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NYC Congestion Pricing Holiday Wishes: ***MTA’s Santa Con - Who’s Getting A Gift & Who’s Getting Coal in their Mobility Stockings?***

New York City’s Central Business District Tolling Program (CBDTP) rollout has been anything but smooth. With proponents hailing it as a transformative solution for air quality and public transit funding, and detractors decrying it as a regressive toll on working-class drivers and neighboring states, the road to implementation has been paved with lawsuits, protests, and debate around equitable impacts on drivers and residents. The latest part of the process has concluded with the Metropolitan Transportation Authority (MTA) Board sending the proposed tolling structure through to the next stage. To keep overall tolls low for as many drivers as possible and to keep things simple, there are few exemptions and discounts. Many who were asking the MTA for a break are now left hoping for a holiday miracle – not on 34th street like the movie, but in reality at 2 Broadway (MTA HQ).

It Came to a Vote



The Traffic Mobility Review Board (TMRB) presented its plan to the MTA (from left): Special Advisor Juliette Michaelson; TMRB Chair Carl Weisbrod; John H. Banks; Elizabeth Velez; and Kathy Wylde

On December 6, 2023, the MTA Board voted nine to one to commence the administrative process to approve the Traffic Mobility Review Board’s (TMRB) recommended tolling structure

for New York City’s congestion pricing plan.¹ David Mack, representing Nassau County, voted against the measure. The plan would require passenger vehicles to pay \$15 to enter Manhattan’s central business district (CBD) below 60th Street during peak hours. While passenger vehicles will pay the toll no more than once daily, other vehicles must pay each time they enter the CBD. Trucks would pay a toll of \$24 or \$36 depending on their size, and the toll for buses would depend on their use. Transit and commuter buses providing fixed-route service under contract with a government agency – and commuter vans licensed by the NYC Taxi and Limousine Commission (TLC) – would be exempt. Intercity and charter buses would pay \$24, and tour buses would pay \$36. All rates would be 75% lower during overnight hours (9 pm to 5 am on weekdays, and 9 pm to 9 am on weekends).

The TMRB’s plan also includes crossing credits for those who pay tolls at the Lincoln, Holland, Hugh L. Carey, and Queens-Midtown Tunnels. There is a 50% discount on the daytime toll rate for low-income drivers, regardless of their place of residence, after the first ten trips in a calendar month. The TMRB’s plan also recommends charging TLC-licensed taxis and for-hire vehicles (FHVs) per ride for each trip to, from, and within the CBD – with no overnight discount. Taxis, black cars, and liveries would pay \$1.25 per ride, and app-based for-hire vehicles, presumably Uber and Lyft, would pay \$2.50.

The chart below shows the recommendations in the TMRB plan:

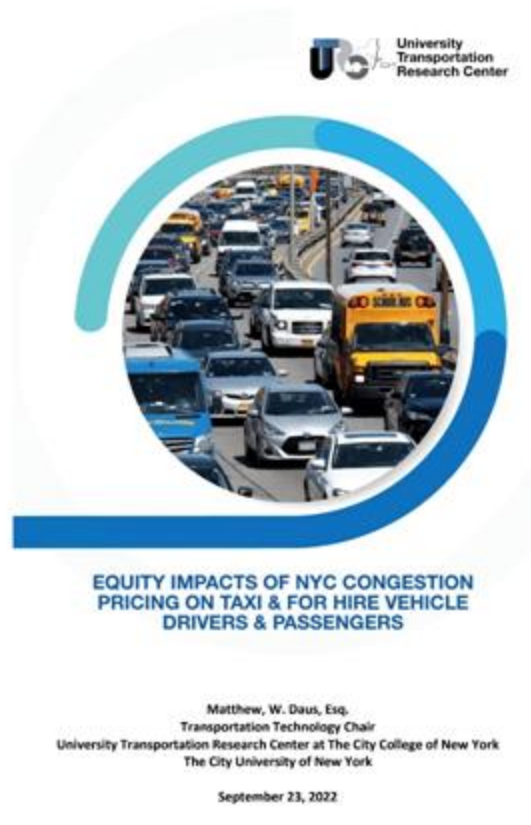
¹ <https://new.mta.info/document/127761>

Vehicle Classification	Charge	Overnight Rate (9PM-5AM weekdays; 9PM-9AM weekends)	Crossing Credit for Lincoln, Holland, Hugh L. Carey, & Queens-Midtown Tunnels
Passenger Vehicles (Base Auto)	\$15 (capped at once per day)	\$3.75	\$5
Small Trucks (moving vans, box trucks)	\$24	\$6	\$12
Large Trucks (articulated, pulling one or more trailers)	\$36	\$9	\$20
Transit & Commuter Bus	Exempt	n/a	n/a
Intercity & Charter Bus	\$24	\$6	\$12
Tour Buses	\$36	\$9	\$20
Commuter Vans licensed by TLC	Exempt	n/a	n/a
Yellow taxis, green cabs, & black cars licensed by TLC	\$1.25 per ride to, from, and within the CBD	\$1.25 per ride to, from, and within the CBD	None
App-based FHVs licensed by TLC	\$2.50 per ride to, from, and within the CBD	\$2.50 per ride to, from, and within the CBD	None
Motorcycles	\$7.50	\$1.88	\$2.50

Buses and Taxis – Can They Get on the Nice List?

Publicly-owned vehicles specifically designed for public works other than general transportation would be exempted from the toll, along with emergency vehicles and buses under government contracts to provide public transit and commuter service. The TMRB’s recommendations do not include a general exemption for school buses because they are often deployed for purposes beyond transporting students to school. The TMRB urged the MTA to explore providing a specific school bus exemption when transporting students to and from school.

Concerns have consistently been raised regarding the impact of a fare increase on taxi and FHV drivers, many of whom identify as members of economic justice populations. Particular concern has been raised around yellow taxi drivers because taxi ridership still has not recovered from pre-pandemic levels. The question of an exemption has been targeted more at taxi drivers than FHV drivers or even passengers.



<https://tinyurl.com/bdfap72k>

In 2022, through the University Transportation Research Center (UTRC) at The City University of New York, I released a report peer reviewed by leading experts in the field, entitled *“Equity Impacts of NYC Congestion Pricing on Taxi and For-Hire Vehicle Drivers & Passengers,”* which concludes that the best way to address equity considerations for drivers and passengers alike would to exempt both taxis and FHV’s from the tolling program.² New York City Mayor Eric Adams also expressed his desire for yellow taxis and school buses to be exempt from the toll at a December 5th press conference, saying “[w]e’re really focusing on our two yellows: school buses and yellow taxi cabs. We want the process to take them into consideration.”³

In a recent [article published in Crain’s New York](#), **Brendan Sexton, President of the Independent Drivers Guild** gave his thoughts on the TMRB’s newly-released recommendations, saying he was glad to see that the tolls “are not primarily on the backs of drivers” but that he’d like to see more parity between the fees on taxis and for-hire vehicles.

² <https://tinyurl.com/bdfap72k>

³ <https://www.nyc.gov/office-of-the-mayor/news/930-23/transcript-mayor-adams-holds-in-person-media-availability>

I also gave my thoughts to Crain's, saying, "We're thankful that that the TMRB has recommended a more modest, workable charge for both taxis and for-hire vehicles, and we think that it's not going to have a catastrophic impact. But we do need to monitor the impact on ridership, because there will be an impact."

Following the MTA Board's vote, Sexton gave his criticism of the lower per-ride surcharges for taxis compared to those of app-based for-hire vehicle services, saying, "There is no reason to give a break to the fat cat private equity funds that own 80% of the yellow taxi medallions, but not the Black and Brown immigrant rideshare drivers who are struggling to get by. Black car trips are already taxed much more heavily than yellow taxis, which don't even pay sales tax. All taxis and FHV's should be treated the same."

The final tolling structure could be revised, and advocates continue to fight for exemptions. During the MTA Board meeting on December 6, 2023, board members questioned the possibility of exemptions for school buses serving public school students as well as taxis. **MTA Chair and CEO Janno Lieber** addressed these concerns at the press conference following the meeting saying "[w]e are allowed to make changes during and after the state review process. However, there is complexity to this whole system, in the sense that it creates different traffic patterns, which then have to be re-studied. That said, we are taking the public comment process very seriously."⁴

Regarding a potential taxi exemption, Lieber said, "[w]e just adopted the TMRB's recommendations hook, line, and sinker. The TMRB was charged with dealing with congestion, as well as being respectful that the yellow cabs are reliant on the CBD. That is why they were given the lower toll. We will continue to look at the yellow cab issue, but it is one of those things where when you change any aspect, it does have these knock-on effects."⁵

Regarding a potential school bus exemption, Lieber said, "[w]e want to exempt school buses engaged in pupil transportation. The complexity is that most school buses are privately operated companies, and in their spare time do other kinds of trips. We need to go through the process of figuring out how you monitor that."⁶

⁴ https://www.youtube.com/watch?v=0pfJ-S9myBk&ab_channel=MTALive

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Matt Daus and MTA Chair Janno Lieber

Exemptions for school buses transporting children to and from school pose bureaucratic and technological challenges for the MTA, but there is still a clear desire on the part of the MTA to do so. An exemption for taxis seems much less likely. The industry has generally accepted and supported the proposed per-ride fee for taxis and FHV's, even though riders in app-based FHV's like Uber and Lyft would be paying more than taxi passengers.

Corey J. Muirhead, Executive Vice President of Logan Bus Co., Inc., and Secretary/Treasurer and past President of the New York School Bus Contractors Association, said on the tolling structure, “This is upsetting in its current form for school buses not to be exempt. A school bus takes 36 cars off the road on both AM and PM trips. School buses are the largest mass transit in the nation. I hope the TMRB reconsiders its position. The school bus starts the education process for hundreds of thousands of students in NYC.”

Parity for All Buses?

While there may be a focus on school buses specifically, the bus industry has come together to call for full exemptions for all buses entering the CBD, not just public transit and commuter buses. In its report, the TMRB said that fixed-route commuter buses merit exemption due to their public service nature, role in reducing congestion, and significance in the regional transportation system.⁷

⁷ <https://new.mta.info/document/127761>

In an open letter to the TMRB, **Glenn Every, President of BUS4NYC**, and **Patrick Condren, Vice President and Secretary of BUS4NYC**, urged the MTA to exempt all buses from congestion pricing because all buses are essential to New York City's transportation network. BUS4NYC (<https://bus4nyc.org/>) is an NYC-based advocacy group comprised of bus company owners that promotes the industry as a viable transportation solution and local economic driver in New York City. In the letter, Bus4NYC points out that many privately operated commuter services keep people out of their private vehicles. There are also vital commuter bus services that do not have a government contract, but generate millions of dollars for New York State and the MTA. The bus industry has never been so united, and in addition to the local trade group, Bus4NYC, support has come in for an exemption from all over the region and the country, including: the United Motorcoach Association (<https://uma.org/>); the American Bus Association (<https://www.buses.org/>); the Greater New Jersey Motorcoach Association (<https://www.gnjma.com/>); the Bus Association of New York State (<https://www.banybus.org/>); Panorama Tours (<https://panoramabustours.com/>); and Coach USA (<https://www.coachusa.com/>).

Buses lead to greater efficiency and help take cars off the road, which reduces congestion. According to BUS4NYC, a single bus can transport 55 or 80 passengers while taking up less space than the same number of cars. Also, clean engine technology has evolved to help lower emissions from buses. Clean diesel engines are 90% cleaner than 20 years ago, and retrofitted diesel engines can reduce particulate matter emissions by up to 90 percent.



Image: Daniel Bowen

Buses that serve the public include private and public agency-operated transit, commuter, inter-city, tour/travel/charter, and sightseeing buses. They are all integral to the local and regional mass transit system, bringing workers, residents, and visitors to and from New York City on a 24/7

basis. Charter and tour buses arrive in New York City daily to bring crowds to Broadway and local businesses, while airport connections provide vital transportation as well.



Image: NBC New York

The MTA's Next Steps & Implementation Plan for Congestion Pricing

On December 6, the MTA Board approved the process to commence the administrative process for implementing the CBD rate structure. The initial toll ratemaking process must follow New York's State Administrative Procedure Act (SAPA), which requires public notices and hearings to elicit comments on the proposed toll rates. The public will have 60 days to submit comments by email, letter, or phone. The MTA said it expects to hold public hearings in February 2024. After the public hearings, a proposed CBDTP initial toll ratemaking regulation will be submitted to the MTA Board for approval before implementation.

If all goes according to the MTA's plan, tolling will begin in spring 2024. That is assuming the lawsuits trying to block it are unsuccessful. In July 2023, New Jersey Governor Phil Murphy followed through on his promise to halt congestion pricing by filing a lawsuit against the U.S. Department of Transportation, Federal Highway Administration (FHWA), claiming the agency's approval of the project was ill-considered and missed numerous risks to Garden State residents. In November 2023, the mayor of Fort Lee, New Jersey filed a class-action lawsuit against the FHWA, the MTA, and the Triborough Bridge and Tunnel Authority claiming that congestion pricing will increase air pollution in the Garden State, especially Fort Lee, due to traffic detouring over the George Washington Bridge.

The pending litigation has had no impact on MTA's progress. Earlier this summer, the MTA began installing its tolling infrastructure once they received federal approval for the plan. The infrastructure will scan E-ZPass and license plates. The MTA already has a problem with toll cheats, who use fake plates, expired plates, defaced plates, and covered plates to evade tolls on

bridges. There is no doubt these fake plates will also be used to avoid paying the congestion toll as well. This will be a constant effort for the MTA – and the NYPD – to prevent fraudulent or defaced plate use and to encourage and educate people to buy into the tolling program.

A 30-day testing phase and a 60-day public information campaign will precede the start of toll collection. By law, for the first 60 days, only the established tolls – no additional fees, charges, or fines – will be collected. When toll collection begins, vehicles that enter the CBD will be tolled. For passenger vehicles – such as sedans, SUVs, minivans, pick-up trucks, and small vans – this toll will be collected no more than once a day. Tolling infrastructure will detect vehicles and their license plates, and the toll will be paid using an E-ZPass. If a vehicle does not have an E-ZPass, toll bills will be mailed to the address of the registered vehicle owner for payment using Tolls by Mail.

Any additional exemptions that are implemented in the tolling plan would require re-working the entire tolling structure and increasing tolls for all other drivers. So, while exemptions are possible, and there is time to advocate, there is a steep hill to climb politically. The tolling program will be monitored with congestion and revenue data and will be constantly evaluated. With this in mind, the program can change in the future and could look different when we learn more about its impacts.

Happy New Year from the MTA – Congestion Pricing Predictions for 2024!

As the MTA’s Polar Express speeds along to implement this ground-breaking program, many clients, friends, stakeholders, and others continue to ask for my opinions on what will happen next. Well, the below is not a wish list, *per se*, but it is a recap based upon speaking to numerous experts in the field, especially the many mobility stakeholders involved in the process.

Implementation seems likely to move forward by spring 2024. While COVID disrupted the congestion pricing timeline in the past, steps toward implementation have been running full steam ahead, with tolling infrastructure already being installed, and additional exemptions unlikely.

The New Jersey and Fort Lee lawsuits challenging the Federal Highway Authority’s approval of the environmental review have not yet yielded any tangible results to derail the program. While this litigation will likely heat-up after the final vote by the MTA Board, and possibly lead to more lawsuits being brought by others, most likely, any victories would involve a delay or tweaks to the program, but not a complete stop to ever doing the program. In general, the government prevails in the vast majority of cases like these, which are basically saying that the FHWA should have prepared an Environmental Impact Statement (EIS) as required by the National Environmental Policy Act (NEPA).⁸

⁸ <https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1236&context=scholarship>

While the tolling structure may change after the upcoming review process, and before or at the MTA Board approval vote, new exemptions are unlikely. If additional exemptions do make it into the final tolling structure, they will most likely be for school buses.

It seems that yellow taxis and school buses are the two categories receiving any real attention when it comes to potential exemptions. Some argue a yellow taxi exemption could help low-income workers; however, what is being missed is that for-hire vehicles (not just Uber and Lyft, but also local community car services or liveries) also serve low-income populations, so creating an imbalance in competing TLC regulated industries raises concerns by many industry stakeholders. While a taxi exemption seems unlikely, the additional \$1.25 per ride charge for taxis, black cars, and liveries will probably impact ridership in the short term. The same goes for Uber and Lyft, whose passengers will be paying an extra \$2.50. We saw this happen when New York State tacked on the Congestion Surcharge back in 2019, which coincided with Uber and Lyft raising fares to comply with the minimum driver earnings law.

The openness by the MTA to exempt school buses is strong, especially when they are serving public school students. The regional bus industry is fighting hard for exemptions as well, arguing all buses serve the riding public and help mitigate congestion. As Lieber explained, there can be technical and bureaucratic challenges to adding any more exemptions, no matter how good or fair they seem. Many hope the true goal is truly to decrease congestion, and not to deny the bus industry exemptions in order to collect a surge of revenue from private motor vehicles - while not dis-incentivizing private car passengers who might consider inter-city or inter-regional buses. Remember, the MTA gets more revenue from 80 private motor vehicles entering NYC (or \$1,200 to be exact) than one private inter-city bus entering the CBD carrying all 80 of those passengers (or just \$24 for all 80 passengers). Food for thought!

Just how big the impact of congestion pricing will be on the various private mobility industries and environmental justice communities being tolled, as well as on shifting travel patterns, remains to be seen. The working from home (WFH) dynamic that has emerged post-pandemic may lead to more companies and passengers simply opting to not come back to the office - so we are talking about a possible modal shift to telecommuting, which was not part of the original congestion pricing policy calculus when the laws were first passed to institute this program. Many remain concerned about adverse impacts, so ***if I had one wish for the holidays, it would be a New Year's resolution by the MTA to commission an independent study (by a university or other objective organization) to analyze the data to assess equity, environmental and/or other impacts - preliminarily within the first 6 months, and then after 1 year.***