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NYC Announces Bold Zero Emissions Plans to "Charge-Up" the TLC's Fleet: *How to Obtain New Free Electric For-Hire Vehicle Permits (E-FHVs)*

In January, New York City Mayor Eric Adams announced that Uber and Lyft will be required to have a zero-emissions fleet by 2030.[1] Adams made the announcement during his 2023 State of the City speech, and it comes on the heels of the International Association of Transportation Regulators' (the "IATR") release of its decarbonization plan: ***"Guiding Principles for Mobility Policy and Congestion Mitigation,"*** (**https://bit.ly/3XsVHPd**) which highlights ten solution-focused principles to mitigate vehicle congestion. Among the IATR's recommendations for regulators is to implement incentives to increase use of zero emission vehicles ("ZEVs") for taxi, limousine/livery, and ride-hail services, and to remove disincentives to switching to an electric vehicle, such as requiring vehicles that are used to provide service to be zero emissions.[2]

Both Uber and Lyft had previously announced their own goals to have 100% electric vehicle fleets by 2030, and California previously enacted requirements that will require ride-hail drivers in the Golden State to be emissions-free by 2030. Still, the news that all Uber and Lyft vehicles in NYC—currently amounting to 74,396 vehicles licensed by the NYC Taxi and Limousine Commission ("TLC")—will be electric does raise many questions about how it will work and the electrification of TLC-licensed vehicles generally, which we delve into below.[3]

How Close Is the TLC to Realizing the Mayor's Mandate?

The answer is that the TLC is just getting started! Currently, only one percent (approximately 1,100) of all TLC-licensed vehicles are electric, according to TLC data – and about 97% of those are FHVs.[4] Uber and Lyft vehicles represents about 80% (74,396 vehicles) of the approximately 110,110 active vehicles licensed by TLC.[5] There are many vehicles that need to transition from an internal combustion engine ("ICE") to a ZEV in the next 7 years. Right now, EVs are in short supply, and there are NOT many fast charging stations around NYC. In other words, there is a lot of work ahead on both the vehicle availability side given supply chain issues, as well as building infrastructure to support this bold initiative.

Who Is Going to Pay for All These New EVs?

In the TLC's Electrification Report 2022, the agency noted that ZEVs typically cost $6,000–$8,000 more than their ICE counterparts, and that the necessary charging infrastructure

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[1] https://nyc.gov/office-of-the-mayor/news/064-23/transcript-mayor-adams-outlines-working-people-s-agenda-nyc-second-state-the-city

[2] The Guiding Principles for Mobility Policy and Congestion Mitigation are available at www.iatr.global/ and may be download here: https://bit.ly/3XsVHPd.

[3] https://www.nyc.gov/assets/tlc/downloads/pdf/annual_report_2022.pdf

[4] https://www.nyc.gov/assets/tlc/downloads/pdf/Charged_Up!_TLC_Electrification_Report-2022.pdf

[5] https://www.nyc.gov/assets/tlc/downloads/pdf/Charged_Up!_TLC_Electrification_Report-2022.pdf

can cost from $3,000 to $14,000.[6] According to Mayor Adams, the transition to zero-emission Uber and Lyft vehicles "will be achieved with no new costs for individual drivers."[7] If not the drivers and vehicle owners, then who will cover these costs? The TLC recommends "exploring more robust financial incentives targeting the for-hire transportation sector, including tax deductions, grants, and an EV driver pay standard."[8] Implementing an EV driver pay standard, as the TLC recommends, may cause bases to avoid hiring drivers who use those vehicles, which would be counterproductive.

I wrote about tax credits for EVs in my September 2022 article for this column, ***"The Inflation Reduction Act: EV & Infrastructure Funding, Credits & Incentives"*** (**https://bit.ly/3m05X3T**), and in an article I co-authored for Chauffer Driven: Legal Ease, ***"Legal Considerations in Financing and Leasing Your First EV"*** (**https://bit.ly/3EtNhQa**).[9]

California has taken a more direct approach to financing the mandated conversion of Transportation Network Company ("TNC") vehicles in the state to zero emission vehicles ("ZEVs") by 2030. The state is creating a Drivers Assistance Program, established through a fee proposed and paid by the TNCs, to manage and distribute financial incentives to low- and moderate-income drivers making the transition to a ZEV.[10] Taking a page from California's playbook, NYC could also take steps to ensure the mandate has minimal negative impact on low- and moderate-income drivers here, and to review barriers to transitioning to ZEVs for these drivers, who earn on average between $14,000 and $60,000 annually.[11]

What about Wheelchair Accessibility?

Another question that has come up is whether the EVs will be wheelchair accessible vehicles ("WAVs"). New York State currently has a tax credit (up to $15,000 per vehicle) for electric taxicabs and livery service vehicles that are WAVs, but there are no such vehicles currently available in the U.S.[12] According to the TLC Report, "[t]he earliest reports of these types of vehicles entering the market is 2024, but the timeline may be much longer."[13] One of the reasons cited is that modifications to current EVs would require major changes that could ultimately require the development of an entirely new model, which would likely extend the timeline beyond 2024.

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[6] "Charged Up! The TLC's Roadmap to Electrifying the For-Hire Transportation Sector in New York City," https://www.nyc.gov/assets/tlc/downloads/pdf/Charged_Up!_TLC_Electrification_Report-2022.pdf

[7] https://nyc.gov/office-of-the-mayor/news/064-23/transcript-mayor-adams-outlines-working-people-s-agenda-nyc-second-state-the-city

[8] https://www.nyc.gov/assets/tlc/downloads/pdf/Charged_Up!_TLC_Electrification_Report-2022.pdf

[9] https://www.blackcarnews.com/article/the-inflation-reduction-act-ev-infrastructure-funding-credits-incentives; https://www.chauffeurdriven.com/news-features/in-this-issue/3514-legal-ease-legal-considerations-in-financing-your-first-ev.html

[10] https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M498/K678/498678391.PDF

[11] https://www.nyc.gov/assets/tlc/downloads/pdf/Charged_Up!_TLC_Electrification_Report-2022.pdf

[12] https://www.tax.ny.gov/pit/credits/taxicabs.htm

[13] https://www.nyc.gov/assets/tlc/downloads/pdf/Charged_Up!_TLC_Electrification_Report-2022.pdf

Does the TLC Have Electrification Plans for Black Cars, Limousines, or Liveries?

At this time, NYC has not announced any plans to mandate electrification of traditional for-hire vehicles ("FHVs") in New York City. Nonetheless, many companies like Revel are embracing an electric FHV future on their own, and others are looking forward to the TLC's impending release of new FHV licenses that will be limited to use with electric vehicles.

The international car rental company Hertz has the largest electric vehicle rental fleet in North America. The company is accelerating the adoption of electrification by investing in the largest rental fleet of electric vehicles in North America and expanding the availability of charging stations. Through large-scale purchases from Tesla, Polestar, and GM, Hertz has assembled a fleet of tens of thousands of EVs available for rent at 500 Hertz locations across 38 states, including New York. Hertz has invested in thousands of charging stations across its locations, and has plans to install a national network of high-speed EV charging stations powered by bp pulse, bp's global electrification and charging solution brand.

In many U.S. markets outside NYC, Hertz has Tesla vehicles available to rent to drive for Uber, and nearly 50,000 drivers have benefited through the companies' partnership. Hertz and Uber recently announced that their North American partnership will be expanded across Europe with 25,000 EVs available to Uber drivers to rent by 2025. This will help Uber reach its goal of being a zero-emissions platform in London by 2025, and in Europe and North America by 2030.[14]

After a two-year hiatus, the TLC's EV exemption for new FHV licenses is back. However, this time, there are restrictions. The TLC recently amended its rules to allow the agency to issue a certain number of FHV licenses for use only with a battery electric vehicle.[15] The agency will issue up to 1,000 EV-only licenses (or E-FHVs), which will almost double the number of EVs currently in the TLC-licensed fleet. Of these, 600 E-FHV licenses will be restricted to individual TLC-licensed drivers ("restricted licenses"), and 400 will be available on a first come, first served basis to any applicant who meets the standard vehicle licensing criteria, including proof of purchase or lease of a qualifying vehicle and proof of insurance. The TLC is initially capping the 400 "unrestricted" licenses at 25 per applicant (based on an EIN/Employer Identification Number or Social Security number).

TLC Chair David Do said during the January 25 vote on the new E-FHV rules that they will start accepting applications for the 600 unrestricted licenses in "mid-March," and that the 400 unrestricted license applications will be available "shortly" thereafter. The TLC will post the application procedures on its website prior to the release of such applications. The TLC cautions potential applicants for the driver-restricted licenses to wait to purchase a vehicle until receiving the go-ahead from the TLC.

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[14] https://newsroom.hertz.com/news-releases/news-release-details/hertz-and-uber-expand-partnership-bring-25000-electric-vehicles

[15] https://www.nyc.gov/assets/tlc/downloads/pdf/proposed_rule_ev-fhv-rules-01-25-2023

In addition to this wise advice, it is important for companies to engage and work with regulatory counsel experienced in this area. This limited opportunity may involve financing and investments before submitting applications. In order to minimize losses and to ensure that the application is accurate, counsel should be contacted to maximize the chances for successfully obtaining these free E-FHV permits. Well, these new permits are not totally free – since there is a fee of $550 for a two year license (non-wheelchair accessible vehicles only). However, while the E-FHV licenses cannot be bought or sold like medallions, the corporations that own them can be sold. Currently, the asking price for a single plate is $40,000 and approximately $27,000 per plate for a multi-plate corporation.[16]

As part of the E-FHV license rule package, the TLC will now be reviewing the license cap only once a year in February instead of twice yearly, as it had been doing since 2019. Incrementally adding EVs through new FHV licenses, and the attrition of existing licenses, is unlikely to push the TLC past the goal line in 2030. It certainly would not hurt if the TLC provided additional incentives to transition existing ICE vehicles to EVs, in order to make progress throughout the FHV industry. The TLC has so far offered no financial incentives for existing FHV licensees to make the switch – not even a discount on its own licensing fees. As the TLC points out in its ***"Charged Up! TLC's Roadmap to Electrifying the For-Hire Transportation Sector in New York City,"*** these vehicles and the charging infrastructure are costly, and charging is not readily available throughout the city.[17]

The TLC Sets August 31, 2023 Deadline to Remove all FHVs from Storage

At the start of the COVID-19 pandemic in 2020, the TLC created the FHV License Storage Program to allow licensee to take their vehicles off the road without having to surrender their FHV permit. License holders could then sell the vehicle or at least surrender their TLC plates to avoid paying higher insurance premiums while vehicles sat idle. The TLC is ending the popular program, and any license currently in storage must be removed by August 31, 2023.[18] As of January 19, 2023, there were 4,123 FHV licenses in storage, down from 5,431 in November 2021 according to TLC data.

Those who have licenses in storage should assess their future fleet needs now to meet the August 31 deadline. Every indication is that this will be a "hard cutoff" date. There are options for those who are unable to put vehicles on the road right now because of the driver shortage or for any other reason. Consult with regulatory counsel as soon as possible to understand the alternate routes to save your permits well before the deadline.

How Will EV-Taxis Be Impacted?

[16] https://tlcrentalmarketplace.com/car-brokerage/
[17] https://www.nyc.gov/assets/tlc/downloads/pdf/Charged_Up!_TLC_Electrification_Report-2022.pdf
[18] https://www.nyc.gov/site/tlc/vehicles/for-hire-vehicle-license-storage.page#

The TLC intends to electrify "a significant portion of its taxi fleet by 2030," the agency noted in its Electrification Report 2022.[19] To allow more EVs to be hacked-up as taxis, the agency amended its existing power specifications for non-accessible vehicles to permit the use of fully-electric vehicles that accelerate from 0 to 60 mph in not less than 4.4 seconds.[20] The aim is to increase the number of eligible electric models for medallion taxis. The rule will go into effect March 4, 2023, and essentially makes the TLC's battery electric vehicle ("BEV") Taxi Pilot Program permanent. Vehicle models must still be approved by TLC before they may be hacked-up as a taxi, but now there are more EV options.

Mandating EVs at TLC – Lessons Learned in Court

This is not the first time the City has looked to the TLC-regulated industry to lead the charge against harmful fuel emissions on New York City streets. In October 2004, when I was TLC Commissioner/Chair, under former Mayor Michael Bloomberg's leadership, the TLC completed the first auction of alternative fuel taxicab medallions, dedicated for use on either hybrid-electric vehicles, or vehicles powered by compressed natural gas. The move was hailed by environmental advocates as a bold step forward in reducing emissions. By June 2006, the TLC auctioned additional alternative fuel medallions, bringing the total number of clean taxicabs to 281. After that, the City suffered some setbacks in our attempts to further green the yellow taxi industry – which included an announcement by Mayor Bloomberg in May 2007 to mandate that all taxicabs be hybrid-electric vehicles as part of the city's first sustainability plan known as ***PlaNYC*** – which was similar to Mayor Eric Adams' announcement in his State of the City speech.[21]

In 2009, the TLC had to backtrack on rules setting a baseline fuel efficiency level for new taxicab vehicles after several taxi fleet operators claimed the regulations were preempted by the ***Energy Policy and Conservation Act and the Clean Air Act.***[22] Then, in 2011, the City lost its fight to induce fleet operators to switch to hybrid vehicles by allowing them to charge drivers $15 more for the lease of hybrid and clean diesel taxis than they could for the lease of ICE taxis.[23] The judge in that case said the financial disparity that would result from the incentive amounted to a *de facto* mandate to purchase hybrids, which relates to fuel economy standards, and that is something that only the federal government is allowed to do.

The hybrid taxi mandate case went all the way to the U.S. Supreme Court on appeal. While the Justices declined to hear the case, this solidified the ruling against the TLC's hybrid mandate.[24] In the interim, due to the high price of gasoline at the time and the TLC's vehicle retirement program, as drivers were forced to replace their older vehicles with newer ones by law, they chose hybrid-electrics instead due to the savings on the price of fuel. Over time, despite the losses in

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[19] https://www.nyc.gov/assets/tlc/downloads/pdf/Charged_Up!_TLC_Electrification_Report-2022.pdf
[20] 35 RCNY § 67-05.1(f);
www.nyc.gov/assets/tlc/downloads/pdf/proposed_rule_taxi_ev_specs_amendment_01_25_2023
[21] https://www.bloomberg.com/news/articles/2007-05-22/mayor-bloomberg-orders-taxi-cabs-to-be-hybrid-by-2012
[22] https://www.law360.com/articles/208500/nyc-takes-hybrid-taxi-fight-to-supreme-court?copied=1
[23] https://www.law360.com/articles/228512?scroll=1&related=1
[24] https://www.law360.com/articles/228512?scroll=1&related=1

court, by the time I left the TLC and thereafter, the number of hybrids continued to increase, and hybrid vehicles constituted 59% of the taxi fleet by 2020.[25]

EV Incentives Are the Safe Way to Go Green & "Charge-Up" the TLC Fleet!

The year 2030 is still many years away, but the zero-emission mandate for Uber and Lyft raises important questions that the City needs to start addressing now. While a mandate was mentioned, policies and rulemaking must be approached very carefully in light of environmental laws and prior court rulings. Much more can be done to accomplish these goals, without a legally sticky mandate, through voluntary incentives, such as: reducing or waiving licensing fees for EVs; allowing an FHV license to remain in storage if the licensee commits to buying an EV within a certain timeframe; offering additional FHV licenses to entities that are providing charging infrastructure for use by any E-FHVs in the industry. The TLC could also coordinate and assist drivers and vehicle owners in taking advantage of the tax credits and grants that are available for EV purchase and infrastructure, or take it a step further – like California – and offer financial assistance to help cover the costs of switching to an EV.

[25] https://www.nyc.gov/assets/tlc/downloads/pdf/2020-tlc-factbook.pdf