

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

Notice of Promulgation

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 that 1) require the Technology System Providers to reimburse the Driver Incentive TIF/SHLIF payment directly to the driver 2) permit medallion owners to place a used Wheelchair Accessible Vehicle into service while eliminating the vehicle retirement requirement for Wheelchair Accessible Vehicles 3) extend the Americans with Disabilities Act (ADA) vehicle specification standards, which currently apply to taxicabs, to accessible For-Hire Vehicles, and 4) require licensed drivers re-take Passenger Assistance and Wheelchair Accessible Vehicle On-Demand training courses under certain circumstances.

This rule is promulgated pursuant to sections 1043 and 2303 of the Charter and section 19-503 of the Administrative Code of the City of New York. This rule was published in the City Record on April 8, 2024 for public comment. On May 8, 2024, a public hearing was held virtually by the TLC and the rule as adopted by the Commission on June 12, 2024.

STATEMENT OF BASIS AND PURPOSE OF RULE

The TLC is promulgating rules that will take proactive steps to facilitate the agency's long-term commitment to accessibility for all New Yorkers. Due to the financial state of the medallion industry over the last several years, which was aggravated by the pandemic, coupled with the TLC's mandate to have 50% of the medallion fleet comprised of Wheelchair Accessible Vehicles, it is incumbent upon the TLC to ensure the continued commitment to accessibility.

A larger rule proposal was originally contemplated for which a hearing was held on May 8, 2024. However, due to the ongoing federal litigation in the *Taxis for All Campaign, Inc., et al. v. New York City Taxi and Limousine Commission, et. al.*, the TLC has determined that it is not currently feasible to increase the allocation of the TIF fees to medallion owners and drivers for initial hack-up and operational payment subsidies. TLC may re-examine the possibility of a potential increase in TIF subsidies at a later date.

The amended rules will:

- Eliminate the scheduled vehicle retirement dates for new and used Wheelchair Accessible Vehicles placed into service, in addition to currently licensed Accessible Taxicabs (vehicles must still pass regularly scheduled inspections).
- Permit the conversion of used vehicles to Wheelchair Accessible Vehicles in accordance with the TLC's existing Accessible Vehicle specifications.
- Clarify TLC's re-hacking rules to ensure that medallions eligible for re-hacking new vehicles adhere to TLC's existing accessibility requirements.
- Require Technology System Providers to streamline the process of returning the TIF driver incentive payment per fare directly to the driver.
- Create consistency among the industry sectors by requiring accessible For-Hire Vehicles to meet the same Americans with Disabilities Act standards that are required of taxicabs.
- Require TLC Drivers to re-take the Passenger Assistance and Wheelchair Accessible Vehicle Training ("Re-Training course") at a TLC-approved Education Provider upon investigated and founded complaints of drivers violating their duties to passengers using wheelchair accessible vehicles (WAVs).
- Require applicants for a TLC Drivers License to take the Passenger Assistance and Wheelchair Accessible Vehicle Training again as a condition of licensure upon renewal.

The Commission's authority for this rule is found in section 2303 of the New York City Charter and section 19-503 of the Administrative Code of the City of New York.

New material is underlined.

[Deleted material is in brackets]
 Asterisks (***) indicate unamended text

Section 1. The definitions of terms “Street Hail Livery Improvement Surcharge” and “Taxi Improvement Surcharge” as set forth in Section 51-03 of Title 35 of the Rules of the City of New York are amended to read as follows:

Street Hail Livery Improvement Surcharge is the surcharge of \$1.00 per trip that will be added to every Hail Trip in a Street Hail Livery. The Street Hail Livery Improvement Surcharge will be deposited into the Street Hail Livery Improvement Fund, except for any amounts paid directly to the Drivers of Accessible Street Hail Liveries.

Taxicab Improvement Surcharge is the surcharge of \$1.00 per trip that will be added to every taxicab trip. The Taxicab Improvement Surcharge will be deposited into the Taxicab Improvement Fund, except for any amounts paid directly to the Drivers of Accessible Taxicabs.

Section 2. Subdivision (a) of Section 53-10 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (a) *Assisting the Passenger.* An Approved Driver
 - (1) Must assist a passenger who uses a wheelchair or a passenger with other disabilities when:
 - (i) Entering the vehicle from the sidewalk; and
 - (ii) Exiting from the vehicle to the curbside.
 - (2) Must secure a passenger with a disability and their mobility device within the Vehicle.

§53-10(a)	[Fine: \$200] <u>Fine: \$50 and suspension if plead guilty before a hearing; \$150 if found guilty following a hearing and suspension. The suspension is deferred for 60 days; if the Driver completes the Vision Zero and Accessibility Remedial course within the 60-day period the Driver will not be suspended.</u>	Appearance NOT Required
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Section 3. Subdivision (b) of Section 53-10 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (b) *Packages.* An Approved Driver must place the packages and parcels of a passenger with a disability in the Vehicle and secure them and must retrieve them for the Passenger

at the end of the trip upon request.

§53-10(b)	<u>Fine: \$50 and suspension if plead guilty before a hearing; \$150 if found guilty following a hearing and suspension. The suspension is deferred for 60 days if the Driver completes the Vision Zero and Accessibility Remedial course within the 60-day period, the Driver will not be suspended.</u>	Appearance NOT Required
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Section 4. Subdivision (d) of Section 53-10(d) of Title 35 of the Rules of the City of New York is amended to read as follows:

(d) *Waiting for the Passenger with a disability.* An Approved Driver who has accepted a dispatch must wait for the passenger with a disability to appear curbside except where prohibited by New York State Vehicle and Traffic Law or where otherwise directed by law enforcement at the pick up point for at least ten minutes after the time of arrival reported by the Driver for on-demand trips, and at least ten minutes after the scheduled pickup time indicated by the Dispatcher for advance reservation trips.

§53-10(d)	<u>Fine: \$50 and suspension if plead guilty before a hearing; \$150 if found guilty following a hearing, and suspension. The suspension is deferred for 60 days if the Driver completes the Vision Zero and Accessibility Remedial course within the 60-day period the Driver will not be suspended.</u>	Appearance NOT Required
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Section 5. Paragraphs (1) and (2) of subdivision (f) of section 58-21 of Title 35 of the Rules of the City of New York are amended to read as follows:

(f) *Non-Cash Payments.*

- (1) For any lease of a Taxicab (vehicle and Medallion) under paragraph 58-21(c)(1) or 58-21(c)(2), an Owner (or Owner’s Agent) must pay a Driver, on a daily basis, the total amount of all non-cash payments, including E-Payments through the Technology System (if any), made during the Driver’s shift, less the Taxicab Improvement Surcharge payable to the Taxicab Improvement Fund as set forth in Section 66-25. For trips provided in WAV vehicles, the Taxicab Improvement Driver Incentive Payment (as specified in TLC Rule 58-50(h)(2)) shall be paid directly to the Driver by the Technology System Provider and/or E-Hail Application Provider at the time and in the manner required by the Commission. Drivers leasing a Taxicab on a weekly basis under section 58-21(c)(1)(i)E, 58-21(c)(1)(i)F, 58-21(c)(2)(i)E or 58-21(c)(2)(i)F may, at the Driver’s discretion, be paid

on a weekly basis. Payments to a Driver and access to these funds must be provided at no cost to the Driver. An Owner or the Owner’s Agent must:

- (i) Pay the Driver, including any sublessee Drivers, and if the Owner or the Owner’s Agent delegates or assigns this responsibility to another party, the Owner or the Owner's Agent shall be responsible for making full payment to the Driver if any designee or assignee fails to pay the Driver as required, and Driver reports non-payment to the Owner or Owner's Agent within 90 days of non-payment.
- (2) For any lease not described in paragraph (1), an Owner (or Owner’s Agent) must pay the Driver, on no less than a weekly basis, the total amount of all non-cash payments, including E-Payments through Technology System (if any), made during that period, less the Taxicab Improvement Surcharge payable to the Taxicab Improvement Fund as set forth in Section 66-25. For trips provided in WAV vehicles, the Taxicab Improvement Driver Incentive Payment (as specified in TLC Rule 58-50(h)(2)) shall be paid directly to the Driver by the Technology System Provider and/or E-Hail Application Provider at the time and in the manner required by the Commission. Payments to a Driver and access to these funds must be provided at no cost to the Driver. An Owner or the Owner’s Agent must:

- (i) Pay the Driver, including any sublessee Drivers, and if the Owner or Owner’s Agent delegates or assigns this responsibility to another party, the Owner or the Owner's Agent shall be responsible for making full payment to the Driver if any designee or assignee fails to pay the Driver as required, and Driver reports non-payment to the Owner or the Owner's Agent within 90 days of non-payment.

§58-21(f)(1)& (2)	Fine: \$100 In addition to the penalty payable to the Commission, the ALJ must order the Owner to pay restitution to the Driver, equal to the cost to the Driver.	Appearance NOT REQUIRED
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Section 6. Subdivision (e) of section 58-50 of Title 35 of the Rules of the City of New York, relating to transfer of accessible vehicle conversion requirement, is REPEALED, and subdivisions (f) through (j) are relettered (e) through (i).

Section 7. Paragraph (3) of subdivision (i) of section 58-50 of Title 35 of the Rules of the

City of New York, as relettered by this rule, is amended to read as follows:

- (3) Allocation amounts provided for in paragraphs (1) and (2) of this subdivision will be reviewed and adjusted as provided in subdivision [(h)](i) of this section.

Section 8. Chapter 59C of Title 35 of the Rules of the City of New York is amended by adding a new section 59C-04, to read as follows:

59C-04 Specifications for Accessible For Hire Vehicles

- (a) An Accessible Vehicle may be approved if it meets the following conditions:
 - (1) It is a vehicle other than (i) a bus, (ii) a minibus, or (iii) a van, the chassis for which, as originally manufactured, is designed to seat eight or more persons.
 - (2) It is capable of transporting at least one passenger using a common wheelchair (as wheelchair is defined in Code of Federal Regulations, title 49, section 37.3).
- (b) The chassis of the Accessible Vehicle, as originally manufactured, must have:
 - (1) A maximum horsepower of 290.
 - (2) The original equipment manufacturer's suspension and steering components.
 - (3) No bumper modifications.
 - (4) Exception regarding bumpers: A bumper modified to allow installation of a rear-entry ramp may be approved if it satisfies either of the following:
 - (i) Modification by secondary manufacturer:
 - a. The rear bumper is reinforced.
 - b. The modification is approved by the vehicle manufacturer.
 - c. The modification meets or exceeds Federal Motor Vehicle Safety Standards crash testing requirements.
 - d. Any rear door lock modifications must meet the Federal Motor Vehicle Safety Standards and the lock must be attached to the chassis, not the ramp, unless a secondary lock is attached to the chassis.
 - (ii) Modification by other than secondary manufacturer:
 - a. The rear bumper is reinforced.
 - b. The modification is approved by the vehicle manufacturer.

- c. The modification meets or exceeds Federal Motor Vehicle Safety Standards crash testing requirements.
- d. The modifier must retain an engineer with at least a bachelors degree in either mechanical engineering or electrical engineering with at least 3 years' experience in automotive manufacturing to certify that each vehicle was modified using the design tested to meet or exceed Federal Motor Vehicle Safety Standards crash testing requirements.
- e. A separate certification from such engineer for each vehicle must be presented to the TLC indicating that the requirements set forth in items a through c of this subparagraph have been met.
- f. Any rear door lock modifications must meet the Federal Motor Vehicle Safety Standards and the lock must be attached to the chassis, not the ramp, unless a secondary lock is attached to the chassis.

(c) The Accessible Vehicle as manufactured by the original equipment manufacturer ("OEM") or as modified by an OEM- approved or National Highway Traffic Safety Administration (NHTSA)-registered second-stage manufacturer must meet the following specifications:

- (1) The minimum ground clearance (measured from frame, loaded to gross vehicle weight rating) must be 5 inches.
- (2) (i) The passenger compartment length (measured from rear of driver's seat base to rear seat base) must be not less than 56 inches.
(ii) Exception: For an Accessible Taxicab designed to carry a Passenger using a wheelchair in the front right position beside the Driver, the passenger compartment length must be not less than 38 inches.
- (3) The rear compartment of any vehicle approved for use as an Accessible Vehicle Model must meet the following dimensions as defined by the Society of Automotive Engineers:
 - (i) Effective legroom (L51) must be at least 34.6 inches.
- (4) The front compartment of any vehicle approved for use as an Accessible Vehicle Model must meet the following dimensions:
 - (i) Effective legroom (L34) must be at least 40 inches.
- (5) Total legroom (the sum of L34 and L51) must be at least 74.6 inches.
- (6) The original floor of the Accessible Vehicle, if lowered, must be lowered from the base of the firewall to the area immediately in front of the rear axle.
- (7) If a lowered floor assembly is used, it must be stainless steel (16 gauge minimum) and must meet or exceed the 1,000 hour salt spray rating.

- (8) If a lowered floor assembly is used, a vapor-insulating barrier of ½ inch marine grade plywood must be applied over the lowered metal floor and thoroughly secured.
- (9) The wheelchair ramp must not block any part of the door or glass while in the stowed position.
- (10) The system provided to securely hold one or more wheelchairs in place must be the system known as Q straint QRT Standard or, if an alternative system, it must meet or exceed the Q straint QRT Standard.
- (11) No anchor points may project more than 1/8 of an inch above the finished floor.
- (12) If the Accessible Vehicle has a middle fold-up passenger seat, it must have a folding mechanism and base plate and must meet the requirements of the Federal Motor Vehicle Safety Standard No. 207, Code of Federal Regulations, title 49, and section 571.207.
- (13) Any modifications to the rear air conditioning must be approved by the OEM.
- (14) Any and all electrical wiring, other than as provided by the OEM, must be PVC-or-better insulated and color-coded for positive identification.
- (15) The back-up alarm must be an electrically operated device that produces an intermittent audible signal when the Accessible Vehicle’s transmission is shifted into reverse.
- (16) The converted vehicle must be purchased from the same converter which has manufactured the necessary parts/components and provided the labor to convert the vehicle.

Section 9. Subdivisions (a) and (b) of section 66-25 of Title 35 of the Rules of the City of New York are amended to read as follows:

- (a) Taxicab Improvement Fund.
- (1) A Technology System Provider and/or E-Hail Application Provider must pay the collected Taxicab Improvement Surcharge remitted by the Taxicab Driver to the Taxicab Improvement Fund within 60 days of the end of the payment period. For example, the Taxi Improvement Surcharge due for the month of July must be remitted to the TLC in its entirety by October 1st.
- (2) The Technology System Provider and/or E-Hail Application Provider must pay the Taxicab Improvement Surcharge to the Taxicab

Improvement Fund at the time and in the manner required by the Commission.

- (3) If a Technology System Provider and/or E-Hail Application Provider does not pay the Taxicab Improvement Surcharge to the Taxicab Improvement Fund at the time required, non-payment will be grounds for suspension of the Technology System Provider License or E-Hail Application Provider License, and/or denial of any renewal application or of any application for another TLC-issued license, as well as monetary penalties.

§66-25(a)(1)-(3)	Penalty: \$1000 fine and suspension until compliance	Appearance REQUIRED
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- (4) For trips provided in WAV vehicles, the Taxicab Improvement Driver Incentive Payment (as specified in TLC Rule 58-50(h)(2)) shall be paid directly to the Driver by the Technology System Provider and/or E-Hail Application Provider at the time and in the manner required by the Commission.
- (5) For trips provided in non-WAV vehicles, the Taxicab Improvement Surcharge (as specified in TLC Rule 58-26(a)(1)(i)) will be paid directly to the TLC's Taxi Improvement Fund by the Technology System Provider and/or E-Hail Application Provider at the time and in the manner required by the Commission.
- (6) For trips provided in WAV vehicles, distribution records of the Taxicab Improvement Surcharge paid directly to the Driver by the Technology System Provider and/or E-Hail Application Provider must be submitted to the TLC on a monthly basis at the time and in the manner required by the Commission.

§66-25(a)(4)-(5)	Penalty: \$500 fine and the Technology System Provider shall pay restitution to the Driver, equal to the lack of payment received by the Driver.	Appearance REQUIRED
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(b) Street Hail Livery Improvement Fund.

- (1) A Technology System Provider and/or E-Hail Application Provider must pay the collected Street Hail Livery Improvement Surcharge remitted by the Street Hail Livery Driver to the Street Hail Livery Improvement Fund within 60 days of the end of the payment period. For example, the Street Hail Livery Improvement Surcharge due for the month of July must be remitted to the TLC in its entirety by October 1st.

- (2) The Technology System Provider and/or E-Hail Application Provider must pay the Street Hail Livery Improvement Surcharge to the Street Hail Livery Improvement Fund at the time and in the manner required by the Commission.
- (3) If a Technology System Provider and/or E-Hail Application Provider does not pay the Street Hail Livery Improvement Surcharge to the Street Hail Livery Improvement Fund at the time required, non-payment will be grounds for suspension of the Technology System Provider License or E-Hail Application Provider License, and/or denial of any renewal application or of any application for another TLC-issued license, as well as monetary penalties.

<u>§66-25(b)(1)-(3)</u>	Penalty: \$1000 fine and suspension until compliance	Appearance REQUIRED
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- (4) For trips provided in WAV vehicles, the Street Hail Livery Improvement Driver Incentive Payment (as specified in TLC Rule 82-70(b)) will be paid directly to the Driver by the Technology System Provider and/or E-Hail Application Provider at the time and in the manner required by the Commission.
- (5) For trips provided in non-WAV vehicles, the Street Hail Livery Improvement Surcharge (as specified in TLC Rule 82-26(a)(1)(i)) will be paid directly to the TLC’s Street Hail Livery Improvement Fund by the Technology System Provider and/or E-Hail Application Provider at the time and in the manner required by the Commission.
- (6) For trips provided in WAV vehicles, distribution records of the Street Hail Livery Improvement Driver Incentive Payment paid directly to the Driver by the Technology System Provider and/or E-Hail Application Provider must be submitted to the TLC on a monthly basis at the time and in the manner required by the Commission.

<u>§66-25(b)(4)-(5)</u>	Penalty: <u>\$500 fine and the Technology System Provider shall pay restitution to the Driver, equal to the lack of payment received by the Driver.</u>	Appearance REQUIRED
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Section 10. Section 67-05.2 of Title 35 of the Rules of the City of New York is amended by adding a new paragraph (16) to subdivision (c) and adding a new subdivision (e), to read as follows:

- (c) The Accessible Taxicab as manufactured by the original equipment manufacturer

(“OEM”) or as modified by an OEM-approved or National Highway Traffic Safety Administration (NHTSA)-registered second-stage manufacturer must meet the following specifications:

(16) The converted vehicle must be obtained from the same converter which has manufactured the necessary parts/components and provided the labor to convert the vehicle.

(e) Requirements for used vehicle conversion to an Accessible Vehicle. A used non-accessible vehicle may be Hacked-up as an Accessible Vehicle for use as an Accessible Taxicab, only if:

- (1) The converted vehicle meets the specifications set forth in this section.
- (2) The converter is approved by the Commission and submits documentation in a form and manner prescribed by the Commission indicating that the conversion was performed in accordance with the specifications set forth in this section.
- (3) The vehicle is included in the list of Commission approved vehicles posted on the TLC Web site.
- (4) The converted vehicle passes the required Commission inspections.

Section 11. Subdivisions (b) and (d) of section 67-06 of Title 35 of the Rules of the City of New York are amended to read as follows:

(b) Putting Vehicle into Service the First Time. A Taxicab Model may be Hacked-up for use as a Taxicab, only if it:

- (1) Is new, having fewer than 500 miles on the odometer and is one of the manufacturer’s two latest vehicle model years (Example: If in calendar year [2008] 2022 the manufacturer introduces the [2009 Caprice] 2023 Camry, only [2009] 2022 and [2008] 2023 [Caprices] Camrys may be Hacked-up); or
- (2) Is a used Taxicab or Wheelchair Accessible Taxicab Model less than seven years old and passes TLC inspection, except for conversion of a used non-Accessible vehicle into an Accessible vehicle, as provided in subdivision (e) of section 67-05.2 of these Rules.

(d) Limited Right to “Re-Hack” for Transfer. A vehicle that has been Hacked-up may be transferred to another Medallion, with the approval of the Commission and in accordance

with the Accessibility requirements of subdivisions (a) through (e) of section 58-50 of these Rules, only if the vehicle passes inspection, has not yet met its Scheduled Retirement Date and meets one of the following conditions:

- (1) *Repossessions.* The vehicle is purchased through a bank or other lender that has acquired the right to sell the vehicle through repossession and the repossession occurs within 24 months of Hack-up.
- (2) *Same Medallion Owner or Agent.* The owner (or owner's Agent) of the Medallion transfers the vehicle to another Medallion operated by the same owner or agent.
- (3) *Compressed Natural Gas Vehicle.* The owner of a Medallion (or the owner's agent) may transfer a vehicle fueled by Compressed Natural Gas to any other Medallion owned by the same owner.
- (4) *Transfer of Medallion and Vehicle.* A vehicle which is in use with an Independent Medallion and is not at its Scheduled Retirement Date can continue in use with that Medallion following the transfer of that Medallion until its Scheduled Retirement Date if it passes all inspections and if the vehicle meets all of the following:
 - (i) the vehicle is acquired by a Transferee of an Independent Medallion together with that Medallion from the Transferor of that Independent Medallion and
 - (ii) the vehicle was operated by the Transferor of that Independent Medallion with that Medallion.

Example (1)

If a medallion is currently affixed to an Accessible Vehicle and has completed its required 4-year Accessible Taxicab cycle, the medallion may be re-hacked with a used non-Accessible Vehicle, since the next cycle would permit the use of a non-Accessible Taxicab.

Example (2)

If the medallion is currently affixed to a non-Accessible Vehicle, pursuant to section 58-50 of these Rules, the medallion may only be re-hacked with a used Accessible Vehicle once the non-Accessible vehicle is removed from service.

Section 12. Section 67-18 of Title 35 of the Rules of the City of New York, relating to vehicle retirement, is REPEALED, and a new section 67-18 is added, to read as follows:

67-18 Scheduled Vehicle Retirement

(a) New Vehicles

(1) Non-Wheelchair Accessible Vehicles

All vehicles Hacked-up as new vehicles pursuant to TLC Rule 67-06(b)(1) must be retired from Taxicab service and replaced no later than the first scheduled inspection of the vehicle occurring 84 months after the vehicle was Hacked-up.

(2) Wheelchair Accessible Vehicles

All new Accessible Vehicles that are or have been Hacked-up pursuant to TLC Rule 67-06(b)(1) shall have no set retirement date, contingent upon the Accessible vehicle passing its regularly scheduled inspections.

(b) Used Vehicles

(1) Non-Wheelchair Accessible Vehicles

All non-Accessible vehicles Hacked-up as used vehicles pursuant to TLC rule 67-06(b)(2) must be retired from Taxicab service and replaced no later than the first scheduled inspection of the vehicle occurring 84 months after the vehicle was Hacked-up, less the age of the vehicle as determined by the difference between the calendar year at Hack-up and the model year of the vehicle.

Example

A used 2018 model year vehicle that was hacked up in 2022 is three years old and must be retired from Taxicab service and replaced no later than the first scheduled inspection of the vehicle occurring 48 months after the vehicle was Hacked-up.

(2) Wheelchair Accessible Vehicles

All used Accessible Vehicles that are or have been Hacked-up pursuant to TLC Rule 67-05.2 shall have no set retirement date, contingent upon the Accessible vehicle passing its regularly scheduled inspections.

Section 13. Paragraph (4) of subdivision (j) of Section 80-04 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (4) *Passenger Assistance and Wheelchair Accessible Vehicle Training.*
Applicants for a new TLC Driver License or for renewal of a TLC Driver License must complete the Passenger Assistance and Wheelchair Accessible Vehicle Training as a condition of licensure. [Applicants for a renewal TLC Driver License who have never attended and completed Passenger Assistance

and Wheelchair Accessible Vehicle Training must attend and complete such training, in order to renew the TLC Driver License.]

Section 14. Paragraphs (2) through (4) of subdivision (g) of section 82-17 of Title 35 of the Rules of the City of New York are renumbered paragraphs (3) through (5), and a new paragraph (2) is added, to read as follows:

- (2) For trips provided in WAV vehicles, the Street Hail Livery Improvement Driver Incentive Payment (as specified in TLC Rule 82-70(b)) will be paid directly to the Driver by the Technology System Provider and/or E-Hail Application Provider at the time and in the manner required by the Commission.