

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON GOVERNMENTAL OPERATIONS

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APRIL 26, 2018
Start: 1:40 P.M.
Recess: 5:07 P.M.

HELD AT: 250 Broadway - Committee Room 16th
Floor

B E F O R E:

COUNCIL MEMBERS: Fernando Cabrera, Chair
Bill Perkins
Joseph Borelli
Keith Powers
Inez Barron
Kalman Yeger
Ben Kallos
Alan N. Maisel
Ydanis A. Rodriguez

A P P E A R A N C E S (CONTINUED)

Emily Newman, Acting Director of the
Mayor's Office of Operations

Pauline Toole, Commissioner of Department
of Records and Information Services
(DORIS)

Fidel Del Valle, Commissioner Office of
Administrative Trials and Hearings (OATH)

Meera Joshi, Commissioner and Chair of
the New York City Taxi and Limousine
Commission

Mohammed Akinlolu, Assistant Commissioner
for Prosecution TLC

Nino Hervias, New York City Tax
Coalition, United We Stand

Peter Mazar, General Counsel Metropolitan
Taxi Board of Trade

Victor Salazar, New York Taxi Worker's
Alliance

Zubin Soleimany, New York Taxi Worker's
Alliance

Bhairavi Desai, Executive Director New
York Taxi Workers Alliance

Alex Camarada, Reinvest Albany, Beta NYC

A P P E A R A N C E S (CONTINUED)

Mark O'Connor, Transportation Alternative

Brian Howell (SP?)

Kristen Johnson (SP?) Behalf of NAACP
Legal Defense and Educational Fund (LDF)

Hoag Vald (SP?).

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2 (alright this is a sound check for the
3 Committee on ... I better find out okay go back...
4 Governmental Operations. Being recorded by Israel
5 Martinez April 26, 2018. I might have said that
6 already, taking place 16th Floor Committee Room.
7 Scheduled for 1:30 and that's all I got to say. Next
8 door actually hearing us so it should be
9 interesting.)

10 CHAIR FERNANDO CABRERA: Okay, good
11 afternoon and welcome to this hearing on the
12 Committee of Governmental Operations. I would like
13 to share with everyone, we have been joined by
14 Council Member Perkins and Council Member myself.
15 Thank you so much for being here today. Today we
16 will be holding our first hearing for three pieces of
17 legislation on three different subjects. The first
18 will be Introduction #14 sponsored by Council Member
19 Borelli in relation to the broadcasting of mandatory
20 debates, the second is Introduction #828 sponsored by
21 myself in relation to an online list of required
22 reports and the third is Introduction, Intro #748 in
23 relation to certain tax commission related hearing
24 procedures of an Office of Administrative Trials and
25 Hearings. I will describe the second and third bills

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2 in greater detail before calling out panels to
3 discuss them. First I want to thank that members of
4 the Committee which are mentioned, two of them that
5 are here already for their dedication and careful
6 consideration of testimony. I also want to thank my
7 office and Committee Staff who have worked so hard on
8 the Bills we will be hearing today, my Communication
9 Legislative Director Mike Levine, uhm my Chief of
10 Staff Greg Faulkner, CE Council of Committee Brett
11 Reed, Policy Analyst to the Committee Elizabeth Cronk
12 and Finance Analyst to the Committee Zachariah
13 Harris. First we will hear Intro #14 sponsored by
14 Council Member Borelli who could not be here with us
15 today in relation to the broadcasting of Mandatory
16 Debates. This Bill is a reintroduction of a Bill
17 heard previously in December of 2017, the Campaign
18 Finance Act requires certain mandatory citywide
19 debates be held and this debate often broadcast on
20 television, radio and the internet. However the main
21 broadcast sponsor may sometimes be, uhm may be cable
22 channel that is not available to all the residents of
23 the city. This Bill will require mandatory citywide
24 debates to be simultaneously broadcast on the City's
25 Television Network. We have received written

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2 testimony on this Bill from both the Campaign Finance
3 Board and the Mayor's Office of Media Entertainment
4 in addition to the testimony they provided on this
5 same issue in December of last year. We will
6 therefore not be calling up on those agencies to read
7 their statements today, instead, instead I will now
8 ask if any members of this committee have any
9 questions for either of those agencies on Intro 14
10 and if so we will call the agencies up for the
11 purpose of that questioning. And if not, we will
12 move on to the next piece of legislation. And I see.
13 Okay, alright so I want to thank, so with that we
14 will go to, with no questions uhm we are going to uhm
15 Intro 282, Reports Bill. We will now move on to
16 Intro 820, I sponsored by myself in relations to an
17 online list of required reports. This Bill will
18 require the Department of Records and Information
19 Services to post their website as a list of every
20 report, document, study on publication required by
21 Law to be sent to the Council of the Mayor along with
22 a copy of such report. If a require report were not
23 received by the Department then the Bill will require
24 them to send a request to the responsible agency and
25 to post a notice to the website to such report

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2 remains outstanding. While the department does not
3 currently post some reports to the website, the
4 universe of reports posted there seems incomplete and
5 there is no notice if a required report was not
6 received by the department. This Bill will permit
7 the public to know the full universe of reports and
8 to access them. I will call on the Department of
9 Records and Information Services and the Mayor's
10 Office of Operations to testify on this Bill.

11 Following this panel, we will ask Administration to
12 testify in the Intro 748 relation to Taxi Violation
13 Hearing Procedures followed by public panel and as
14 they come I want to recognize, we have also been
15 joined by Council Member Powers who has the power.

16 KEITH POWERS: I don't if I do yet, we
17 are going to find out.

18 CHAIR FERNANDO CABRERA: Yes, you do.
19 Alright so we are waiting the Department of Records
20 and Information Service and Mayor's Office of
21 Operation, testify and will be having this.

22 LEGAL COUNSEL: Can you raise your right
23 hands? Do you affirm to tell the truth, the whole
24 truth and nothing but the truth in your testimony

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2 before this Committee and to respond honestly to
3 Council Member questions? Thank you.

4 I'm going to go for it. Are you ready?

5 Great. Good afternoon, Chair Cabrera. And other
6 members of the Governmental Operations Committee. My
7 name is Emily Newman, I am the Acting Director of the
8 Mayor's Office of Operations. Thank you Chair

9 Cabrera and the rest of the Governmental Operations

10 Committee for the opportunity to discuss the

11 Council's reporting requirements. We agree with the

12 Council on the importance of transparency and

13 government and public reporting and we prioritize

14 these values. I am here today to testify on the work

15 that operations does in evaluating reports and

16 advisory boards and to provide contacts on the

17 landscape of reporting throughout the city. As you

18 know, the Mayor's office of operations is charter

19 mandated to convene and chair the report and advisory

20 board review commission which is intended to among

21 other things review current reporting requirements,

22 assess the usefulness of reports and make

23 recommendations about reporting requirements that

24 should be removed, consolidated or otherwise

25 streamlined. The chart requires members to include

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2 the speaker of the City Council, two additional
3 Council Members chosen by the speaker, the
4 Corporation Council, the Director of the Office of
5 Management and Budget, the Commissioner of the
6 Department of Information Technology and
7 Telecommunications and the Director of the Mayor's
8 Office of Operations. A memo standing up the
9 Commission was sent to the Council earlier this week
10 and the Commission will reconvene in May. This
11 Commission is a great example of the good Government
12 efforts in which operations engages, helping agencies
13 maximize their time and impact, increasing
14 transparency through open data and performance
15 management and improving customer service to the
16 public. The Commission allows us to work with
17 agencies and the Council to get a better
18 understanding of the reporting requirements that
19 currently must be adhered to routinely and to
20 understand whether those reporting requirements were
21 made a smart use of agency resources. In addition,
22 the chart already requires that Mayoral Agencies
23 provide the Municipal Library with digital versions
24 of all reports required by executive order or local
25 law. We admire the work that Doris does to help make

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2 sure reports are as available and accessible as
3 possible. As you know, agencies work hard, often
4 with limited resources to meet their mandates while
5 fulfilling numerous reporting requirements. Intro
6 828 would impose a new reporting procedure and
7 inventory requirement creating additional
8 administrative burden. With the continuous addition
9 of Legislated reports required of City Agencies, we
10 recognize the need to ensure strong Administrative
11 practices to support agency compliance; however, we
12 do not believe that Intro 828 identifies the most
13 effective approach and that it is not in the City's
14 best interest to mandate a new process in advance of
15 any relevant recommendations of the report and
16 advisory board commission. Therefore we cannot
17 support the passage of Introduction 828 at this time;
18 however, we look forward to continuing to work with
19 the Council to identify a more practicable solution.
20 Thank you again for the opportunity to testify today.
21 We look forward to answering any questions you may
22 have.

23 PAULINE TOOLE: Hi, so good afternoon
24 Chair Cabrera and members of the Governmental
25 Operations Committee. I am Pauline Toole the

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2 Commissioner of the Department of Records and
3 Information Services which commonly is known as DORIS
4 and thank you for the opportunity you have provided
5 me to put, to give input on Intro 828 which proposes
6 making additional information available about City
7 Government reports. One of the agencies three
8 divisions the Municipal Library has begun to pivot
9 from a brick and mortar research facility to one that
10 increasingly offers digital content with a goal of
11 building a robust online library by 2020. The
12 foundation for this online library is the
13 publications portal hosted by DORIS, mandated by
14 section 1133 of the Charter as amended in 2003 by
15 local law 11. The Charter requires Mayoral Agencies
16 to provide the Municipal Library with digital
17 versions of all reports required by executive order
18 or law as well as hard copies of other published
19 materials. In 2014, the existing platform was
20 virtually impossible to navigate so we built a
21 platform using open source code to improve public
22 access. In previous testimony, I reported to the
23 Council that between 2003 and 2014 only 48% of
24 agencies had submitted reports in electronic format
25 to the portal. By April 2015, all agencies had

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2 submitted some electronic publications. At the same
3 time, the Library staff developed a list of all
4 reports that agencies were required to produce and
5 began a program of continuous outreach to obtain the
6 reports. Due to these efforts, the quantity of
7 submissions continues to increase. As of today there
8 are 21,059 reports that were submitted to the
9 Publications Portal up from 7,287 in 2014 and the
10 chart and testimony shows that. In 2015, we re-
11 launched the newly developed portal with enhanced
12 searching capabilities, agencies submit reports along
13 with metadata that enhances the search capacity and
14 we soon will be introducing a one stop submissions
15 portal for agencies to add reports in metadata
16 directly to the site. This will further streamline
17 the process of making the publications available to
18 the public, review the reports platform is a critical
19 component in our efforts to build an online library
20 and archive and I totally understand the impotence
21 for the proposed Legislation under consideration
22 today. However, we believe it is premature for
23 reasons that have been addressed by my colleague from
24 the office of operations. As you know, the Report
25 and Advisory Board Review Commission will be convened

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2 shortly. We recommend that this proposal be held
3 until the commission completes its review. In
4 addition, Intro 828 is drafted includes requirements
5 that would be owners for DORIS to undertake in real
6 time. The Legislation would require DORIS to post a
7 list of all required reports and include on the list
8 a copy of the report, the frequency of publication,
9 the date received and the date the report will next
10 be issued. Some agencies submit reports on a weekly
11 basis, some monthly, some quarterly, and updated list
12 for each submission would require extensive resources
13 and ultimately not provide the public with a really
14 worthwhile service. DORIS provides a searchable
15 database listing all of the reports that have been
16 submitted to the open data portal and updates the
17 data on a regular basis. If deemed necessary, the
18 data fields enumerated on the proposed Legislation
19 should be required on an annual basis which would
20 take into account all of the new reports requires and
21 this data set would be better placed in the open data
22 portal rather than the DORIS website because it
23 likely would be in a searchable database and not a
24 PDF. The draft further requires that the list
25 include a copy of the report which is not viable.

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2 The reports are already on the platform and available
3 so duplicating the post would require double the
4 storage and access capacity. Similarly posting an
5 email indicating a particular port is not available
6 would lead to a good deal of frustration for the end
7 user because they think they are going to get the
8 report and then they get the email saying there is
9 not a report and that researchers don't like that.
10 The searchable publications portal provides the
11 public with reports by keyword, agency, date and
12 other search terms. Finally the effective date does
13 not allow sufficient time to implement any of the
14 requirements. We would be very happy to work with
15 the Council on drafting a Bill that might improve the
16 accessibility of reports incorporating the
17 conclusions of the report and Advisory Board
18 Commission. Thank you very much.

19 CHAIR FERNANDO CABRERA: Thank you so
20 much uhm let me just recognize who we have been
21 joined, also by Council Member Barron, welcome. Uhm
22 I was curious uhm let me just start with the uhm the
23 Advisory Committee. And when was the last time they
24 met?
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EMILY NEWMAN: The last time they met was in 2012. Uh-huh.

CHAIR FERNANDO CABRERA: 2012?

EMILY NEWMAN: We have just reconvened the group.

CHAIR FERNANDO CABRERA: Okay.

EMILY NEWMAN: Uhm by sending out a memo earlier this week.

CHAIR FERNANDO CABRERA: Okay.

EMILY NEWMAN: Uhm we aim to have the first meeting in May.

CHAIR FERNANDO CABRERA: And why, why such a long span.

EMILY NEWMAN: Uhm. That's a great question. Uhm I can't really speak to the, to the long span, uhm I came back to the Mayor's Office of Operations in June 2017 as Acting Director. Uhm and I picked up on the work that had previously started with the previous Com... uhm Director uhm working on pulling together this Commission.

CHAIR FERNANDO CABRERA: Well I'm glad it got started, uhm obviously we are not happy that uhm that we went almost you know almost seven years

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without having that Advisory Committee cause you know it does serve a function.

EMILY NEWMAN: Absolutely and we are anxious to get it, up and running, we think that it will provide a lot of value.

CHAIR FERNANDO CABRERA: Great.

EMILY NEWMAN: In a lot of areas. Fantastic.

CHAIR FERNANDO CABRERA: Uhm I'm going to ask one more question and then I'm going to open it up to, to my colleagues, uhm a review by Committee staff found that the DORIS was missing several years, worth of report from some agencies such as DOIT and the Department of Buildings and so we would like to know why this report is missing and how is the public supposed to know from looking at your website that they, that there may be reports missing?

PAULINE TOOLE: Well, once again it's a good question, we, as I mentioned since 2014, we began working with the agencies, not just to get current reports but to harvest older reports and it's an ongoing process so we will be you know constantly working with the liaisons of the agencies to get the full set of reports. Uhm in some instances, reports

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2 may have been given in paper copy because the
3 agencies weren't yet ready to uhm issue electronic
4 versions so we would have those. Uhm it's a
5 different effort, uhm and you know, I think when
6 people are looking for reports, occasionally they are
7 looking for an exact report and more generally the
8 researches who come to us are looking for information
9 about subjects and so they'll, they'll search those.
10 Uhm.

11 CHAIR FERNANDO CABRERA: So, which goes
12 to the heart of the matter of this Bill, that there
13 is no way, so if I were to search, there was no way
14 for me to know if uhm if those reports are missing.
15 So the general public wouldn't know that they are
16 available in a hard copy but looking at the website
17 they wouldn't know that it could be readily available
18 if they gave a hard copy, so that's the heart of the
19 intention of the Bill is to alert the public that you
20 know it's missing and there is other ways to gather
21 this information and so I, at the present moment you
22 don't have a mechan, mechanism for people to be
23 alerted of your current situation?

24 PAULINE TOOLE: That's true.

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CHAIR FERNANDO CABRERA: Okay, alright with that let me turn it over to Council Member Powers.

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KEITH POWERS: Thank you, thanks for being here. Thanks for the testimony, uhm I want to start with just some questions, I noticed that a really large jump in the submissions to the portal from 7,287 to 21,000 in the span of one, two, three, four years. I presume, while we, we do a lot of local laws on reporting but is there another reason, I presumably there is more than that, I don't think we passed 14,000 Bills on it. What, are there other reasons why that number has gotten, gotten so high? Is it more information being presented to you than in the past? Is it more, just be curious to know?

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EMILY NEWMAN: As, as, as mentioned in the testimony the Librarians compiled a list of reports and then began working with agencies to solicit the reports and going to Chair Cabrera's point, that effort elicited, you know, dozens, and dozens and dozens of reports and so we keep adding the growing uhm and that's why you have a such a large increase between 2015 and 2018 because the staff of the Department began pursuing those reports.

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KEITH POWERS: So it was like an increase in terms of going back and looking at reports that they were not previously, were not previously captured but that, and.

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EMILY NEWMAN: Agencies between 2003 and 2014 agencies largely ignored their mandate to submit reports.

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KEITH POWERS: Got it, so you are playing a little bit of catch up on terms of things?

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EMILY NEWMAN: Quite a bit of.

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KEITH POWERS: Quite a bit of catch up. Yeah I agree. And so there's, right now there is 21,000?

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EMILY NEWMAN: 59.

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KEITH POWERS: 59 reports submitted through because of a local Law or because of an Executive Order?

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EMILY NEWMAN: The, the, the section 1133 of the Charter requires that agencies submit all reports, studies, etc. that are required by local law, executive order or state and federal law.

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KEITH POWERS: Ab, so, so something, the laws that we passed that get passed on, so that, that was my starting point which is to say I'm probably

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2 going to be the rare person in City Council to say
3 this, I think we are drastically asking the agencies
4 to over report and I am like as big on transparency
5 and as anything as anything, but when we make demands
6 out of agencies to do their job another ways I do
7 worry that we are adding in so much on to them that
8 is unfunded, half of the, we don't fund new staff for
9 that. We don't fund. And so I do welcome a
10 convening of a group to look at that. Not that we
11 should be saying you shouldn't do your jobs that are
12 mandated by local laws but that we should be
13 improving the ability to do the jobs and looking at
14 what laws, perhaps, reporting don't serve a purpose
15 anymore at this point. Can I get some more about
16 that exact process? So what, how do you determine
17 that there is going to be a commission come any point
18 in time and.

19 EMILY NEWMAN: Sure.

20 KEITH POWERS: And and what is the
21 timeline on that and more information about that.

22 EMILY NEWMAN: Uhm so it's, it's a
23 Charter Mandate, I spoke earlier about the
24 participants. There will be three from the Council
25 as well as others from the Administration uhm and uhm

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2 the first meeting will be in May and at that time we
3 will start to work on sort of the scope for this
4 Committee, this commission to see sort of what we are
5 going to tackle first and to develop a timeline uhm
6 so I think it will take us a few months to have
7 specifics on the timeline uhm I can tell you some
8 specifics on the Commission, uhm it covers waving or
9 modifying any periodic report, Commission, Committee,
10 Task Force of Advisory Body uhm and according to the
11 Charter it can review, uhm criteria including whether
12 the reporter advisory board is useful for evaluating
13 the effectiveness of a program, uhm if it's an
14 effective use of uhm management of City resources.
15 If it is duplicative, if it remains relevant, so
16 there are a lot of things I think we're, uhm we're in
17 agreement on uhm where we want to look to make sure
18 that what we have been asked with doing still make
19 sense.

20 KEITH POWERS: And and then when you make
21 a determination, what happens? Are you not. I, I
22 would assume you can?

23 EMILY NEWMAN: Yes it requires.

24 KEITH POWERS: Limited by local Law.
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EMILY NEWMAN: It requires approval of the Mayor and the Council as well as input from stakeholders.

KEITH POWERS: You will send us something that says for our approval?

EMILY NEWMAN: Yes.

KEITH POWERS: And and what is the six year period that uhm the chair noted, I think many would say, uhm how often should we be doing this? How, what is, why, what is the Charter outline in terms of frequency or is it just the Mayor?

EMILY NEWMAN: It mandates an annual public meeting.

KEITH POWERS: Oh, okay.

EMILY NEWMAN: annual public meeting.

KEITH POWERS: Oh, okay.

EMILY NEWMAN: So now we.

KEITH POWERS: Have we been having them? Have we been having them? Every?

EMILY NEWMAN: We have not.

KEITH POWERS: Oh.

EMILY NEWMAN: We have not, the last meeting was in 2012 as I understanding it.

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KEITH POWERS: Okay so why did we decide today, I mean, in.

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EMILY NEWMAN: So we've been talking about this, certainly since I came back to operations in mid-2017 and I know the previous Director was working with the Council on it prior to that. Uhm so it's taken us some time to get it off the ground, we wanted to wait uhm until early this year to get it launched uhm and so now we are anxious to pull this group together and, and I think it is something that can convene regularly moving forward.

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KEITH POWERS: Got it. And I would note that I, I do, there are, I mean even like I'm the Chair of the Criminal Justice Committee, I think, even though I criticize the work load I think actually some of the work that we've done and my predecessors have done, I haven't done anything but uhm, uhm have has really been around. I think some of those reports actually have been very useful and will be very useful in terms of highlighting conditions within our jail system. And so, uhm the public having access to those, I think are, is very important and so I share the goal of the Chair making sure they are accessible, available and that the ones

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2 that we are doing, that where we share, is the ones
3 that we are doing are the most impactful ones.

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EMILY NEWMAN: Absolutely.

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6 KEITH POWERS: And so uhm I would, I
7 would at least, if not in its present form you can be
8 supportive of, certain with the committee and the
9 Chair finding ways that we can, that we can ensure
10 that the public has access on this. I know some good
11 Government groups in the, in the crowd that would
12 certainly appreciate having uhm access to information
13 in the searchable format, I, I, recognize that the
14 open data portal may be a bit better than a PDF.
15 Things like that, all things we can work out but I
16 would, I do support the Chair's goal of ensuring the
17 public has access to those in a reasonable fashion
18 and I want, you got a response, but I want to ask one
19 more question I think you will be able to respond.
20 Are we expecting that work, that 21,000 to keep going
21 up as you do more work? Like what is it that we
22 think is uhm what do you ballpark the final number
23 at?

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PAULINE TOOLE: Well as we do more work,

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as you pass more reporting requirements, we expect
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KEITH POWERS: We passed, something today, it's not a promise, I think.

PAULINE TOOLE: But I also wanted to say you mentioned the, the reports required around Criminal Justice and you know we had a great partnership, we built a great partnership with NYPD who is regularly like just providing all the required information so that is on the portal, it gets added to the portal regularly and the PDFs are searchable, it's just that they are not a database.

KEITH POWERS: Right, my, my, my question is really though do we, you are at 7, you are 7, you are tripled.

PAULINE TOOLE: We probably won't have that same rate of growth.

KEITH POWERS: I got it.

PAULINE TOOLE: But it will be, it will be steady, yes. Yes.

KEITH POWERS: Okay. Thank you.

PAULINE TOOLE: Thank you.

CHAIR FERNANDO CABRERA: Thank you so much uhm Council Member Powers and I, and I do share your sentiments regarding having reports that perhaps we no longer have use for so we want to use our

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manpower uhm in the areas that we could get the most output, so I share with that, we are already looking into that. So uhm, I'm, I'm glad that you brought that issue up. I wanted to ask you uhm what other agencies are behind in giving you reports?

PAULINE TOOLE: I don't have that information readily available but I could certainly provide it.

CHAIR FERNANDO CABRERA: What do you, from the top of your head, who else?

PAULINE TOOLE: Uhm I'm, I'm sorry, I didn't, I didn't prepare myself for that question.

CHAIR FERNANDO CABRERA: Okay if you could give us that information. Uhm we would like to know not only how uhm whose whose in default but also how f... how late they are in reporting uhm and when do we anticipate to get their report? Oh let me uhm recognize Council Member Yeger, apologize.

KALMAN YEGER: No problem.

CHAIR FERNANDO CABRERA: He has a question. Thank you.

KALMAN YEGER: Thank you.

CHAIR FERNANDO CABRERA: Or several questions.

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KALMAN YEGER: I apologize if this was asked before, what is the annual number of reports that you are required to receive by all the wonderful Laws that this body and our predecessors have enacted for you? Is there an annual number of reports that are required to be made that you know of?

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PAULINE TOOLE: I think it is upwards of 400.

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KALMAN YEGER: 400 a year, okay, do you know what it cost you to run this reporting uhm maintenance system or reporting data portal of whatever it is that we are calling it in order to, to receive all the wonderful Bills that the Council passes requiring all the agencies to make very important reports to you?

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PAULINE TOOLE: Uh-huh, I don't have a breakdown for the cost of the particular platform, uhm we developed it using open so... open source software, open source code so there was no investment in that technology. Uhm and we have a small development team that has built up the portal and as I mentioned at the beginning, you didn't know, moving from a brick and mortar library archives.

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KALMAN YEGER: I read your testimony.

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2 PAULINE TOOLE: To, to, one that's online
3 so the cost of making all of the archival records of
4 the City and the Library Materials of the City are
5 joined together.

6 KALMAN YEGER: I share uhm, my colleague
7 Council Member Powers concern about uhm whether this
8 body spends an awful amount of time Legislating the
9 reporting of information uhm I can't tell you how
10 many votes in just three months I think I have
11 already voted on that, uhm but what I would love to
12 know and if you can I know that you are going to get
13 some additional information for the Committee when
14 you go back. I'd love to know what kind of savings
15 we would have you know if instead of giving you 400 a
16 year, you were only getting 200 a year, you know or
17 100 a year or 12 a year. I'm curious to know how
18 much we can save the tax payers if perhaps we were
19 stop uhm Legislating various agencies of this City to
20 prepare information that is probably readily
21 available but simply asking the agency to give the
22 information out.

23 PAULINE TOOLE: Uhm we can certainly look
24 at that, I would just note that probably the higher
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2 cost is at the other agency level not the DORIS level
3 but we can explore that and come back to you on it.

4 KALMAN YEGER: Alright what I frequently
5 notice, and this is not a question, this is really
6 just commentary, what I frequently notice is that
7 when we do a Bill uhm to require an agency to report
8 our, our estimate of the cost is 0. Uhm we do that
9 all the time. We say it doesn't cost anybody
10 anything to do this and it just doesn't make sure.
11 It surely costs somebody to sit at the computer and
12 type information or to make a copy of something. I
13 mean there are some costs somewhere but we, we are
14 very, this is one place that this Council is
15 extraordinarily conservative is estimating the cost
16 that uhm, uhm of the Laws that we pass, so I'd love
17 to know the answer to that information. Thank you
18 ma'am, thank you Mr. Chairman.

19 CHAIRMAN FERNANDO CABRERA: Any other
20 questions, Council Members, no, well thank you so
21 much. Thank you, alrighty, great and next we will
22 hear Intro #748 sponsored by myself in relation to
23 certain Taxi and Limousine Commission related hearing
24 procedures of the Office of Administrative Trials and
25 Hearings. This Bill addresses the hearing process

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2 used by TLC and Oath when hearing Taxi related
3 violation. It applies to any type of Taxi, be it
4 Yellow Cab, Green Cab, Black Car or Delivery Vehicle.
5 The nature of the Taxi and Taxi business is such that
6 responding to a TLC summons is a serious matter often
7 requiring time away from driving and with significant
8 consequences for the viability of a person's
9 livelihood. It is incredibly important that we
10 ensure this hearing procedure are as fair as
11 possible. With that in mind, this Bill is set for a
12 number of requirements for hearing on Violations of
13 TLC Laws and Regulation. The Bill will first require
14 that the TLC provide a presence of relevant hearings,
15 either in person, through a representative or through
16 a remote method. The Bill will next provide Oath
17 Hearing Offices with the discretion to reduce
18 violation penalties if the propose penalty will
19 constitute injustice by considering a number of
20 factors including the impact on both the recipient,
21 other violation and the community overall. The Bill
22 will also provide that duplicate notices of
23 violations should be dismissed when a respondent can
24 provide proof of the duplication. The Bill will also
25 promote timely hearings by providing for them to

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2 begin within three hours of their assigned time or to
3 be dismissed or rescheduled. Finally the Bill will
4 place the final appeal of violation determination
5 with OATH rather than with the TLC. I believe this
6 measures will make for a fairer process for the
7 Hearing of Taxi related violations. I would like to
8 call upon the administration to testify on this Bill
9 and will be coming upon Commissioner de Valia from
10 OATH. I'm sorry, we just are calling for
11 Commissioner de Valia.

12 I understand and I will sit here
13 silently. I understand that I will be testifying
14 right after Commissioner del Valle but the issues are
15 very intertwined. Thank you very much.

16 CHAIR FERNANDO CABRERA: So I'm going to
17 ask the members uhm to just address the questions at
18 this moment to Commissioner del Valle.

19 COUNSEL: Alright Commissioner do you
20 affirm to tell the truth, the whole truth and nothing
21 but the truth in your testimony before this committee
22 and to respond honestly to Council Member questions?

23 FIDEL DEL VALLE: I do.

24 COUNSEL: Thank you.

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2 FIDEL DEL VALLE: Thank you I'd like to
3 thank the Chair and the Committee uhm particularly
4 for their support in the last couple of years in
5 helping us communicate to the communities, the
6 changes that have occurred at OATH and how to deal
7 with summons in the City of New York. A process is
8 pointless if nobody knows how it works and I
9 appreciate that very much. Uhm, I have, I have a
10 statement that I have been asked to read which I have
11 prepared so I will read the entire statement rather
12 than just summarizing. Uhm, the Office of
13 Administrative Trials and Hearings is the City's
14 independent administrative law court. In 1979, Mayor
15 Koch established OATH by Executive Order with a goal
16 that they would eventually be one centralized city
17 administrative law tribunal to adjudicate cases. In
18 accordance with Mayor de Blasio's overall commitment
19 to provide City resident's and small businesses an
20 administrative law process that is impartial and
21 fair, OATH has established a trials division and
22 hearings division to ensure a more streamlined
23 administrative tribunal. I'll add parenthetically
24 here though that we do not hear of PVB summons,
25 parking summons or traffic summons. A lot of people

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2 confuse that. Office of Trials Division
3 Administrative Law Judges serve five year terms. One
4 year longer than the Mayor's term and adjudicate the
5 more complicated cases including New York City Civil
6 Service Disciplinary Cases, Law Board Cases, City
7 Contract Disputes, City Issued Licenses,
8 Discrimination Cases under the City's Human Rights
9 Law and Cases involving the City's Lobbying Law.
10 OATHs Division adjudicates summons issued to
11 residents and small businesses by agencies, some more
12 than 24 agencies including the Department of Health
13 and Mental Hygiene. The Department of
14 Transportation. The Department of Sanitation. The
15 Department of Environmental Protection. The
16 Department of Buildings. The Taxi and Limousine
17 Commission and the New York City Police Department.
18 Over the past 10 years, the health tribunal and Taxi
19 and Limousine Tribunal and Environmental Control
20 Board have been transferred to OATH for cases
21 involving summons issued by the TLC; however, the TLC
22 chair person reserves the authority to adopt or
23 reject or modify final determinations of the hearings
24 division as well as the trials division. OATHs
25 mandate is to force the judicial professionalism,

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2 fairness, impartiality, equality and the commitment
3 to the integrity of Administrative Law decisions. As
4 the City's Administrative Law Tribunal OATH is
5 dedicated to providing due process in cases that
6 originate with the City's numerous enforcement
7 agencies and a fair and impartial forum that is also
8 convenient and accessible to the public. OATH has
9 been working for the past three years to consolidate
10 adjudications and improve services to ensure greater
11 transparency, equity and fairness for City residents
12 and small businesses. Intro 748, this Bill seeks to
13 amend the administrative code to grant discretion to
14 OATH ALJ's and hearing officers to reduce penalties
15 established by the Taxi and Limousine Commission in
16 "In the interest of Justice." As a considering
17 factor set forth in the Bill. It would put a
18 difficult burden on the respondent to have to prove
19 the existence of these factors. Variations in
20 hearing results may convey the appearance of being
21 arbitrary and capricious and therefore we should also
22 require the hearing officer to be provided with
23 guidance as to the levels of reduction if he or she
24 should find that a respondent's application for
25 reduction has merit. Such guidance would come from

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2 either the TLC or this Council. This Bill also would
3 make a determination of the appeals unit of the OATHs
4 Hearing Division, a final administrative
5 determination. In cases involving summons, issued by
6 the TLC, thereby taking away authority from the TLC
7 chair to adopt, reject or modify these
8 determinations. According to the law department, the
9 proposal to move this power from TLC to OATH
10 apparently alters the charter structure of powers of
11 elected officials, especially in light of the very
12 different appointment structures of TLC and OATH.
13 This issue may be exacerbated by the Bill's provision
14 OATH, rising OATH, hearing officers to reduce the
15 penalties in the interest of justice without further
16 review by TLC. In setting the provisions of the
17 Legislation that require a hearing officer to dismiss
18 summons that would impose a duplicate penalty for
19 violation already charged under another prevision of
20 law. OATH already adheres to this practice with a
21 respondent, when the, when the respondent appraises
22 the hearing officer of such duplicate charges;
23 however, the remaining some vagueness as to whether
24 the duplicate summons includes summons returnable to
25 another venue such as DMV. OATH is committed to

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2 ensuring that individual appearing before tribunals
3 are given a fair hearing which includes the
4 imposition of penalties authorized by Law or by rule.
5 Finally, the Legislation appears to also limit the
6 amount of time necessary for a hearing to begin.
7 OATH is committed to providing greater access to
8 justice by improving the efficiency and timeliness of
9 the adjudications process without impairing due
10 process. The Chair and members of this committee are
11 commended for their work to further that commitment.
12 OATH has concerns about whether the time reduction as
13 prescribed in the Legislation and I mean the process
14 as described in the Legislation will result in
15 enhancing OATHs commitment to efficiency and
16 timeliness without impairing due process. OATHs
17 concern center around issues involving the cause for
18 a delay and whether any such delay was reasonable.
19 Moreover, OATH is currently undertaking a review of
20 its procedural rules and is drafting amendments to
21 improve efficiency and fairness of hearings.
22 Nevertheless, as an administrative law tribunal
23 exclusively having adjudicatory power OATH has always
24 remains consistent with its mandate to follow the
25 Law. With respect to that, I would like to just add

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2 an addendum with respect to that time limit issue,
3 the way the Law is structured somebody could have a
4 summons scheduled for 9 o'clock in the morning, walk
5 in at 11:59 and then demand a dismissal because it
6 was three hours after the time that was on the
7 summons. Uhm, that, uhm I'm sure is not the intent
8 of the Legislation but I think that something that
9 can be uhm remedied. Uhm in short, uhm the
10 Administration is concerned that the Legislation as
11 written does not achieve the goals that I think are
12 clearly intended by the Council. If there are any
13 questions I'd be happy to respond to them?

14 CHAIR FERNANDO CABRERA: Thank you so
15 much uhm Commissioner, I have a couple of questions
16 before I turn it over to uhm my colleagues, uhm
17 Commissioner if I, if I get and I'm asking because I
18 don't know, if I get a ticket by the NYPD, I'm
19 driving and get a ticket and I go before a judge, is
20 that word final? When you go through all the appeal
21 process?

22 FIDEL DEL VALLE: If you get uhm traffic
23 ticket as opposed to a TLC ticket?

24 CHAIR FERNANDO CABRERA: Yes.

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FIDEL DEL VALLE: Uhm no, I believe if you get a uhm, I'm not, I'm not an expert on that process but I believe if you go to the traffic adjudications bureau you can appeal to a central point somewhere in Albany.

CHAIR FERNANDO CABRERA: Right.

FIDEL DEL VALLE: I don't know what happens after that.

CHAIR FERNANDO CABRERA: But it goes before a judge, right?

FIDEL DEL VALLE: It's not like the, the Police Commissioner go over, it doesn't go to the Police Department, no it goes to DMV somewhere.

CHAIR FERNANDO CABRERA: Right, so wouldn't it follow the same logic that when it comes to TLC, why, why, when it comes to Taxi and for the sake of from here forward when I say Taxi Drivers I mean all of them, uhm, I mean all of them uhm delivery like cars and so forth. So why, why a special provision will go to TLC and not have a judge who have no personal interest is own biased and is supposed to hold the scales of justice with a blindfold.

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FIDEL DEL VALLE: Uhm that sounds very appealing, uhm but I believe the City Chartered the way it is structured. Uhm calls for the TLC, actually the Commission uhm to be the final uhm decision maker on violations but going to your point, uhm other agencies have made OATH the final arbiter, particularly the Department of Consumer Affairs. But that was, that was delegated by the Commissioner of Consumer Affairs to.

CHAIR FERNANDO CABRERA: Yeah I feel uhm obviously with intentional more comfortable having someone who has no interest who has who is supposed to be the weigh the merits of both uhm presentations whether it is the driver or TLC and make the final determination. I would feel more comfortable, as a matter of fact, I believe the public will feel more comfortable as well. I have a second question here and then I'll turn it over to my colleagues and that is getting back to this duplicate and substantially identical violation, is that taking place right now?

FIDEL DEL VALLE: Uhm let me be clear about, about something, uhm I know that TLC does not issue identical summons for this, for the same violation at the same time at the same place.

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CHAIR FERNANDO CABRERA: Right.

FIDEL DEL VALLE: Where it becomes an issue, as I understand it is there is a TLC summons that is issued and by the way, TLC isn't the only entity that issues TLC summons. Port Authority Police also issue TLC summons.

CHAIR FERNANDO CABRERA: Okay.

FIDEL DEL VALLE: And at the same time for this for this same exact circumstances, substance effect in time and place they will also issue a DMV summons. Uhm, if the respondent makes us aware of that, the duplicate summons as required by Law will be dismissed. If we have no other way of knowing about it unless the respondent makes us aware of it and of course provides proof and I believe in fact that uhm when the summons is issued by TLC and then presented with the proof they withdraw their summons as well.

CHAIR FERNANDO CABRERA: Is there, is there a case where if I'm a Taxi driver and I get a ticket by TLC that I'm going to get one from NYPD?

FIDEL DEL VALLE: It happens, uhm uhm, I have and this is anecdotal, I have seen more particularly for example uhm Taxi drivers who might

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be stopped at the Port Authority bus terminal. They may get a summons from the Port Authority Police Officer on a TLC form and if that Port Authority Police Officer feels like it he will issue the same Taxi driver the exact same violation on a DMV form. And that that's, that's the type of problem that we are looking.

CHAIR FERNANDO CABRERA: From a purely judicial point of view, uhm is that like a form of double jeopardy. I mean I'm getting hit twice for the same traffic uhm ticket.

FIDEL DEL VALLE: Literally that would be double jeopardy legally it's not, and the reason that legally it's not is that under our Constitution double jeopardy only applies to criminal charges and these are not criminal charges.

CHAIR FERNANDO CABRERA: Right.

FIDEL DEL VALLE: Theoretically you could dismiss a summons for exactly the same thing and, and if it is repeated and repeated and repeated, of course, it doesn't happen that way, but legally it could.

CHAIR FERNANDO CABRERA: But I would say and I'm just going to make a statement and not a

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2 question is, is uhm it's excessive if I commit a
3 crime, if I'm for example driving a member of the
4 public and I'm driving my Honda and I get a ticket
5 uhm for you know speeding I'm not going to get
6 another ticket for the same you know violation. I
7 would, it would seem to me that just in the spirit of
8 the double jeopardy I know it's only in criminal law
9 just this period of justice will call for that, you
10 know you pay for exactly for what you did, not more,
11 not less and that to me would truly be justice. I'm
12 going to open it up.

13 FIDEL DEL VALLE: I think we would all
14 agree with that.

15 CHAIR FERNANDO CABRERA: Yes.

16 FIDEL DEL VALLE: Everybody would agree
17 with that, I'm sure the Administration would agree
18 with that.

19 CHAIR FERNANDO CABRERA: Let me recognize
20 we have been joined by Council Member Kallos, uhm and
21 we will start with Council Member Rodriguez, followed
22 by Council Member Powers and Council Member Yeger.

23 YDANIS RODRIGUEZ: Thank you Chairman
24 Cabrera. Uhm you know first of all, thank you
25 Commissioner, both of you Vice President Commissioner

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2 for you know being a leading agency that sometimes,
3 it is a challenge for all of us because I know her
4 heart is on the drivers; however, in the last few
5 years we've been on the attack in our city. Remember
6 like when we tried to pass a package of Bills and the
7 Uber and Lyft the same day when we were suppose to be
8 voting on that package of Bills they have a morning
9 meeting in the morning, they send a meeting with some
10 elective to built support from those elected to be
11 with Uber and not to support the package of
12 Legislation that we were intended to vote on that
13 particular day and I know that we wanted to move, we
14 wanted to pass another Legislation that would level
15 the playing field in a city where it is full
16 opportunity for everyone, with the Uber and Lyft and
17 the other 70 something accompanied, they should be
18 able to do find without bringing our business, you
19 know our Yellow Taxi industry, delivery truck, they
20 should not block company so I know that you heard,
21 you being a leader in a difficulty moment uhm because
22 he only took for those companies not only to build
23 that support and confuse to cause a collusion and a
24 confusion but also to invest millions of dollars
25 attacking elected officials. Those are both that

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2 wanted to level a playing field and to bring to their
3 side other elected officials. So in the last few
4 years we have been trying to work with a number of
5 Bills to protect everyone. First of all, we have
6 professional Taxi drivers as a former one, one
7 training in billion cars and carry car service that
8 worked during my nighttime as I went to City College
9 during the daytime. I know that since the 80 and 90
10 today most of the Taxi drivers, they are great
11 hardworking people and this business is the
12 opportunity to allow them and us to take a family to
13 live as a working family in dignity and to take our
14 family to be middle class. But no doubt that this
15 thing that we have been able to change, by many other
16 things that still we have to change. You know in the
17 past it was the same person who gave the ticket and
18 was a judge who plays the role so in changes being
19 done in the last you know, we were able and he was on
20 my time, he was under the previous council member
21 that they were able to work with a TLC Commissioner
22 to work with City Hall and be able to make some
23 reform. But still today I see both agencies, we need
24 to work closer because I heard and I am first for the
25 consumers and I know that the drivers are for the

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2 consumers and their riders, someone getting in the
3 back of the car made a complaint related to
4 harassment and there is not a process, and that is
5 not a process but as city's right now, like that
6 drivers immediately is seen as guilty. So it's not
7 that if experts are a passenger in the back of the
8 car and he or she feels that he or she was harassed
9 that person is called to go to TLC and present and
10 bring lawyer and whoever but driver's should not be
11 found guilty or to given even the option of pay this
12 amount or no you can come here. And when drivers are
13 invited to go and face judge of the agency, the
14 passenger call to face and make the case. So for me
15 like one of that's one of those areas that I hope in
16 working together we can be able to change it, you
17 know, yes anyone should be able to make the call or
18 make the complaint, that person should be invited to
19 come and meet the same day with the drivers and the
20 driver to be able to defend and if the driver is
21 guilty he or she should pay for the consequences but
22 I think I would like to see more clarity so I would
23 like to hear you know how do you see that process
24 going on in those particular cases when passenger
25 made the complaint, what is the procedure that we

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2 have today. Are those individuals expected, those
3 that made the complaint that they had to come through
4 the system and be able to present their concession so
5 that they the driver is able to be able to make his
6 or her case.

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FIDEL DEL VALLE: I wish my answer could
8 be as long but. When someone uhm a passenger uhm
9 makes a consume complaint we classify these as
10 consumer complaints, uhm the complaint goes to TLC.
11 TLC evaluates the Complaint and if they see that it's
12 appropriate they will issue a summons to the driver
13 for a hearing. At the hearing, a driver cannot be
14 found guilty without the testimony of the
15 complainant.

16

YDANIS RODRIGUEZ: I'm sorry, sorry,
17 excuse me give me a second, but at the hearing the
18 complainer, I, asking to face the driver, right?

19

FIDEL DEL VALLE: The testimony of the
20 complainant can be by telephone or eventually by
21 teleconference. The reason that evolved and that
22 process has evolved to my knowledge, to my personal
23 knowledge for over 30 years is because many of the
24 complainants claim that and it just depends a lot on
25 what the allegation is. Uhm that they are afraid to

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2 be in the presence of the driver, in the physical
3 presence of the driver. Uhm so an accommodation I
4 think that was created, must have been well over 25
5 30 years ago. It allows the complainant to testify
6 by telephone. But in any and the complaining has to
7 be able to answer questions that are directed to the
8 complainant either by the driver or the driver's
9 lawyer or the driver's representative and on that
10 basis uhm uhm, the hearing proceeds to its
11 conclusion. That's the State of Affairs right now
12 but uhm they can't just not show up at all. Uhm
13 complainants generally are given two opportunities
14 to, to, uhm appear either in person or by some other
15 means. If they don't appear then the summons is
16 dismissed.

17 YDANIS RODRIGUEZ: Okay would just like
18 to see more clarity on that piece. I think that this
19 process it isn't fair to the drivers. Again I
20 believe that any passenger, any rider should be
21 allowed and we as a Council take aversively for
22 people to make a complaint but there has to be a
23 better due process if that person made a complaint,
24 the complaint that person should be, if it be by
25 phone then the driver should be able to have a

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2 conference call at the same time where the
3 complainant. Again I know that you also take your
4 job very seriously. This is something that we for the
5 Council should be able to provide more clarity but
6 the process as it is right now it isn't fair to the
7 drivers and I hope that we can change that. My last
8 question, my second one, first of all, before my
9 question is, you know we need to do something with
10 those police officers that are in the George
11 Washington Bridget that they are under the Port
12 Authority. Those agreement between NYPD and Port
13 Authority also should have to be changed because I
14 understand that, you know I represent North Manhattan
15 and there is one of those police officers there. It
16 looks like that they are still behind where we as a
17 CDR you know those productivity is planned the police
18 officer, that, that give a number of tickets a day,
19 you know it's still happening today in our city but
20 we are making changes and progress. It looked to me
21 that those police officers on the other side in the
22 Port Authority they follow the same code of ticket
23 that they have to give every day because and again
24 this someone as a Latino that always fights against
25 racism discrimination. This is now about where a

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2 white police officer who is doing that. This is a
3 Latino police officer who is in his car and I get the
4 Law, the lowest I will astern. Someone works for
5 Port Authority protecting the bridge whoever come in
6 or out, he or she should be able as a police officer
7 to stand on 178 for Washington, Broadway for
8 Washington and be able to follow anyone that is
9 suspicion, that is not the case. And I will assume
10 that as they do in George Washington they do in other
11 places. They go to 175th and they go particularly
12 after Taxi drivers and the ticket that they give are
13 no ticket that just because that person is breaking
14 the law is starting on the George Washington Bridge,
15 it's about giving tickets and those tickets are
16 connected, those are whatever agreement or the way
17 that it works those go to TLC and I think again I
18 hope that we can make changes in not only around the
19 George Washington but in any area where we have the
20 Port Authority Police Officer giving tickets they
21 should be follow individual, starting at the location
22 that police officer from 178 which is in the
23 jurisdiction he goes to 168 to start giving ticket
24 there or to 185th without anyone being connected or
25 close to the George Washington Bridge, so I just hope

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2 that you can look at that situation, I've been
3 working and I have brought us that problem to the
4 local police officer, I have brought it to you know
5 to our Commissioner in the past. This is something
6 that again we hope that we are addressing because
7 that is another way on how Taxi drivers are treated
8 as criminal not as hard working individual that
9 making important contribution to our city, thank you.

10 CHAIR FERNANDO CABRERA: Thank you so
11 much Council Member Rodriguez and the very issue that
12 you brought up of whenever a Taxi driver has to
13 appear before court and then you have to complainer
14 over the phone, this very Bill will address that
15 issue so uhm I would appreciate your support in it
16 and uhm we follow up with Council Member Powers and
17 then Council Member Yeger.

18 KEITH POWERS: Thank you, thank you for
19 being here and thank you for your testimony, the one
20 part of the Bill that I didn't see in your testimony
21 I would like to ask a question about it and I did
22 read the TLC commissioners as well. If you mentioned
23 it but didn't address an opinion on it so I and I'm
24 not sure I know enough to, to make a determination on
25 it so I want to ask some questions on it which is

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2 about the TLC as a petitioner to appear at the
3 violations hearings uhm in person or through a
4 representative and uhm not being able to proceed with
5 the hearing without that, without a TLC
6 representative appearing. Uhm I didn't notice any
7 mention of that in your testimony, is that something
8 that you agree with or disagree with?

9 FIDEL DEL VALLE: Right now the structure
10 of, of uhm any summons hearing is that uhm let me
11 paraphrase by explaining uhm more broadly uhm
12 agencies that issue summons whether it a TLC, the
13 police department, buildings department or whatever,
14 fire department, have the discretion of whether or
15 not they are going to send a representative to the
16 hearing when the summons is adjudicated. At one
17 extreme you have for example, the sanitation
18 department which issues the great bulk of the summons
19 that we deal with. They never send anybody like
20 unless it's an extraordinary dumping case or
21 something like that and at the opposite you have
22 agencies such as the TLC or Consumer Affairs or the
23 Buildings Department or the Fire Department which
24 always has a representative and/or the actual
25 inspector who wrote the summons present at the

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2 hearing. Uhm that said, TLC summons' require that
3 there be a representative for the TLC at the hearing.
4 At the moment, uhm the way the process works is there
5 is a prosecutorial attorney who is goes into the
6 hearing as well as the respondent and/or the
7 respondent's attorney or, or representative if they
8 chose to have one which they have a right to. Uhm if
9 during the process of the hearing, the issue comes up
10 as to whether or not the person who issued the
11 summons should be there uhm the hearing officer makes
12 a determination as to whether that the presence of
13 the, the summons writer uhm will add to the, to the
14 body of knowledge necessary to adjudicate the summons
15 or not and if that is the case, the hearing is
16 adjourned to call in the, the inspector or whomever
17 wrote the summons. Uhm and this applies to whether
18 it is TLC or the Buildings Department or anybody
19 else. If at the adjourned date, the, the inspector
20 does not appear we will proceed with a hearing taking
21 the negative inference from the fact, that the, the,
22 the writer of the summons didn't appear negative
23 inference being that they have nothing to testify to
24 in support of the summons other than what is on the
25 face of the summons. Uhm an exception to that is the

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2 police department when they issue a TLC summons,
3 always appears either if it's Port Authority Police
4 by teleconference or NYPD in person but that's the
5 mechanics of, of, of, of uhm, the respondent and the
6 summons writer being present at the hearing.

7

8 KEITH POWERS: So today if a TLC ticket
9 gets written, the person who writes it doesn't show
10 up to the hearing to, to, to discuss or why the
11 summons is written just you may say but if it happens
12 then they get to adjourn to the next time.

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13 FIDEL DEL VALLE: Remember at the hearing
14 there is a, there is a representative from the TLC at
15 all times.

15

16 KEITH POWERS: Required or? Cause
17 sanitation doesn't send one so.

17

18 FIDEL DEL VALLE: TLC always does it's
19 just TLC always does.

19

20 KEITH POWERS: By practice.

20

21 FIDEL DEL VALLE: That's the standard
22 practice, uhm, and there is well versed on the
23 particular summons. They have a file. They know
24 what the file says, the circumstances and whatever
25 and that is usually more than enough to put forth,
the, the facts and circumstances. If the respondent

1
2 insists of the person who wrote the summons being
3 present then the hearing officer makes a
4 determination if that will add anything to uhm. To a
5 proceeding. If he or she makes that determination
6 there is an adjournment for that person to have the
7 opportunity to appear at the adjourn date, and then
8 at the adjourn date the process continues.

9 KEITH POWERS: And if the TLC did not
10 send a representative and I applaud them for doing
11 that, if they did not send one, same thing as
12 sanitation rather, you could continue with the
13 hearing, absent there, being there, I'm trying to
14 figure out whether, if the need for the requirement
15 around.

16 FIDEL DEL VALLE: Well that never, I
17 don't think that ever happens. Uhm they always send
18 somebody. Uhm TLC uhm actually TLCs offices,
19 prosecutorial offices are in the same building as, as
20 our adjudications unit. So it's simply a matter of
21 like walking across the hallway.

22 KEITH POWERS: Okay, yes, I think that,
23 actually across the hallway isn't it. Uhm, uhm, well
24 thank you well I will leave it at that because I know
25 others have questions and uhm thanks, thank you.

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FIDEL DEL VALLE: Thank you.

CHAIR FERNANDO CABRERA: Council Member
Yeger?

KALMAN YEGER: Thank you Mr. Chairman,
thank you Chief and thank you Madam Commissioner for
being so patient, uhm Chief Judge, right now if a
respondent does not appear at the scheduled time or
shortly thereafter on the same day, what happens with
his case, with his summons case?

FIDEL DEL VALLE: Assuming he has not
called for a reschedule or something like that he
defaults.

KALMAN YEGER: Okay and then uhm on,
judgment is issued against him, uhm.

FIDEL DEL VALLE: Within five days, yeah.

KALMAN YEGER: Guilty by default?

FIDEL DEL VALLE: Yeah.

KALMAN YEGER: So what d...

FIDEL DEL VALLE: We a review, we do a
review of the summons afterwards which that's why we
give ourselves a five day window to make sure that at
least on the four corners of the summons uhm service
was proper. Uhm if it wasn't proper even if the

1
2 person didn't appear, the summons is dismissed. Uhm
3 that happens less than 2% of the time.

4 KALMAN YEGER: And you've testified to
5 this actually previously to the Council when we were
6 talking about uhm the Budget Hearings, uhm you've
7 indicated how the dismissal rates, are, are come
8 about and sometimes there are service issues that
9 require the court to, the OATH to dismiss on its own
10 without regard to a motion having been filed by the
11 respondent to do so. Uhm, uhm the Legislation as I
12 have read it, uhm the proposed Legislation would
13 require TLC to uhm be present in a very, uhm various
14 different methods of being present, whether in
15 person, by sending an authorized representative to
16 TLC and to.

17 FIDEL DEL VALLE: To, to OATH you mean?

18 KALMAN YEGER: To OATH excuse me or
19 another authorized representative as OATH would
20 permit my rules so therefore OATH would actually be
21 able to create a rule that would allow somebody else,
22 not an attorney admitted to practice in this state to
23 represent the TLC at OATH and a third way is if the
24 tribunal offers the opportunity you've indicated that
25 the tribunal does, by remote methods uhm and you've

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created this, we've created this window by this

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proposed Legislation that would require the case to

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be made or the case to proceed within three hours, a

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three hour window, otherwise there would be a

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dismissal. The dismissal and this, and this is the

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question part, the dismissal in effect is a default

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judgment? Is that correct?

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FIDEL DEL VALLE: In reverse, yeah.

10

KALMAN YEGER: In reverse against the

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petitioner for not showing up?

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FIDEL DEL VALLE: Correct.

13

KALMAN YEGER: For essentially in the

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view of some of the sponsors of this Bill perhaps and

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others for having wasted the court's time and wasted

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the respondent's time and wasted the witness' time if

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there is a witness, just didn't show up, they had a

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time, they had a place, they had very different

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methods of being able to do so and they have chosen

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for whatever reason not to and of course, they surely

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could have contacted the court and said uhm uhm judge

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you know or OATH folks we can't make it today for

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various reasons and, and OATH would accommodate, as

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OATH would accommodate anybody who receives a

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summons. So I just wanted to make that point. Uhm

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the second question I have, is uhm you testified Chief that to the that the witness if this is a summons written by reason of a complaint filed, that the witness can testify by telecommunication methods, telephone, etc. that's not changing in this Bill in your estimation is it?

FIDEL DEL VALLE: Uhm no.

KALMAN YEGER: Okay well that's, that's the right answer, it's not, uhm and I want to make sure about that because there are folks who are watching this at home and who interacted with me over Twitter this morning indicating that they have a concern that witnesses are now going to be forced to come down to OATH and have to sit there two variations of the concern, one is that they have to sit there for three hours and one is that if they don't get there within three hours the case will be dismissed but the answer is they'll have a time given to them by which they can call a certain number or OATH can cal... actually OATH calls them uhm and asks them to testify over the phone and the Council is not proposing Legislation to change that in any way. The Council is not looking to make it more inconvenient

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2 for witnesses, complaining witnesses to make their
3 case and assist the TLC in prosecuting a summons?

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FIDEL DEL VALLE: Uhm that's correct. In
5 fact, theoretically the respondent could be on the
6 pho, on one phone and the complainant on another
7 phone. The, the, just as a technical point when an
8 inspector or police officer or whatever writes a
9 summons they are the complainant. When somebody who
10 is a consumer makes a complaint via the TLC or
11 whatever, the TLC is not the complainant, the person
12 who made the complaint is the complainant and you
13 can't find somebody guilty of anything without the
14 complainant who made the complaint testifying as to
15 what happened.

16

KALMAN YEGER: I have, I have a
17 clarification issue. In the case, as you described
18 it, uhm, the second, uhm based on a complaint from a
19 rider from a passenger, from a uhm from a New Yorker,
20 who is the petitioner in that case?

21

FIDEL DEL VALLE: Uhm the Petitioner,
22 that, that's, that's a good question because the, the
23 summons is issued by TLC.

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KALMAN YEGER: Okay it's TLC versus
25 driver X?

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FIDEL DEL VALLE: Yes.

KALMAN YEGER: Is that correct?

FIDEL DEL VALLE: The, the, the Council in it's wise drafting uhm has identified, has defined the term Petitioner as follows: The term Petitioner means the City Agency authorized to issue notices of violation returnable to the tribunal. Uhm we have further in our Bill indicated that a, a sequence of, of possibilities for how the Petitioner appears before uhm before uhm the court. Uhm in your estimation having read the Bill, Chief and I don't want to pin you down if you need to look at it and you get back to us but I think that this Bill was drafted never to intend uhm that a witness, citizen witness, complainant as it were have to appear physically before OATH to make the case.

FIDEL DEL VALLE: Physically in person.

KALMAN YEGER: That is correct.

FIDEL DEL VALLE: I don't know what the intention was.

KALMAN YEGER: Okay it's, the attention is not but the wording doesn't, the wording doesn't appear there that would make you as a wise attorney identify a reason that you would have to dismiss a

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case because the complainant didn't show up.. uhm in person.

FIDEL DEL VALLE: Physically in person?

KALMAN YEGER: Physically in person.

FIDEL DEL VALLE: Uh-huh, that's correct.

KALMAN YEGER: Okay and Judge in your uhm, procedures at your court, you are still going to proceed, assuming this passes and the Mayor signs it uhm you will still proceed accordingly and have the availability of witnesses to testify via telephone?

FIDEL DEL VALLE: Yes in fact, we are in the process of making technology more and more available for people to testify. In fact, eventually I wouldn't be surprised if people would be testifying by way of their smart phones.

KALMAN YEGER: Just going to think it and the judge is going to hear it but we are in favor of technology, we are going to try to save you rent by making everything over the telephone and then everybody can stay home. Uhm.

FIDEL DEL VALLE: I won't have to wear a suit.

KALMAN YEGER: I have to wear a suit everyday uhm just a few more questions uhm Mr.

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2 Chairman, thank you for your indulgence uhm the uhm,
3 I don't want to pit agency against agency uhm my
4 record here is I would never want to do that of
5 course and Madam Commissioner has not had an
6 opportunity to testify yet but uhm the Commissioner
7 has, has indicated not it's not to just you will have
8 a chance and we will interact uhm but the
9 Commissioner's testimony is, uhm no not that one.
10 The Commissioner testified that or I presume will
11 testify that uhm Intro 748 specifies who may
12 represent TLC in Administrative proceedings limiting
13 such representation to attorney admitted to practice
14 law, this would be in contra gression to practice in
15 administrative hearings throughout the city. We know
16 that would be the case if that were true. But this
17 Bill as I have indicated is very clear that the
18 Council is, is in Section 19-902 subsection A,
19 subsection 2 that TLC can appear before your agency,
20 Judge by sending an authorized representative who is
21 an attorney admitted to practice Law in New York
22 State or another representative as OATH permits by
23 rule without getting into future seeing here I would
24 like to know Judge, would OATH be open to if it
25 hasn't already doing a room making that would allow

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2 TLC to send anybody it wishes who isn't an attorney
3 admitted to practice law if the agency so desired?

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FIDEL DEL VALLE: Okay be succinct, TLC
5 didn't do that right now because TLC in the past has
6 had inspectors appear in and essentially prosecute
7 the case rather than attorneys. That is, that is
8 something that is strictly within the realm of TLC to
9 decide whom they want to do it. It is a matter of
10 their managerial policy and structure and so forth
11 which has nothing to do with OATH per se, so long as
12 the person who appears is competent to appear. If
13 it's an inspector, as was the case for uhm the
14 majority of the existence of TLC or for efficiency
15 purposes, uhm and attorney as is the practice today
16 it doesn't make a difference as far as OATH is
17 concerned.

18

KALMAN YEGER: Okay now Chief uhm I've
19 heard you testify before this Council, I'm only here
20 100 and change days so I'm not as knowledgeable as my
21 very wise colleagues uhm but one of the, one of the
22 things that I was most fascinated by when I heard you
23 testify is the notion that uhm under your
24 administration uhm since the Mayor came into office
25 in 2014 and since you uhm became Chief Judge that you

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2 have desired to create this fearness at OATH, uhm
3 this due process place where, where recipients of
4 summons, respondents, whoever they are that may
5 appear before the court, not just, uhm have justice
6 handed but know that they were dealt with fairly even
7 if they lose their case, I uhm as you know I have
8 said this before, I am a recovering attorney. I have
9 appeared by OATH, I've lost cases, I've won cases,
10 it's good to walk out of there knowing that even if
11 you lost, you had your shot in court. Judge, is, is
12 there anything in this Legislation in your view that
13 would diminish due process in any way that would make
14 it worse or either the Petitioners, the City of New
15 York or the Respondents?

16 FIDEL DEL VALLE: I don't think there is
17 anything in Legislation that will diminish due
18 process per se. Uhm there are questions some of them
19 of a technical matter that I still, who has authority
20 to do what and I have, I have a concern as to uhm the
21 ability of respondents to deal with the criteria that
22 has been set forth for, uhm reducing penalties, apart
23 from the fact that the, the hearing also has no
24 guidance on how to do that, that's, that's one issue
25 but we have, we have approximately 300,000 hearing as

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2 year and the people appearing at these hearings vary
3 from Michael Cohen who appeared on, on behalf of
4 Trump Tower last year to uhm uhm, he did. Lost. He
5 did. There you go. To uhm, uhm an individual who
6 literally sounds like a cliché got off the boat and
7 the process is totally alien to him. It comes from
8 an environment where due process basically is how
9 much do you pay off the, the cop or the judge or
10 whatever, in fact, a friend of mine had a lawsuit in
11 a country that I will not name in public, when the
12 lawsuit was settled one of the, one of the items in
13 the inventory from his lawyer was "the usual gift to
14 the Judge." Uhm and I'm not making this up, uhm my
15 point being that the expectations of what they can do
16 and what they can't do, and by what is available to
17 them, what their rights are, vary widely and very few
18 of them uhm have the means or even know they can
19 actually hire an attorney even though they are
20 informed of it. And those who don't hire an attorney
21 who have uhm nonattorney representatives assist them,
22 their skill level varies wildly to from very, very
23 skilled and, and an expert in the subject matter to
24 they actually do more damage to the Respondent than,
25 than help and that's a condonedrum (SP?), I mean if

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2 we require that every, every, every Respondent have a
3 licensed attorney my concern is that nobody is going
4 to have anything, uhm that's, that's a question I
5 struggled with 25-30 years ago when I was the Chair
6 of the Taxi and Limousine Commission and the Tribunal
7 was at TLC and it is a question I struggle with right
8 now.

9

KALMAN YEGER: Chief, going to the uhm
10 the indicators of how a Judge can in the interest of
11 justice, it's not actually the language but whether
12 or not imposing a penalty would constitute or result
13 in injustice and then there are several factors that
14 the court may utilize in order to come to that
15 conclusion. Uhm but at the core it's a Judge making
16 a fact finding, uhm.

17

FIDEL DEL VALLE: And for the Judge to
18 make a fact finding, somebody has to present the
19 facts to the Judge?

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KALMAN YEGER: Correct. But this is not
21 on the whether or not there is guilt or innocence
22 which are based on the fact or uhm, uhm, uhm finding
23 or whatever it is called, it not guilt or innocence,
24 sustained or not sustained I believe, if it is now in
25 the penalty phase and, and an applicant or a

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2 respondent is applying to the court saying you know
3 reduce the penalty because Judge OATH issues many,
4 many uhm variations of pamphlets and guidances and
5 various stock at Language designed to help educate
6 Respondents uhm on how to, on how to navigate your
7 court and you've essentially created a pro se court
8 uhm where people can go and get the justice that,
9 they don't desire to be there necessarily but they go
10 to the court because they have to and you've created
11 a system to make it easier on them. Uhm it's the
12 estimation I think of, of the people who uhm offered
13 this Bill and, and uhm other members of the Council
14 that I, that we are willing to trust the OATH judges,
15 their officers of the court. They are officers of
16 the City, they took an Oath long before they were
17 employed by the City, they took an Oath to uphold the
18 Constitution of the State of New York and the Laws of
19 New York State as officers of the court. They are
20 state officers. We are trusting that when they look
21 at the factors they will be able to apply the facts
22 of the case to the law as set forth in this statute
23 and if necessary if appropriate if justice requires
24 they will perhaps or perhaps not reduce a penalty but
25 it's, it's not mandatory that they do so. It's, it's

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2 the word may is all over here. May in the interest
3 of justice reduce a penalty it doesn't have to. It
4 is not obligatory, uhm so the notion that somehow
5 there is arbitrary and capriciousness involved in,
6 in, in reducing or choosing to not reduce, it is set
7 forth in the statute that it is within the discretion
8 of the, of the judicial hearing officer to do so.

9 FIDEL DEL VALLE: That's why I'm
10 concerned that specifically about the arbitrary and
11 capriciousness aspect of it. Our hearing officers
12 which number a little over 300 are per diem hearing
13 officers. Uhm but how one individual will judge
14 something and another individual will judge something
15 can vary widely. You can have a very compassionate
16 individual. You can have on the other side. My
17 concern is without parameters set forth in the Law or
18 in TLC regs, uhm the exact same scenario could result
19 in wildly different results. I have ...

20 KALMAN YEGER: OATH rules? Why couldn't
21 they be set forth in OATH rules as part of a
22 rulemaking that OATH does knowing that the statute
23 has been, has been enacted and OATH does rule making
24 to set forth the parameters by which and also judge
25 you know, you got this in every courthouse in the

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2 world or at least America, you get the hanging
3 judges, you get the non-hanging judges. We don't
4 call them non-hanging judges, right, we call them
5 liberals. But you have that uhm in every courthouse.
6 We have judges who view the facts and judges are
7 human beings, they are not computers. They look at
8 the facts as they see them and two judges looking at
9 the same set of facts may come to two very different
10 conclusions. That is normal. There's nothing wrong
11 with passing a statute that has that result as long as
12 that result is not mandated and that's what the
13 Council has done in this proposed Legislation. It
14 has put that forth as a May, as a, as a possibility
15 of, of the court availing itself of that option if
16 necessary.

17 FIDEL DEL VALLE: Uhm most of my practice
18 since I left TLC and came back to government was in
19 federal court and in federal court you have
20 sentencing guidelines uhm that uhm you the statute,
21 the, the US Code will say the penalty for this
22 violation is such and such but the sentencing
23 guidelines which are not created by the court uhm
24 pretty much dictate how a judge makes that, that
25 balance and if a judge uhm goes outside of those

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2 parameters he basically has to write an encyclopedia
3 justifying it. What we are actually talking about
4 is, is fundamental to the concept of a fine. The
5 only legitimate purpose to a fine at least in, in our
6 society is to alter behavior that uhm society
7 considers inappropriate whether it's a traffic ticket
8 or whatever. And the fine itself for it to be
9 effective has to have a level of sting to the person
10 who has to pay the fine. That is, it doesn't have to
11 destroy them, I mean we are not talking about mass
12 murderers here but it has to smart a little, hurt a
13 little. The conundrum that we are looking at is an
14 it, it doesn't involve TLC really because they are
15 pretty clear cut but the conundrum is you would have
16 for example, an example I like to give a lot, uhm,
17 the building where my office is is owned by S&L Green
18 which is the largest commercial real estate operator
19 in the city of New York and they are very, very good
20 at it but if per se one day uhm they fail to clean
21 the sidewalk after a snow storm within the magical
22 three or four hours, whatever it is after the snow
23 stops, they will get a summons for I don't remember
24 what the amount is but parenthetically,
25 hypothetically let's say it is \$300 so multi-billion

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2 corporation a \$300 summons doesn't mean anything
3 anymore than uhm you dropping a penny on the street
4 but you have uhm an elderly home owner in the Bronx
5 who is in their 80s, is a widow and is living off of
6 social security, for that homeowner a \$300 summons
7 could mean that they don't have money for food for
8 the next month because they are living off of Social
9 Security and it's that kind of proportionality that
10 is very, very difficult to balance. It is very
11 difficult for an adjudicator to balance, it is very
12 difficult, even more difficult I think for a
13 Legislative body to balance but uhm that's a matter
14 of justice and uhm I'm sure you guys can figure it
15 out.

16 KALMAN YEGER: That's what we are working
17 on Chief. Thank you very much. Thank you Mr.
18 Chairman.

19 CHAIR FERNANDO CABRERA: Thank you so
20 much. Council Member Barron?

21 INEZ BARRON: Thank you, thank you for
22 coming. I'm looking at the briefing material that
23 was given to this uhm this committee and one of the
24 paragraphs says that in order to streamline the
25 administration of cases and ensure that all

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2 Defendants have access to Council and a fair hearing.
3 OATH has tried to implement alternatives to in person
4 hearings and that is something you've been talking
5 about. These alternatives include the opportunity
6 "to fight a summons online, by mail, by phone and
7 video conference and call" and then it says that
8 during your testimony March 19th you indicated that
9 TLC chose not to participate in phone call hearings
10 but is testing webcam capacity for video hearings.
11 So you've indicated that TLC always has someone there
12 at the hearings?

13 FIDEL DEL VALLE: Yes.

14 INEZ BARRON: So then it hasn't had any
15 impact on their not wanting to participate in a phone
16 call hearing and did they mean that the respondent
17 did not want to? Then does that then have a impact
18 on the hearing?

19 FIDEL DEL VALLE: Uhm I don't speak for
20 TLC but uhm TLC always has a TLC representative of
21 the hearing. The issue is whether or not the
22 Respondent can, can, uhm appear remotely in one
23 fashion or another. Uhm right now we technically,
24 number one by, by OATH rules and and and technology
25 we can accommodate virtually any type of remote type

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2 hearing. I mean we've even done it overseas. Uhm
3 but all the parties have to be agreeable to it uhm
4 and we are working with TLC to do remote video uhm,
5 uhm, testimony of the Respondent. TLC has concerns
6 regarding doing it by telephone.

7

8 INEZ BARRON: So have they refused to
9 participate in a hearing where the Respondent only
wants to be there by phone, via phone?

10

FIDEL DEL VALLE: That's my

11 understanding.

12

13 INEZ BARRON: So what has that meant in
terms of the case being heard?

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15 FIDEL DEL VALLE: If the Respondent
16 doesn't appear they default. The Respondent has to
appear.

17

18 INEZ BARRON: You are saying that the law
19 allows them to appear via phone and if TLC for
20 whatever reason is saying they will not participate
21 it seems to me that the Respondent is the one that's
22 being penalized unjustly if in fact they are offered
23 the opportunity to do that, uhm and the TLC is
refusing to participate?

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25 FIDEL DEL VALLE: When TLC uhm declines
to participate in in that program that offer is made

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to the Respondent because it's not available. As is as though it is not available.

INEZ BARRON: I don't think that's fair. That if you are saying that these are the mechanisms and the means by which Respondents can participate but TLC says we won't participate or allow the Respondent to have uhm have a hearing because they are not there in person that to me Mr. Chair seems that that is something in, and perhaps that's a Bill that I will introduce to say that TLC will not able to have that option and I'll talk to you about that.

CHAIR FERNANDO CABRERA: Well I'll second that. Thank you. Please make a co-partner.

INEZ BARRON: Okay I will.

CHAIR FERNANDO CABRERA: I'll just interject before you do that issue then find out TLC's rationale.

INEZ BARRON: I don't think their rationale gives them the uhm justification to deny the Respondent to participate in a form that everyone else has because TLC doesn't want to do it. But, we will have to have a hearing so they'll have an opportunity if they come.

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CHAIR FERNANDO CABRERA: Well actually the, the Commissioner is here and she will uhm in the next two minutes, she will be testifying and so you'll get to ask that question.

INEZ BARRON: Thank you.

CHAIR FERNANDO CABRERA: Uhm loving, uhm looking forward to having uhm you ask that question. Uhm Commissioner I just have one more question and I want to thank TLC Commissioner for being patient here but do you believe this do you believe it may sometimes be in the interest of justice to allow the hearing officers, officers to reduce a proposed penalty?

FIDEL DEL VALLE: Do I believe it's possible? That in the interest of justice a hearing officer should be able to reduce a penalty?

CHAIR FERNANDO CABRERA: Yes.

FIDEL DEL VALLE: Yes.

CHAIR FERNANDO CABRERA: Okay thank you alright and with that, uhm Commissioner, uhm no, and Judge I know you have a lot in your plate, uhm I want to thank you for being here today and thank you for all the hard work that uhm you have exemplified and model in OATH and with that, you, you, are free to

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go. Thank you so much. And so uhm we uhm now we are going to have TLC Commissioner uhm and we are going to.

COUNSEL: I do affirm to tell the truth, the whole truth and nothing but the truth in your testimony before this committee and to respond honestly to Council Member questions?

MEERA JOSHI: I do.

COUNSEL: Thank you.

MEERA JOSHI: Uhm good morning Chair Cabrera and to the entire Committee and thank you for your interest in Government Operations which put most people to sleep. So thank you. Uhm good afternoon Chair Cabrera and members of the Governmental Operations Committee. I am Meera Joshi Commissioner and Chair of the New York City Taxi and Limousine Commission. Thank you for the opportunity to share TLCs views on Intro 748. TLC licenses and regulations 130,000 vehicles and about 180,000 drivers who transport approximately 1 million passengers a day. The Laws passed by Council and rules promulgated by TLC play a vital role in protecting these passengers, their drivers and the general public. For example, TLC summons are issued

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2 for violations of City Council Laws including
3 important Vision Zero Legislation and for evaluations
4 of TLC rules governing safe driving prohibiting
5 sexual harassment and service refusals and ensuring
6 that important consumer protection standards are met.
7 Most of our drivers never end up at an OATH hearing
8 but when they do it is for something serious and the
9 failure to appropriately penalize them harms not only
10 passengers but also other New Yorkers who drive or
11 walk across the City streets every day. TLC develops
12 its rules and penalties based on its experience
13 regulating a complex industry and they take affect
14 only after undergoing the process mandated by the
15 citywide administrative procedures act including
16 notice to the public of the rules, a public hearing
17 and then a public vote by the Commission. This
18 process typically takes at least 90 days. Having our
19 summons heard before an OATH hearing officer ensures
20 that our licensees who are issued a TLC summons
21 receive independent adjudication of their cases.
22 Both TLC and OATH recognize that a driver's time
23 spent at OATH is time spent not on the road and not
24 earning money. Each day TLC prosecutors are available
25 and ready to appear at OATH hearings to ensure that

1
2 no driver has to wait for TLC to appear. OATH too
3 has focused on making improvements in it's hearing
4 processes intended to reduce case backlogs and wait
5 times. I'll now turn to Intro 748 which would Amend
6 the Administrative code by adding several new
7 sections. It would require TLC to appear at hearings
8 on TLC summons by person, by a representative who is
9 either an attorney admitted to practice or another
10 representative authorized by OATH. In the event that
11 the petitioner fails to appear OATH would be
12 prohibited from holding a hearing and OATH would be
13 required to dismiss the violation unless TLC makes a
14 timely request to reschedule. Intro 748 would also
15 give OATH hearing officers the added task of
16 considering reductions to penalties set forth in TLC
17 rules and in local law. The proposed Legislation
18 would also require the hearings on violations of TLC
19 regulations or local law beginning within three hours
20 of the hearing time set in the summons. If that
21 deadline is not met, OATH would then have to
22 reschedule or dismiss the violation. Intro 748 would
23 also require the hearing officer to dismiss a
24 duplicate notice of violation. Finally Intro 748
25 would establish in any case in which a Respondent is

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2 charged with violating a provision of Law or rules
3 enforced by the TLC a determination by the appeals
4 unit of the OATH hearings division is final unless
5 the Respondent seeks review by TLC to further the, to
6 further reduce the penalty. This provision conflicts
7 with established authority and president that
8 designates the TLC Chair as the final arbiter of
9 policy interpretation. I want to highlight some
10 additional concerns into Intro 748. TLCs regulatory
11 system is established by charter. Section 2303 of
12 the Charter vests TLC with broad authority over the
13 regulation and supervision of the business and
14 industry of transportation or persons by licensed
15 vehicles for hire in the City. To that end, the
16 Charter requires that TLC to set policy and make
17 rules governing the industry including drivers and
18 vehicle owners also subject to the note and comment
19 requirements of CAPP. Into 748 is this not written
20 on a blank slate. The proposed Legislation however
21 ignores these regulatory and adjudicatory powers by
22 giving OATH hearing officers and not the TLC the
23 ability to establish appropriate penalties for
24 violations of rules and laws designed to protect
25 millions of daily passengers, tens of thousands of

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2 driver and the general public. It's also important
3 to remember that in many cases the penalties for TLC
4 vio, for violations of TLC rules are set by local law
5 and in Intro 748, this would be the oneness on OATH
6 hearing officers to second guess the penalties set by
7 this council not just those set by the TLC. Hearing
8 officers are charged only with finding facts and
9 apply the Law, not making independent policy
10 determinations and while we understand the intention
11 may have been to minimize the impact on some
12 communities perceived to have received
13 disproportionate summons, this Bill instead sends a
14 message to the public that grave infractions need not
15 be taken seriously. Additionally and practically the
16 many factors that hearing officers would be required
17 to review and considering a penalty reduction. One
18 questionably add a significant amount of time to
19 administrative justice process because the Bill will
20 in effect create a two part proceeding. One in which
21 the Respondent's guilt or innocence is determined and
22 in the case of the finding of guilt a penalty phase
23 as the hearing officer examines each and every factor
24 specified in the Bill and presumably takes evidence
25 on many of them. In some Intro 748 would dangerously

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2 compromise TLCs policy making authority to determine
3 the violations that pose a threat to public safety
4 and our ability to specify the appropriate level of
5 punishment for violations of TLC regulations by
6 substituting TLCs policy making and enforcement
7 determinations with the decisions of an individual
8 both hearing officer who are finders of fact not
9 Legislatures or regulators. By diminishing TLCs
10 authority in this area, the Bill would remove
11 critical safety and consumer protection for
12 passengers and for the general public. Intro 748
13 also specifies who may represent TLC in
14 administrative proceedings, limiting such
15 representation to attorneys admitted to practice.
16 This would be in contravention to the practice and
17 administrative hearings throughout the city by, of
18 allowing appearances by both recent law school
19 graduates awaiting admission to the Bar and law
20 students, all of whom operate under the supervision
21 of experienced agency attorneys. It also threatens
22 the current practice of allowing law enforcement
23 officers from the police department and Port
24 Authority and others to appear and prosecutions of
25 summons that they write for violation of TLC laws and

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2 rules. We are unaware of any other agency whose
3 ability to represent itself in an administrative
4 proceeding to adjudicate violations of its rules and
5 regulations is limited in this way and we are not
6 aware of any stated public purpose for this
7 limitation to apply only to the TLC. The Bill would
8 further impact the exercise of administrative justice
9 by providing for TLC summons including those issues
10 for violations of local laws enacted by the Council
11 to be dismissed if a hearing is not held within three
12 hours. We are not aware that OATH has experienced
13 difficulties in scheduling hearings in a timely
14 manner. In fact, currently even drivers who show up
15 as much as six hours late for a hearing are given an
16 opportunity by OATH to be heard rather than face a
17 default judgment against them. Based on consultation
18 with a law department, we also note that Intro 748
19 raises significant legal conflicts. Among them is one
20 raised by the provision of the Bill that with one
21 narrow exception make rulings of the appeals unit of
22 the OATH hearings division which exercises powers of
23 the formal, the former TLC tribunal, the final
24 determination of the tribunal in any case where a
25 Respondent is charged with violating a provision of

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2 law or rules enforced by the TLC. This appears to
3 misconstrue the function of the Charter mandated
4 Chair review which is significantly limited to review
5 only of interpretations of TLC rules and applicable
6 laws. The TLC is an operational and regulatory agency
7 charged with regulating the for hire transportation
8 industry while OATH is an adjudicatory agency charged
9 with resolving disputes that power to make final
10 determinations in matters other than findings of fact
11 was assigned to agencies by voter referenda, enacting
12 and amending the city administrative procedure act,
13 CAPA in 1988 and again in 2010. Moving this
14 important power from TLC to OATH would be a
15 fundamental structural alteration raising serious
16 questions concerning its consistency with the balance
17 of power within City Government set forth in the
18 Charter. In conclusion, TLC is concerned that Intro
19 748 will not only shorten, will not shorten or
20 simplify the OATH process for drivers but instead
21 will extend the time because of the long list of
22 determinations hearing officers would be required to
23 make, time when drivers could be out making money or
24 with their families and perhaps most important it
25 will not protect New Yorkers against the rare but all

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too real occurrences when they are victimized by

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dangerous driving, outright denials of service,

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sexual and other forms of harassment from a TLC

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licensee or from a driver or a business operating

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unlawfully without a license. Thank you for allowing

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me to testify today and I'd be happy to answer any of

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your questions.

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CHAIR FERNANDO CABRERA: Thank you so

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much, uhm Commissioner I'm going to start with

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Council Member Barron because she left out with a

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question with Commissioner Del Valle, so I'd love for

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you to have an opportunity to answer.

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INEZ BARRON: Thank you Mr. Chair.

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CHAIR FERNANDO CABRERA: Thank you.

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INEZ BARRON: Uhm thank you to the

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Commissioner for coming and again just to reiterate

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the briefing materials that the committee received in

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preparation for this hearing says that in order to

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streamline the administration of cases and ensure

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that all Defendants have access to Council and a fair

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hearing OATH has tried to implement alternatives to

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in person hearings. These alternatives include the

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opportunity to fight a summons online, by mail, by

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phone and by video conference and the uhm testimony

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here, the facts here in this briefing say that the

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adm, the Chief Administrative Law Judge, uhm Del

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Valle shared that TLC chose not to participate in

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phone call hearings but is testing webcam capacity so

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my question to you is, is this accurate and what is

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the reason that TLC does not participate in phone

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calls?

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MEERA JOSHI: So as I read the briefings

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as I walked in that same section caught my eye

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because we've been doing a lot of work at the TLC to

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ensure that drivers are out on the street earning

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money and they are not tied up in our processes

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anymore than they absolutely need to so we try to do

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everything online and by phone so that provision

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caught my eye as well uhm and I know that we have

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been actively working on video conferencing so I

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wanted to understand why we weren't actively working

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on the phone conferencing as well. It turns that we

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have no objection to doing phone conferencing we need

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to understand the appropriate method for the

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Respondents to be able to submit evidence via the

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phone calls so that to me is an ongoing process it

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doesn't seem like with all of the technology and

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means of communication that don't require in person

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appearance available to us today that that needs to stay unresolved.

INEZ BARRON: Have you participated in phone call hearings?

MEERA JOSHI: No we have not because we haven't worked out.

INEZ BARRON: Do you object to participating in.

MEERA JOSHI: Absolutely not because the.

INEZ BARRON: So then why haven't you?

MEERA JOSHI: Because we are working out with OATH the appropriate means for the Respondents to present their evidence over the telephone. Often times it's documentary evidence uhm and things of that nature so it's how do we make sure that that can get into evidence for the OATH hearing officer to appropriately evaluate it uhm because they should have that opportunity to fairly present all of their evidence but we absolutely have no objection to the goal of making sure that people have easy access to the adjudications forum.

INEZ BARRON: So have you asked the hearing Judge, uhm the uhm trial Judge to get this

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information prior to the date so that you could be able to participate in a phone hearing?

MEERA JOSHI: I don't know the exact nature of the negotiations but I am happy to follow up with you on our particular concerns and how we are working with those to address them.

INEZ BARRON: And do you think that it is discriminatory and does a disadvantage to the Respondent for you to not be able to participate in a phone hearing?

MEERA JOSHI: I am a strong advocate for allowing people to participate in any means that is causes the least inconvenience for them, especially when we regulate the way that they make their livelihood so I absolutely am a proponent for saving them time away from their job. Uhm so we are whole heartedly moving forward and working especially on the video conferencing which is the ideal situation even for drivers, they get to actually look at the, especially in consumer complaints, the complaining on the other side uhm is the ideal situation and in lieu of that while there is phone conferencing available as soon as we can figure out how to do the exchange of evidence we are absolutely supportive of that but

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2 I do agree with you it should be offered to both
3 sides in a way that both sides can take advantage of
4 a more efficient way of appearing.

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6 INEZ BARRON: So before you coming into
7 this hearing today, were you aware that that was an
8 issue because I thought I heard you say that when you
9 came in you saw it, and it caught your attention.

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11 MEERA JOSHI: I was unaware it was an
12 issue, we have been advocating for the video
13 conferencing.

14

15 INEZ BARRON: So who makes the decision
16 as to whether or not you will be able to participate
17 in an on phone a phone hearing? Is that something.

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19 MEERA JOSHI: We make it together as an
20 agency, we have several issues and several divisions
21 but it is an active ongoing discussion with OATH
22 about how to make that possible.

23

24 INEZ BARRON: And how long have you been
25 trying to make this possible?

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27 MEERA JOSHI: I'm going to uhm defer to
28 my Assistant Commissioner, Mohammed Akinlolu who is
29 right here who is head of our prosecution who can
30 advise us on the exact status of that.

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32 INEZ BARRON: Thank you.

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COUNSEL: Do you affirm to tell the truth, the whole truth and nothing but the truth in your testimony before this committee and to respond honestly to Council Member questions?

MOHAMMED AKINLOLU: I do.

COUNSEL: Thank you.

MOHAMMED AKINLOLU: There has never been.

INEZ BARRON: Can you give us your name please?

MOHAMMED AKINLOLU: Uhm my name is Mohammed Akinlolu, Assistant Commissioner for Prosecution at TLC. So there has never been any phone call hearing at OATH regarding any TLC cases, never. So that would.

INEZ BARRON: Right so.

MOHAMMED AKINLOLU: Okay there was a discussion as to whether Respondents could testify over the phone and we just raised our concerns that how do we know that it is actually the, uhm we have the actual Respondents on the phone, that is one, and if they have to comply with TLC rules, they have to show compliance so how do they present compliance over the phone. And if they have to present defenses also like if there is someone sees you, uhm someone

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sees and it taking a class, how do we get that

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certificate over the phone so that we can withdraw

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the case.

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INEZ BARRON: So how long have you been

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trying to address this issue and get a resolution for

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that?

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MOHAMMED AKINLOLU: It wasn't a long

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discussion. I think it was like about two years ago

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that it happened and that was the end of it so then

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we now move to where pound. So because we do video

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conferencing right now even though.

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INEZ BARRON: So I'm not clear, how far

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away of you let me start at the other then, how far

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away are you from resolving the issue of

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participating in phone hearings?

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MOHAMMED AKINLOLU: That's what I saw,

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toward ongoing discussion so we discussed it then and

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that is what it is. So far now we have moved, TLC

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and OATH have moved away from phone uhm testimony

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uhm, uhm.

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INEZ BARRON: Hearings yeah.

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MOHAMMED AKINLOLU: Hearing to webcam so

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we are working with SBS now to implement webcam so we

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have the resources now and OATH has it but right now

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2 there have been instances where few Respondents you
3 know from Staton Island they appear via video
4 conferencing and we are always there, you know so
5 OATH has the uhm capacity you know to do that and we
6 will go to the courtroom, some courts, you know some
7 courtrooms where we do that, so we do video
8 conferencing you know for Respondents and for.

9 INEZ BARRON: So.

10 MOHAMMED AKINLOLU: And for ...

11 INEZ BARRON: Okay so you have completed
12 the testing by webcam capacity and you are in fact
13 using that? For video hearings? It is already in
14 place?

15 MOHAMMED AKINLOLU: Not, we use it for
16 Airport, for Airport cases but for Respondents we
17 haven't started doing that.

18 INEZ BARRON: So when do you think that
19 you will be able to have that in place? That's my
20 question.

21 MOHAMMED AKINLOLU: We have it in place,
22 OATH has it in place. So it's now for OATH to uhm
23 okay we have, we are working on our universal summons
24 on the summons, we intend to put into production in
25 June so they are, is a paragraph on the summons that

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if you chose to appear by a webcam you should contact
OATH so we.

INEZ BARRON: So by June it will be in
place?

MOHAMMED AKINLOLU: Be June, in June,
yeah. So.

INEZ BARRON: Thank you, thank you Mr.
Chair.

MEERA JOSHI: Thank you for your interest
because I think it is the, the absolutely next phase
of hearings that they be done over video conference
for the convenience of both the Complainant, the
Respondents and the TLC.

INEZ BARRON: Thank you.

CHAIR FERNANDO CABRERA: Before I, I go
to Council Member Yeger, I, I was a little confused
here. Uhm because I heard you commissioner say that
there is ongoing discussion and then I hear your
Assistant Commissioner says that there is no
discussion, uhm here is the second piece that is huge
for my understanding the other agencies cause you
mentioned Assistant Commissioner that you don't know
whose on the other side, well that would, that
statement would invalidated 15,000 plus already phone

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court proceedings that have already taken place and I have full trust on the courts in OATH so I understand on what basis are you making that statement?

MEERA JOSHI: I think it is also a matter of the two agencies coordinating on what, what standards are necessary for the phone conferences and at this stage does it make more sense to get everybody on video conferencing now and I think that is the better step both for the drivers and for the Complainant because there is certainly a difference in quality in terms of replicating the atmosphere in a hearing room in a video conference than there is in the phone.

CHAIR FERNANDO CABRERA: But 15,000 other phone calls have been made.

MEERA JOSHI: So we.

CHAIR FERNANDO CABRERA: They have, let me finish, I let you finish that have worked effectively and in the spirit of justice was done correctly so do you have any data, any research to substantiate that a phone call uhm proceedings are less effective or would not meet the standards. Is there any research that you guys have?

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2 MEERA JOSHI: I think uhm and I think we
3 will defer to Chief Del Valle as well as take it up
4 in discussions afterwards especially with their
5 experience with phone calls and having Respondents
6 come in so we can better understand how the, those
7 cases if there are any differences in the nature of
8 the evidence that needs to be presented, uhm the
9 cases that you are referring to and our cases but it
10 certainly is a matter of coordination between our
11 agencies and a willingness of both of our agencies
12 and OATH I defer to on having experience of dealing
13 with these phone cases which they do now uhm on how
14 we can get to a, to a level where we are all
15 comfortable and engaging with them.

16 CHAIR FERNANDO CABRERA: I would hope
17 that you will provide the same option that has been
18 given in other agencies and I admire the other
19 agencies for doing it and I appreciate Commissioner
20 the statement that you mentioned earlier that you
21 don't want and I really do, you don't want to
22 interfere in their daily, business of trying to you
23 know some of this may only making now during the day
24 only \$100 a day but next year they will, you will
25 make more money working in McDonalds.

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MEERA JOSHI: You might already make more money working at McDonalds.

CHAIR FERNANDO CABRERA: And I appreciate that. That, that we somehow, somehow we have to make it easier and more feasible and have accessibility to, to proceeding with justice. So I, I'm going to turn it over to Council Member Yeger, he has a few questions and then I'll come back I have a few others.

KALMAN YEGER: Thank you Mr. Chairman.

CHAIR FERNANDO RODRIGUEZ: Thank you.

KALMAN YEGER: Madam Commissioner you were here when the Chief Judge was testifying earlier and I have some ridiculous questions but I went through the statute and indicated the manner in which uhm the proposed statute would allow the uhm the Petitioner of TLC to be represented or to make an appearance at OATH and I'm not going to enumerate them again, its three or four different ways, one in person, the one that you focused on is the attorney part, your, two places, you said that the Bill would require TLC to appear at hearings on TLC summons in person by a representative who is either an attorney admitted to practice or by another representative

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2 authorized by OATH. Then you indicate on page 4 uhm
3 Intro 748 specifies who may represent TLC in an
4 administrative proceedings limiting such
5 representation to attorneys admitted to practice law,
6 right? That's.

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MEERA JOSHI: Or as OATH authorizes.

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KALMAN YEGER: It's not what it says and
9 it's not what you said.

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MEERA JOSHI: I'm sorry, that's not what
11 I said, I believe that's what my.

12

KALMAN YEGER: That's not what your
13 testimony says and that's why, that's I want to be
14 very clear because.

15

MEERA JOSHI: No I'm glad you raised
16 because I was listening to as you asked the question
17 and I will check my own testimony but it is or as
18 OATH authorizes so there is this additional ability
19 to expand beyond attorneys.

20

KALMAN YEGER: And but then but you
21 further go on that would be in contravention of the
22 practice and administrative hearings throughout the
23 city by allowing appearances by both recent law
24 school graduates awaiting admission to the Bar, law
25 student, etc. it also threatens the current practice

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2 of allowing law enforcement officers and the police
3 department, Port Authority to appear in prosecutions
4 of summons that's just not true uhm and then of
5 course the, the indictment you are unaware of any
6 other agency whose ability to represent itself in the
7 administrative proceeding to adjudicate violations of
8 its rules and regulations, is limited in this way and
9 you are not aware of any stated public purpose for
10 this limitation to apply only to TLC, so we are not a
11 bunch of maniacs here, well maybe some of us but
12 nobody at this table, uhm you know the Bill was
13 written and learned at the Council, employed by the
14 City Council of which we are going to hire 1000 more
15 of them for like \$30 billion apparently past their
16 own budget, I voted no against it but uhm it is going
17 to happen anyway. So a lot of people here worked on
18 this Bill and set forth this mechanism by which your
19 agency can appear to prosecute these cases and uhm
20 it's not I mean I want to make sure that we are all
21 understanding here. TLC is not being handcuffed by
22 the Council in how you prosecute your cases, that's
23 not the intent here. The intent is and I'll get to a
24 question but the intent here is to, is to streamline
25 a process to make it cheaper for TLC to prosecute

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2 these cases to make it cheaper for Respondents to
3 appear to defend themselves and to make it cheaper
4 for witnesses to participate right because we are
5 setting it up a place that is already set up for
6 hearings, in front of a group of people who are
7 already set up and ready to do their hearings. We
8 are giving you the rules and regs for how these
9 hearing should go and we are also setting for that
10 look, if TLC can't move ahead in a three hour window
11 on the return date of a summons without having
12 actually asked the court for an adjournment which is
13 typical you know in any other court anywhere in
14 America, you know if you can't show up ask for an
15 adjournment uhm it's going to be dismissed, that's
16 just normal and I'm trying to understand where the
17 where the objection is putting aside the part that is
18 just not 100% accurate but I don't understand the
19 objection to having a court adjudicate cases which is
20 essentially what OATH is.

21 MEERA JOSHI: Uhm so I do want to just
22 address the first point, so on page two on the second
23 paragraph that's where I said the Bill would require
24 TLC to appear at hearings on TLC summons in person by
25 a representative who is either an attorney admitted

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2 to practice or another representative authorized by
3 OATH and you are right I don't repeat that entire
4 phrase on page four but I do say it on page two.

5 KALMAN YEGER: No, that's my point, I
6 agree that, Commissioner I'm sorry I agree that you
7 say it in one place but I but my point about the
8 paragraph on page four is that the entirety of the
9 paragraph goes through all of these heinous things
10 that we are doing to you in the Bill and then you
11 know indicts us with that no other agency ever has
12 ever had these kind of handcuff put on them but
13 really it's not, we are not doing anything. We are
14 not changing your rules.

15 MEERA JOSHI: I think uhm Chief Del Valle
16 put this very succinctly today we have a practice of
17 freedom of who we choose to appear that hearings and
18 we have our own policy in making sure that we are
19 always represented at hearings though we are not
20 required to and there are other agencies where there
21 is not an agency representative at the hearing uhm so
22 those are decisions that the TLC makes on who we want
23 to appear at hearings and that we will always appear
24 at hearings. Uhm the change that would be made in
25 this law is it would just take that decision making

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2 from TLC to OATH and so today there is not reason why
3 we think practice would change at all should this
4 provision become law because uhm Chief Del Valle and
5 I have a good working relationship and we have an
6 understanding and we know how well it works currently
7 with us having uhm the you know universe of people
8 that we have coming in but I think the concern is
9 does that, does that handcuff an agency in the future
10 should you not have a good working relationship with
11 the adjudicatory body where they could limit you to
12 just practicing attorneys which may have an
13 administrative, create an administrative burden for
14 the agency and also be a problem for the licensee
15 because it might slow up our process if a variety of
16 people that we can have come in on our behalf is
17 limited. So I think the concern is not the, the fact
18 that there is options today and there is also today
19 if the OATH today continued to allow everything that
20 TLC does on its own today that there wouldn't be
21 options tomorrow. It's what happens later on if
22 those are options could somehow be taken away and
23 that's really our concern.

24 KALMAN YEGER: So I would like to just
25 uhm I know this is not a response back and forth

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2 thing but I would like to briefly explain that two
3 things, first of all, you know in my view, OATH and
4 TLC are both agencies of, of, of person, it's the
5 Mayor tomorrow and it's the Mayor tomorrow and it's
6 the Mayor after that, any Mayor and where there are
7 disputes between agencies they get worked up by the
8 Executive. The Executive doesn't work for the
9 Council with the exception of Laws that the Council
10 passes subject to enactment. Uhm so if there's a, if
11 there's a debate and one morning some future Chief
12 Judge who is not as wise as Chief Judge Del Valle
13 wakes up and says no more anybody who isn't a lawyer,
14 well I assume that you will figure out and your
15 successor will figure out how to work that out but
16 more importantly and it is important to note this, I
17 think that every court everywhere determines who gets
18 to practice in front of it. It's not, it's not a
19 strange thing, it's normal, it's regular, it happens.
20 That's the way the system works. I can't walk in to
21 a court in New Jersey and start practicing law
22 because the courts in New Jersey have not authorized
23 me to do so but I can go anywhere in New York State
24 and do it and that's the way it's supposed to work.
25 Right, the court authorizes who may show up subject

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2 to the enabling statutes that the Legislature gives
3 it. In this case, assuming this is enacted the
4 Legislature will be given a set of rules by which the
5 court will authorize who may and may not appear
6 before it. I can't imagine a scenario where the
7 court is going to refuse to produce a set of rules
8 that enable to TLC, either this TLC and this OATH or
9 a future TLC and a future OATH to go about its
10 business in an orderly fashion. Uhm so I mean I just
11 wanted to address the concern because obviously I do
12 believe your concerns are serious and I, I do know
13 that you do speak with your counterparts at the other
14 agency but it's important I think from my perspective
15 to just uhm for you to understand what the Council is
16 thinking and why it does this. Uhm, I, I'd like to
17 address something that you indicated with respect to
18 the TLC powers and authorities and the
19 misconception that this Council appears to have
20 with of the Charter mandated Chair review which I
21 understand that. The TLC is an operational
22 regulatory agency, no dispute from me, charged with
23 the regulation of, of the industry, no dispute, OATH
24 is an adjudicatory agency charged with resolving
25 disputes, uhm as an adjudicatory agency just like any

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2 other court it is also charged with just not making a
3 finding effect that a conclusion of law but also the
4 ultimate result of what is the judgment, what is the
5 judgment of the court, what is the penalty to be
6 imposed, maybe no penalty, maybe \$1000, maybe
7 \$100,000, maybe a revocation of a license, whatever
8 it may be and the Council gives its set of rules
9 which you are very concerned that this, this law uhm
10 contradicts some prior laws that the Council has made
11 and clearly, I, I can assure you, that's I've been
12 assured that this Council has attorneys who are very
13 wise and before they write a Bill they, they because
14 they don't let me write any Bills, they are, no it's
15 a true story, they, we will talk about it later, they
16 don't uhm, they look all across the statutes to make
17 sure that what we are doing is not preempted either
18 by State Law or by Federal Law and of course within
19 the City of New York to make sure that we are not
20 doing something that is contrary to our, our lawful
21 rights under the charter, our obligations under the
22 charter to make and write laws that uhm that enforce
23 the parameters of the Charter so that's what we are
24 doing and I want you to be assured that this Council
25 is not going to pass a law that, that, you know is,

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2 is nullifying its prior law without simply you know
3 repealing the law which it could do if it chose to.
4 Uhm I'm not going to beat the dead horse of the
5 telephones because I think you have indicated very
6 well that your, your agency is most desirous of, of
7 doing telephone hearings. My concern about
8 telephones was not even for the Petitioner,
9 Respondent issue so much as that I wanted to make
10 sure that the witnesses, the, the New Yorkers who are
11 affected by the industry that you are regulating are
12 able to get their case before the judge and say this
13 is what we saw and with no interference and I wanted
14 to make sure and the Chief indicated that in his
15 view, uhm this law does nothing to hinder the ability
16 of a New Yorker to put forth his or her complaint and
17 to make sure that it's going to get a fair hearing
18 and the extent necessary if punishment need be meted
19 out, it is and this statute in my estimation before
20 adding my name to it and in the estimation of other
21 members I believe would also in the estimation of the
22 Court is, uhm is perfectly in line with our desire,
23 our policy desire of making sure that New Yorkers are
24 able to get unsafe drivers off the road because
25 that's your job and I think you do it well and I, we

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are not trying to keep you from doing that and I want to make sure that you understand that and a lot of the testimony frankly is, gives the indication that we are a bunch of maniacs who are like trying, I know you didn't say that and I don't mean that you said it.

MEERA JOSHI: I have to be quiet.

KALMAN YEGER: No, no, no, but you do right after this. Hang on I'm almost done, the Chairman is going to cut me off anyway. You see the lawyers, we have the words and they just can't stop.

MEERA JOSHI: I thought you were a reformed lawyer?

KALMAN YEGER: I am a reformed lawyer it means I can't charge anybody for being a lawyer but once a lawyer always a lawyer the Judge will tell you uhm but to me it is most important that, that you understand that what we are trying to do is that we are trying to make that balance, of the fairness, not it's not just about waking up in the morning because we want to protect drivers from your, your awful hands, it's not what we are doing and it's not because we want to make sure that OATH has more work to do, it's not what we are doing. It's what, we

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2 want to make sure that unsafe drivers are off the
3 road in a way that, that protects the City that
4 protects the right of everybody, the riders, the New
5 Yorkers who are crossing the street and from the
6 arrant cab driver who is not watching what he or she
7 is doing and the rights of the cab drivers to not
8 have their licenses revoked because you know just
9 cause. So take it away, I didn't really ask a
10 question but you can say anything you want now.

11 MEERA JOSHI: Alright so I think that you
12 raised two points and I'll try to be succinct because
13 uhm I know the time is 3:45 and I'm going to make one
14 comment here because I had a meeting at the office at
15 4 p.m. with family of driver's so do you want to tell
16 them I'll be late at 4:15?

17 CHAIR FERNANDO CABRERA: Yeah
18 Commissioner we almost I only have literally just one
19 question.

20 MEERA JOSHI: Okay.

21 CHAIR FERNANDO CABRERA: And it really
22 calls for a very short answer.

23 MERRA JOSHI: Alright perfect.

24 CHAIR FERNANDO CABRERA: We only got like
25 two more minutes.

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2 MEERA JOSHI: I will be very succinct in
3 my answer and then we will get everything done this
4 afternoon and I appreciate uhm your sensitivity to
5 that. So the two point that I think we you talked
6 about Council Member Yeger are the sort of balance of
7 the, of the you know the adjudicator versus the
8 regulatory agency and I think previously you had
9 raised the issue of should the penalties possibly be
10 in, in OATHs rules for agency if that would give them
11 the proper guidance uhm and I think that uhm and I
12 think also that uhm the point of who, does the court
13 get to decide who is in attendance at hearings
14 representing both parties and I think a lot of those,
15 uhm sort of key into the fact that this is
16 administrative it's an administrative hearing process
17 and it is also in some ways this hybrid because there
18 has been this delegation of many agencies to OATH,
19 the agencies retain a certain amount because it's a
20 delegation uhm also by retaining a certain amount of
21 authority over the process things like the ability
22 and state law that allows us to docket money
23 judgments against unlicensed operators is in
24 particular tied to the fact that we have retained and
25 we have delegated some authority and that is really

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2 muddies the waters a lot and I think that you have
3 aptly described how courts without those
4 constrictions have uhm certain bright lines between
5 what they can order and what the, the Prosecutor
6 decides and they, they are more complex I think in
7 this issue and we are happy to meet with you
8 afterwards and so of go over in more detail how
9 those, that retention of power sometimes causes
10 problems in sort of figuring out what the right rules
11 are going forward and even last year, the fire
12 department uhm in recognition that the fire
13 department is the enforcement agency and the
14 authority over what the right penalty should be over
15 the violations of the fire code, worked with both to
16 take their penalties out of OATH rules and put them
17 in the fire department rules uhm so that it was clear
18 that the agency was the one determining monetary
19 penalties and OATH would be the one applying them and
20 again I think that speaks to this uhm this dynamic
21 you have here in administrative law especially with
22 the agency delegation of power. Uhm I was very glad
23 that you raised the point on clarifying who is
24 appearing by phone. Because we had a lot of
25 confusion as well. I think there are many people

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2 here that are going to testify one about the
3 importance of being able to testify by phone as a
4 consumer and also about uhm the the sort of
5 consequences they fear of maybe penalty reductions on
6 a a Judge by Judge basis but the the clarification is
7 helpful because the, the way the, the law is written,
8 you are right, Petitioner is defined as us and that's
9 the one that has to appear in person or as authorized
10 by OATH it doesn't change that consumers can call in
11 by telephone and historically there has been very
12 several reasons I think Chief Del Valle identified,
13 one, that there might be this, feeling that consumers
14 felt more comfortable, uhm years ago, when I worked
15 at a different agency I met with then Commissioner
16 Matt Doss (sp?) who explained to me that they had had
17 a very high default rate and you know with consumers
18 not appearing at hearings so they thought that that
19 was having a chilling effect on consumers feeling
20 comfortable filing and following through so they
21 offered them this phone uhm option and that they
22 found that that actually helped with the follow
23 through rate of those consumer complaints. The time
24 I was at CCRB and we are very concerned with default
25 rates there because you want to make sure that

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2 complainants have easy avenues to file uhm complaints
3 and so he sort of told us well this is what's worked
4 here, allowing them to come in by phone and then
5 there is the other complicating factor, especially in
6 the Taxi business many of the consumers are tourists,
7 they might come from different countries so by the
8 time it gets to the hearing they are in Australia or
9 wherever they may have to wake up at a funny time but
10 they can still participate. Uhm but any of this
11 stuff that because of time I haven't been able to
12 provide you a complete explanation we are more than
13 happy to follow up afterwards.

14 CHAIR FERNANDO CABRERA: Thank you, thank
15 you so much. Uhm one quick question and that is how
16 often has the TLC elected to overturn a summons
17 decision that has been appealed to TLC after being
18 decided by OATH.

19 MEERA JOSHI: Uhm, I'm glad your raised
20 that too because I hadn't, I remember when this
21 provision first came about and in the first few years
22 uhm it's the Respondents that actually, we were
23 appealing to us and we were hearing those and we were
24 agreeing with the Respondents. Much to the
25 consternation of my Assistant Commissioner of

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2 Prosecutions who was not happy that we were
3 overturning their decision but there was a wall
4 between the two and one of the most notable reasons
5 was because it came down to an interpretation in OATH
6 of one of our rules that we felt they were
7 misconstruing as a very sort of strict liability when
8 in fact they were missing the intent of the rule and
9 because they were reviewing as a strict liability
10 they were finding drivers in violation uhm and we set
11 the precedent through the Chair's petition process
12 that it not be considered that way. Uhm but in
13 recent years, and I have the numbers here for 2017
14 and 2016, in my notes, uhm or Chris will give them to
15 me again, I'm so sorry they are scribbled.

16 CHAIR FERNANDO CABRERA: It's okay.

17 MEERA JOSHI: Okay 2016 it was 1 and 1 so
18 it was one time the agency appealed to the Chair and
19 one time the Respondent appealed to the Chair that a
20 decision was issued in and 2017 zero, zero for
21 Petitioners and one for the one for the. Okay, so
22 nine from the Agency relating to OATH decisions when
23 we had a rule of transition, we changed to a
24 universal license and so your two driver's licensing
25 chapters resided in two different chapters. They

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2 were merged to chapter 80 and so there was a process
3 by which through the Chair's decision uhm we were
4 able to give guidance to OATH Judges on how to
5 interpret the Chapter 80 rules.

6 CHAIR FERNANDO CABRERA: And so I can get
7 you out of here to your next appointment. How many
8 uhm cases do you settle before they get to OATH.

9 MEERA JOSHI: Uhm I think the vast
10 majority but absolutely will get you, you know
11 specific numbers on. Both. Over the years.

12 CHAIR FERNANDO CABRERA: You think about
13 90% when you say vast majority, when I think vast
14 majority I think.

15 MEERA JOSHI: Around 70%.

16 CHAIR FERNANDO CABRERA: Around 70%.
17 Okay.

18 MEERA JOSHI: And we will also send you
19 because we revamped the way we inform drivers about
20 the opportunity to settle uhm much in response to
21 concerns that have been raised by Council Members as
22 well as concerns raised by drivers, groups, about
23 ensuring that driver's know what their options are,
24 giving them the opportunity to call Mohammed's
25 office, provide us with additional evidence and as a,

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2 as a consequence we are able to withdraw summons
3 because we can interact with the drivers at an
4 earlier point and get their side of the story in
5 essence.

6 CHAIR FERNANDO CABRERA: Okay thank you
7 so much, both Commissioners, thank you Assistant
8 Commissioner, thank you for being here today I know
9 you have other appointments to go to and with that we
10 are going to call the next panel. Uhm Nino Hervias
11 from the New York City Taxi Coalition, United We
12 Stand, Peter M.. Mazer from the Metropolitan Taxi
13 Board of Trade, Victor Salazar from the New York Taxi
14 Worker's Alliance, Zubin Soleimany from the New York
15 Taxi Workers Alliance and if I butcher your names
16 please bear with me, Bhairavi Desai, I'm sorry man
17 just help me here it's been a long day. Uhm from the
18 New York Taxi Workers Alliance and if we need an
19 extra chair we can just that blue one. I have one
20 more here. (I will slide down I don't care or I'll
21 stay at the end I don't care). It's all fine, that's
22 good.

23 CHAIR FERNANDO CABRERA: So uhm for the
24 sake of time here and thank you so much for waiting
25 and I also want to thanks colleagues that have been

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2 here from the very beginning, I commend them for
3 being here today for uhm the very wise questions. So
4 what we will give you each three minutes but that
5 doesn't mean that it is going to stop there, you know
6 we are going to have questions, we are dying to ask
7 you questions. So with if you can introduce yourself
8 you can start.

9 PETER MAZAR: Go ahead I'll start, may I.
10 I'll start, good afternoon Mr. Chairman and members
11 of the Governmental Operations Committee, my name is
12 Peter Mazar and I am General Counsel to the
13 Metropolitan Taxi Cab Board of Trade, an association
14 representing the owners of approximately 5500
15 Medallion Taxi Cabs. We also provide a full service
16 Taxi Cab Driver's center and provided free legal
17 representation to Taxi Cab Drivers in about 2500 OATH
18 taxi tribunal cases during the past three years.
19 From 1987 through 1998, I served as an administrative
20 law Judge and has Chief Administrative Law Judge to
21 former TLC tribunal and during that period of time I
22 estimate that I adjudicated about 25,000 cases.
23 Thank you for the giving me the opportunity to speak
24 with regard to Intro 748 which would make some
25 significant changes to both OATH and TLC operations

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2 regarding the adjudication of summons issued to taxi
3 cabs and for hire drivers and businesses. As a
4 former hearing officer and now as a litigator
5 appearing before the tribunal on a regular basis, I
6 fully appreciate the need for a tribunal to dispense
7 justice fairly and impartially. Confidence in a
8 licensing and regulatory system is not possible
9 unless there is complete confidence in the underlying
10 adjudicatory process. This Legislation attempts to
11 uhm address some of the concerns that have been
12 expressed over in past and present OATH and TLC
13 procedures and I will take them one by one. The
14 first is 19902 which talks about who may appear and
15 you have my written testimony I am not going to go
16 through the whole thing because I won't get it at two
17 and three minutes but the point has been made already
18 and it is the single point that I want to make here
19 again is that uhm in consumer cases, particularly
20 consumers can appear by telephone, drivers cannot and
21 if anything comes out of this I urge you to consider
22 the fact that if a driver however, the consumer is
23 going to appear, the driver should appear the same
24 way, so if a consumer is in person the driver can be
25 in person, if the consumer is on the telephone, the

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2 driver should be on the telephone, if the consumer is
3 video conferencing the driver can video conference.
4 I am a lawyer, we have lawyers, we have reps, we can
5 figure out how to get the evidence to the Judge to
6 make the case, to best present our case. Uhm the
7 next one I want to deal with is 19503 which would
8 give hearing officers greater discretion to reduce
9 penalties and the problems I've had with the hearing
10 officers is they don't, they don't exercise
11 discretion to reduce penalties from my experience a
12 Judge given the opportunity whenever there is a range
13 of fines will always impose the highest fine
14 possible. The Commission used to have a lot of range
15 fines and the Judges had a lot more discretion. That
16 was taken away from them. The Judges as a rule were
17 basically imposing the highest penalties possible.
18 The TLC already does a settlement process, prehearing
19 and it works fine. I settle almost all of my cases
20 prehearing and there is a reason that we do that
21 because you get a lower, a lower penalty and if I
22 could just have a couple of minutes to finish up.
23 Most but not all Respondents are offered settlements
24 and a settlement process does work because it does
25 provide a consistency of results and I am very

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2 concerned that giving Judges discretion would take
3 away the settlement process and what would happen is
4 that drivers would no longer be offered settlement
5 but would have to go to the hearing be forced to
6 appear at a hearing and if the driver is not
7 sophisticate he is not going to know or she is not
8 going to know how to put on a case and say well there
9 should be a mitigation, a penalty for a whole variety
10 of reasons and I'm just very concerned that the
11 judges won't know how to do it, Respondents won't
12 know how to do it. Commission of course, will always
13 have a representative. The representative will ask
14 for the highest penalty possible, they always do,
15 that's what prosecutors do and uhm I'm just not
16 comfortable that it will work. Some of the other
17 provisions, the three hour rule, that's and old thing
18 that they used to be long waiting times, I don't see
19 that as a problem anymore. One change that I would
20 urge when you are dealing with the petition to the
21 chair person, I think generally it works. I think
22 the problem is that sometimes the Chairperson
23 exercises, right now her authority to impose a
24 penalty greater than that which was imposed by the
25 OATH judge. I would like to see that if there is an

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2 appeal to the Chairperson that she can either accept
3 the Judges recommendation or lower the penalty but
4 not increase the penalty above what the uhm above
5 what the Judge uhm did. And the only other thing
6 that I want to say which is in my testimony is that
7 we we must have uhm the most important thing is that
8 you have integrity in the process and that you have
9 and that you have drivers and Respondents who are
10 appearing in front of a hearing and consumer, uhm
11 consumer compliance who know that there is going to
12 be a fair hearing. If, if we can't give everybody a
13 fair hearing then the tribunal is failing and a lot
14 of these changes they may work, they may not work,
15 the most important thing is that Respondents have to
16 know that when they walk into a hearing that they are
17 going to be given a fair hearing, that they have a
18 Judge that is impartial, a Judge that is willing to
19 listen to them, a Judge that is going to apply the
20 law fairly. A Judge that will apply the rules of
21 evidence and not going in with their personal biases
22 and I think if we accomplish that through this
23 Legislation or some other Legislation that would be a
24 great step forward for the City. I thank you for the
25 opportunity to testify.

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2 ZUBIN SOLEIMANY: I uhm yeah, thanks,
3 Chair Cabrera and the Council Members thank you for
4 allowing me to speak, my name is Zubin Soleimany I'm
5 a staff attorney with the New York Taxi Worker's
6 Alliance, uhm we represent drivers in all sectors and
7 I just want to thank you for looking at the issue of
8 penalties that have for a long time not been
9 commensurate with the earnings of this work force.
10 As you know our, our work force is work forcing
11 economic crisis right now, I believe Chair Joshi was
12 saying earlier that many drivers are earning below
13 minimum wage at this time and the penalties currently
14 are are out of whack. Uhm that said, I uhm I do have
15 some concerns about the idea of giving more
16 discretion right now to the ALJs, Chair Del Valle
17 spoke earlier about a concern that there would be
18 arbitrary and caprice concerns about penalties.
19 Those concerns exist for us today. Uhm there are
20 range penalties right now I will give you an example
21 of you have you have a penalty you have a violation
22 called the Willful Acts of Commission Against the
23 Public Interest. Uhm a driver's charged with that
24 for basically anything the TLC doesn't have a rule
25 for already. We had a member get charged with that

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2 violation who had severe asthma and wanted to use a
3 nebulizer in his car before the trip began so he
4 could breath and he was charged with Act of
5 Commission against the Public Interest, now that
6 could have been anywhere from just \$150 fine to a
7 \$350 fine and a 30 day suspension of his TLC license.
8 Now a 30 day suspension of your driver's license, not
9 only means the loss of the income you would have had
10 for that month but if you are a long term committed
11 driving you still have to continue paying lease
12 expenses of thousands of dollars during that month so
13 I'm not comfortable with the discretion that ALJ has
14 right now to go anywhere from \$150 to \$7000 worth of
15 damages and just for the record, this issue has been
16 raised on appeal to the OATH appeals unit and their
17 official position is that the ALJ does not have to
18 give any explanation for where the range in that
19 penalties are. So our position right now is I think
20 that the goals here in this Legislation are allocable
21 (sp?). Uhm, uhm I think a better way to look at this
22 would be more of a comprehensive overhaul of the
23 Commissions penalties. Some penalties are set right
24 now in the ad code for unlicensed operation, refusal
25 and overcharge but the rest are at their discretion

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2 and I think uhm I am a proud New Yorker but here I
3 think we can look to Chicago's example. Uhm Chicago
4 a few years ago overhauled their penalties for
5 drivers and they have two tiers of penalties, one is
6 a lower offense and one is a repeated offense or a
7 more serious offense. The lower offences range from
8 \$50 to \$100. So this could be for something like uhm
9 you know I wanted to take, I wanted to take
10 Lexington, the driver took Park, which right now is a
11 much higher penalty, uhm the higher penalty ranges
12 anywhere from \$100 to \$400 and and that's it and I
13 would, I would note that I think that this such a
14 scheme would make sense in the hearings division.
15 Right now TLC has two options to prosecute, they can
16 go to the hearings division where the vast majority
17 of cases are heard or they can go to the trials
18 division which is more formal and driver's have more
19 due process right. When TLC decides to go to the
20 trials division they can do anything they want, they
21 have absolute discretion to seek penalties up to
22 \$10,000 for any violation so if there is a serious
23 concern that maybe the fine, the loaded fines on the
24 books would not be appropriate for an aggrieved act
25 they always have that option. Uhm another and I'll

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2 be brief but another point, another point that we
3 proposed in overhauling the TLC penalties is that you
4 know I spoke earlier for this option of a fine and a
5 suspension is right now that discretion of the Judges
6 is that it can be either, or or both. Now it is
7 either the fine or everything. Uhm though we would
8 propose that the Judge that there would either be a
9 financial penalty or a suspension it is extremely
10 burdensome right now to take away a driver's ability
11 to pay a fine and then ask him to pay that fine on
12 top of it. Uhm so I think uhm just to I know some
13 folks may have some concerns about what this might
14 do, the deterrents effect on public safety and here I
15 want to distinguish between the types of fines that
16 might relate to customer complaints uhm or, or to
17 driving and those that are safety related. I just, I
18 want to reiterate that right now the TLCs Critical
19 Driver Program which suspends driver's license after
20 six points accumulated in 15 months. As far as we
21 know, is the strictest standard for professional
22 drivers anywhere in the country so stricter than
23 those for current CDL holders of trucks so I think
24 that, that framework aside from financial penalties

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would not be addressed by any of the changes that we are discussing today.

CHAIR FERNANDO CABRERA: Thank you.

NINO HERVIAS: Uhm good afternoon Councils, my name is Nino Hervias representing the Coalition of Taxi dri... uhm Medallion Owners. And uhm what we all know as the reason why we are here, uhm when agreement, the process is broken. And we are here to fix it because we deserve fairness in a due process. Council Cabrera's Bill is a step in the right direction and it is urgent for us since our industry has been decimated by this totally unfair competition that we are facing today with possibly reversible (like four suicides), you name it where I can go on the whole day. Uhm since your testimony has been well and I, I second that, uhm on the practicality, uhm of the window that provides uhm which uhm here for three hours, I will recommend that for two hours, cause I mean for us drivers every hour is an eternity. It is, what the fine, actually what kind of fool are you going to bring to the table and it is so important to keep that in mind but also but also uhm in fairness of a hearing, in practical, I as a driver as my friends also they, they face it, I see

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2 no parameters when it comes to testimonies from the
3 Respondent and the Complainant or the Official. Uhm
4 when there is a 50/50 fair uhm statement both eyes
5 that uhm we are not given the benefit of the doubt
6 and I don't know what is, what is the guidance a
7 Judge or anybody I mean a Judge has but my only
8 understanding is they I believe that they believe
9 that every officer are angels. That's all I can say
10 so it's urgent I mean to do the best that we can in
11 and get it right this time. I support Bill 748 right
12 now. Thanks so much.

13 BHAIRAVI DESAI: Hello, good afternoon
14 uhm we are so pleased that you are having this
15 hearing today. Uhm my name is Bhairavi Desai I am
16 the Executive Director of the New York Taxi Worker's
17 Alliance we have a membership of over 20,000 drivers
18 and as Zubin said, uhm you know when we first started
19 in 96 we had only Yellow Cab members and over the
20 past five years as there has been a revolving door
21 made of the economic desperation where drivers are
22 just trying to figure out which sector is going to
23 allow them to survive. We know have a membership
24 that works across the industry. Uhm you know, the,
25 the four suicides that you know Nino mentioned one by

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2 a driver whose suicide note was left on the back of a
3 summons and you know uhm it, you know it, we can't
4 delabor the point enough that there is a tremendous
5 economic consequence for drivers around these fines.
6 Uhm other than the fact that they are not
7 commensurate with driver earnings is really crushing.
8 It leads to a sense of desperation. It's one thing
9 if you know you don't have enough money for that day
10 to go to work in terms of paying the lease or gassing
11 up uhm the thing is once you loose your license its a
12 permanent loss or at least it's a loss that can last
13 for you know several years before you, you are able
14 to go back to work again. We are talking about a
15 work force that is over 94% immigrant, majority,
16 people of color. It's people coming from communities
17 that are otherwise, you know have limited actions in
18 the overall economy and so when they los, when a
19 driver loses their license, it really does shut the
20 door from you know thousands of families for any
21 sense of econ, you know economic viability, you know
22 to sustaining themselves, we have seen such a rise in
23 eviction notices to like drivers after 60 hours of
24 work a week talking about food shortage and hunger
25 and starvation in the middle of a shift. You know

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2 there is a tremendous crisis, uhm you know some of
3 these issues with the fines of course pre-exist this
4 crisis but at this point, it, it, it is such a heavy
5 boulder, right that feels so crushing that you can't
6 get out, you know get out from under it. Uhm, and
7 the and the idea that you would lose your license, a
8 suspension or revocation and still be expected to pay
9 a fine that could be as much as \$10,000 it, just, it
10 is beyond preposterous, right, its beyond forget the
11 ethics of it, how is it practical for a poor person
12 to be out of their job for a month or longer and
13 still be expected to put it together that much money
14 when people can barely scrape together their rent
15 money nowadays. It is just not practical and what's
16 important here is that the TLC really regulates the
17 economics of our industry on the other side we are
18 calling on that to be done on the FH side as well by
19 having the Yellow Cab, Green Cab, meter rate be the
20 wage floor across the industry so no, no company can
21 go lower, they can go higher but they cannot go lower
22 and to cap the expenses for FH drivers like on
23 vehicle financing which that exists on the Yellow Cab
24 side. Uhm, but so, so, so, you know TLC you know in
25 many ways shapes the economic. When drivers take a

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loss unless the agency that regulates this industry has a stake in that loss, the reality is things will not change, right, so we are the only ones that pay the price, that has to shift because if those in power don't share some of our grief, then we don't get heard and things simply don't change. Thank you.

CHAIR FERNANDO CABRERA: Thank you so much. Uhm I wanted to propose an idea here. You, we have this Bill and I hear what you are saying regarding your concern about the Judge's penalties being too high. What if we half what you are proposing today along side with this, so we are not talking about an exuberant amount of fines which is against uhm the 8th Amendment of the Constitution of the United States, excessive fines, right, uhm what if if we have two the two working in conjunction with each other where we have half the amount of the that we see in Chicago and we have this at the same time and yet put it in the hands of the Judges which I still be. I mean, I mean we, we do it with everything else. I think the reason why we have it right now and it looks so appealing is because of the 5000 you now as the letter says you know \$300 you know pay \$300 now or you could be liable paying

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2 \$5000. I'll be I'll be honest human nature kicks in
3 and it would be like here is the \$300 which is very
4 close to some of the you know two and a half days
5 worth of work and so which is like you mentioned it
6 decimates, uhm literally the financial stability of
7 families. What are your thoughts on that if we have
8 both of them at the same time?

9

PETER MAZAR: I believe, I think within a
10 more limited range uhm that that could be
11 appropriate. I my concern would be just uhm on whom
12 is the burden to adjust the fine. Will it be the
13 Default position of the ALJs to assume the maximum
14 and then to be argued down from that or vice versa,
15 uhm and what would be, what would be the primary to
16 justify any changes in the you now would that find it
17 ways into OATH rule making any, any departure from
18 either the minimum or the maximum would have to be
19 justified rather than as I mentioned earlier, there
20 is, you know there is no rational required by the
21 appeals unit. That would be my concern.

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CHAIR FERNANDO CABRERA: You know for me
23 the culture of ALJ should be one of making a judgment
24 based on the merits of the case. And but again if
25 you only have an option of this high or nothing I,

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I'm with you, I hear you and I we are ready, I, I, I went to your press conference yesterday and we are already working on some possible Legislation here to make sure that we have equity taking place. Council members any questions before our next panel?

KALMAN YEGER: I have a question.

CHAIR FERNANDO CABRERA: Sure.

KALMAN YEGER: Thank you I had a question for I think you, Mr. Mazar.

PETER MAZAR: Yes.

KALMAN YEGER: Uhm you indicated uhm that your concern about allowing uhm the uhm allowing the OATH Judge to mitigate the penalties based on these various factors that are in statute. Uhm is that the TLC would no longer offer the pre-settlement process but uhm there's nothing right now requiring them to offer the settlement process in the statute as it currently is. The reason they do it is because they want to take the cash on the table rather than roll the dice for later, and they are still going to still, uhm in my estimation I mean just like any other agency that at the end of the day is you know it has a several fold process right, obviously it cares about the people and it cares about the cars

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2 and it cares about the drivers but it also has an
3 aspect of their, uhm of the bureaucracy that requires
4 them to impose penalties and collect them. They will
5 continue doing the settlement process, I don't see
6 why they wouldn't but I haven't done a question yet,
7 but what, what we've done and this, this is what I
8 will post to you is what I believe the Council is
9 doing here is uhm uhm giving the Judges not as a
10 matter of eve.. of course in every case but as a
11 matter of but as a matter for a special case, uhm
12 just why the word may is in there for the interest of
13 just as required, not every case requires a lower
14 penalty from the, from the uhm guideline penalty
15 based on the interest of justice, right, it's a
16 special case, that's why, that's why cases get
17 dismissed in the interest of justice because
18 typically they wouldn't be dismissed but the interest
19 of justice all things taken together are given the
20 nine varying factors that we have listed in the
21 statute, put them all together, the Judge says uhm
22 \$1500 penalty doesn't make sense, a \$100 penalty
23 makes more sense. You know so what we, what we are
24 really doing here is we are not taking away the TLCs
25 ability to do that settlement process, uhm do you

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still have, given, given the way that I am looking at it, and this is the way we looked at it I think, do you still have a problem with it?

PETER MAZAR: Well he, I will address it this way, settlement process is relatively new uhm the TLC only started the settlement process maybe two or three years that, before that they took everything to hearing and the reason that they went with the settlement process, in part it might be for the money on the table, in part it may be judicial convenience and expediency uhm in, in part so that they most of the types of summons that we see are routine cut and dry, they are not the kind of cases that you are going to litigate, let's say a taxi cab had an overdue inspection, uhm either it was inspected on time or it wasn't and now the Commission through a settlement process is offering a lower fine, so you, you can plead guilty and pay \$100 instead of paying \$200. Uhm on the consumer cases, they do offer settlement sometimes, sometimes they offer settlements that are still not worthy of consideration. I have two cases on for next week that the settlement offer is \$3000 I'm not really, neither of my drivers are going to take that

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2 settlement. So the pros, but I think that but my
3 fear and I and I nothing has made me uhm has turned
4 away to alleviate is my fear is that the TLC will
5 turn around and say well you can go to every hearing
6 and argue in front of the Judge now for mitigation.
7 Uhm rather than going uhm on a case by case basis and
8 having your settlement processed. And like I've
9 said, I probably settle about 90% of my cases, uhm
10 because and I only bring the cases to trial that I
11 feel that I am going to win because there is no
12 reason to put somebody license, livelihood at risk
13 unless I am very, very confident that I have a strong
14 defense on the, on the case. So those are the only
15 cases that we are actually going to, going to bring
16 to a hearing. Uhm and those cases, I mean those
17 cases, I mean we have a reasonably good record but
18 unfortunate I mean you almost hate to say it but
19 unfortunately you don't know if the quality of what
20 you get at the at the tribunal varies from Judge to
21 Judge and there are many Judges that when I walk into
22 the room I know immediately that I am going to be
23 found guilty and I'm going to have the, the maximum
24 fine because that's what those Judges do. There are
25 other Judges that you don't feel that same way and

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2 the justice isn't across the board, it isn't even and
3 and yes I understand, I, we do, I practice in traffic
4 court, I practice in criminal court I know that you,
5 you can say sometimes you have Judges that are more
6 harsh and more lenient but they, there still needs a
7 lot of work in the tribunal to bring the level up of
8 the quality, I mean perhaps it is better than it was
9 but there is still uhm I need that you really want to
10 know that you have a fair a fair hearing and without
11 the settlement process if I had to bring everything
12 to a hearing it would be very, very difficult and I
13 unless I knew that the settlement process was going
14 to continue that the TLC would continue to offer the
15 kind of settlements that they have uhm I don't, I
16 don't I mean I, also my concern and I, I listen what
17 the two the two Chair people said and I do agree that
18 most Respondents are not sophisticated enough to make
19 a cogent argument with respect to mitigation penalty,
20 with a lawyer, I you know we could do it, a lawyer or
21 a trained representative but I, I don't know that a
22 Respondent is going to be able to articulate the kind
23 of uhm things that we have, we have other processes
24 where people come in and they have to articulate how
25 to, whether they should keep a license or not keep a

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license and if they don't come in with representation they are really at a disadvantage. I am worried about that.

KALMAN YEGER: When I was, when I was talking to the Chief Judge uhm and or when I was questioning, whatever we do here uhm uhm one of the things that I talked about was the, the notion that OATH is designed as a pro se court and he has really done more work over the last four years as he has talked about the Council since the Mayor came in to office to really make that a more user friendly court for the Respondent side, uhm, uhm to make it more administratively user friendly on the Petitioners side but also to make to make it easier for Respondents to walk in there and get their case as adjudicated as pro se litigant which most people do. Most people are not able to hire an attorney to represent them and obviously drivers are include in that for a lot of reasons, uhm, uhm but I think that what you are indicating is something that can be easily resolved by OATH by creating a process. You know, they can they can create a little booklet, they have dozens of booklets about the different kinds of cases they do. They can create a form saying if you

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2 need to request that the court uhm reduce your
3 penalty you have the right to do so for the varying
4 nine factors and here is the evidence that we would
5 take for each of those nine factors. There are
6 different ways that the court can do that but uhm to,
7 to not give the court the ability to mitigate the
8 penalties the only other option that you are
9 suggesting is to, excise that from this, from his
10 proposed statute to say that right now, that as it
11 stands right now the Court doesn't have the authority
12 to mitigate the penalty and make it a lower interest
13 of justice like \$25 penalty. You want that excess
14 from the statute, I want the court to have that
15 option?

16 PETER MAZAR: Well uhm I'll answer that
17 in a little bit of a different way. One of the
18 things that the City Council did a couple of years
19 ago is you've decriminalized a lot of.

20 KALMAN YEGER: Not me.

21 PETER MAZAR: Uhm okay.

22 KALMAN YEGER: My predecessor Council.

23 PETER MAZAR: Your predecessor Councils
24 have decriminalized a lot of offenses, one of the
25 offenses that taxi cab drivers typically, typically

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2 get is, is engine idling which under the
3 Administrative covers as a misdemeanor returnable to
4 criminal court. When I used to go to criminal court
5 with my drivers I used to get at least a plead guilty
6 to public health and only get a \$25 fine. Now they
7 go to the OATH, the minimum fine is \$350 for the same
8 offense but it's not criminal anymore there won't be
9 a warrant out for their arrest if they don't show up
10 in front of the OATH tribunal there will just be
11 defaulted for \$350 but is that justice, uhm is that
12 mitigation, we've taken the same offense and made it
13 a defacto \$25 criminal offense is now a \$350 civil
14 offense is that what it should be? Maybe it's maybe
15 engine idling is serious and maybe they felt that the
16 the criminal court Judges were not doing, and I
17 understand in criminal court of course we mitigate
18 all the time, we wind up, there is always plea
19 bargaining. We always uhm are doing that, the
20 settlement process is kind of the process that we
21 have right now. Uhm and in past times when the TLC
22 was a little bit more open to negotiating the
23 settlement process, now they are much more concerned
24 about being uhm having a settlement process where
25 everybody is treated equally so there is really very

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2 little negotiation with the TLC when it comes to
3 settlements. It's pretty much if this is the
4 violation then this is the fine then the settlement
5 is this, yeah, or 2/3 or whatever it is. In a
6 perfect world I would love to see Judges have
7 discretion to lower penalties. I am trying to figure
8 out how it would work. I can see it working if maybe
9 if you had a two, a two hearing process where I did a
10 hearing and then if I'm found guilty then I can
11 submit before the pa, and as a second phase maybe
12 before penalty they do that in the OATH trials unit
13 does that now where they have a second, a second step
14 where they do a penalty phase, maybe for the more
15 serious violations we could do something like there,
16 where two steps or if you are found guilty the Judge
17 doesn't immediately impose a penalty but then you
18 have the opportunity to present uhm evidence of
19 mitigation.

20 KALMAN YEGER: I think like that might
21 work.

22 CHAIR FERNANDO CABRERA: You are talking
23 about an entirely separate trial?

24 PETER MAZAR: Uhm a second, a second
25 phase of the trial after the fact finding phase.

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KALMAN YEGER: A second phase of the trial after the fact finding phase.

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PETER MAZAR: I'm talking about elongating the process by a factor of two sometimes, right, you know.

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KALMAN YEGER: Are those probably in the uhm I I guess you are not looking to do this on a, it seems like this is going to be something that would be done sparingly maybe only in an interest of justice.

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PETER MAZAR: I mean that's, but that's the point of the statute because after the first time the Council is actually given the authority on these kinds of cases to OATH judges to look at other factors other than the penalty guidelines that the TLC puts out and to and to take the you know the extent of harm caused by the violations one caught my eye right now for example on the engine idling, right, if you know, if uhm if uhm if the OATH Judge says \$350 because you left your engine on for two minutes, are you kidding me, \$25 is fine. Right, so that's the kind of thing that we are talking about. Now uhm you just ran over somebody's foot because you

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were looking at your phone, you don't get mitigated for that.

KALMAN YEGER: I understand.

PETER MAZAR: And maybe, maybe that person should lose their license but what we are talking about is that the, the Respondents have the opportunity to say this is the, these are the facts of the case, this is what I was found or will be or possibly or potentially found liable of and this is, these are the issues. So if you intend to pose a penalty Judge I just want you to be aware of the following.

KALMAN YEGER: Uh-huh.

PETER MAZAR: I mean you have one to work with because there are penalty guidelines and the penalty guidelines says you know what you are being charged with, you know the code that you are being charged with the penalty could be anywhere from \$300 to whatever, you know \$5000, \$10,000 whatever the case may be, perhaps \$10,000 as a maximum as an up to \$10,000 fine which is I think what the enabling statute allows is that would be.

KALMAN YEGER: That would be in.

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PETER MAZAR: Probably something that should be looked at.

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KALMAN YEGER: At all the trials, that's the penalty is up to \$10,000.

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PETER MAZAR: And it's po, it possibly should be but that, that's something that is done citywide across the board for a lot of agencies, the up tos, the question is whether or not the, the TLC which is imposing the penalties is uhm is going up to too many times and perhaps that's why Judges who are independent of the TLC should have the ability to take other factors and look at them and say you know, we can, we can mitigate based on these factors. So just.

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KALMAN YEGER: Two ways to look at it.

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PETER MAZAR: There are many ways to look at it, I don't know.

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CHAIR FERNANDO CABRERA: Well actually Council Member you came out with an idea that I would love to support of the manual that would be a very good LS request, I would love to be a caprine with you an looking forward to have it and looking forward to having a hearing on it. Now we have two LS requests for today which is very, very good and put

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2 our staff to work even more for the extra staff that
3 we are getting.

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KALMAN YEGER: I look forward to it Mr.
Chairman, thank you.

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CHAIR FERNANDO CABRERA: Thank you so
much to the panel, thank you, thank you for your
advocacy, please do not give up the fight because
literally there are lives at stake here and their
families. Thank you so much and with that we will
have the last panel, uhm I'm going to try to read
this last time but Alex Camarda from Reinvent Albany,
Mar, Mark O'Conner from Transportation Alternative,
Brian Howell, Kristen Johnson and Hoag Vald(SP?) feel
free to come up. Thank you so much for waiting to
all the way to the end. It means a lot. Fantastic I
think we need, feel free to pull up that blue chair
if you could just get a little closer, there you go,
fantastic, feel free to begin. Just identify
yourself, thank you. Again we will have three
minutes on the clock and then we will have some
questions.

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I'm accompanying my testimony with a
slideshow of photograph that I took that her basis
for the complaints that I've been fighting for TLC.

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2 Thank you for hearing my testimony, my name is Hoag
3 Vald (SP?) I live in the east village of Manhattan
4 with my family. I have three children ages 7, 5 and
5 almost 4 weeks old. As the majority of the people
6 who reside in this City I do not own a car, to
7 transport my children to school and back I use a
8 cargo bike that can hold multiple children. That is
9 an efficient way which makes zero pollution. When I
10 ride by bicycle every day I encounter endless amounts
11 of traffic violations by drivers around me. One of
12 the most prevalent and unsafe situations I observe is
13 of drivers who block bike lanes. Two years ago I
14 discovered that the Taxi and Limousine Commission
15 prosecutes drivers who violates traffic rules so I
16 started filing complaints online, submitting
17 complaints along with pictures to the 3-1-1 website.
18 TLC found that most of my complaints had merit and
19 prosecuted them. Unsafe driving is prevalent in the
20 city, cross walks are blocked regularly, pushing a
21 stroller through a blocked cross walk is an unsafe
22 and unacceptable situation. People get killed by
23 being knocked over, doors that are opened on to bike
24 lanes. When a driver speeds in the school zone the
25 summons is made to the vehicle owner not to the

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2 drivers. TLC is holding professional drivers
3 accountable for violating traffic rules.
4 Professional drivers use the street at a multiple
5 higher rate than any other driver since they drive
6 the city streets for 10 to 12 hours a day. Reporting
7 of unsafe drivers by street users is the only merit
8 of an effort to create a safer city for people to
9 live in. It is a sincere method since the
10 complaining witness has no monetary incentive to file
11 a complaint. No amount of money from the fine that
12 the driver pays for violating the traffic rule will
13 go to the complaining witness. TLC prosecuting
14 attorneys are professionals who give an excellent
15 consume service, they follow up on complaints and
16 will not prosecute cases that are determined as not
17 compliant with TLC rules. Every case is thoroughly
18 investigated. The drivers are held accountable and
19 pay a fine. TLC has established a reasonable and
20 fair system. The drivers have a change to plea
21 guilty and pay reduced fine or go to a hearing to
22 challenge the charges that were brought up against
23 them. I testified in over 100 hearings in the last
24 two years, 60% of the cases the hearing officers
25 found the driver guilty, 40% were dismissed. The

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2 driver walked home and didn't pay a fine. This is a
3 non-discriminatory system. The complaints are based
4 on Taxi Medallion numbers or FHP license plate
5 numbers. No prejudice, versus gender or race of the
6 Respondent drivers. This method of civic engagement
7 should be lotted and expanded. A telephone app that
8 was created specifically to make the Compliant filing
9 process easier called Reported has processed over
10 2700 complaints since it was launched two years ago.
11 I personally filed a dozen complaints a day,
12 culminating in the thousands over the years. I would
13 like the Committee to oppose this Bill since it will
14 diminishing the ability for the Taxi and Limousine
15 Commission to hold drivers accountable for unsafe
16 driving. Today when a hearing officer dismisses the
17 case, the driver pays no penalty. The ability to
18 reduce a fine by the discretion of the hearing
19 officer in a case that he rules the driver is guilty
20 will make the whole process meaningless. Drivers
21 will have no incentives to settlement for the maximum
22 fine amount since the fine amount will be ambiguous.
23 This method that was introduced five years ago
24 eliminated the OATH backlog of mine. Please expand
25 the system by staffing of more prosecutors in order

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2 to reach the reach the goal of Vision Zero that no
3 one human being will die on the streets of New York
4 City because of reckless driving. Please publicize
5 this method so that a real change will come to the
6 unsafe driver behavior that exists right now in the
7 city. I want my kids to be able to walk safely in
8 the streets. I want every driver to respect the
9 pedestrian's right of way, keep cross walks, bike
10 lanes, bus lanes, bus stops clear. I want drivers to
11 stop unnecessary honking, respect soft lines, stop
12 idling their engine creating air and noise pollution.
13 TLC holds drivers accountable for all of these
14 violations. Thank you for hearing my testimony.

15 ALEX CAMARDA: So I will try to summarize
16 my testimony so it's as quick as possible. So uhm my
17 name is Alex Camarda I am the Senior Policy Advisor
18 for Reinvent Albany and I am actually presenting
19 testimony for Reinvent Albany and Beta NYC today uhm
20 we are testifying on two Bills, the DORIS Bill
21 related to creating and inventory of required reports
22 under city law and then also the Intro 14 uhm
23 regarding broadcasting of candidate debates. So I
24 will start with the, with the first Bill, generally
25 we support the concept of creating an inventory of

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2 reports that are required under the law, we think
3 that is fundamental and very important since so much
4 of the, so many of the laws the Council passes are
5 actually reporting Bills. We think the mechanics of
6 the Bill needs some work in particular we think that
7 uhm there needs to be more of an open data approach
8 to reporting information as the Commissioner alluded
9 to of DORIS. We then that Government generally needs
10 to move away from providing information that's lock
11 in static PDF reports and report data in an open,
12 usable, and dynamic form which is actually required
13 by the City's Open Data Law. Uhm the online table of
14 reports on the DORIS website in their publications
15 portal, created by this Bill should be downloadable,
16 machine readable and sortable by column headers like
17 agency, date due, date last released, name of the
18 report and other categories. Uhm the spreadsheet
19 itself that the Bill envisioned should be required to
20 be put into the Open Data Portal and automated so
21 that it's instantly updated. Uhm any tabular data
22 that's in these reports that are given by agencies to
23 DORIS including any grafts, charts or tables are
24 required by law to also be placed into the Open Data
25 Portal and we also opposed the idea that DORIS would

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2 spend time uhm scanning and uploading reminder letter
3 that is sent to agencies and put those into the uhm
4 database in lieu of the reports. We think that there
5 should just be another column in the online list that
6 reports whether the agencies did the report or not
7 and that a separate list should be created of all of
8 these agencies that did not complete the report and
9 you could look at the model, the state authorities
10 budget office does something just like this so it
11 creates kind of a list on their website of those who
12 didn't meet their obligations of the law, very clear
13 and easy to read. Beyond that, beyond the open data
14 principals, we have some other suggested amendments,
15 we think that DORIS should be required to send a
16 letter, not just 10 days prior to a report being due
17 but at the beginning of a Fiscal year to let agencies
18 know these are the reports that are due for the
19 upcoming year. And these are the ones that uhm you
20 should be preparing. For the online list we think
21 that the exact site in the charter administrative
22 code that requires the report should be identified so
23 advocacy groups can look at that and see if the
24 report is actually met in terms of all the
25 obligations and we also think that there should be a

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2 brief summary of the report in this table as DORIS
3 now does in its government publications portal. So
4 moving quickly on to the uhm second Bill Intro 14.
5 Uhm you know generally speaking we encourage civic
6 participation in our democracy through the use of
7 modern technology. We think it is much easier and
8 cheaper to actually do webcasting uhm rather than
9 television broadcasting. We think that that is
10 advantageous not only because it's less expensive, it
11 allows for archiving at much lower costs and it can
12 be watched on smart phones which more and more is
13 what people watch their content on these days. Uhm
14 we do think that if uhm the Council does want to add
15 broadcast channels for those who don't use smart
16 phones and other more modern devices we would
17 encouraged two amendments be made to the to the Bill
18 related to the broadcasting provisions. One is we
19 think that the government channel, uhm there is four
20 NYC.gov channels, one is actually a government
21 channel, we think it should be re-broadcast on that
22 channel uhm rather than the one that is most popular.
23 Uhm there is an NYC.drive channel where some people
24 like to watch traffic evidently. We are not sure
25 that it makes sense to air the debates on that

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channel and we would also note that NYC.life for

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reasons that we don't understand, that's one of the

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channels, it airs on Comcast, direct TV and dish

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while the other NYC.gov channels do not so that

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actually reaches more people so that might be the one

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channel that you want to air the debates on or maybe

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all four but we leave that to you. Thank you for

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your time today.

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KRISTEN JOHNSON: Hello good afternoon

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Chair Cabrera and members of the Committee. My name

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is Kristen Johnson and I am testifying on behalf of

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the NAACP Legal Defense and Educational Fund (LDF).

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Thanks for the his opportunity to testify on Intro

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748. LDF strongly opposes the portion of this

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proposed Legislation that would allow OATH ALJs to

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impose fines below the minimum fines for TLC related

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violations. Those fines have already proven

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inadequate to remedy and deter the widespread and

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persistent problem in the city of trying to hail a

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cab while black. At least in ride refusal cases

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those fines should be increased, not potentially

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lowered. LDF is the nations oldest civil and humans

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rights law organization. LDF works to erratic race

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discrimination and public accommodations is the

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2 legacy of the nation's Civil Rights Laws which
3 historically were used to attack discrimination in
4 public spaces, schools, transportation, public
5 accommodation and transforming those spaces to
6 protect the dignity of communities of color. Since
7 our incorporation in 1940 LDFs headquarters have been
8 located in New York City and an additional LDF Office
9 is located in Washington DC. The majority of our 75
10 person staff works out of our New York City Office
11 and most also reside in the city. Over 50 years ago,
12 Congress recognized that a Law was needed to
13 vindicate the deprivation of personal dignity that
14 surely accompanies, denies, denials of equal access
15 to public accommodation. 50 years later though such
16 deprivation of personal dignity remains routine for
17 black New Yorkers who have experienced standing on
18 street corners, watching taxi after taxi pass them by
19 or hearing the car doors lock when they try to get in
20 and seeing the same cabs pull over for white
21 passengers without hesitation. This was the case for
22 Leon Collins who was visiting in New York City in
23 2015 with his wife and young daughter when he tried
24 to hail a taxi heading uptown in the hell's kitchen
25 neighborhood. Finally giving up on his attempts to

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2 flag down a cab Mr. Collins asked his wife who was
3 white to try, a taxi stopped for her almost
4 immediately. Mr. Collins later posted on facebook
5 about his experience visiting New York City Riding.
6 Today my younger daughter learned how NYC cabs are in
7 no rush to pick up black men especially on avenues
8 pointed toward Harlem. It doesn't even really anger
9 me anymore because it has always been this way as
10 long as I can remember. This past October LDF
11 Director Counsel Charlotte Eiffel (SP?) tweeted about
12 her experience being denied service while trying to
13 hail a taxi. The experience she described is a
14 common one for black New Yorkers. When the taxi
15 driver saw her trying to flag him down he on duty
16 light off and drove past. The TLC replied to the
17 tweet prompting an ongoing dialog between LDF and TLC
18 about the persistent problem of discriminatory ride
19 refusals in the city. Within days of meeting with
20 TLC, Ms. Eiffel was refused service twice more, once
21 while leaving the LDF Office in the financial
22 district and once while leaving the staff holiday
23 party in the West Village. Ms. Eiffel's experiences
24 underscore the prevalence of discriminatory ride
25 refusals in the city. Uhm communications with TLC

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2 during this time have been constructive and also
3 illuminating add to the extent of the problems that
4 must be overcome within the industry. Deprivation of
5 personal dignity is not the only harm to black New
6 Yorkers inflicted by routine and persistent ride
7 refusals. There are substantial economic problems as
8 well, missed job interviews and flights, being late
9 for client meetings or doctor appointments or having
10 one's pay docked at work and there are black tourists
11 whose starry visions of New York City are marred by
12 racism. How many people visiting New York City
13 experience what happened to my colleague who after
14 waiting in the taxi line at Penn Station had a taxi
15 roll past her to pick up a white woman standing 20
16 feet behind her. The man working the taxi stand
17 observed what happened and apologized, saying that he
18 sees the same thing happen to black people all day.
19 Many white New Yorkers have had the experience of
20 securing cabs for their black friends. I have
21 personally heard from white law clerks who would have
22 to hail cabs in New York for the African American
23 Judge for whom they worked and from a colleague whose
24 desire is to come to New York had diminished due to
25 experiences of having had to ask his white boss to

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2 help him get a cab in order to not miss his flight.
3 The consequences are particularly severe for the many
4 black people and other people of color who live in
5 out of borough neighborhoods without access to a
6 subway making them dependent on taxis and the bus
7 system which is arguably an even worse crisis than
8 our subways. Many taxi drivers as we have learned in
9 our conversations with TLC would readily admit that
10 they would refuse service to a black person because
11 they think they might live in an out of borough
12 neighborhood which would be less economically
13 advantageous for the driver. As a result, the
14 refusal of some taxi drivers to serve black customers
15 further segregates the city and further marginalizes
16 communities of color. It can prevent black New
17 Yorkers from participating as full citizens in New
18 York City life. The problem of course is not new but
19 it is now 2018 and the problem persists. Every day
20 black people in the New York City are denied a basic
21 service because of the color of their skin. Learning
22 from a young age to associate the click of a cab's
23 door locks with racial exclusion and corrosive
24 prejudice. I'm almost done. The Bill currently
25 before the Committee would give ALJ the discretion to

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2 reduce penalties including for biased related ride
3 refusals below the minimum amount set by the TLC. As
4 you know from our discussions with the TLC and others
5 many drivers already consider the potential for a
6 fine an acceptable cost of doing business. Something
7 they are willing to bear based on false and harmful
8 stereotypes of black passengers that are widely held
9 throughout the industry. The penalty for a first
10 time violation is only \$350, \$350 excuse me if the
11 driver pleads guilty before a hearing and \$700 for a
12 second violation occurring within 24 months. Taxis
13 operate in public spaces, that's public
14 accommodations and TLC is required to enforce
15 policies and practices and ensure riders do not
16 experience discrimination. The kind of
17 discrimination experienced by black passengers
18 resonates deeply with African-Americans who still
19 suffer the indignity of discrimination by businesses
20 operating in public spaces. For far too long Taxi
21 drive discrimination against black people has been an
22 open and ubiquitous fixture of New York City Streets.
23 If the City Council allows for lower penalties for
24 racial discrimination it will be a signal that black
25 New Yorkers indeed all New Yorkers will hear loud and

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2 clear at a time when openly racist rhetoric is
3 condoned or even uttered at the highest levels of our
4 federal government New Yorkers pride themselves on
5 advancing and representing values of equity, fairness
6 and diversity. The proposed Bill is not just a step
7 backwards it is a statement that the daily
8 indignities of black New Yorkers don't matter. Going
9 forward we should look to bold innovative solutions
10 that will finally put an end to racial discrimination
11 in the Taxi industry. For now, though the decision
12 is exceedingly simple saying no to a build out will
13 not deter people who operate a public accommodation
14 for denying a basic service to a person based on the
15 color of their skin. We respectfully request that
16 the Council reject this Bill and support the
17 imposition of penalties that will adequately punish
18 Taxi drivers for engaging in discrimination against
19 black commuters in the City. Thank you.

20 Thank you Chairman Cabrera and Committee
21 members for the opportunity to testify in Intro 748,
22 my name is Mark O'Connor I am the Legislative and
23 Legal Director with transportation alternatives. In
24 the interest of justice and for the safety of all new
25 Yorkers we implore that you do not further authorize

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2 OATH to reduce safety based penalties issued by the
3 TLC particularly when such penalties are related to
4 dangerous driving. Uhm we are highly sympathetic to
5 the challenging work environments and economic
6 situations that many for hire vehicle and taxi
7 drivers confront if they seek economic opportunity
8 for themselves and their families. Drivers deserve a
9 living wage and there are many things that could and
10 should be done including raising fair rates and
11 further regulating the app based for hire vehicles
12 that have started operating in recent years uhm as
13 well as ensuring due process for drivers in TLC and
14 and OATH adjudication. Uhm the Taxi Workers Alliance
15 earlier so I proposed a two tiered penalties a system
16 which something that I think could also be, be used
17 uhm but sacrificing safety and the deterrents that
18 come from dangerous driving penalties cannot be an
19 option. Despite recent reductions and traffic
20 facilities New Yorkers are still killed at tragic
21 rates and are exposed to unacceptable dangers when
22 simply walking, biking or driving. Dangerous that
23 result from speeding, failure to yield to pedestrians
24 and distracted driving. In 2017, drivers licensed by
25 the TLC we involved in at least 30 fatal crashes, an

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2 increase of approximately five deaths from 2016.
3 None of these drivers, not one lost their TLC license
4 in 2017. Citywide 214 people died in 2017 and since
5 2001, more than 5,000 New Yorkers have died in
6 traffic crashes with more than 60,000 people injured
7 every year. Dangerous drivers are the primary cost
8 or a contributing factor in 70% of pedestrian
9 fatalities. In addition to the personal agony
10 suffered by thousands of family, every injury and
11 death results in significant economic costs for the
12 traffic victims and the families. We estimate that
13 the average injury crash costs each victim more than
14 \$9000 in medical expenses and lost wages alone.
15 Costs that multiply exponentially for serious and
16 fatal crashes. People of color and low income New
17 Yorkers up to three times more likely to be struck
18 and injured by motor vehicles and are such stand to
19 gain the most from effective traffic enforcement by
20 the TLC. In addressing this epidemic of suffering is
21 a responsibility shared by all professional drivers,
22 particularly Taxi and for hire vehicle drivers have
23 the greatest responsibility. They spend more time in
24 traffic and through their driving lead the way for
25 either more reckless or safer driving by all New

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2 Yorkers. The responsibility professional drivers
3 have for the safety of others cannot be
4 overestimated. Professional drivers receive special
5 training because they are operating a lethal multi-
6 ton vehicle. The primary purpose of the TLC must be
7 to ensure that drivers operate with the highest level
8 of diligence and comply with loss mentor protectors.
9 Two provisions in Intro 748 are particularly
10 troublesome subsections one and two of section 19,
11 903 will allow OATH to consider the seriousness and
12 circumstances and the extent of harm caused by the
13 violation in question. Speeding and failing to yield
14 to a pedestrian are serious offenses by professional
15 drivers in particular and even if the first such
16 violation by that driver causes no immediate harm the
17 next offense could cost a lost life and so the
18 deterrent sought from the TLC issued penalty may
19 occur too late if the proposed provisions on Intro
20 748 are enacted. Professional drivers have the
21 highest responsibility to operate lethal vehicles on
22 crowded city streets with the utmost care for the
23 safety of us all. TLC enforcement plays a critical
24 role in this effort and we urge this committee to
25 ensure that the important work by the TLC to protect

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New Yorkers are not diminished in your lottable and important question for justice. Thank you.

CHAIR FERNANDO CABRERA: Thank you so much uhm I have a, one question and I know Council Member Barron has a question, I don't know if Council Member Yeger has a question but I find it ironic that your concern that it will go through uhm a Judge to determine whether there should be a reduction when 90% of all the tickets right now are, you heard the Commissioner 90%, the vast majority if I remember right, 90 or 80 something like that, the vast majority of them they get a reduction right now so wouldn't you want uhm to go through a due process where you stand before a Judge and the second thing to consider, I want you to think about is the fact that most of these drivers are people who look like me and you. Uhm it's people of color, 94% of them are people of color and people are trying to make a living every day, so trying to find that equilibrium that homeostasis point I think is very, very difficult and this is why I appreciate uhm the comments that are being made from both sides. I would love for both sides to get together some time, I don't know if that has ever happened, and if it

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2 hasn't I would love to facilitate that. I would love
3 to be in that room. I would love to see what it
4 sounds like uhm so we could come out with lost that
5 at the end of the day it protects people who walk
6 down the streets every day like yourself who don't
7 have a vehicle, you have chosen that lifestyle for
8 you and your family that it protects the drivers,
9 that protects other drivers uhm and at the same time
10 we have people that uhm could uhm make a decent
11 living especially for those who are first time
12 immigrants here in this nation. I don't know if you
13 want to comment on that but then I will turn it to
14 Council Member Barron.

15 INEZ BARRON: Just a quick follow up, you
16 mentioned that most of the drivers are people of
17 color and/or a significant percentage and we you know
18 we, we're sensitive to that and aware of that but I
19 think in our minds, uhm to a certain extent that
20 doesn't matter in the context of a finding that there
21 was a raced based ride refusal. Uhm in that context.

22 MARK O'CONNOR: I agree with you. I, and
23 this is why I think it should go before a Judge. I
24 think this is why the balance of justice should take
25 place before a Judge and right now you have most of

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2 the cases being set up by TLC so I find it ironic
3 that if you want, and we hear that right now we heard
4 that, it is kind of a very strange situation right
5 here because I heard the previous panel is we should
6 have the Taxi which was to say hey we prefer the way
7 it is right now with the, with the TLC because we get
8 a better deal and I hear that you don't want the
9 penalties to go down and yet you don't want it to go
10 through the Judges. So I'm just like stuck here
11 somewhere in between.

12 INEZ BARRON: Right and so I'm not going
13 to hog the mic, I just want to clarify uhm LDFs
14 quarrel is not with the fact that it will be going to
15 Judges uhm overall but I think the idea that it
16 could, it could ever be appropriate to mitigate
17 penalties when there has been a finding of race
18 discrimination with respect to ride refusals, that's
19 our concern and so we, you know we understand the
20 points of discretion and how it can be good in
21 certain circumstances and again our focus, we are
22 kind of leave the focus on ride refusals based on
23 race and when there has been a finding of that, uhm
24 the idea that there could ever be mitigation just
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2 doesn't seem quite appropriate, particularly in New
3 York City.

4 CHAIR FERNANDO CABRERA: And I'm with you
5 100%, I have experienced racism, I have experienced
6 all of the above you have spoken about and the
7 rejection the shame that comes with that so it goes
8 beyond you know you know the psychological effects of
9 that. Uhm so we are not taken away uhm you know in
10 this context I don't think the intent of this uhm law
11 will have an effect on that, as a matter of fact I
12 think that it will give you a greater chance because
13 right now the TLC could say in those cases, they say
14 just give a couple of hundred dollars, we will settle
15 for \$100 and there is nothing anybody else can do.
16 As a matter of you'd even know, you don't even have
17 those numbers because we don't know what it is with
18 that being settled on and we are talking about the
19 fact majority of the case, I'd like to know, I like
20 to know how many times you know people who look like
21 us are being rejected and being bypassed. We will
22 never know that unless they go before a Judge.
23 Council Member Barron and I appreciate your comments
24 they are very powerful. Oh I'm so sorry, I am so

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sorry, I didn't, if you could come forward a little bit.

BRIAN HOWELL (SP?): Sure.

CHAIR FERNANDO CABRERA: Thank you so much.

BRIAN HOWELL: Uhm my name is Brian Howell, uhm thank you to the Committee and to Chair Cabrera for the opportunity to speak today. Since New York City adopted Vision Zero in 2014 traffic fatalities have fallen by 28% and pedestrian fatalities by 45% and that same time traffic fatalities nationwide have increased by 15%. The success in reducing death and serious injury has come through a variety of methods including head starts for pedestrians crossing the street, protected bike lanes and road dyes that decrease vehicle speeds by narrowing roadways and speed safety cameras around 140 city schools that have reduced speeding by 63% as children go to and from school. Despite these clear success, a vocal minority of drivers infuse the efforts calling increased enforcement of the city's traffic safety laws a scam. Despite the fact that these measures were introduced to improve safety and by nearly every standard have improved safety. It's

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2 minority persistence disingenuous claims that the
3 city is merely saving lives and preventing injury to
4 its citizens in a various scheme to collect revenue
5 from drivers. The Legislation proposed today seems
6 to be born of a similar spirit. Reducing
7 Administrative delays for driver's license by the
8 taxi and limousine commission is a worth goal,
9 particularly given that driver's cannot earn wages
10 while attending hearings; however it is crucial to
11 remember that these hearings are often the results of
12 driver behavior. I have participated in about 15 TLC
13 hearings, each the result of a driver attempting an
14 unsafe turn or swerving into my lane and nearly
15 hitting me or parking in a cross walk or in a bike
16 lane or sometimes even on the side walk. Every
17 hearing in which I have participated is lost time for
18 drivers that they could have avoided by simply
19 driving responsibly. The OATH process is
20 participated in by the taxi and limousine commission,
21 provides an opportunity to hold driver's accountable
22 for unsafe behavior that places everybody at risk of
23 injury or death. Every day each of witnesses
24 countless drivers speeding, blocking intersections,
25 blocking cross walks, running lights, etc. Most of

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2 the time we are powerless to seek for address for
3 these dangerous actions but fortunately the OATH
4 hearing process gives us the opportunity for at least
5 some of the drivers on our streets. Ideally the
6 process would be expanded to all drivers. This
7 process exists to demand accountability and promote
8 safety but you wouldn't know that from reading the
9 text of this proposed Bill. The word safety appears
10 only once and only has an item to be considered when
11 a Judge or hearing officers weighs whether to lower
12 but not raise a penalty issued against a driver after
13 a guilty finding. The fair to consider this role,
14 the role that this process plays in reducing future
15 dangerous behavior by drivers is evident in the last
16 sentence of the Bill summary. "The purpose of this
17 Legislation is to alleviate the administrative and
18 the financial burdens that drivers subject to OATH
19 hearings face. The sponsors of this Bill seem to see
20 the OATH hearing process mainly as a burden on TLC
21 license drivers from which little public backing is
22 derived. I urge the Council Members sponsoring this
23 Bill to protect all New Yorkers and I urge them to
24 remember that the true traffic victims are those who
25 are injured and killed on our city streets, not those

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who are called to answer for the dangerous behavior that causes it.

CHAIR FERNANDO CABRERA: Thank you so much and again thank you for your patience, uhm Brian for, for waiting all this time. Council Member Barron?

INEZ BARRON: Thank you Mr. Chair and before I begin I just want to say in full disclosure uhm Kristen Johnson on the panel is my daughter in love or as a legal term calls it daughter in law, she's married to my oldest son and she is the mother of my two grandsons, Solomon and Ossa.

KRISTEN JOHNSON: Thank you.

INEZ BARRON: And uhm I just want to have that full disclosure.

CHAIR FERNANDO CABRERA: And that's why I know that she is a woman of wisdom.

INEZ BARRON: Yes because my son was smart enough to snatch her up. Uhm just some very interesting points I think that were raised in the testimony from the legal defense fund, particularly talking about racism and the race based policies that we see when people of color, yourself included as you've indicated are bypassed by taxis, by cars or

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2 whatever. By the taxis really, that uhm turn off
3 their signs and refuse to pick up those persons, it's
4 historic. It may be that there is a large percentage
5 of drivers who are people of color but we know that
6 every institution in this country has got systemic
7 racism built in from its beginnings because this
8 country began with those same kinds of racist beliefs
9 and they are documented in the founding documents of
10 this country so there may be that there are drivers
11 of color who pass by passengers, would be passengers
12 because they are people of color but that's because
13 they have adopted that same policy I'm going to go to
14 a neighborhood that is going to be far removed, I'm
15 going to go, I'm not going to get as big a tip as I
16 might get in other instances and for other reasons
17 that they bypass these people so the people who they
18 are waiting to be picked up who would like to be a
19 passenger taken to their destination. We used to say
20 in my community years ago that if you saw a yellow
21 cab, oh that's someone who is coming from a trip and
22 coming back via plane because you didn't see yellow
23 cabs in the black community because they didn't, they
24 didn't go through the black community. They were at
25 airports where they would be uhm given a customer who

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2 came to the community so you did not see yellow cabs
3 in my community and I've always lived in a black
4 community, grew up in Fort Green, now living in East
5 New York. The fact that there is a provision perhaps
6 in this proposal that would allow people who violate
7 the conditions of, of the agreement which is to take,
8 pick up customers regardless of any kind of uhm
9 discrimination and that there is a provision that
10 would reduce the penalty, sends a very clear message,
11 Black Lives Don't Matter. You don't have to worry
12 about paying a \$350 fine it will be recorded as a
13 fine that is less than that and why is it less,
14 because the conditions under which you violated your
15 contracts are less important because these are people
16 who are black. So I'm very concerned about this and
17 I think that if this Bill can be revised to bring
18 some consideration to certain types of violations
19 that would not be reduced that that would be
20 something that would perhaps make the Bill more
21 effective and as well as the issues that were raised
22 in terms of certain safety violations that might also
23 be reduced, minimized because there would be a part
24 of the uhm provisions of this Bill are also a great
25 concern, so I just want to say that uhm it raises

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2 some very serious issues as identified in the
3 extended testimony and sends a very wrong message, oh
4 it used to be that if you were passed up because you
5 were black you had a \$350 fine but now don't worry
6 about that, it won't be that high, it will be lower
7 so I think it is a very significant piece, it is a
8 very real issue, it is still existing and I think we
9 need to look to see how we might make an adjustment
10 to the Bill based on the fact of some of these safety
11 issues that were raised as well.

12 CHAIR FERNANDO CABRERA: Thank you so
13 much Council Member Barron and I the one thing I love
14 about hearings and I know we have been in government
15 for a while is that uhm it makes Bills better and so
16 I'd love to sit down with you and see how uhm we
17 could have a Bill that would demonstrate the highest
18 level of justice.

19 INEZ BARRON: Great.

20 CHAIR FERNANDO CABRERA: Looking forward
21 to that. Council Member Yeger? So with that I
22 cannot believe it, we have arrived to the end, I want
23 to thank the staff again whose so wisely and
24 strategically put and prepared us for the hearing.
25 They are simply amazing to work with and I want to

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thank the advocates for your voice, uhm I want to say every word that you have spoken, we are going to take into consideration. We want to make this the best possible Bill uhm and do right but all of our citizens. Thank you so much and see you into the next hearing.

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date May 30, 2018