

## **NEW YORK CITY TAXI AND LIMOUSINE COMMISSION**

### **Notice of Promulgation of Rules**

Notice is hereby given in accordance with section 1043(b) of the New York City Charter (“Charter”) that the Taxi and Limousine Commission (“TLC”) promulgates amendments to its rules governing TLC approval of taxicab rooftop advertising fixtures.

These rules are promulgated pursuant to sections 1043 and 2303 of the Charter and section 19-503 of the Administrative Code of the City of New York. The rule was included in the Commission’s regulatory agenda for this Fiscal Year.

These rules were published on June 8, 2011, for public comment in the City Record. On July 21, 2011 a public hearing was held by the TLC at its offices at 33 Beaver Street, 19<sup>th</sup> Floor, New York, New York, 10004 and the rules were adopted by the Commission at a public meeting held on September 15, 2011. Pursuant to section 1043(e)(1)(c) of the Charter, these rules will go into effect 30 days following publication in the City Record.

### **Statement of Basis and Purpose of Rule**

The purpose of the rule is to:

1. Codify the rooftop device approval process,
2. Establish safety standards for rooftop devices,
3. Establish a fine for taxicabs that do not comply with the standards, and
4. Allow the vehicle owner to refuse to display an advertisement.

Section 19-525 of the City Administrative Code allows TLC to issue permits for exterior advertising on licensed vehicles and to promulgate rules governing the type and size of advertisements. The TLC only allows advertising on taxicabs with approved rooftop devices. The TLC currently approves taxicab rooftop advertising devices through a Memorandum of Understanding (“MOU”) with each rooftop provider. The MOUs set the standards with which the rooftop device must comply. The rules will replace the MOUs by codifying the approval process stated in them. Rooftop devices currently approved through an MOU will continue to be approved in accordance with the rules.

Under the rules, every newly designed rooftop advertising fixture offered by a provider must be approved by the TLC before it can be affixed to a taxicab. A taxicab owner using an unauthorized rooftop advertising fixture will be issued a summons under Rule 58-34.

The rule establishes the following safety standards for TLC approval of a new rooftop advertising fixture:

- certification by a licensed professional engineer;
- proper affixation of advertising content to the fixture;
- size limits; and,

- restriction of advertising to the sides of the rooftop fixture.

In addition, the rule prohibits medallion owner from installing advertising material on a taxi if the vehicle owner reasonably objects to the express or implied content of such material (unless the vehicle owner shall have previously provided a blanket written consent to all advertising material). This provision was in direct response to testimony delivered at the TLC's July 2011 meeting.

At that meeting, the TLC heard testimony from DOV drivers' representatives that they are concerned that "[y]ou can't control what advertising content is up there.... [W]hen that vehicle is parked in your neighborhood, in front of your friends and family, that medallion number, that vehicle is associated with you.... [T]here are ads that have been up there that they don't want to be associated with." DOV drivers testified that "[t]hat advertisement is on my car, parked in the driveway. My children ask what it is. 'I want to go to a gentlemen's club.' What should I answer them? We have to take care of the kids. If the advertisement is no good, what should we do?"

And, it appears, that agents and medallion owners are sensitive to this concern. Following the July 2011 meeting, counsel for the Committee for Taxi Safety (a group representing medallion agents) wrote to the Commissioners that "anytime a driver complained to us about the content of an advertisement on the rooftop, we immediately contacted our roof top vendor and had the advertisement switched. We took care of any complaint immediately and the roof top provider also responded at once." In light of the foregoing, the TLC believes that this provision of the rule will regularize and codify commendable practices which medallion owners, agents and roof top providers already, apparently, follow.

The TLC currently intends that these rules will remain in effect until such time as TLC selects a vendor (or vendors), pursuant to a competitive process, to act as providers for taxicab exterior advertising.

New material is underlined.

[Material inside brackets indicates deleted material.]

Section 1. Section 58-34 of Title 35 of the Rules of the City of New York is amended by adding a new subdivision (e), to read as follows:

§58-34            Vehicle Equipment

(e) Optional Rooftop Advertising Fixture.

(1) An Owner may equip a Taxicab with an authorized Rooftop Advertising Fixture in accordance with Rule 67-16.

- (2) The Owner must remove a Rooftop Advertising Fixture if the TLC terminates such authorization in accordance with section 67-16(e) of these Rules.
- (3) An Owner must not use any rooftop advertising fixture unless the Owner has obtained a permit to use such a fixture
- (4) An Owner can use only an authorized Rooftop Advertising Fixture.

<u>§58-34(e)(1-4)</u>	<u>Fine: \$200 and a 10-day Notice to Correct. If the 10-day Notice to Correct is not complied with, Summary Suspension until the condition is corrected</u>	<u>Appearance NOT REQUIRED</u>
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(5) An Owner shall be prohibited from installing any advertising material if a Vehicle Owner reasonably objects to the express or implied content of such material. A Vehicle Owner may, but cannot be compelled to, waive this right to object by providing an Owner a blanket prior written consent to all advertising material. If such Vehicle Owner does not waive this right, and there is a dispute with respect to such advertising, Owner and Vehicle Owner shall name a third party who shall decide any such dispute. If the Owner and Vehicle Owner cannot agree on who shall decide the dispute they may obtain the assistance of any alternate dispute resolution service with offices in the City of New York, the cost of which service will be equally shared by the Owner and the Vehicle Owner. The definition of Vehicle Owner for this paragraph includes the title owner of the Taxicab vehicle, or the long-term lessee of the Taxicab vehicle where the vehicle lease has a conditional purchase agreement for the vehicle.

<u>§58-34(e)(5)</u>	<u>Fine: \$150 for every thirty days the advertising material is posted on the taxicab, if plead guilty before a hearing; \$200 for every thirty days the advertising material is posted on the taxicab, if found guilty following a hearing.</u>	<u>Appearance NOT REQUIRED</u>
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Section 2. Section 67-03 of Title 35 of the Rules of the City of New York is amended by adding new subdivisions (g) and (h) and re-lettering existing subdivisions (g) through (j) as subdivisions (i) through (l), to read as follows:

**§67-03            Definitions Specific to this Chapter**

- (g) *Rooftop Advertising Fixture* means a device that incorporates the functions of a Roof Light with the displaying of advertising.

(h) Rooftop Advertising Fixture Provider means the entity responsible for supplying the Rooftop Advertising Fixture to the Medallion Owner and maintaining the advertising material.

Section 3. Title 35 of the Rules of the City of New York is amended by adding a new section 67-16, to read as follows:

**§67-16 [(Reserved)] Authorized Rooftop Advertising Fixture**

(a) Authorized Rooftop Advertising Fixture.

(1) Upon payment of an annual Advertising Permit Fee as described in Rule 58-07(g), a Medallion Owner may install and maintain an authorized Rooftop Advertising Fixture.

(2) A Medallion Owner must not install or maintain a Rooftop Advertising Fixture that is not authorized, or no longer authorized, by TLC.

(b) Grandfathered Authorized Rooftop Advertising Fixtures. A Rooftop Advertising Fixture that is authorized by a Memorandum of Understanding between the Rooftop Advertising Fixture Provider and the TLC that is in effect on August 30, 2011 and was installed in accordance with these rules shall be deemed to comply with the requirements of these rules.

(c) Requirements for Obtaining TLC Approval of a Rooftop Advertising Fixture.

(1) The Rooftop Advertising Fixture must be tested and certified in accordance with the Department of Defense Test Standard MIL-STD 810f by a licensed Professional Engineer and documentation of testing and certification must be submitted to TLC. (MIL-STD 810f can be found at <http://www.dtc.army.mil/navigator>.)

(2) The Rooftop Advertising Fixture must be approved by TLC's Safety and Emissions Division.

(3) The Rooftop Advertising Fixture Provider may post advertisements on the Rooftop Advertising Fixture. Such advertisements:

(i) must not exceed the physical dimensions of the advertising display surface of the rooftop unit

(ii) Exception: An advertisement can exceed the dimensions of the advertising display surface of the rooftop unit by no more than 100 square inches if the certification by a Professional Engineer as required in paragraph one

of this subdivision specifically states that the extension is safely supported upon the Rooftop Advertising Fixture.

(4) The Rooftop Advertising Fixture must

- (i) be two-sided, each side of a shape that is longer across and shorter in height, although not necessarily a rectangle;
- (ii) display advertising material to the sides of the vehicle, and
- (iii) not display advertising material to the front and back of the vehicle.

(4) Variation in approved design.

- (i) If the Rooftop Advertising Fixture Provider wants to deviate from an approved design, it must inform the TLC of any material variation in the original, approved design before installing a modified fixture.
- (ii) The TLC shall, within fourteen (14) business days, inform the Rooftop Advertising Fixture Provider whether an additional authorization is required with respect to the modified Rooftop Advertising Fixture.

(d) Maintenance of Rooftop Advertising Fixture. The Rooftop Advertising Fixture Provider must maintain the Rooftop Advertising Fixture in accordance with this Rule:

(1) The Rooftop Advertising Fixture Provider must ensure that the Rooftop Advertising Fixture

- (i) is firmly affixed to each taxicab;
- (ii) is otherwise operating in a safe manner;
- (iii) is in good working order; this includes that the advertising displayed on the fixture is firmly affixed; and
- (iv) displays current advertisements. A current advertisement is one that includes, but is not limited to, a defined event (such as advertisements for movies, concerts or events which have fixed opening or running dates) and only remains current until 60 days following the completion or termination of the event, or promotes an existing business or consumer product.

(2) (i) The Rooftop Advertising Fixture Provider must not display advertising that is offensive to public morals or is otherwise in violation of New York Penal Law Section 245.11.

(ii) The Rooftop Advertising Fixture Provider must remove any advertising in violation of subparagraph (i) from public display within fifteen (15) days after a TLC request to remove such advertising.

(e) Termination of Authorization of Rooftop Advertising Fixture.

(1) The Chairperson may terminate authorization of a Rooftop Advertising Fixture if the provider has not complied with the requirements stated in this Rule.

(i) Prior to terminating authorization, the Chairperson will give the Rooftop Advertising Fixture Provider notice of the Chairperson's intent to terminate authorization and shall provide detailed reasons for the action.

(ii) The Rooftop Advertising Fixture Provider shall have 21 business days after the notice to cure any defect or to respond to any concerns set forth in the notice unless the TLC extends the cure period.

(iii) If the Rooftop Advertising Fixture Provider fails to cure any defect or fail to respond to any concerns set forth in the Chairperson's notice to the satisfaction of the Chairperson within the time period allotted by the TLC, the Chairperson may promptly terminate authorization.

(2) Notwithstanding the notice requirements of paragraph one, TLC may immediately terminate authorization of a Rooftop Advertising Fixture if the Chairperson determines there is an imminent threat to the health or safety of members of the public, taxi drivers, or other individuals.