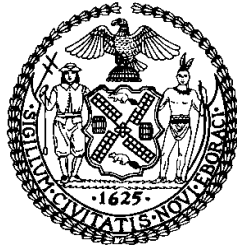


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**THE COUNCIL OF THE CITY OF NEW YORK**  
COMMITTEE REPORT OF THE INFRASTRUCTURE DIVISION  
Jeffrey T. Baker, Legislative Director  
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**COMMITTEE ON TRANSPORTATION**  
Hon. Ydanis Rodriguez, Chair

August 27, 2020

**PROPOSED INT. NO. 1865-A:**

By Council Members Rodriguez and Louis

**TITLE:**

A Local Law in relation to the creation of a black car and livery task force

**INTRODUCTION**

On August 27, 2020, the Committee on Transportation, chaired by Council Member Ydanis Rodriguez, will hold a hearing on Proposed Int. No. 1865-A, a Local Law in relation to the creation of a black car and livery task force. This is the second hearing that the Committee has held on this legislation. The first hearing on Int. No. 1865 was held on January 22, 2020. At that hearing, the Committee heard testimony from the New York City Taxi and Limousine Commission (TLC), operators of app-based for-hire vehicles, liveries and black cars, industry advocates and other

interested stakeholders.

## **BACKGROUND**

The TLC is charged with the regulation and oversight of taxicabs, including yellow taxicabs and street hail liveries (also known as green or boro taxis), for-hire vehicles (FHVs), commuter vans and paratransit vehicles.<sup>1</sup> The category of FHVs includes black cars, liveries, and luxury limousines.<sup>2</sup> Liveries, also known as community cars, accept passengers by prearrangement.<sup>3</sup> Similarly, black cars and luxury limousines are also limited to accepting rides through prearrangement, but must also receive more than 90 percent of payments in a non-cash method.<sup>4</sup> Luxury limousines differ from black cars in that they may carry up to 20 passengers and have additional insurance requirements.<sup>5</sup>

Each FHV<sup>6</sup> must be affiliated with a base that is authorized to dispatch vehicles.<sup>7</sup> As such, when a vehicle owner applies for an FHV license, they must list the name of the base that the vehicle will affiliate with. A driver may accept dispatches from other bases, and may also change their base affiliation.<sup>8</sup> For each trip, the dispatching base must provide the customer with the name and license number of both the affiliated base and the dispatching base.<sup>9</sup>

Base owners in the FHV sector can set their own fares, subject to the requirement that the base submit its rate schedules annually to the TLC,<sup>10</sup> which must include surge or variable pricing

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<sup>1</sup> See N.Y.C. Taxi and Limousine Commission website at <https://www1.nyc.gov/site/tlc/about/about-tlc.page>

<sup>2</sup> N.Y.C. Taxi and Limousine Commission *2018 Fact Book*, available at [https://www1.nyc.gov/assets/tlc/downloads/pdf/2018\\_tlc\\_factbook.pdf](https://www1.nyc.gov/assets/tlc/downloads/pdf/2018_tlc_factbook.pdf)

<sup>3</sup> N.Y.C. Admin. Code § 19-516(a).

<sup>4</sup> *Id.* at §§ 19-502(u) and (v).

<sup>5</sup> *Id.*

<sup>6</sup> The term “for-hire vehicle” can be used to refer to liveries specifically, or liveries, black cars, and luxury limousines collectively. In this report, for-hire vehicle is used to refer to the broader class of vehicles.

<sup>7</sup> 35 R.C.N.Y. § 59A-11(e).

<sup>8</sup> *Id.* at § 59A-11(e).

<sup>9</sup> *Id.*

<sup>10</sup> 35 R.N.Y.C Rules 58B-26.

policies, and any and all additional fees charged to the customer.<sup>11</sup> Owners must also submit rates to the TLC whenever rates are changed, with every renewal application, and with any application to change the ownership or location of the base.<sup>12</sup> In 2016, the City Council passed legislation that required black car bases to provide the passenger with an upfront binding fare quote.<sup>13</sup> Additionally, black car bases must display an option that allows customers to acknowledge and accept that surge pricing is in effect prior to dispatching a vehicle to a customer.<sup>14</sup>

Livery bases are also required to have off-street parking and submit an application for service to the community board and Council Member in the impacted area.<sup>15</sup> The application requires livery base owners to submit a business plan, indicate how many vehicles will affiliate with the base and how many trips they anticipate each vehicle will conduct per day.<sup>16</sup> Black car bases are exempt from these requirements.<sup>17</sup>

### **GROWTH IN THE FOR-HIRE VEHICLE INDUSTRY**

Smartphone technology has led to the development of the so-called “sharing economy,” which links consumers to peers providing a service, such as transportation or lodging, resulting in a new model of non-professional drivers offering passengers transportation in their own vehicle, often known as ridesharing. It was in this context that Uber, Lyft and other app-based companies first entered the New York City market between 2011 and 2014. These companies operate as FHVs and must follow the same requirements.

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<sup>11</sup> 35 R. N.Y.C. 59B-21.

<sup>12</sup> *Id.*

<sup>13</sup> 35 R.N.Y.C 59B-23 and LL 49 of 2016/19-545.

<sup>14</sup> 35 R.N.Y.C 59B-25(i).

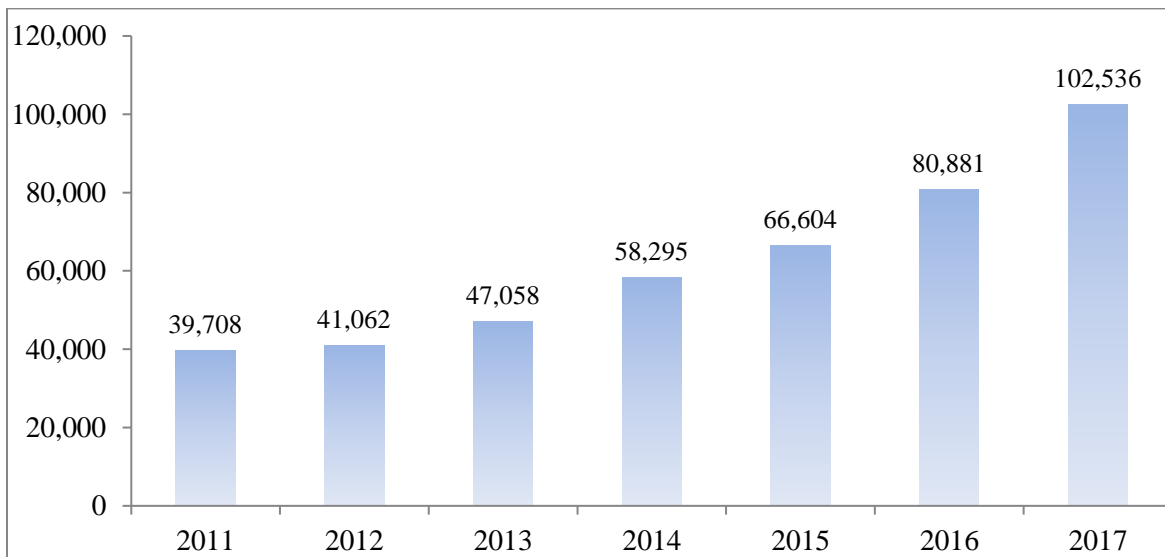
<sup>15</sup> 35 R.N.Y.C § 59B-05.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

App-based companies operate most of their bases under the black car designation due to the fact that more than 90 percent of their transactions are non-cash.<sup>18</sup> Traditionally, black car companies served business clients; however, as many new providers elected to operate as black car services, this sector has exploded in growth and now caters to a much larger number and variety of customers.<sup>19</sup>

### Number of Licensed For-Hire Vehicles<sup>20</sup>



In response to the rapid growth of the FHV sector, the City Council and TLC have made several regulatory changes in recent years. On August 8, 2018, the Council passed legislation that

<sup>18</sup> N.Y.C T.L.C Fact Book 2016, available at [http://www.nyc.gov/html/tlc/downloads/pdf/2016\\_tlc\\_factbook.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/2016_tlc_factbook.pdf).

<sup>19</sup> Schaller Consulting, *The New York City Taxicab Fact Book 26* (Mar. 2006), available at <http://www.schallerconsult.com/taxi/taxifb.pdf>.

<sup>20</sup>T.L.C., *2011 Annual Report 8*, available at [http://www.nyc.gov/html/tlc/downloads/pdf/annual\\_report\\_2011.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/annual_report_2011.pdf);  
T.L.C., *2012 Annual Report 10*, available at [http://www.nyc.gov/html/tlc/downloads/pdf/annual\\_report\\_2012.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/annual_report_2012.pdf);  
T.L.C., *2013 Annual Report 8*, available at [http://www.nyc.gov/html/tlc/downloads/pdf/annual\\_report\\_2013.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/annual_report_2013.pdf);  
*T.L.C., 2014 Annual Report 9*, available at [http://www.nyc.gov/html/tlc/downloads/pdf/annual\\_report\\_2014.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/annual_report_2014.pdf);  
*T.L.C., 2015 Annual Report 9*, available at [http://www.nyc.gov/html/tlc/downloads/pdf/annual\\_report\\_2015.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/annual_report_2015.pdf);  
*T.L.C., 2016 Annual Report 8*, available at, [http://www.nyc.gov/html/tlc/downloads/pdf/annual\\_report\\_2016.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/annual_report_2016.pdf);  
*T.L.C., 2017 Annual Report 8*, available at, [http://www.nyc.gov/html/tlc/downloads/pdf/annual\\_report\\_2017.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/annual_report_2017.pdf).

became Local Law 149 of 2018, which created a new licensing category of High-Volume FHVs<sup>21</sup> that dispatch 10,000 or more trips per day. The Council also passed legislation that became Local Law 147 of 2018 (Local Law 147), in relation to conducting a study of the impact vehicles for hire have on the City of New York, and authorizing the commission to establish and revise vehicle utilization standards for high-volume for-hire services and to regulate the issuance of new licenses to for-hire vehicles. The law also implemented a moratorium on the issuance of all new for-hire vehicle licenses (including those of traditional black car and livery services) while TLC studied and decided whether to adopt vehicle utilization standards and decided whether new for-hire vehicle licenses should be issued.<sup>22</sup>

Pursuant to Local Law 147, TLC—in coordination with DOT—issued a report, in June 2019, recommending an extension of the vehicle license pause and the adoption of vehicle utilization or “cruising” standards in Manhattan below 96th Street (the Congestion Zone).<sup>23</sup> In August of 2019, TLC adopted rules extending the vehicle license moratorium and instituting, beginning in February of 2020, a 36 percent cap on high-volume for-hire services (HVs) cruising, which will be lowered to 31 percent beginning in August of 2020.<sup>24</sup> The current cruising rates across all HVs is 41 percent.<sup>25</sup> In this rule package, TLC also permitted cross-class dispatching

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<sup>21</sup> Local law 149 of 2018 available for download at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3479666&GUID=01C67FF7-C56D-474A-BA53-E83A23173FA7&Options=ID|Text|&Search=>.

<sup>22</sup> Local law 147 of 2018 available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3331789&GUID=6647E630-2992-461F-B3E3-F5103DED0653&Options=ID|Text|&Search=>.

<sup>23</sup> Taxi and Limousine Commission and Department of Transportation, “Improving Efficiency and Managing Growth in New York’s For-Hire Vehicle Sector,” June 2019, available at [https://www1.nyc.gov/assets/tlc/downloads/pdf/fhv\\_congestion\\_study\\_report.pdf](https://www1.nyc.gov/assets/tlc/downloads/pdf/fhv_congestion_study_report.pdf).

<sup>24</sup> TLC rules, [https://www1.nyc.gov/assets/tlc/downloads/pdf/proposed\\_rules\\_hvfhs\\_cruising\\_08\\_07.pdf](https://www1.nyc.gov/assets/tlc/downloads/pdf/proposed_rules_hvfhs_cruising_08_07.pdf)

<sup>25</sup> *Id.*

meaning that a vehicle affiliated with a black car base can now be dispatched by a livery base and vice versa.<sup>26</sup>

## **IMPACTS ON LIVERIES AND CORPORATE BLACK CARS**

Some have argued that the less stringent rules and operating requirements given to app-based FHV's before the moratorium was in place, gave the high-volume FHV's an unfair advantage and led to their tremendous growth. As a result, liveries and traditional black car operators and drivers have been negatively impacted. While the city has seen an increase in the number of vehicles in the app-based black car sector due to the proliferation of app-based dispatches such as Uber and Lyft, it has also seen a decline in the number of cars affiliated with community car services (liveries), corporate black cars and luxury limousines. As of December 31, 2018, there were approximately 10,500 liveries, 103,000 black cars, and 4,100 luxury limousines operating in the City.<sup>27</sup> This is in contrast to the number of vehicles that were operating in each sector in beginning of 2014, when there were approximately 50,000 liveries, 10,000 black cars, and 7,000 luxury limousines operating in the City.<sup>28</sup> One particular community car service in East Harlem went from dispatching 325 vehicles before Uber was operating in the city to about 106 in September 2019.<sup>29</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> N.Y.C. Taxi and Limousine Commission *2018 Annual Report*, available for download at [https://www1.nyc.gov/assets/tlc/downloads/pdf/annual\\_report\\_2018.pdf](https://www1.nyc.gov/assets/tlc/downloads/pdf/annual_report_2018.pdf)

<sup>28</sup> N.Y.C. Taxi and Limousine Commission, *2014 Taxicab Fact Book*, available at [http://www.nyc.gov/html/tlc/downloads/pdf/2014\\_taxicab\\_fact\\_book.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/2014_taxicab_fact_book.pdf).

<sup>29</sup> Matthew Flamm, *Long-struggling livery cabs still losing ground*, Sept. 5, 2019, Crain's New York Business, available at <https://www.crainsnewyork.com/features/long-struggling-livery-cabs-still-losing-ground>

By The Numbers Calendar Year 2018

<b>Vehicles</b>	
<b>Street Hail Service</b>	
Medallion Taxis	13,587
Standby Vehicles	103
Street Hail Liveries (SHLs)	3,566
<b>Prearranged Service</b>	
For-Hire Vehicles (non-SHL)	118,737
Black Car	103,486
Livery	10,515
Luxury Limousine	4,143
Paratransit Vehicles (non-SHL)	333
Commuter Vans	260
<b>Total Vehicle Licenses</b>	<b>135,993</b>
<b>Bases</b>	
Black Car Bases	399
Community Car Services	437
Luxury Limousine Bases	149
Commuter Van Authorizations	87
Paratransit Bases	49
<b>Total Base Licenses</b>	<b>1,121</b>

*Source: N.Y.C. TLC 2018 Annual Report*

Additionally, liveries and traditional black car operators contend that the moratorium recently imposed by Local Law 147 to ease congestion and stem the proliferation of High Volume FHV’s on our city’s streets has hurt them as well since they cannot replace the drivers they lose to the app-based companies or those who fail to renew their licenses.<sup>30</sup> TLC, however, indicates that liveries have been losing drivers to Uber and Lyft for years and that the cap has not made things significantly worse for them.<sup>31</sup>

Others have also called for the TLC to restructure their licensing requirements and create four different categories for the sectors in order to help liveries and corporate black bases survive. Currently, the TLC has three classes of FHV service which includes under that umbrella liveries,

<sup>30</sup> See testimony of Cira Angeles of the Livery Base Owners Association in the hearing transcript of the September 10, 2019 Transportation Committee oversight hearing available at <https://legistar.council.nyc.gov>

<sup>31</sup> Matthew Flamm, *Long-struggling livery cabs still losing ground*, Sept. 5, 2019, Crain’s New York Business, available at <https://www.crainsnewyork.com/features/long-struggling-livery-cabs-still-losing-ground>

black cars, and luxury limousines.<sup>32</sup> Under one of the proposed restructurings TLC would create a separate licensing scheme for yellow taxi medallion drivers, livery taxi drivers, corporate account black cars and app-based black cars.<sup>33</sup> Some have called for the new licenses to be restricted. For example, the drivers licensed and affiliated with a livery or traditional black car base could not transfer their vehicles to high volume FHV's like Uber and Lyft.<sup>34</sup>

## **DRIVER INCOME**

The TLC released a report in July 2018 on app-driver earnings titled “An Earnings Standard for New York City’s App-based Drivers: Economic Analysis and Policy Assessment” (the Earnings Standard Report). The report was prompted by concerns with how app companies compensate drivers. The Earnings Standard Report was based on the research of economists James Parrott and Michael Reich, who studied TLC trip data and driver pay data supplied by Uber, Lyft, Juno, and Via.<sup>35</sup>

The report found that the majority of app-based drivers in New York City were immigrants.<sup>36</sup> Two-thirds of drivers list driving as their only occupation, which they rely on because they provide the bulk of their family’s income.<sup>37</sup> Almost 60 percent of these drivers work more than thirty hours per week.<sup>38</sup> The report found that 40 percent of drivers have incomes low enough to qualify for Medicaid and 16 percent of drivers have no coverage at all.<sup>39</sup> Additionally,

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<sup>32</sup> See N.Y.C. Taxi and Limousine Commission website at <https://www1.nyc.gov/site/tlc/businesses/for-hire-vehicle-bases.page>

<sup>33</sup> *Uptown Council Member Rodriguez’s Reaction To Mayor’s Proposal To Cap For-Hire Vehicles*, Harlem World Magazine, June 13, 2019, available at <https://www.harlemworldmagazine.com/uptown-council-member-rodriguez-reaction-to-mayors-proposal-to-cap-for-hire-vehicles/>

<sup>34</sup> Matthew Flamm, *Long-struggling livery cabs still losing ground*, Sept. 5, 2019, Crain’s New York Business, available at <https://www.crainsnewyork.com/features/long-struggling-livery-cabs-still-losing-ground>

<sup>35</sup> James A. Parrott and Michael Reich, *An Earnings Standard for New York City’s App-based Drivers: Economic Analysis and Policy Assessment* (July 2018), available at <http://www.centrernyc.org/an-earnings-standard>

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at p.21.

<sup>39</sup> *Id.* at p.5.



18 percent of drivers qualify for federal supplemental nutrition assistance (also known as SNAP), twice the rate for New York City workers overall.<sup>40</sup> Reich and Parrot determined that the current median net hourly earnings in the industry is \$14.25, which 85 percent of app-based drivers are paid per week.<sup>41</sup>

The TLC commissioned the study in order to examine the effects of a potential raise of the pay floor to \$17.22 per hour, which would be equivalent to the New York State minimum wage in New York City of \$15 that took effect on December 31, 2018, plus an additional 90 cents for paid time off and the employee's \$1.32 share of payroll tax.<sup>42 43</sup> At the time of the study, 85 percent of drivers earned below \$15 per hour, after expenses.<sup>44</sup> This means that the hourly earnings for drivers is down more than \$3 from between 2016 and 2017.

The Report recommended a pay floor, which would be met by companies based on a "minimum pay standard formula" for each trip, and recommended a \$1 bonus per pickup for shared riders because 40 percent of drivers with the lowest estimated hourly earnings provided shared rides. It would allow the average driver to see their pay increase by 22.5 percent or \$6,345 additionally per year.<sup>45</sup> For the remainder of drivers who do make above the proposed standard, most of them drive vehicles that qualify for premium services and higher fares.<sup>46</sup> The policy proposal encouraged the industry to reduce overcharging commissions rather than raising fares.<sup>47</sup> The pay floor was also intended to incentivize improved driver utilization (the amount of time a passenger is in a vehicle), shared rides, and reduce the growth in the number of new app-based

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at p.21.

<sup>42</sup> *Id.* at p.34.

<sup>43</sup> *Id.* at p.7.

<sup>44</sup> *Id.* at p.6

<sup>45</sup> *Id.* at p.4.

<sup>46</sup> *Id.* at p. 30.

<sup>47</sup> *Id.*

drivers. The pay floor standard would not be based on the passenger fare and is not a mandated pay method, but rather sets a basis for a driver's earnings floor.

The formula calculates the minimum pay per trip by multiplying distance of the trip in miles and \$0.58 (which the authors determined based on drivers' per mile expenses) to cover driving costs, as well as the time of the trip multiplied by \$0.287 (which compensates drivers for their time at \$17.22/60 minutes) to cover net expenses.<sup>48</sup> These factors are divided by the company's specific utilization rate in the previous quarter. The utilization rate is the amount of time drivers had passengers in their vehicles, which TLC analyzed based on company trip data from the previous quarter.<sup>49</sup> The first chart below, from the Earnings Standard Report, indicates the app company utilization rate for 2017.

App-Company Utilization<sup>50</sup>

Here are 2017 utilization rates for each of the four major app-dispatch companies serving New York City:

Juno	50%
Lyft	58%
Uber	58%
Via	70%

Below is an example, also from the Earnings Standard Report, of how the proposed pay standard applies to a typical trip.<sup>51</sup>

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<sup>48</sup> *Id.* at p.34.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at p.37

<sup>51</sup> *Id.* at p.38

### Exhibit 17: The Proposed Driver Pay Standard Applied to a Typical Trip

A typical FHV trip might be 7.5 miles in distance and 30 minutes in time.

Here is how the driver minimum pay standard (not the passenger fare) would be calculated under the proposal pay standard (assuming an industry-wide average utilization of 58%):

$$\frac{(.580 * 7.5 \text{ miles})}{.58 \text{ utilization}} + \frac{(\$0.287 * 30 \text{ minutes})}{.58 \text{ utilization}} = \$22.34$$

*Note: this is the minimum pay standard (for a non-shared ride), not the passenger fare, and the company and the driver can always agree that driver pay for any trip should be higher.*

The driver pay standard ensures that the driver can cover vehicle expenses as well as get paid at least the independent contractor equivalent of \$15.00 an hour.

The formula incentivizes each company to raise its company-wide utilization rate from one quarter to the next, by increasing the average number of trips per driver hour,<sup>52</sup> since a higher company utilization rate lowers the company's costs for the expense and time components.<sup>53</sup>

The proposed pay increase and shared ride bonus would cost companies an additional 13.2 percent,<sup>54</sup> but the authors argue that companies would limit the entry of new drivers onto the platform, queue future rides, allocate trips to drivers who drive longer hours, and promote more shared rides.<sup>55</sup> These efforts would assist in increasing the utilization rate, absorbing much of the effect of the proposed plan. The Parrot and Reich report projected response time to increase by an average of 18 seconds.<sup>56</sup>

The authors reasoned that the proposed plan would likely have a moderate effect on improving congestion and it might also help taxi and street hail services, as it would reduce

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at p.54.

<sup>55</sup> *Id.* at p. 57.

<sup>56</sup> *Id.*

competition between the sectors. However, the authors noted that non-app FHV companies may continue to lose market share.<sup>57</sup>

Since 2014, there has been a dramatic increase in the use of app-based FHVs. App-based FHV trips grew 800% from 2014 to 2017, from 20 to 160 million annual trips.<sup>58</sup> In May 2018, almost 18.5 million trips were dispatched by high-volume FHV companies, more than six times the trip volume in May 2015.<sup>59</sup> As of July 2018, over 78,000 vehicles were affiliated with high-volume FHV bases, up from about 12,500 in January 2015. These bases can also dispatch to any licensed FHV in their vehicle class (i.e., black car) that is not affiliated with their base.<sup>60</sup> Drivers were dispatched on almost 18.5 million trips per month for high-volume FHV bases in May 2018—twice as many trips as the yellow taxi industry—in 76,000 vehicles, or six times as many FHVs as taxis. App-based FHVs now providing over 575,000 trips a day during the week and nearly 675,000 trips on the weekend.<sup>61</sup> As of May 2018, app-based FHV trips have increased by 520,000 trips per day compared to May 2015. Yellow cab trips have declined by 127,000 trips per day during the same period.

A report released in June 2019 jointly by the TLC and the New York City Department of Transportation found that high-volume FHV trips grew from approximately 1.9 million in January 2015 to almost 24 million trips in March of 2019.<sup>62</sup> The report also highlighted that there were

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<sup>57</sup> *Id.*

<sup>58</sup> NYC DOT (July 2018)

<sup>59</sup> TLC Ride Data (July 2018)

<sup>60</sup> TLC Ride Data (July 2018)

<sup>61</sup> TLC Ride Data (July 2018)

<sup>62</sup> See “Improving Efficiency and Managing Growth in New York’s For-Hire Vehicle Sector,” NYC Taxi & Limousine Commission and NYC Department of Transportation, June 2019, available at [https://www1.nyc.gov/assets/tlc/downloads/pdf/fhv\\_congestion\\_study\\_report.pdf?fbclid=IwAR3SL68cI0RxHu6TTZd-BWSIHwvGibuiIayaJ\\_AwqaA5qk0lqHvVGO9eyLFM](https://www1.nyc.gov/assets/tlc/downloads/pdf/fhv_congestion_study_report.pdf?fbclid=IwAR3SL68cI0RxHu6TTZd-BWSIHwvGibuiIayaJ_AwqaA5qk0lqHvVGO9eyLFM)

more than 120,000 FHV's operating in the city in 2019, up from the 40,000 vehicles that were operating in 2010.<sup>63</sup>

Many have argued that drivers for app-based FHVs do not have sufficient worker protections, and are left vulnerable to the app-based companies.<sup>64</sup> If Uber's drivers were recognized as employees, Uber would be the largest private sector employer in the City of New York.<sup>65</sup> According to the Earning Standard Report, 85 percent of drivers for the four largest FHV companies (Uber, Lyft, Via, and Juno) earned below \$17.22, the independent contractor equivalent of a \$15 hourly wage, with an allowance for paid time off, which NYS recently implemented as the minimum wage.<sup>66</sup> Driver earnings before expenses have declined since 2014. Between 2016 and 2017, mean hourly earnings for drivers across all four companies decreased by more than \$3 per hour.<sup>67</sup> Between 60-65 percent of FHV drivers work full-time and 80% acquired a car, at least in part, to drive professionally.<sup>68</sup> According to Reich and Parrott, "app companies have been able to expand their workforce by drawing principally immigrants without a four-year college degree and who face restricted labor market opportunities; and 60-65 percent of app drivers are full-time, without another job, and about 80 percent acquired a car to earn a living by driving."<sup>69</sup> Moreover, "[t]he proposed policy would increase driver net earnings (after expenses) by 22.5 percent or an average of \$6,345 per year among the 85 percent of drivers who would get increases . . . . The policy could be fully paid for by combining an increase of 2.4 minutes in driver trips with

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<sup>63</sup> *Id.*

<sup>64</sup> See, e.g., Chris Brooks, "Meet the militant taxi drivers union that just defeated Uber and Lyft," Salon.com, Aug. 26, 2018, available at [https://www.salon.com/2018/08/26/meet-the-militant-taxi-drivers-union-that-just-defeated-uber-and-lyft\\_partner/](https://www.salon.com/2018/08/26/meet-the-militant-taxi-drivers-union-that-just-defeated-uber-and-lyft_partner/).

<sup>65</sup> Parrott, James A. & Reich, Michael, 'An Earnings Standard for New York City's App-based Drivers: Economic Analysis and Policy Assessment' (July 2018), [<http://www.centernyc.org/an-earnings-standard/>], p.69

<sup>66</sup> Parrott & Reich, 'An Earnings Standard for New York City's App-based Drivers', p1

<sup>67</sup> Parrott & Reich, 'An Earnings Standard for New York City's App-based Drivers', p24

<sup>68</sup> TLC Ride Data (July 2018)

<sup>69</sup> Parrott & Reich, 'An Earnings Standard for New York City's App-based Drivers', p5

passengers per working hour with reductions in company commissions. Fare increases would then be small (five percent or less) and average wait times for passengers would increase by about 12 to 15 seconds.”<sup>70</sup>

Pursuant to Local Law 150 of 2018, which required TLC to establish minimum payments to FHV drivers and authorized the establishment of minimum rates of fare,<sup>71</sup> in December of 2018, TLC adopted rules establishing a driver pay floor for HV drivers, using methodology recommended by the Earnings Standard Report discussed above.<sup>72</sup> The driver pay became effective February 1, 2019.<sup>73</sup> According to TLC, from February to August of 2019, the driver pay rules resulted in an additional \$225 million being paid to more than 80,000 drivers.<sup>74</sup>

### **INCOME FROM ADVERTISING ON FOR-HIRE VEHICLES**

Yellow taxis in the city are allowed to have exterior and interior advertising on their vehicles,<sup>75</sup> including the option of having a rooftop advertising fixture,<sup>76</sup> as long as they are authorized by the TLC. In allowing taxis to advertise, TLC cites the type of technology that they are required to use for credit card payments and data collection and contends that the advertising helps defray the cost of the technology.<sup>77</sup> In contrast to those rules, FHV’s have been prohibited from displaying such advertisements since 1999,<sup>78</sup> except for a brief period of time between

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<sup>70</sup> Parrott & Reich, ‘An Earnings Standard for New York City’s App-based Drivers’, p1

<sup>71</sup> Local law 150 of 2018, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3487613&GUID=E47BF280-2CAC-45AE-800F-ED5BE846EFF4&Options=ID|Text|&Search=>.

<sup>72</sup> TLC rules, [https://www1.nyc.gov/assets/tlc/downloads/pdf/driver\\_income\\_rules\\_12\\_04\\_2018.pdf](https://www1.nyc.gov/assets/tlc/downloads/pdf/driver_income_rules_12_04_2018.pdf)

<sup>73</sup> See Driver Pay at <https://www1.nyc.gov/site/tlc/about/driver-pay.page>.

<sup>74</sup> Matthew Flamm, “Taxi and Limousine Commission votes on new e-hail rules,” Crain’s New York, Aug. 7, 2019, available at <https://www.crainsnewyork.com/transportation/taxi-and-limousine-commission-votes-new-e-hail-rules>.

<sup>75</sup> TLC rules §58-32 available at [https://www1.nyc.gov/assets/tlc/downloads/pdf/rule\\_book\\_current\\_chapter\\_58.pdf](https://www1.nyc.gov/assets/tlc/downloads/pdf/rule_book_current_chapter_58.pdf)

<sup>76</sup> TLC rules §67-16 available at [https://www1.nyc.gov/assets/tlc/downloads/pdf/rule\\_book\\_current\\_chapter\\_67.pdf](https://www1.nyc.gov/assets/tlc/downloads/pdf/rule_book_current_chapter_67.pdf)

<sup>77</sup> Meaghan McGoldrick, “Digital ad ban on for-hire vehicles sparks outrage among app drivers,” Brooklyn Daily Eagle, August 28, 2019, available at <https://brooklyneagle.com/articles/2019/08/28/digital-ad-ban-on-for-hire-vehicles-sparks-outrage-amongst-app-drivers/>

<sup>78</sup> TLC rules §59A-29e available at [https://www1.nyc.gov/assets/tlc/downloads/pdf/rule\\_book\\_current\\_chapter\\_59.pdf](https://www1.nyc.gov/assets/tlc/downloads/pdf/rule_book_current_chapter_59.pdf)

February 2018 and August of 2019 when the TLC allowed them to advertise after a Federal District Court ruled in a lawsuit that TLC's ban was unconstitutional.<sup>79</sup> However, on an appeal from the TLC, the Second Circuit of the U.S. Circuit Court of Appeals reversed the lower court's ruling and upheld TLC's ban on advertising in FHV's.<sup>80</sup> Following the appellate court's decision, on August 31, 2019, the TLC resumed enforcing the ban on advertising in both the interior and exterior of FHV's.<sup>81</sup> Vehicles that are caught driving around with advertisements are subject to a \$50 penalty.<sup>82</sup>

Some FHV drivers argue that TLC's ban on advertising prevents them from earning additional revenue that could be worth thousands of dollars per year.<sup>83</sup> The Independent Drivers Guild (IDG), an advocacy group that represents app-based drivers, indicated that their financially struggling drivers earned about \$300 a month from the advertising, extra income that helped them pay for some of their industry expenses, like health insurance, and allowed them to spend less time on the road driving.<sup>84</sup> However, in reinstating the ban the TLC claimed that they saw no evidence of drivers benefiting from the advertising and stated that only 70 of the more than 120,000 FHV drivers had applied for permits during the time period that the ban was lifted in 2019.<sup>85</sup>

## **IMPACT OF VEHICLE LEASE ARRANGEMENTS**

In New York City, Uber has partnerships with dealerships that offer vehicle financing

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<sup>79</sup> Vugo, Inc. v. City of New York, No. 1:2015cv08253 - Document 63 (S.D.N.Y. 2018)

<sup>80</sup> Vugo, Inc. v. City of New York, No. 18-807 (2d Cir. 2019).

<sup>81</sup> See TLC Industry Notice #19-10, FHV Advertising, available at [https://www1.nyc.gov/assets/tlc/downloads/pdf/industry\\_notice\\_19\\_10\\_english.pdf](https://www1.nyc.gov/assets/tlc/downloads/pdf/industry_notice_19_10_english.pdf)

<sup>82</sup> TLC rules §59A-29e available at [https://www1.nyc.gov/assets/tlc/downloads/pdf/rule\\_book\\_current\\_chapter\\_59.pdf](https://www1.nyc.gov/assets/tlc/downloads/pdf/rule_book_current_chapter_59.pdf)

<sup>83</sup> Noah Manskar, "Revived NYC Ban on Uber Car Ads Rankles Drivers," Patch, August 23, 2019, available at <https://patch.com/new-york/new-york-city/revived-nyc-ban-uber-car-ads-rankles-drivers>.

<sup>84</sup> Matthew Flamm "Uber and Lyft drivers lose their rooftop billboards." Crain's New York Business, August 27, 2019, available at <https://www.craigslist.com/transportation/uber-and-lyft-drivers-lose-their-rooftop-billboards>

<sup>85</sup> See "Ride-Share Vehicles Banned From Adding Advertisements To Their Cars," CBS New York, August 22, 2019, at <https://newyork.cbslocal.com/2019/08/22/ride-share-vehicles-banned-from-adding-advertisements-to-their-cars/>

options to drivers with low credit scores.<sup>86</sup> The companies have payment plans for drivers that charge as high as \$500 per week and that require drivers to sign a payment deduction authorization that allows the dealer take the fees directly from the driver's Uber earnings.<sup>87</sup> Drivers are incentivized with the promise that they will own their vehicle within three years. However, the driver may end up paying more than the actual sticker price of the vehicle.<sup>88</sup> A report released by IDG found that drivers who lease their vehicles have on average annual expenses up to \$35,000 and drivers who own their vehicles or have a loan had an average annual cost of \$30,000.<sup>89</sup>

### **ANALYSIS OF PROPOSED INT. NO. 1865-A**

Proposed Int. No. 1865-A establishes a task force charged with studying the black car and livery industries for the purpose of identifying challenges to the viability of these industries. The task force would also study the potential impacts of advertising and the viability of advertising as an additional revenue source for drivers in the black car, livery and other for-hire vehicle industries. The task force would be responsible for issuing recommendations for legislation and policy in accordance with the findings of their study. The task force would be chaired by the Chair of the Taxi and Limousine Commission (TLC) or someone designated to represent the Chair of the TLC Commission. Eight members of the task force will be appointed by the Mayor. One member will be appointed by the Speaker of the City Council and one member will be appointed by the Public Advocate. Appointments must be made no later than 60 days after this bill becomes law and all members of the task force will serve without compensation. The task force would be

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<sup>86</sup> Uber NYC, "Rent a TLC Car, available at <https://www.uber.com/drive/new-york/get-started/tlc-car-rentals/> (last accessed September 4, 2019).

<sup>87</sup>Griswold, Alison, Inside Uber's unsettling alliance with some of New York's shadiest car dealers, (June 27, 2017), available at <https://qz.com/1013882/ubers-rental-and-lease-programs-with-new-york-car-dealers-push-drivers-toward-shady-subprime-contracts/>.

<sup>88</sup> *Id.*

<sup>89</sup>Independent Drivers Guild, "Progress Toward A Fair For-Hire Vehicle Industry," (2017) available at <https://drivingguild.org/wp-content/uploads/2017/11/Progress.pdf>.



required to meet at least once a quarter, hold at least one public hearing and submit a report to the Mayor and the Speaker that includes their policy and legislative recommendations to address the challenges to the viability of the black car and livery industries. This report should be submitted no later than 250 days after the bill becomes law and published online by the TLC Chair. The task force would terminate 180 days after the submission of its report. Proposed Int. No. 1865-A would take effect immediately.

Proposed Int. No. 1865-A would define the terms “base,” “black car,” “livery” and “for-hire vehicle” as follows: The term “base” is defined as a business licensed by the TLC for dispatching for-hire vehicles as well as the physical location from which for-hire vehicles are dispatched. As defined by section one, a base can be any of the following: a black car base, a livery base, or a luxury limousine base. The term “black car” is defined as for-hire vehicle dispatched from a base whose owner holds a franchise from the corporation or other business entity that operates the base, or who is a member of a cooperative that operates the base. Black cars must be dispatched from a base that receives more than 90 percent of its payment by means other than direct cash payment by a passenger. The term “livery” is defined as a for-hire vehicle that is designed to carry fewer than six passengers, not including the driver, which is dispatched from a base and charges for service on the basis of a flat rate, time, mileage, or based on zones. A “for-hire vehicle” is defined as a vehicle licensed by the TLC with a seating capacity of 20 or fewer, three or more doors which is not a taxicab, commuter van or a bus.

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Proposed Int. No. 1865-A

By Council Members Rodriguez and Louis

A LOCAL LAW

In relation to the creation of a black car and livery task force

Be it enacted by the Council as follows:

Section 1. Definitions. For purposes of this local law, the following terms have the following meanings:

Base. The term “base” means a for-hire base as defined in subdivision g of section 59B-03 of title 35 of the rules of the city of New York.

Black car. The term “black car” means a for-hire vehicle dispatched from a central facility whose owner holds a franchise from the corporation or other business entity that operates such central facility, or who is a member of a cooperative that operates such central facility, where such central facility has certified to the satisfaction of the New York city taxi and limousine commission that more than 90 percent of the central facility’s for-hire business is on a payment basis other than direct cash payment by a passenger.

Livery. The term “livery” means a for-hire vehicle that is designed to carry fewer than six passengers excluding the driver, is dispatched from a base and charges for service on the basis of flat rate, time, mileage or zones.

For-hire vehicle. The term “for-hire vehicle” means a for-hire vehicle as defined in subdivision i of section 59B-03 of title 35 of the rules of the city of New York.

§ 2. Task force established. There is hereby established a task force to be known as the black car and livery task force.

§ 3. Duties. The task force shall study the black car and livery industries for the purpose of identifying challenges to their viability and shall make recommendations for legislation and policy to address those challenges. In addition to any other topics that the task force deems appropriate, the task force shall consider the potential impacts of advertising and the viability of advertising as an additional revenue source for drivers in the black car, livery and other for-hire vehicle industries.

§ 4. Membership. a. The task force shall be composed of the following members:

1. The chairperson of the New York city taxi and limousine commission or such chairperson's designee, who shall serve as chair of the task force;

2. Eight members appointed by the mayor;

3. One member appointed by the speaker of the council; and

4. One member appointed by the public advocate.

b. All appointments required by this section shall be made no later than 60 days after the effective date of this local law.

c. Each member of the task force shall serve at the pleasure of the officer who appointed the member. In the event of a vacancy on the task force, a successor shall be selected in the same manner as the original appointment. All members of the task force shall serve without compensation.

§ 5. Meetings. a. The chair shall convene the first meeting of the task force no later than 30 days after the last member has been appointed.

b. The task force may invite relevant experts and stakeholders to attend its meetings and to otherwise provide testimony and information relevant to its duties.

c. The task force shall meet no less than once each quarter to carry out the duties described in section three. The task force shall hold at least one public hearing before submitting the report required by section six.

d. The meeting requirement of subdivision c shall be suspended when the task force submits its report as required by section six.

§ 6. Report. a. No later than 250 days after the effective date of this local law, the task force shall submit a report to the mayor and the speaker of the council setting forth its recommendations for legislation and policy relating to addressing challenges to the viability of the black car and livery industries. The report shall include a summary of information the task force considered in formulating its recommendations.

b. The chairperson of the New York city taxi and limousine commission shall publish the task force's report electronically on such commission's website no later than 30 days after its submission to the mayor and the speaker of the council.

§ 7. Agency support. The New York city taxi and limousine commission shall provide appropriate staff and resources to support the work of such agency related to the task force.

§ 8. Termination. The task force shall terminate 180 days after the date on which it submits its report, as required by section six.

§ 9. Effective date. This local law takes effect immediately.

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