option.

Despite recent reductions in traffic fatalities, New Yorkers are still killed at tragic rates and are exposed to unacceptable dangers when simply walking, biking or driving - dangers that result from speeding, failing to yield to pedestrians, and distracted driving. In 2017, drivers licensed by the TLC were involved in at least 30 fatal crashes, an increase of approximately five deaths from 2016. None of these drivers lost their TLC license in 2017. Citywide, 214 people died in 2017, and since 2001 more than 5,000 people have died in traffic crashes in New York City, with more than 60,000 people injured every year. Dangerous driver choices are the primary cause or a contributing factor in 70% of pedestrian fatalities. People of color and low-income New Yorkers are up to three times more likely to be struck and injured by motor vehicles, and as such stand to gain the most from effective traffic enforcement by the TLC.

In addition to the personal agony suffered by thousands of families, every injury and death results in significant economic costs for the traffic victims and their families. We estimate that the average injury crash costs each victim more than $9,000 in medical expenses and lost wages alone - costs that are multiplied exponentially for serious and fatal crashes.

Addressing this epidemic of carnage and suffering is a responsibility shared by all. Professional drivers, particularly FHV drivers, have the greatest responsibility: They spend more time in traffic and through their driving lead the way for either more reckless or safer driving by all New Yorkers. The responsibility professional drivers have for the safety of others can not be overestimated.

Professional drivers receive special training because they are operating a lethal multi-ton vehicle. The primary purpose of the TLC must be to ensure drivers operate with the highest level of diligence and comply with laws meant to protect us all.

Deterrence research shows that effective enforcement against dangerous driving must be visible, widespread and consistently applied. Additionally, drivers must know that apprehension and legal consequences for dangerous driving is likely.

Two provisions in Intro 748 are particularly troublesome. Subsections 1. and 2. of Section 19-903 would allow OATH to consider the "seriousness and circumstances" and the "extent of harm" caused by the violation in question. Speeding and failing to yield to a pedestrian are serious offenses by professional drivers in particular, and even if the first such violation by that driver causes no immediate "harm", the next offense could cause a lost life, and so the deterrence sought from the TLC-issued penalty may occur too late if the proposed provisions are enacted.

Professional drivers have the highest responsibility to operate lethal vehicles on crowded city streets with the utmost care for the safety of us all. TLC enforcement plays a critical role in this effort, and we urge this committee to ensure that the important work by the TLC to protect New Yorkers are not diminished in your laudable and important quest for justice.

Thank you.

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Testimony to the New York City Council Governmental Operations Committee on the Publication of Online Reports and the Broadcasting of Mandatory Debates
April 26, 2018

Good morning Chair Cabrera and members of the New York City Council Governmental Operations committee. My name is Alex Camarda, and I am the Senior Policy Advisor for Reinvent Albany. I am testifying today on behalf of both Reinvent Albany and Beta NYC, who could not send a representative to the hearing. Reinvent Albany advocates for transparent and accountable government in New York, and is particularly interested in making city government more transparent. Here in New York City, as co-chair of the NYC Transparency Working Group, we were instrumental in passing the city's Open Data Law and subsequent amendments and advocating for OpenFOIL legislation which led to the creation of the City's OpenRecords platform.

DORIS Online List of Required Reports

The bill, which does not yet have a number, would require the Department of Record Information Services (DORIS) to maintain a listing of reports, documents, studies and publications on their website that local law requires must be completed and submitted to the Council or Mayor. The list would show when the report was last completed, when it is next due, how often it must be completed, and include the latest version of the report. It also requires DORIS to write a letter to the agency head 10 business days prior to a report being due. If the report is not received by the due date, DORIS publishes on its website the the letter to the agency head until the report is received.

Under current law, DORIS already administers a large Government Publications Portal which appears to have ~~a whopping 5,446~~ thousands of government publications in it, sortable by agency, type of report, and topic.[1] This portal is supposed to include reports required by local law, executive order or mayoral directive to be published or issued to the mayor or Council, as required by section 1133(a) of the New York City Charter. It is also required to include federal and state reports provided by city agencies as is practicable in addition to reports completed by independent consultants for city agencies. If city

[1] See: http://a860-gpp.nyc.gov

agencies are meeting their obligations under section 1133(a), the current DORIS Government Publications portal is more inclusive than the online list of submitted reports envisioned by this bill before the Council. However, we do not know to what extent agencies are complying with the law.

We applaud the Council's and Mayor's staff who did yeoman's work recently in identifying all the reports required by local law which will help create the online list established by the bill. This was a critical and long overdue undertaking, as many of the bills passed by the Council are reporting bills. Too often these reporting bills are not completed, undercutting government transparency and negating the work done by the Council, the Mayor's Office, and advocacy groups in passing the law that required the report in the first place. Having a list of reports will better ensure the transmission requirements to DORIS are met, and facilitate elimination of unnecessary or outdated reports, which can be done under the Reports and Advisory Board Review Commission (RABRC) in city law. This Commission has only been convened once, but it makes sense for it to be convened again once this online list of reports is created by DORIS. We would support further measures to create more coherence around reporting mandates including sunsetting them to ensure they are revisited and still useful.

Regarding the legislation, we will only support it if it is amended to reflect an Open Data approach to reporting information. Government needs to move away from providing information locked in static PDF reports and report data in the open, usable and dynamic form mandated by the City's Open Data law.

The online table of reports on the DORIS website created by this bill should therefore be downloadable, machine readable, and sortable by agency, date due, date last released, name and other column headers. The spreadsheet itself should be required to be put in the Open Data portal and automated for instantaneous updates. Any tabular data in the reports (graphs, charts, tables, etc.) should be placed in the Open Data portal and identified as connected to the reports, as is required under the Open Data law. While we understand the intent, we oppose requiring DORIS to spend time scanning and uploading the reminder letters it sends to agencies to do their reports. Laggard agencies and reports should be identified in a data column in the table on the DORIS website. Then, DORIS should collate that data and list laggard agencies and reports as part of an annual summary on reporting compliance (The state Authorities Budget Office does something similar to this.[2])

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[2] See: https://www.abo.ny.gov/reports/delinquentreports/February2018DelinquentList.pdf and Authorities Budget Office, ABO Reports on Delinquent Authorities at https://www.abo.ny.gov/reports/abodelinquentreports.html.

Beyond making this bill adhere to Open Data principles and the law, we recommend the following additional amendments:

- DORIS should be required at the beginning of each fiscal year to notify agencies which reports are due in the upcoming year. The ten day notification in the bill is sufficient as a reminder of the date due for the report, but it should not be the first notification to agencies. We want the agencies to have enough time to complete the report thoroughly in accordance with all the provisions of the law requiring the report.
- DORIS' online list (which we think should be referred to as a dataset or table because it has multiple column headings) of reports should cite the section of the charter or administrative code where the specific requirements of the report are described.
- The DORIS tablet should include a brief summary of the report, an abbreviated description of what DORIS currently provides for reports in the Government Publications portal.

Broadcasting of Mandatory Debates

Int. No. 14 of 2018 (Borelli) requires that mandatory debates of candidates participating in the city's public matching campaign finance program running for citywide office be broadcast simultaneously on the city-owned or operated television channel serving the largest public audience.

It is notable that section 3-709.5(5)(a)(vii) in the city's Administrative Code requires the debate sponsor to, "set forth plans for publicity and for broadcast and other media coverage for the debates," so debates are typically broadcast on privately owned channels already, particularly if the sponsor is a media organization.

Reinvent Albany believes in making government accessible to the public and encouraging civic participation in our democracy through the use of modern technology. The easiest and cheapest way to do this is through webcasting, which is far less expensive than television broadcasting, allows for easier and much less expensive video archiving, and can be watched on smartphones, which are far more accessible than television sets. We therefore believe it is more important to require the CFB to webcast the debates rather than televise it on additional channels, which we understand CFB currently does and would support having codified.

If the Council wants to additionally televise debates on government channels, we encourage two amendments be made to the bill:

- The language should clarify the government channel can rebroadcast the debate even while being required to broadcast the debate simultaneously or live, albeit nothing would appear to prohibit that.
- The debate should be broadcast on the NYC.gov channel rather than the most popular channel, or, alternatively, broadcast on every government channel. It doesn't make sense for the debate to air only on NYC.drive, NYC.world or NYC.life if that is not as popular as NYC.gov.[3] NYC.life also airs on Comcast, DirecTV and Dish while the other channels do not.

[3] See: http://www1.nyc.gov/site/media/about/channels-and-carriers.page

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TESTIMONY OF PETER M. MAZER

General Counsel

METROPOLITAN TAXICAB BOARD OF TRADE

Intro. No. 748; April 26, 2018

Good afternoon, Mr. Chairman and Members of the Government Operations Committee. My name is Peter Mazer, and I am General Counsel to the Metropolitan Taxicab Board of Trade (MTBOT), an association representing the owners of approximately 5,500 medallion taxicabs. We also provide a full service taxicab drivers' center and have provided free legal representation to taxicab drivers in about 2,500 OATH taxicab tribunal cases during the past two years. From 1987 through 1998, I also served as an Administrative Law Judge, and Chief ALJ, at the former TLC tribunal and adjudicated about 25,000 cases over this period.

Thank you for providing me this opportunity to testify with respect to Intro No. 748, which would make significant changes to both OATH and TLC operations regarding the adjudication of summonses issued to taxicab and for-hire owners, drivers and businesses. As a former hearing officer, and now as a litigator appearing before the tribunal on a regular basis, I fully appreciate the need for a tribunal to dispense justice fairly and impartially. Confidence in a licensing and regulatory system is not possible unless there is complete confidence in the underlying adjudicatory process.

This legislation attempts to address some of the concerns that litigants have expressed regarding past and present OATH and TLC procedures. The first, section 19-902, addresses the issue of who must appear on behalf of the TLC at a hearing. A frequent complaint made by respondents, particularly in consumer cases, is that the driver is required to appear in person at a hearing but the consumer appears by telephone. This proposed legislation does not alter this practice. The Commission may present a complaining witness in person, something that happens rarely, if ever; or the can appear solely by a TLC prosecuting attorney who presents the case based on documentary evidence, such as a summons. This is done in the vast majority of cases, both before the taxi tribunal as well as with respect to other agencies that have summonses adjudicated through OATH. Consumers invariably appear by telephone. While OATH rules permit remote methods of testifying, such as having consumers appear by telephone or perhaps videoconferencing, for now, a driver must appear in person at the tribunal while the complaining witness need not appear in person. Equity should dictate that the respondent should be permitted to appear at the hearing in the same manner as the petitioner, whether in person, by telephone or videoconferencing. In other words, if the complainant can appear remotely, so should the respondent.

Proposed section 19-903 would give hearing officers greater discretion to reduce penalties imposed under TLC rules or the Administrative Code, by utilizing a list of criteria to be considered. In the past, hearing officers had considerable discretion with respect to penalties because many violations provided for a range of fines or other penalties. Over the years, the Commission eliminated most range fines and replaced them with set fines, thereby reducing a hearing officers' latitude in assessing penalties. For those violations where hearing officers still have latitude, the common practice by most hearing officers has been to assess the maximum fine permitted in all cases, which may include a lengthy license suspension or revocation, without any explanation or justification on the part of the hearing officer. OATH appeals decisions have held that no justification need be articulated by a hearing officer who decides to assess the maximum penalty authorized.

But giving hearing officers greater discretion in imposing penalties dopes little to instill confidence in the tribunal if it is the perception of the respondent that a fair and impartial hearing is not being offered in the first place. Respondents now, for the most part, enter into settlements with the TLC and accept fines that are mitigated because they have a lack of confidence in the hearing process. Giving these same hearing officers greater discretion does nothing to cure the underlying system if the respondent simply believes that due process cannot be afforded by the tribunal. While the proposed legislation would set forth a number of factors that hearing officers "shall" consider in decision whether a mitigation of penalty is warranted, transforming such a standard of review into an assurance that the hearing is fair in the first place is a challenge that I believe cannot be easily corrected by rewriting regulations or laws. The test is how the legislative branch and the agencies can work together to ensure a fair hearing for everyone.

The TLC already utilizes a settlement process for most violations, pre-hearing. A large number of respondents accept a reduced penalty in exchange for a guilty plea. Most, but not all respondents are offered settlements. The settlement process generally works well for routine violations because it allows for consistency of results, and enables many respondents the opportunity to face a reduced penalty. If the settlement process were replaced with a system giving hearing officers greater discretion, I believe the likely outcome would be higher fines and penalties for respondents.

Other provisions in this proposed legislation would prohibit the assessment of a violation for the same offense where both a TLC and a Vehicle and Traffic Law provision is alleged to be violated. I am not aware that this is a practice, although it could occur occasionally in the context of a consumer complaint where there was also police intervention.

The rules propose (section 19-905) that a three-hour time limit be imposed from hearing timer to the commencement of the trial. Such a rule existed many years ago when overcrowding and long waits at the tribunal was a problem. There is no longer a need for such

a rule, particularly if OATH adopts rules permitting the greater use of remote hearings which would result in less inconvenience to all parties.

With respect to appeals to the Chairperson (section 19-906), such appeals are only taken with respect to cases where discretionary license revocation is sought. I would propose that the Chairperson's authority in such cases be limited to adopting or decreasing, but not increasing, the penalty imposed by the hearing officer. Presently, in a discretionary revocation case, whether the hearing officer imposes a penalty of less than license revocation, the Chairperson can increase the fine and/or the suspension or revocation period.

In summary, with respect to the legislation before the council today I urge this Committee to consider the following changes to OATH procedures:

- Provide that whenever a consumer complainant need not appear in person, the respondent also need not be required to appear. Alternatively, if the respondent must personally appear, so should the complaining witness;
- Limit the Chairperson's review of both OATH Hearings and Trials Divisions determinations to an adoption of the judge's findings or a mitigation of penalty. Prohibit the Chairperson from increasing penalties imposed by hearing officers.

But to address the underlying problems, I would also urge that this committee consider the creation of a task force, comprised not only of TLC and OATH representatives, but also of persons who regularly appear before the tribunal, to propose meaningful procedural changes that would ensure due process and a respect for the rule of law in the adjudication of summonses.

Thank you for providing me the opportunity to testify. I would be happy to answer any questions you may have.

LDF
DEFEND EDUCATE EMPOWER

Testimony of Kristen Johnson
LDF/Fried Frank Fellow
NAACP Legal Defense and Educational Fund, Inc.

Before the New York City Council
Committee on Governmental Operations

Opposing Int. No. 748

New York, NY

April 26, 2018

I. INTRODUCTION

Good Afternoon, Chair Cabrera and members of the Committee. My name is Kristen Johnson and I am testifying on behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF). Thank you for the opportunity to testify this afternoon on Int. No. 748. LDF strongly opposes the portion of this proposed legislation that would allow OATH Administrative Law Judges to impose fines below the minimum fines for Taxi and Limousine Commission-related violations. Those fines have already proven inadequate to remedy and deter the widespread and persistent problem in this city of trying to hail a cab while Black. At least in ride refusal cases, those fines should be increased, not potentially lowered.

LDF is the nation's oldest civil and human rights law organization. LDF was founded in 1940 by Thurgood Marshall, who later became the first Black U.S. Supreme Court Justice. Since its inception, LDF has used legal, legislative, public education, and advocacy strategies to promote full, equal, and active citizenship for Black Americans. This has included litigating seminal cases such as *Brown v. Board of Education* and *Newman v. Piggie Park Enterprises*, which upheld Title II of the Civil Rights Act of 1964 and its prohibition on racial discrimination in public accommodations. LDF has also been on the frontlines of opposing racial profiling, whether practiced by law enforcement agencies, department stores, airlines, or, as in the matter under discussion today, taxicab drivers. LDF's work to eradicate race discrimination in public accommodations is the legacy of this nation's civil rights laws which historically were used to attack discrimination in public spaces—schools, transportation, public accommodations—and transforming these spaces to protect the dignity of communities of color. Since our incorporation in 1940, LDF's headquarters have been located in New York City. And an additional LDF office

is located in Washington, D.C. The majority of our 75-person staff works out of our New York City office, and most also reside in the City.

II. TESTIMONY

Over 50 years ago, Congress recognized that a law was needed to vindicate "the deprivation of personal dignity that surely accompanies denials of equal access to public [accommodations]."[1] Those Senators in the early 1960s understood that "[d]iscrimination is not simply dollars and cents. . . . It is equally the inability to explain to a child that . . . he will be denied the right to enjoy equal treatment even though he be a citizen of the United States and may well be called upon to lay down his life to assure this Nation continues."[2]

Fifty years later, though, such "deprivation of personal dignity" remains routine for Black New Yorkers, who have experienced standing on street corners, watching taxi after taxi pass them by or hearing the car doors lock when they try to get in, and seeing the same cabs pull over for white passengers without hesitation. This was the case for Leon Collins, who was visiting New York City in 2015 with his wife and young daughter when he tried to hail a taxi heading uptown in the Hell's Kitchen neighborhood. Finally giving up on his attempts to flag down a cab, Mr. Collins asked his wife, who is white, to try. A taxi stopped for her almost immediately. Mr. Collins later posted on Facebook about his experience visiting New York City, writing, "Today, my younger daughter learned how NYC cabs are in no rush to pick up black men, especially on avenues pointed toward Harlem. . . . It doesn't even really anger me anymore, because it has always been this way, as long as I can remember."[3]

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[1] S. Rep. No. 88-872, at 16 (1964).
[2] *Id.*
[3] Paul LaRosa, *Almost No More White NYC Cab Drivers, But Blacks Still Can't Catch a Ride?*, HuffPost, Jan. 6, 2015, https://www.huffingtonpost.com/paul-larosa/nyc-cab-drivers-blacks_b_6116602.html (quoting a friend and former colleague).

Mr. Collins and his daughter should have been able to visit this city without being denied a basic service because of the color of their skin. That was clear to Congress over 50 years ago. And it must be clear to us now that there is no context in which such refusal of service can ever be ignored, tolerated, or accepted.

This past October, LDF's Director-Counsel, Sherrilyn Ifill, tweeted about her experience being denied service while trying to hail a taxi. The experience she described is a common one for Black New Yorkers: when the taxi driver saw her trying to flag him down, he turned his "on duty" light off and drove past. The Taxi and Limousine Commission (TLC) replied to the tweet, prompting an ongoing dialogue between LDF and TLC about the persistent problem of discriminatory ride refusals in the City. Within days of meeting with TLC, Ms. Ifill was refused service twice more, once while leaving the LDF office in the Financial District and once while leaving the staff holiday party in the West Village. Ms. Ifill's experiences underscore the prevalence of discriminatory ride refusals in the City. Our communications with TLC during this time have been constructive, and also illuminating as to the extent of the problems that must be overcome within the industry.

Deprivation of personal dignity is not the only harm to Black New Yorkers inflicted by routine and persistent ride refusals. There are substantial economic harms as well: missed job interviews and flights, being late for client meetings or doctor's appointments, or having one's pay docked at work. And there are Black tourists whose starry visions of New York City are marred by racism. How many people visiting New York City experience what happened to my colleague, who, after waiting in the taxi line at Penn Station, had a taxi roll past her to pick up a white woman standing 20 feet behind her? The man working the taxi stand observed what happened and apologized, saying that he sees the same thing happen to Black people all day.

Many white New Yorkers have had the experience of securing cabs for their Black friends. I've personally heard from white law clerks who would have to hail cabs in New York for the African American Judge for whom they worked, and from a colleague whose desire to come to New York has diminished due to experiences of having had to ask his white boss to help him get a cab in order not to miss his flight. And as described in the book *Taxi Confidential*,

> Whenever Sean Croix, a black man, had to hail a cab, he had his white friends do it. He would hide around a corner or behind a light, darting into the backseat at the last moment. His friend, Ted Boss, also African-American, did, too. Both moved to New York ten years ago to attend Columbia University's medical school. Sean, who grew up in Miami, knew New York cabbies' reputation for racism; Ted, who came from San Antonio, had no clue. Today, both have countless stories—all told with a residue of anger—illustrating their struggle to catch cabs.[4]

Unable to rely on hailing cabs, Black New Yorkers for decades have had to build extra time into their schedules or plan alternate modes of transportation. Indeed, many Black people, like New York Times Magazine staff writer Jenna Wortham, have decided that, after "endur[ing] humiliating experiences trying to get a cab," they would just "avoid[] cabs altogether," choosing rental cars and public transportation instead.[5] As found in a 2015 Chicago study, "Black aversion to the taxi services industries rest in a broad feeling of disrespect by the industry toward them and their communities."[6] According to Wortham and fellow blogger Latoya Peterson, even though using a ride-sharing app can be more expensive than a regular yellow taxi, they are "usually willing to pay extra to avoid potential humiliation."[7]

The consequences are particularly severe for the many Black people and other people of color who live in outer-borough neighborhoods without access to a subway, making them

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[4] AMY BRAUNSCHWEIGER, TAXI CONFIDENTIAL: LIFE, DEATH AND 3 A.M. REVELATIONS IN NEW YORK CITY CABS 194 (2009).

[5] Jenna Wortham, *Ubering While Black*, Matter (Oct. 23, 2014), https://medium.com/matter/ubering-while-black-146db581b9db.

[6] Cornell Belcher & Dee Brown, HAILING WHILE BLACK 3 (2015), http://www.brilliant-corners.com/post/hailing-while-black.

[7] Wortham, *supra* note 5.

dependent on taxis and the bus system, "which is arguably in an even worse crisis than our subways."[8] Many taxi drivers, as we have learned, will readily admit that they will refuse service to a Black person because they think they might live in an outer-borough neighborhood, which would be less economically advantageous for the driver. As a result, the refusal of some taxi drivers to serve Black customers further segregates this city and further marginalizes communities of color. It can prevent Black New Yorkers from participating as full citizens in New York City life.

The problem, of course, is not new. The *New York Times* called attention to it in 1987 with the headline, "Hailing a Taxi Is Even Harder if You're Black."[9] And attention to the issue in New York arguably peaked in 1999, after actor Danny Glover filed a complaint alleging that five cabs had failed to stop for him and his daughter in Harlem.[10] In 2011, the City announced a crackdown on drivers who refused service to outer boroughs.[11] But, it is now 2018, and the problem persists: Every day, Black people in New York City are denied a basic service because of the color of their skin, learning from a young age to associate the "click" of a cab's door locks with racial exclusion and corrosive prejudice.

The bill currently before the Committee would give Administrative Law Judges the discretion to reduce penalties, including for bias-related ride refusals, below the minimum amount set by the Taxi and Limousine Commission. As we know from our discussions with the TLC and others, many drivers already consider the potential for a fine an acceptable "cost of doing business," something they are willing to bear based on false and harmful stereotypes of

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[8] Brad Lander, *Desegregating NYC: Twelve Steps Toward a More Inclusive City* 28 (Apr. 2018), https://drive.google.com/file/d/17yqKmyjsVXJEezRc-Dxfiz08F8C3MW_n/view.
[9] Sam Roberts, *Hailing a Taxi Is Even Harder if You're Black,* N.Y. Times (Dec. 10, 1987), https://www.nytimes.com/1987/12/10/nyregion/metro-matters-hailing-a-taxi-is-even-harder-if-you-re-black.html.
[10] Monte Williams, *Danny Glover Says Cabbie Discriminated Against Him,* N.Y. Times (Nov. 4, 1999), https://www.nytimes.com/1999/11/04/nyregion/danny-glover-says-cabbies-discriminated-against-him.html.
[11] Sara Frazier, *Crackdown on Taxis Who Rebuff Riders*, NBC New York (Mar. 9, 2011), https://www.nbcnewyork.com/news/local/City-Cracks-Down-on-Taxis-Who-Rebuff-Riders-117655504.html.

Black passengers that are widely held throughout the industry. The penalty for a first-time violation of an unjustified refusal of service is only $350 if the driver pleads guilty before a hearing, and only $700 for a second violation occurring within 24 months.[12] The persistence and prevalence of discriminatory ride refusals in our city makes clear that the current system of fines is inadequate. Allowing Administrative Law Judges to give even lighter penalties than the ineffective ones already on the books would send the opposite message of the one we should be sending.

Taxis operate in public spaces as public accommodations and TLC is required to enforce policies and practices that ensure riders do not experience discrimination. The kind of discrimination experienced by Black passengers resonates deeply with African Americans who still suffer the indignity of discrimination by businesses operating in public spaces. The Council must disrupt this and enable TLC to fulfill its obligation to ensure that all customers are afforded dignity and respect. The Council should be working with community members on strategies to end this problem and to hold accountable taxi drivers who engage in damaging racial discrimination. Measures that could help deter racially biased ride refusals include increasing fine amounts and other sanctions for drivers found to have refused service based on race, and enhancing the TLC's ability to extend accountability measures, including fines to medallion holders, agents, garage owners and other stakeholders higher up the economic chain of ownership. These are just some of the measures that we have explored during our recent discussions with TLC.

For far too long, taxi driver discrimination against Black people has been an open and ubiquitous fixture of New York City streets. If the City Council lowers the penalties for racial discrimination, it will be a signal that Black New Yorkers—indeed, all New Yorkers—will hear

[12] 35 R.C.N.Y. § 80-02(e) (2016).

loud and clear. At a time when openly racist rhetoric is condoned, or even uttered, at the highest levels of our federal government, New Yorkers pride themselves on advancing and representing values of equity, fairness, and diversity. The proposed bill is not just a step backwards, it is a statement that the daily indignities of Black New Yorkers don't matter. Going forward, we should look to bold, innovative solutions that will finally put an end to racial discrimination in the taxi industry. For now though, the decision is exceedingly simple: Saying "No" to a bill that will make it easier for people to discriminate. Saying "No" to a bill that will make it easier for people who operate a public accommodation to deny a basic service to a person based on the color of their skin. This bill is not equitable. This bill is not just. And this bill is certainly not New York City.

We respectfully request that the Council reject this bill and support the imposition of penalties that will adequately punish taxi drivers for engaging in pernicious discrimination against Black commuters in our city.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 748 Res. No. _____

☐ in favor ☐ in opposition

Date: 4-26-18

(PLEASE PRINT)

Name: Mohammed Akinlolu

Address: _____

I represent: TLC

Address: 33 Beaver Street

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I intend to appear and speak on Int. No. 825 Res. No. _____

☐ in favor ☐ in opposition

Date: 4/26/2018

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Name: Pauline Toole

Address: 31 Chambers Room 305

I represent: DORIS

Address: " "

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☐ in favor ☐ in opposition

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Name: Emily W. Newman

Address: 253 Broadway

I represent: Mayor's Office of Operations

Address: 253 Broadway

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☑ in favor ☐ in opposition

Date: 4/26/18

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Name: Keri Ebie

Address: 1 Centre St, 26th FL

I represent: HHOME

Address: _____

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Name: Fidel F. Del Valle

Address: 100 Church St. 12th Fl.

I represent: OATH

Address: 100 Church St. 12th Fl.

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☐ in favor ☐ in opposition

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(PLEASE PRINT)

Name: Commissioner Meera Joshi

Address: 33 Beaver Street, NY 10004

I represent: NYC Taxi and Limousine Commission

Address: 33 Beaver Street, NY 10004

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(PLEASE PRINT)

Name: Alex Camarda

Address: _____

I represent: Reinvent Albany

Address: _____

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Date: _____

(PLEASE PRINT)

Name: NINO HERVIAS

Address: _____

I represent: NYC Taxi Coalition

Address: United we Stand

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Appearance Card

I intend to appear and speak on Int. No. 1148 Res. No. _____

☐ in favor ☐ in opposition

Date: 4/26/2017

(PLEASE PRINT)

Name: PETER M. MAZER

Address: 39-24 24th STREET - LIC, NY 11101

I represent: METROPOLITAN TAXICAB BOARD OF TRADE

Address: Same

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I intend to appear and speak on Int. No. 2018-7048 Res. No. _____

☐ in favor ☒ in opposition

Date: _____

(PLEASE PRINT)

Name: CHORESH WALD

Address: 311 E 11 ST #PH2D New York NY 10003

I represent: _____

Address: _____

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 748 Res. No. _____

☐ in favor ☐ in opposition

Date: 04/26/18

(PLEASE PRINT)

Name: Kristen Johnson

Address: 40 Rector St 5th flor NY, NY 10006

I represent: NAACP Legal Defense Fund

Address: 40 Rector St 5th flor NY, NY 10006

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I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: VICTOR SALAZAR

Address: 120 ERSKINE PL.

I represent: NEW YORK TAXI WORKERS ALLIANCE

Address: _____

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(PLEASE PRINT)

Name: Bhairavi Desai

Address: 120 Edgar Pl #14D BRONX 10475

I represent: New York Taxi Workers Alliance

Address: 31-10 37th Ave #300 LIC, NY 11101

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☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Zubin Soleimany

Address: 31-10 37th Ave. Ste. 300 LIC, NY 11101

I represent: New York Taxi Workers Alliance

Address: _____

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☐ in favor ☐ in opposition

Date: 4/26

(PLEASE PRINT)

Name: MARCO CONNER

Address: _____

I represent: TRANSPORTATION ALTERNATIVES

Address: _____

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Appearance Card

I intend to appear and speak on Int. No. 2018-1781 Res. No. _____

☐ in favor ☒ in opposition

Date: 4/26/18

(PLEASE PRINT)

Name: Brian Howald

Address: 254 Henry St. #4 Brooklyn, NY 11201

I represent: _____

Address: _____

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