

## NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

### Notice of Promulgation of Rules

**Notice is hereby given in accordance with section 1043(e) of the Charter of the City of New York (“Charter”) that the Taxi and Limousine Commission (“TLC”) promulgates rules governing lease rates charged to lessees of taxicab medallions and certain taxicab vehicle requirements.**

These rules are promulgated pursuant to sections 1043 and 2303 of the Charter of the City of New York. These proposed rules were not included in the TLC’s regulatory agenda for Fiscal Year 2009 because the need for such rules was not anticipated at the time the regulatory agenda was published.

These rules were published for comment in the City Record on February 23, 2009. A public hearing on these rules was held by the TLC at its offices at 40 Rector Street, 5<sup>th</sup> Floor, New York, New York 10006 on March 26, 2009 at 9:30 a.m. Pursuant to section 1043(e)(1)(c) of the Charter, these rules will take effect 30 days following publication in the City Record.

New Material is underlined.  
[Brackets indicate deleted material.]

Section 1. Title 35, section 1-78 of the rules of the City of New York is hereby amended to read as follows:

**§1-78 Limitations on Standard Lease Rates Charged to Drivers.**

(a) *Standard Lease Cap.* An owner of a taxicab may charge a lease rate to a driver that is not greater than the Standard Lease Cap.

(1) The Standard Lease Cap for a medallion and vehicle for one twelve-hour shift shall not exceed:

- (i) \$105, for all day shifts;
- (ii) \$115, for the night shift on Sunday, Monday and Tuesday;
- (iii) \$120, for the night shift on Wednesday;
- (iv) \$129, for the night shifts on Thursday, Friday and Saturday.

(2) The Standard Lease Cap for a medallion and vehicle for one shift for a week or longer shall not exceed \$666 weekly.

(3) Cost adjustments. The Standard Lease Caps set forth in paragraphs one and two of this subdivision shall be adjusted as follows:

- (i) For a vehicle that is hacked up pursuant to section 3-03.1 of this title, including a vehicle that is authorized by section 3-03(c)(10) of this title, the Standard Lease Cap shall be adjusted upward by \$3 per shift (\$21 per week).
- (ii) For a vehicle that is hacked up pursuant to section 3-03 of this title, excluding section 3-03(c)(10) of this title, the Standard Lease Cap shall be adjusted downward by \$4 per shift (\$28 per week) beginning on May 1, 2009, by \$8 per shift (\$56 per week) beginning on May 1, 2010, and by \$12 per shift (\$84 per week) beginning on May 1, 2011.

(4) Limits on Additional Charges. No owner, including any employee or agent of an owner, may charge to or accept from a driver any payment of any kind, such as a tax, surcharge, pass-along, tip or fee of any kind, for the lease of a medallion or of a medallion and a vehicle, other than a lease amount no greater than the applicable Standard Lease Caps set forth in paragraphs one and two of this subdivision, plus

- (i) a credit card pass-along no greater than permitted by section 1-85(b) of this chapter;
- (ii) a security deposit no greater than permitted by section 1-79(c) of this

chapter, less any deductions permitted by section 1-79(a) of this chapter;  
(iii) the discount toll amount for use of the EZ-Pass as permitted by  
sections 1-37 and 1-83 of this chapter;  
(iv) a late charge not to exceed \$25 for any shift; and  
(v) a reasonable cancellation charge, subject to the provisions of section 1-  
79.1(b)(6) of this chapter; and  
(vi) parking tickets and red light violations permitted to be deducted from  
the security deposit pursuant to section 1-79(a)(3) and (4) of this chapter  
provided that the lessor and agent of the lessor permits the driver to  
challenge such tickets and violations.  
(vii) The lease of a medallion and vehicle under paragraphs one and two  
of this subdivision includes service and maintenance. Service and  
maintenance of the vehicle is the responsibility of the lessor of the  
medallion and vehicle and the lessor and an agent of lessor may not charge  
the lessee for service and maintenance costs for the vehicle.

[(3] 5) (i) The Standard Lease Cap for a medallion only, covering the entire time during a week or longer, shall not exceed \$800 weekly.

(ii) Cost adjustment. The Standard Lease Cap set forth in subparagraph (i) of this paragraph shall be adjusted as follows:

For a vehicle that is hacked up pursuant to section 3-03.1 of this title, including a vehicle that is authorized by section 3-03(c)(10) of this title, the Standard Lease Cap shall be adjusted upward by \$42 per week.

(iii) Maintenance. The lease of a medallion under this paragraph does not include, and does not require a medallion owner or its agent to provide, service and maintenance of the vehicle. A medallion owner or an agent of the medallion owner must not require the lessee to obtain service and maintenance from any particular provider, including, but not limited to the medallion owner or an agent of the medallion owner.

(c) [The complaining witness for a violation of this rule must be a driver who was subject to a lease prohibited by this rule, or a Commission employee.

(d) The provisions of this rule do not apply to owners and lease drivers whose business relationship is governed by the terms of a collective bargaining agreement which regulates the subject of lease prices.

(e) The Commission shall not lower any upper limitation of lease rates established in Rule 1-78 herein, unless in the view of the Commission, the record before the Commission includes substantial evidence of reduced operating expenses of the affected medallion owners. The Commission shall not raise any upper limitation of lease rates established in Rule 1-78 herein, unless in the view of the Commission, the record before

the Commission includes substantial evidence of increased operating expenses of the affected medallion owners. The factors to be reviewed in consideration of any proposed increase in the upper limitation of lease rates shall also include, but not limited to, the effects on driver earnings and the retention of experienced drivers.

(f) As relates to lease caps, the Commission shall periodically hold a public hearing and solicit written comment as to operating expenses, driver earnings and the retention of experienced drivers in the taxi industry. The first such public hearing shall be held no later than March 31, 1998. Thereafter, the Commission shall hold such a hearing no later than two years subsequent to the previous hearing.]

(d) Credit Card Charges. An owner or the owner's agent must pay a driver daily in cash the driver's receipts that are charged to a credit card on that day, less only a credit card pass-along no greater than permitted by section 1-85(b) of this chapter for any lease under paragraphs one or two of subdivision (a) of this section. For all other leases, an owner or an owner's agent must pay the driver in cash no less often than weekly the driver's receipts that are charged to a credit card, less only a credit card pass-along no greater than permitted by section 1-85(b) of this chapter.

Section 2. Chapter 1 of title 35 of the Rules of the City of New York is hereby amended by the addition of new section 1-78.1, to read as follows:

**§1-78.1 Changes to Lease Caps.**

(a) During March of each even-numbered year, the Commission shall hold a public hearing and solicit written comment as to operating expenses, driver earnings, the retention of experienced drivers in the taxi industry, and other matters relevant to the setting of lease caps, for purposes of considering changes to the Standard Lease Caps set forth in section 1-78 of this chapter.

(b) Notwithstanding the provisions of subdivision (a) of this section, the Commission may initiate lease cap changes at any time, based on the Commission's assessment of appropriate policy considerations.

Section 3. Chapter 1 of title 35 of the Rules of the City of New York is hereby amended by the addition of new sections 1-79.1, 1-79.2 and 1-79.3, to read as follows:

**§1-79.1 Lease Terms and Form of Lease.**

(a) Every lease entered into pursuant to section 1-78 of this chapter, including any amendment to such lease, must be in writing, and must be signed by the owner or a person duly authorized to act on behalf of the owner, and by the leasing driver or drivers. A copy of the fully executed lease must be provided to the leasing driver or drivers.

(b) Every such lease must contain the following terms:

(1) *The length of the lease.* The lease must state the beginning date and time of the lease and the ending date and time of the lease. A weekly lease must run for seven consecutive calendar days. A shift must run for 12 consecutive hours.

(2) *Itemization of the costs covered by the lease.* The lease must state the total lease amount, and an itemization of that total cost. The itemization must separately state the amount of the lease that applies to the medallion and the amount if any that applies to the vehicle.

(3) *Other costs.* The lease must state the amounts if any of the security deposit, the percentage credit card pass-along and any other costs that the driver will be charged.

(4) *Notices.* For each cost itemized pursuant to paragraphs two and three of this subdivision, the lease must include a reference to the Commission rule authorizing the imposition of such cost on the driver. The lease must either recite the complete text of each such rule or state the address of the Commission's Web page on which the rule is published.

(5) *Overcharges.* Every lease must contain clearly legible notice that overcharges are prohibited by the Commission's rules, and that complaints of overcharges may be made in writing to the Commission or by telephone call to 311.

(6) *Cancellation charges.* Any cancellation charge contained in the lease must be reasonable, and will not be permitted unless the lease also provides that

(i) no cancellation charge may be charged to driver if the medallion owner or its agent demands the return of the medallion and the driver is not late in making lease payments at the time of such demand;

(ii) if an agent demands the return of a medallion upon the request of an owner, the driver has the right to request that the agent supply a replacement medallion and, if a medallion is provided through the agent, the driver will not be responsible for the costs of hacking up a replacement vehicle; and

(iii) when a cancellation payment is made, the driver's obligation to make lease payments terminates upon such payment.

(7) *Deposit information.* Each lease must include the information regarding deposits required by section 1-79(e) of this chapter.

**§1-79.2 Receipts.**

A driver shall be given a written receipt for every payment made to or deduction taken by the owner, or any person acting on behalf of the owner. The receipt must include the name of the driver and the number of the medallion subject to the lease. The receipt shall clearly state the date of the payment or deduction, the name of the person who accepted the payment or the deduction, the amount of the payment or deduction, the purpose of the payment or the deduction, and the number of the section of this chapter that authorizes the payment or deduction.

**§1-79.3 Retaliation.**

An owner may not act in retaliation against any driver for making a good faith complaint against any owner for violation of sections 1-78 through section 1-79.3 of this chapter. “Retaliation” shall be broadly construed, and shall include imposing any adverse condition or consequence on the driver or withholding or withdrawing any beneficial condition or consequence from the driver.

Section 4. The title of section 1-86 of title 35 of the rules of the City of New York is hereby amended to read as follows:

**§1-86 Penalties for Violation of Rules Governing Owners of Medallion Taxicabs [and Coaches].**

Section 5. Title 35, section 1-86 of the rules of the City of New York be amended by deleting the penalties for violation of section 1-78(b)(i) and 1-78(b)(3) and adding new penalties for violation of sections 1-78(b), 1-78(d), 1-79.1, 1-79.2 and 1-79.3, to read as follows:

| Rule No.      | Penalty<br>All fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed. | Personal Appearance Required |
|---------------|---|------------------------------|
| [§1-78(b)(i)] | [First violation \$500<br>Second and subsequent violations: \$1000 and/or suspension of the medallion   | [Yes]                        |

|                     |   |            |
|---------------------|---|------------|
|                     | for up to thirty days.<br>In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the driver, equal to the excess that was charged to the driver.]   |            |
| [§1-78(b)(3)]       | [First violation: \$250<br>Second violation: \$350<br>Third and subsequent violations: \$500 and/or suspension of the medallion for up to thirty days.<br>It shall be a determination after hearing as to whether multiple contracts constitute a single violation and whether a violation is subsequent to notice of a prior violation.<br>In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the driver, equal to the excess that was charged to the driver.] | [Yes]      |
| <u>§ 1-78(a)(4)</u> | <u>First violation \$500</u><br><u>Second and subsequent violations: \$1000 and/or suspension of the medallion for up to thirty days.</u><br><u>In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the driver, equal to the excess that was charged to the driver.</u>  | <u>Yes</u> |
| <u>§ 1-78(d)</u>    | <u>\$100</u>  | <u>No</u>  |
| <u>§1-79.1(a)</u>   | <u>\$500</u>  | <u>No</u>  |
| <u>§1-79.1(b)</u>   | <u>First violation \$500</u><br><u>Second and subsequent violations: \$1000 and/or suspension of the medallion</u>  | <u>Yes</u> |

|                |   |           |
|----------------|---|-----------|
|                | <u>for up to thirty days.</u><br><u>In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the driver, equal to the excess or non-authorized charge that was charged to the driver.</u> |           |
| <u>§1-79.2</u> | <u>\$50 plus driver gets free shift.</u>  |           |
| <u>§1-79.3</u> | <u>\$1,000</u>  | <u>No</u> |

Section 6. The title of section 3-03 of title 35 of the rules of the City of New York is hereby amended to read as follows:

**§3-03 Taxicab Specifications [on or after May 1, 1996].**

Section 7. Paragraphs (10) and (11) of subdivision (c) of section 3-03 of title 35 of the rules of the City of New York are hereby amended to read as follows:

(c) *Vehicle Specifications.*

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(10) Notwithstanding the foregoing provisions of this subdivision 3-03(c), [beginning on October 1, 2008, no taxicab shall] a vehicle may be hacked up [unless] as a taxicab if the [taxicab] vehicle is powered by diesel fuel, and the vehicle otherwise meets [either the requirements of an accessible taxicab pursuant to section 3-03.2 of this chapter or both of the following:

- (i) a minimum city rating of twenty-five (25) miles per gallon as labeled pursuant to title 49, section 32908 of the United States Code and regulations promulgated pursuant thereto, and
- (ii)] the vehicle specifications provided in section 3-03.1(c) of this chapter, whether or not the taxicab is a hybrid electric vehicle.

[(11) Notwithstanding the foregoing provision of this subdivision 3-03(c), beginning on October 1, 2009, no taxicab shall be hacked up unless the taxicab meets either the requirements of an accessible taxicab pursuant to section 3-03.2 of this chapter or both of the following:

- (i) a minimum city rating of thirty (30) miles per gallon as labeled pursuant to title 49, section 32908 of the United States Code and regulations promulgated pursuant thereto, and

- (ii) the vehicle specifications provided in section 3-03.1(c) of this chapter, whether or not the taxicab is a hybrid electric vehicle.]

## **STATEMENT OF BASIS AND PURPOSE**

These rules modify existing Taxi and Limousine Commission rules governing taxicab leasing in several respects.

In light of the determination in *Metropolitan Taxicab Board of Trade v. City of New York*, 08 Civ. 7837 (PAC) (Oct. 31, 2008), these rules rescind the existing rules mandating that taxicabs hacked up beginning on October 1, 2008, must be city-rated at or above 25 miles per gallon, and that taxicabs hacked up beginning on October 1, 2009, must be city-rated at or above 30 miles per gallon.

In the place of that rescinded requirement, the new rules alter the maximum lease rates in such a way as to create incentives for taxicab owners to buy cleaner vehicles. Specifically, the proposed rules permit owners of medallions used for hybrid electric taxicabs and “clean diesel” taxicabs to charge \$3.00 per shift more than the maximum lease rate that would otherwise be allowed. Similarly, owners of less clean taxicabs will, after a phase-in period, be permitted to charge \$12.00 per shift less than the maximum lease rate that would otherwise be allowed. Lease rates for wheelchair accessible taxicabs will remain unchanged.

Under existing rules, a taxicab owner who purchases a vehicle that is costly to run does not bear the gasoline costs incurred in the operation of that vehicle. Instead, gasoline costs are borne by the drivers, who may have no voice in the owner’s choice of vehicles. These newly promulgated rules are intended to place gasoline costs on the owner who chooses the vehicle. An owner who chooses a vehicle which is also a fuel efficient vehicle will be able to realize greater lease income than an owner who chooses a less efficient vehicle, while the expenses of leasing drivers will be roughly equal regardless of the taxicab owner’s vehicle choice.

The newly promulgated rules also specify that owners and agents may not add costs to the lease, other than charges specifically provided for by Commission rules. Therefore, under the new rules, the maximum lease rates cap the total of all charges, other than the credit card pass-along and the security deposit, a late charge and a reasonable cancellation charge (subject to certain required contract provisions) that an owner or agent may charge to a leasing driver. In addition, the new rules specify that owners and agents must settle credit card charges with drivers, in cash, on a daily or weekly basis.

The newly promulgated rules formalize the leasing relationship in several respects. A lease, including any amendment to a lease, is required to be in writing and signed by the leasing driver; to contain an itemization of all charges; and to clearly state a lease term; and, if a cancellation charge is permitted, to contain certain provisions regarding cancellation. Similarly, the rules require that owners and agents provide leasing drivers with receipts for all payments made leasing drivers.

The rules further expressly prohibit retaliation by an owner against a driver for

filing a complaint alleging in good faith an owner's violation of the TLC's lease rules. In view of TLC's experience that drivers are extremely reluctant to file such complaints for fear of such retaliation, the proposed penalty for retaliation is \$1,000.

Finally, the new rules make two procedural changes in the Commission's existing rules. While owners and drivers could continue to petition for changes to lease caps, the Commission, on its own initiative, would be able to modify lease caps, by rulemaking, on the basis of its assessment of appropriate policy considerations.

The rules also eliminate the requirement that a complaint for a violation of a lease cap provision can be made only by the driver subject to the lease. Drivers may be reluctant to report lease cap violations due to concerns about retribution and blacklisting. Effective enforcement of lease caps requires that complaints of violations be investigated actively, regardless of the source of the information.