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EVs in the City: Are FHV Diamonds Forever?

NYC, and its Taxi & Limousine Commission (TLC), which was a leader in sustainable transportation in the 2000s by promoting alternative fueled vehicles, recently removed a major incentive for the use of Electric Vehicles (EVs). Innovative entrepreneur and EV believer, Elon Musk, CEO of Tesla, in response to this move tweeted: “??”; drawing national attention to the latest TLC vote.¹ This article will cover the most recent actions of the TLC and its impact on the industry and the environment, chart the TLC’s history of clean air taxicabs and for-hire vehicles, compare what has and is happening in the taxi and for-hire space with EVs, and explore the path forward in NYC with the new Mayoral Administration slated to start on January 1, 2022.

The Most Recent Actions of the TLC

On June 22, 2021, the Taxi and Limousine Commission (“TLC”) abruptly changed its policy on electric for-hire vehicles (FHVs). In a controversial 5-1 vote, the Commission formally removed the exemption for battery electric vehicles (“BEVs”) from the for-hire vehicle-licensing cap, citing the agency’s fear that the number of applications under the BEV exemption would increase.² Before the vote, TLC Chair Aloysee Heredia Jarmoszuk said, “What we will not allow is the opportunity for another corporation — venture capitalists or otherwise — to flood our streets with additional cars.”³ There are opinions on both sides of the issue, with some who promote clean air not seeing the situation as an all or nothing proposition, which is how the TLC presented it. The TLC did, however, leave the door open for existing FHV permit holders to convert their vehicles to EVs (as long as an existing licensed vehicle is being replaced).

The TLC added the BEV exemption in August 2019—the first time the TLC was able to exercise its FHV capping authority after the City banned the agency from issuing new licenses the year before. In August 2018, New York City enacted Local Law 147, imposing a one-year cap on the issuance of new for-hire vehicle licenses with limited exceptions for wheelchair accessible vehicles (“WAVs”) and certain lease-to-own situations. Local Law 147 also delegated to the TLC the authority to decide the number of FHV licenses the agency would issue after the one year passed, and any exemptions the agency deemed appropriate.

The TLC has maintained the FHV cap since it was first implemented three years ago, a decision it now reviews every six months in February and August.⁴ In keeping the pause in effect, the TLC continued the exemption for WAVs and added BEVs to the exemption list in August 2019. Under the TLC’s own rules, every six months, the agency reviews whether additional FHV licenses should be issued and reports the results of that review and the number of FHV licenses to be issued in the succeeding six months. As recently as February 2021, the TLC decided to continue the BEV

¹ <https://twitter.com/elonmusk/status/1407686591603253250>

² <https://www1.nyc.gov/assets/tlc/downloads/pdf/notice-of-promulgation-of-vote-06-22-2021.pdf>

³ <https://www.blackcarnews.com/article/nyc-tlc-votes-to-remove-ev-exemption-but-drivers-still-want-ability-to-own-their-own-car>

⁴ <https://www1.nyc.gov/assets/tlc/downloads/pdf/license-pause-report-2020-09.pdf>

exemption for another six months “[i]n an effort to continue to increase the percentage of WAVs and BEVs in the FHV fleet.”⁵

In an effort to increase BEVs in the taxi fleet, in May 2021, the TLC announced a pilot program to test whether these vehicles can be used safely and efficiently as yellow taxis (the “BEV Pilot”).⁶ TLC previously conducted a pilot program for BEV taxis between April 2013 and March 2015, which it deemed unsuccessful due to its limited scope and sample size and lack of charging infrastructure. However, according to the TLC, “[w]ith the number of BEVs and charging stations increasing throughout the City, the TLC believes it is time to expand the use of additional BEVs as taxis in NYC.” The BEV Pilot is necessary because the TLC has strict rules regarding vehicles that may be used as taxis. Under the pilot, the TLC will allow medallion owners to apply to have a BEV certified for use as a yellow taxi, as long as the vehicle meets certain conditions. The pilot has not yet started, though the TLC is accepting applications now.

So, why the abrupt change for FHV? Electric vehicles (EVs) are becoming more affordable, battery range is increasing, and more models are hitting the market.⁷ According to the TLC, “[a]s charging infrastructure is constructed throughout the City and as BEVs become more commercially available, TLC anticipates the number of applications for a new FHV license under the BEV exemption will likely increase exponentially.”⁸ Meaning, the TLC was only providing the BEV exemption for FHV while no one was really using it.

Under the TLC’s new rules, in determining the types of vehicles to which the Commission will issue new FHV licenses, the agency will now consider “the availability and demand for battery electric vehicles” and “availability of battery electric vehicle charging infrastructure,” among other factors.⁹ Assuming the TLC sticks to its six-month review cycle, the FHV cap is scheduled for review in August 2021. As of this writing, the TLC has not announced an August meeting.

It appears the TLC’s policy is now to allow EVs, but only if new vehicles are not added to the road. Despite the significant reduction in the number of FHV permits since even before the pandemic happened, and the claims of more infrastructure (when there is little to no infrastructure for fast charging EVs in NYC), the TLC’s current priority is to allow vehicle owners to buy EVs and add them to the road, as long as they are replacing another vehicle already in service.

The NYC TLC’s History of Clean Air Taxicabs vs. Other U.S. Cities

According to the NYC Department of Transportation (DOT), transportation is responsible for almost 30% of NYC’s greenhouse gas emissions (GHGs), with most of these emissions coming from passenger cars.¹⁰ BEVs offer the benefits of reduced Greenhouse Gas Emissions, which is a

⁵ <https://www1.nyc.gov/assets/tlc/downloads/pdf/license-pause-report-2021-02.pdf>

⁶ <https://www1.nyc.gov/assets/tlc/downloads/pdf/bev-pilot-resoluton.pdf>

⁷ <https://www1.nyc.gov/html/dot/html/motorist/electric-vehicles.shtml#/find/nearest>

⁸ <https://www1.nyc.gov/assets/tlc/downloads/pdf/notice-of-promulgation-of-vote-06-22-2021.pdf>

⁹ 35 RCNY § 59A-06(a).

¹⁰ <https://www1.nyc.gov/html/dot/html/motorist/electric-vehicles.shtml#/find/nearest>

major goal for New York City. By 2050, the City aims to have 20% of new vehicle registrations be for EVs, and to reduce GHG emissions by 80%.¹¹

The City and the TLC have been attempting to alleviate greenhouse gas emissions through low-emissions and electric vehicles for years. In 2006, New York City introduced legislation mandating that at least 9% of new medallions for yellow taxis be set aside for hybrid or compressed natural gas vehicles, and incentivized the purchase of low-emission taxis by extending the allowed period of models classified as “clean air” by the United States Environmental Protection Agency.¹²

When I served as TLC Chair, I helped develop the transportation segment of PlaNYC, former Mayor Michael Bloomberg’s signature sustainability initiative. A big part of that plan was to ensure that more clean air vehicles, including taxicabs and FHV’s, were placed on the road, and at the time, the predominant alternative fueled vehicle was the hybrid-electric vehicle. To implement this citywide policy, in 2007, the TLC adopted a rule that would have required all new taxis coming into service achieve a fuel-efficiency city rating of 25 miles per gallon or higher, rising to 30 m.p.g. by Oct. 1, 2009. The rule would have resulted in a virtually all-hybrid fleet by 2012.¹³ However, a federal judge found the TLC’s rules were pre-empted under federal law, which reserve regulation of fuel economy and emissions standards to federal agencies. The United States Court of Appeals for the Second Circuit later upheld that ruling, and the United States Supreme Court declined to consider an appeal by the city.¹⁴

Following New York City’s lead, many cities including Los Angeles, Las Vegas, Boston and Washington D.C. moved to create initiatives for greener taxis and hybrids. However, at every turn the cities faced the same obstacle as New York City, the ruling by the United States Court of Appeals for the Second Circuit.¹⁵ Cities proposed initiatives that provided incentives to encourage the use of hybrid taxis or proposed regulations and legislation to mandate the transition to hybrid taxicabs. Boston created the Clean Air Cab program which promoted hybrid taxis as more fuel efficient vehicles with lower costs and incorporated incentives such as airport privileges and grant awards to those who purchased hybrid cabs. However, this program was unsuccessful as drivers were not voluntarily switching to hybrid taxis, as a result, Boston decided to mandate the switch to hybrid requiring the entire fleet to convert to hybrid vehicles by 2015. In 2009, the mandate was struck down on the basis that it was expressly preempted by federal law.¹⁶

Even without the clean fuel mandate for taxis, a 2019 study by researchers at the Columbia University Mailman School of Public Health and Drexel University found that the Clean Air Taxi rules are successful in cutting emissions and reducing air pollution.¹⁷ According to the study’s

¹¹ <https://www1.nyc.gov/site/sustainability/our-programs/ev-charging.page#:~:text=By%202050%2C%20the%20City%20aims,registrations%20be%20for%20electric%20vehicles.&text=The%20City's%20goal%20is%20to,networ%20in%20New%20York%20State>.

¹² NYC Code § 19-532(b).

¹³ <https://cityroom.blogs.nytimes.com/2008/10/31/judge-blocks-hybrid-taxi-requirement/?login=smartlock&auth=login-smartlock>

¹⁴ <https://www.nytimes.com/2011/03/01/nyregion/01taxi.html>

¹⁵ https://www.greencarreports.com/news/1047703_cities-want-high-mileage-hybrid-taxis-judge-says-its-illegal

¹⁶ <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1025&context=ealr>

¹⁷ <https://www.publichealth.columbia.edu/public-health-now/news/clean-air-taxis-cut-pollution-new-york-city-study>

findings, between 2009 and 2015, the fuel efficiency of the fleet of 13,500 yellow taxis more than doubled, leading to estimated declines in air pollution emissions.

In February 2020, Mayor Bill de Blasio signed an executive order that sets the City on a path to electrifying its entire municipal vehicle fleet by 2040, with 20% of the city fleet being electric by 2025.¹⁸ Currently, the City has the largest electric vehicle fleet in the U.S. (approximately 30,000 vehicles), and the largest electric vehicle charging network in New York State, which it is looking to grow.¹⁹ The City is making a \$10 billion investment to install fast charging stations (with a full charge in 30 minutes) citywide through PlugNYC, a demonstration project to build a comprehensive network of publicly accessible Level 2 Chargers and Level 3 DC fast chargers in all five boroughs.²⁰ In partnership with Con Edison, the City began installing 120 Level 2 charging ports at curbside locations across the city in June 2021.

Despite NYC's plans, when it comes to electric vehicles and setting goals, the city is behind many of its peers. In California, Los Angeles is aiming to solidify its position as the modern-day Detroit of EVs and currently has 43% of California's massive EV industry. Los Angeles's Green New Deal aims to increase EVs in the city to 25% of vehicles by 2025, 80% by 2035, and 100% by 2050. Los Angeles Cleantech Incubator (LACI) and the City of Santa Monica launched and deployed a first-in-the-nation Zero Emissions Delivery Zone within a one-square mile voluntary zone by partnering with tech companies, delivery companies and community organizations.²¹

What Transportation Companies Are Doing Now with EVs in NYC & Other U.S. Cities

In April, Revel—the company known for its electric mopeds—announced plans to launch an all-electric ride-hail service in Manhattan and to build the necessary charging infrastructure.²² The company employs its drivers, providing them benefits not offered to independent contractors. The start-up received support from the Biden administration. At a ribbon cutting ceremony at the company's electric vehicle charging hub, Energy Secretary Jennifer Granholm praised Revel, saying, “What you are doing to create jobs here, what you are doing to heal the planet here, is so important.”²³ The Biden administration has ambitious plans to reduce emissions and install the first-ever national network of electric vehicle charging stations. In early August, Biden signed an executive order that sets a new target to make half of all new vehicles sold zero-emissions vehicles—including battery electric, plug-in hybrid electric, or fuel cell electric vehicles—by

¹⁸ <https://www1.nyc.gov/assets/dcas/downloads/pdf/fleet/NYC-Mayoral-Executive-Order-EO-53-All-Electric-and-Safe-Fleets-of-the-Future.pdf>

¹⁹ <https://www1.nyc.gov/site/sustainability/our-programs/ev-charging.page>

²⁰ Level 2 charging stations provide up to 20 miles of range per hour of charging, and DC fast chargers offer a charging experience comparable to a gas station, with over 30 miles of range per 10 minutes of charging.

<https://www1.nyc.gov/html/dot/downloads/pdf/curbside-level-2-charging-pilot-faq.pdf>

²¹ [https://www.santamonica.gov/press/2021/02/25/laci-launches-first-in-nation-zero-emissions-delivery-zone-with-city-of-santa-monica-and-partners-including-nissan-ikea#:~:text=Los%20Angeles%20Cleantech%20Incubator%20\(LACI,delivery%20companies%20and%20community%20organizations.](https://www.santamonica.gov/press/2021/02/25/laci-launches-first-in-nation-zero-emissions-delivery-zone-with-city-of-santa-monica-and-partners-including-nissan-ikea#:~:text=Los%20Angeles%20Cleantech%20Incubator%20(LACI,delivery%20companies%20and%20community%20organizations.)

²² <https://www.theverge.com/2021/6/23/22546955/nyc-tlc-electric-vehicle-license-taxi-vote-revel-tesla>; <https://www.smartcitiesdive.com/news/nyc-removes-ev-exemption-cap-blocking-revel-ride-hailing-service/599481/>

²³ <https://nypost.com/2021/06/29/biden-admin-praises-revel-after-nyc-snubs-its-tesla-taxi-plans/>

2030.²⁴ Under the recently passed Infrastructure Bill, \$5 billion will be allocated to replace the yellow school bus fleet with low to zero-emission buses, and \$7.5 billion will be used to roll out EV charging stations, with the goal of reaching 500,000 charging stations along highways and in underserved communities by 2030.²⁵

In May, Gravity announced the expected debut of the first-ever zero-emission, fleet-based taxi service, bringing Tesla Model Y BEV's to New York City as yellow taxicabs. These zero-emission taxis will be available to riders at the same cost and rates set for all taxicabs by TLC; and are available to riders via street-hail or on-demand booking applications. Each of Gravity's zero-emission taxicabs will come equipped with Wi-Fi, artificial intelligence, night vision enabled surround view cameras, and interactive screens with built in media applications. In order to develop this BEV pilot program, Gravity is working with Con Edison to identify areas capable of installing state-of-the-art BEV charging infrastructure. Gravity charging spaces will also be available for public use, in hopes of making BEVs accessible to everyone. The goal is to create sustainable transportation that is focused on safety, health and passenger experience.²⁶

Across the U.S., cities are experimenting with ways to increase the use of zero emission vehicles as taxis and rideshare services. The EV Shared Mobility project brings together the U.S Department of Energy's Energy Efficient Mobility Systems program and major industry stakeholders with the cities of Seattle, New York, Denver, and Portland to test different electric shared mobility interventions.²⁷ The project began in early 2018, and the cities implemented their programs in phases over the course of three years. The City of Seattle, Washington, plans to achieve 30% EV adoption by 2030.²⁸ To that end, the city tested whether the deployment of charging infrastructure at prioritized locations, along with supportive outreach and engagement activities, would increase the use of EVs in shared mobility services.

Under new legislation by Colorado's governor, rideshare rental programs qualify for an EV tax credit at the same level as consumers, which is up to \$5,000 per vehicle.²⁹ Building on that, the city of Denver, Colorado is providing EVs directly to ride-hailing drivers and supply charging infrastructure.³⁰ As a part of the EV Shared Mobility Project, the City and County of Denver will deploy EVs in ride-sharing services program which does not currently offer any EVs in the Denver Metro region and install DC fast charging stations to exclusively support these EVs.

²⁴ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/08/05/executive-order-on-strengthening-american-leadership-in-clean-cars-and-trucks/>

²⁵ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/05/fact-sheet-president-biden-announces-steps-to-drive-american-leadership-forward-on-clean-cars-and-trucks/>; <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/28/fact-sheet-historic-bipartisan-infrastructure-deal/>

²⁶ <https://investableuniverse.com/2021/05/04/gravity-battery-ev-infrastructure-tesla-taxi-pilot-project-new-york/>; <https://www.prnewswire.com/news-releases/gravity-inc-announces-innovative-new-electric-yellow-taxi-fleet-301283659.html>

²⁷ <https://evsharedmobility.org/about/#:~:text=The%20project%2C%20led%20by%20the,different%20electric%2C%20shared%20mobility%20interventions.>

²⁸ <https://www.seattle.gov/documents/Departments/OSE/ClimateDocs/TE/TE%20Blueprint%20-%20FINAL%20-%20March%202020.pdf>

²⁹ <https://www.engadget.com/2019-11-15-lyft-denver-express-drive-electric-vehicles.html#:~:text=Under%20the%20new%20law%2C%20rideshare,to%20electrify%20is%20whole%20network>

³⁰ <http://evsharedmobility.org/resource/denver-project-living-case-study/>

As part of the EV Shared Mobility project, Portland, Oregon sought to promote EV use by transportation network company (TNC) drivers coupled with access to free, unlimited charging. The city partnered with Uber to pilot a program that systemically encourages drivers to use an EV. They also created a downtown DC fast charging depot with free unlimited access for TNC EV drivers.

The Path Forward in NYC with the New Mayoral Administration on January 1, 2022

In March 2020, I hosted and moderated a *Transportation Talk* with now Democratic Mayoral Nominee Eric Adams, the presumed next Mayor, who commented that the availability of battery charging stations is currently a barrier for the widespread deployment of EVs in the city. Adams said that, if elected, he would expand charging infrastructure to further incentivize drivers to go electric.³¹ Additionally, he told the *New York Times* that electric buses are an investment that will save the city money on fuel and maintenance.³² While campaigning, Adams said he would push the MTA to add more electric buses to its fleet to reduce pollution, saying that an electric bus fleet would be "an investment that will save the city money on fuel and maintenance."³³

Separate from EVs, Adams has plans to reduce the City's municipal fleet. In his "100 Steps Forward" plan, Adams says he would implement a municipal car share plan to reduce the municipal fleet, which will reduce congestion in the central business districts where many of NYC agencies are located.³⁴ In 2016, Adams proposed a similar plan for City agencies in downtown Brooklyn.³⁵ One idea worth thinking about for the incoming Mayoral Administration is the replication of the Federal government's procurement of TNCs to provide employee transport, to reduce the size of the NYC fleet – but instead of TNCs, use only FHV's and Taxis that are EVs! In addition to car sharing, non-emergency workers for all city agencies could turn in their cars, and instead hail or call a taxi or FHV as part of a subsidized program.³⁶

Adams has many ideas about transportation policies for his administration. A compilation is available in the *Transportation Voter Guide & NYC Mayoral Candidate Policy Report* released in June 2021 by the University Transportation Research Center (UTRC) at the City College of New York of the City University of New: <http://www.utrc2.org/publications/2021-Mayoral-Candidates-Forum>. What remains to be seen is what Adams will do about the TLC's EV policies, and whether he will reverse course or go in a completely different direction.

Are FHV Diamonds Forever?

³¹ <https://bpb.opendns.com/b/https/vimeo.com/527463790>

³² <https://www.nytimes.com/2021/05/27/nyregion/mayoral-election-mta-buses.html>

³³ <https://news.trust.org/item/20210708171004-ytpz4/>

³⁴ <https://ericadams2021.com/eric-adams-100-steps-forward/>

³⁵ <https://nyc.streetsblog.org/2016/02/12/eric-adams-proposes-downtown-brooklyn-car-share-fleet-for-city-agencies/>

³⁶ <https://federalnewsnetwork.com/reporters-notebook-jason-miller/2020/04/gsas-new-governmentwide-contract-standardizes-use-of-gig-economy-for-agencies/>

Under the City rules, FHV licenses—commonly referred to as a “diamond” due to the old shape of the permit—cannot be sold or transferred.³⁷ However, if a license is held by a business entity, then that business may change ownership, and the new owner would retain the FHV license or licenses. The FHV cap effectively created a mini “medallion-like system” for corporate FHV licenses. Before the FHV cap, there was no need to buy or sell an FHV license—anyone who wanted one would simply apply and pay the annual fee. The same is not true for taxi medallions, of which there is only a limited number. Medallions can be sold, transferred, and assigned, and frequently are.

Ever since the FHV cap, there has been a marketplace for the sale of FHV licenses, and prices have surged since the TLC removed the BEV exemption. Currently, a one-plate corporation has an asking price of \$15,500.³⁸ This is just for the plate—no car is included. A review of offerings available online, found an average sales price of \$9,179.10 in June and \$9,788.94 in July (adjusted for offerings with vehicles and plates). If the cap is ever lifted, the market for FHV licenses could disappear.

So while taxi medallions had even outperformed “gold” as an asset in the past, its value was tarnished by Uber and Lyft’s exponential growth. So maybe the reference to FHV licenses as “diamonds” is a misplaced term. While diamonds are more valuable and everlasting when compared to gold, the same does not hold true for FHV permits. They are likely not forever, as the uncertainty surrounding TLC policies should be a lesson learned for those investing in FHV corporations that own permits. Anything could happen at a moment’s notice, and any tweak to the FHV cap could send the value of such entities up or down. The removal of the EV exemption did just that – but the new Mayor could reverse course completely and reinstate it. Anything could happen, so be careful out there!

³⁷ NYC Code § 19-518

³⁸ <https://tlcrentalmarketplace.com/car-brokerage/>