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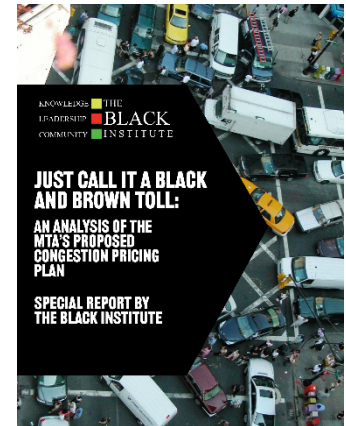
JUST CALL IT A BLACK AND BROWN TOLL:

**AN ANALYSIS OF THE
MTA'S PROPOSED
CONGESTION PRICING
PLAN**

**SPECIAL REPORT BY
THE BLACK INSTITUTE**

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Just Call It a Black and Brown Toll An Analysis of the MTA's Congestion Pricing Plan **January 2023**

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Cover Design: Drew Brown of The
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The image shows auto congestion at
1st Avenue and 57th street in New
York City

Acknowledgements: TBI would like to
thank the Independent Drivers Guild
for providing research support.

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I. EXECUTIVE SUMMARY

The latest, and potentially last chapter of New York's congestion pricing saga is approaching its climax. From the MTA's August 2022 release of the Environmental Assessment (EA) for its vision for congestion pricing, to a heated comment period forcing the MTA to extend public comment, and now to a period of apparent radio silence. There has been a lively debate on this topic with a host of points and issues brought up in support of and against both the MTA's vision and congestion pricing. As a racial justice action tank, a think tank that takes action on issues and policy related to people of color in New York and throughout the diaspora, The Black Institute (TBI) felt compelled to assess this issue from the lens of people of color. While our analysis of the issue pales in length compared to the MTA's, we have just as much to say about the issue, the EA, and the MTA as any other.

Our analysis begins by reviewing the history of congestion pricing, which turns out to be far longer and more storied than one might expect. The idea of reducing congestion by putting an actual price tag on it goes back over a century, when horses traveled the streets, and has appeared in various forms over the decades. In every instance, however, the plans were soundly defeated; as we show, however, each time it was defeated it got closer to the finish line. This current effort began back in 2017, in response to New York City's subway crisis that year exposing the critical deficiency of the city's public transit network. Beyond this point, TBI begins to offer commentary as we trace developments to the passage of a law that implemented congestion surcharges on taxis and for-hire vehicles and laid the groundwork for what would become the Central Business District Tolling program, or CBDTP. We trace this up until shortly after the release of the EA and the charged public debate over that topic, reviewing some of the critical elements of the 2019 law and its relation to the CBDTP.

At this point, TBI begins to dig into the meat of the report and immediately begins to find elements that are, to put it lightly, extremely undesirable from our point of view. We discuss the goals of the plan, both stated and unstated, and find that from the start the MTA seems more concerned with the fundraising element of the law than making a meaningful impact on congestion in New York. For as long and purportedly in-depth this document is, the MTA gives the overwhelming impression of laziness by rejecting actions complementary to congestion tolls in favor of placing all chips on said tolls. A critical example of this is the tolling of virtually all

remaining free crossing from Brooklyn and Queens, a measure that ostensibly serves to reduce congestion, but truthfully is the first view into what looks to be a cash grab. We also note that this section, which lays the foundation for the rest of the EA, relies very heavily on data collected during Mayor Bloomberg's push to implement congestion pricing. That occurred in 2007, with many of the referenced reports on traffic dating to 2007 and 2008, nearly 15 years ago. A lot has happened since then, not the least of which was the 2020 COVID-19 pandemic, and we highlight the obvious issues with using data that is so out of date.

After this, TBI tackles what is probably the most-discussed element of the CBDTP in the public realm – the tolls themselves. Virtually everyone has seen or read about how much these tolls would add to the average commuter's expenses, with the \$23 toll in particular receiving much of the media attention. TBI, however, goes deeper into how the various tolling scenarios function and their impacts on the various drivers, from standard commuters to trucks to for hire vehicles (FHV's). This includes an examination at hidden cost of these tolls for non-EZ Pass commuters, which are significantly higher yet are only slightly alluded to within the main EA and are buried in one of the many appendices.

This is also where we first touch on one of, if not the greatest, injustices present in this plan; the tolls on FHV's. As we review in the history and again at this point, a component of the 2019 law was to implement a per-ride congestion surcharge on FHV's of \$2.75 entering Manhattan across or below 96th street. The expectation was that this surcharge on FHV's and taxis would begin generating congestion revenue for the MTA while it worked on the main congestion toll plan which would incorporate other drivers. However, in every scenario FHV's and taxis unexpectedly now face *additional* congestion tolls, at higher rates and greater frequency than all other drivers. This is made worse by the fact that in many of these scenarios, it is difficult if not impossible for FHV drivers to "pass along" the toll to riders the same way that the 2019 surcharge could be, which places the burden directly on drivers. At this point, we establish that the MTA clearly had determined a group and industry that they could utilize as a sacrificial lamb with minimal blowback, though as events have demonstrated this hope failed to materialize.

TBI then begins to delve into the meat of the report, focusing on the sections that have special relevance to the city's communities of color. This includes the anticipated economic, social, and environmental effects of congestion pricing on the city. While these sections of the

EA are long and filled with technical details, TBI overall assessment is that the MTA did not perform sufficiently critical analysis. Instead, these sections are littered with assumptions and optimistic predictions for how congestion pricing will either not affect, or only positively affect, the issue areas, while discounting, ignoring or obfuscating areas of concern. An example of this is the anticipated rise of air pollution in the Bronx and Harlem, corresponding to an expected rise in traffic as commuters seek to avoid congestion tolls. These are neighborhoods that house an overwhelming majority of Black and brown residents, who will suffer the economic and environmental effects of increased pollution. However, since emissions within the CBD and certain other areas are expected to fall, the MTA apparently sees this as enough to not recommend mitigation.

From there, we discuss what is perhaps the worst section of the EA, the environmental justice section, which has numerous issues ranging from basic definitions to insufficient mitigation suggestions. We again delve into the MTA's feud with the FHV industry, which the MTA estimates may shrink by nearly a quarter and in the same breath asserts will remain viable and not needing strong action to mitigate the effects of the CBDTP on this industry, which is overwhelmingly minority, immigrant, and not wealthy. We then briefly cover the MTA's capital plan, and the composition of the Traffic Mobility Review Board (TMRB). We are particularly unhappy with the TMRB, which is small, insufficiently diverse, and insular; the MTA has appointed five out of the six members to "fairly" deliberate their own plan, and there is effectively no community representation.

Following this, TBI's analysis clearly lays out the numerous issues with the MTA's plan for congestion tolling. We reiterate the key points and failures of the EA from the individual sections. There is not enough nuance, not enough critical analysis, not enough quality research, all despite the length and exhaustive technicalities of the EA until this point. All of these issues affect our communities, communities of color, at a disproportionate rate unlike suburban commuters or wealthy Manhattanites. We cannot afford to pay the price of this plan which promises benefits that are not certain, and that the MTA cannot be relied on to deliver. TBI also squarely lays out the stakes for FHV drivers, which as mentioned is mostly people of color, largely immigrant, and on average barely make enough to afford to continue living in our city. We highlight how the MTA, in its attempt to double-tax the industry under the plan, will

economically demolish an industry that feeds tens of thousands of New Yorkers who are already struggling. The FHV industry likewise demonstrates the inadequacy of the MTA's proposed mitigation efforts, which are at best totally insufficient to address the economic fallout of congestion tolling and at worst are utterly condescending to those who will lose their jobs because of congestion pricing.

After this, TBI breaks down the overall winners and losers of the MTA's overall congestion plan, establishing that ultimately the plan is a regressive tax on communities of color and an attempt to kill the FHV industry. As a result, the biggest winner is the MTA; while their capital plan ostensibly dictates how the revenue from the CBDTP would be used, the MTA is effectively on track to collect billions of dollars that will not be accounted for whatsoever. Wealthy commuters will likewise benefit from cleared roads as fewer wealthy commuters try to find alternative ways into the city to avoid the tolls. These cost-conscious travelers will be forced to rely on public transit infrastructure that, for many of them, does not effectively serve their communities and which may not be served for years to come. TBI then briefly reviews the positive aspects of the plan, as well as reasons why its approval should be expedient, for the sake of counterargument.

Ultimately, TBI finds that the CBDTP is fundamentally flawed and unjust towards New York's vulnerable communities. The current plan is unjustifiably optimistic, does not significantly accomplish its goals, and would permanently damage the FHV industry, which is a majority-minority and economically strained one, by unfairly double-taxing it. The MTA is the only real winner, receiving billions in needed revenue which, beyond what is outlined in the capital plan, will not be traceable by the general public. The approval process for the plan is flawed and while community response to the EA has been overwhelming, there is nothing to prevent the MTA from ignoring the feedback and pushing ahead. TBI therefore demands that, voluntary or not, the MTA retract the EA and their vision of congestion pricing. Congestion pricing must be re-analyzed in such a way that it will: further reduce congestion and pollution, include a better understanding of the effects of congestion tolling on a community level, and suggest tolls that will not regressively tax our vulnerable industries, in addition to other flaws. The enabling law must be amended to increase community representation and build in greater protections for New York's vulnerable communities, including a prohibition on congestion tolls

applying to FHV's. And TBI demands that the MTA be audited to assess its efficacy and true needs, both to protect the city's vulnerable communities and the FHV industry from unfair taxation and advance policy that would ensure the MTA receives additional support from the state, which would prevent the predatory suggestions that this version of congestion pricing contains.

II. INTRODUCTION

Congestion pricing has been a proposed solution to traffic woes for well over a century. The concept, its proponents argue, will revolutionize the current state of traffic in large cities worldwide by creating massive disadvantages for commuters to travel by car through tolls. By making it that much more costly to drive in urban areas, especially business districts, the belief is that commuters will abandon their cars in favor of transportation alternatives including mass transit, cycling, or even just walking for some individuals. This in turn would reduce the amount of congestion in the streets, making the experience better for the drivers that remain on the roads, and even potentially increase economic productivity by ensuring that goods and services arrive at their destinations faster. The money collected from tolls, moreover, can be put towards a variety of social goods, ranging from improving mass transit to incentivizing greener transportation alternatives, and the overall reduction in traffic has potentially large environmental impacts as well.

Critics, on the other hand, protest congestion pricing as a form of regressive tolling that punishes people for driving in an era where it is more expensive than ever. They point to the devastating effects that the scheme can have on workers who drive the economies of their respective cities, both through their job and patronage of local businesses. This argument in particular holds significant weight following the COVID-19 pandemic, which led to many office jobs formerly located in major cities becoming remote not only temporarily, but in some cases permanently.

New York has a long history of attempting to implement congestion pricing, and an equally long history of failures. The latest attempt, which is what this report is concerned with, has been years in the making – all the way back to 2017, when Governor Andrew Cuomo first announced support for the idea during that same years' subway crisis. The MTA was charged with not only devising a plan that would reduce congestion and create a source of revenue for themselves, but to also assessing the impact that such a plan would have on New York City and the surrounding area. On August 10th, 2022, the MTA released their plan and their assessment into the world, prompting divisive debate and, among other things, this report.

The Black Institute (TBI) is a racial justice action tank, a think tank that takes action. We research issues and policy to determine their impact on people of color, and then organize according to the findings. The MTA's congestion plan holds massive implications for New York's communities of color, potentially both positive and negative. There are the tolls, which would almost certainly hurt our city's predominantly lower-income Black and brown communities. On the other hand, however, what about the potential improvements that this money would help to fund, to the aid of communities of color? TBI therefore has researched and written this report, which seeks to answer questions like this and many others by reviewing the MTA's environmental assessment and other relevant sources to assess the impact on communities of color. Sadly, as one will discover as they read on through this report, the effects on people of color are far from being weighted in their favor; rather, it is the complete reverse.

III. HISTORY AND CONTEXT

Congestion in 20th Century New York

Congestion, as a concept, is hardly new. New York, like many of the nation and the world's most important and oldest cities, organically grew from small settlements to the sprawling metropolitan areas they are today. In many ways, these centuries-old origins are at the root of many of the problems that face contemporary cities, congestion being one of those issues. Congestion, simply put, is when there are an excess number of people or cars in an area such that travel time is higher than what it could be.¹ When roads and sidewalks are filled with cars and people, respectively, they are clogged or *congested*. Congestion has always been a facet of city life; people and cars take up space, goods take up as much or more space, and cities happen to have high numbers of both with limited space to move them. Congestion was, until relatively recently (a bit over a century), a people problem; too many people hauling themselves and/or their goods from one place to another.

When the Industrial Revolution occurred, however, congestion fundamentally shifted from a human problem to a vehicle problem, but not as city dwellers today know it – it actually came in the form of horses. Originally restricted to the wealthy, by the late 1800s horses had become the optimal method of transporting both people and goods in the form of horse-drawn carriages, trollies, and barges. In 1890, for example, New Yorkers took an average of 297 horse-powered rides per year.² However, the exploding popularity and number of horses soon led to significant issues in cities, two being particularly pertinent to the forthcoming discussion of congestion pricing – congestion and pollution. The increase in horses and their waste matter posed significant congestion and public health risks and were eventually replaced by the cars that we

¹ "Chapter 2 - The Nature of Traffic Congestion and Reliability: Causes, How They Are Measured, and Why They Matter," Traffic Congestion and Reliability: Trends and Advanced Strategies for Congestion Mitigation (United States Department of Transportation - Federal Highway Administration, March 23, 2020), https://ops.fhwa.dot.gov/congestion_report/chapter2.htm.

² Andrew Nikiforuk, "The Big Shift Last Time: From Horse Dung to Car Smog," The Tyee (The Tyee, March 6, 2013), <https://thetyee.ca/News/2013/03/06/Horse-Dung-Big-Shift/>.

are all too familiar with. Horse congestion was swapped for vehicle congestion, and the visible piles of manure were replaced with invisible fumes and smog.³

As the number of cars grew, the issue of congestion did as well. As early as 1933, the city pushed for plans to impose tolls on free bridges crossing the East River to reduce city-bound traffic and raise revenue but were rebuffed by strong citizen opposition.⁴ Subsequent pushes in the 1950s and the 1970s likewise were defeated, with plans also experimenting with alternative ways to reduce congestion including annual vehicle ownership taxes, parking fees, and even a flat-out ban on private cars in Manhattan. This was especially disappointing in the 1970s as the



Figure 1: Congestion on East 42nd Street, near the Park Avenue Viaduct. Photo credit to Drew Angerer, via Getty images. See footnote 3

decade opened with the passage of the Clean Air Act (CCA), which should have been an impetus for New York to take meaningful steps. While Mayor John Lindsay backed by the Environmental Protection Agency (EPA) had pushed an aggressive plan that involved many of the previously mentioned anti-congestion strategies, his successor Abraham Beame was very opposed to the plan and did his best to kill it, with a level of success.⁵ New York City was ordered by federal court to implement Lindsay's plan, including tolls on previously free bridges,

³ Hannah Frishberg and Amy Plitt, "How Congestion Pricing Could Help Fix NYC's Crumbling Subway System," *Curbed NY* (Curbed NY, March 27, 2019), <https://ny.curbed.com/2018/3/14/17117204/new-york-congestion-pricing-cuomo-subway-uber>.

⁴ Sewell Chan, "How East River Bridges Stayed Toll-Free," *The New York Times* (The New York Times, November 11, 2008), <https://archive.nytimes.com/cityroom.blogs.nytimes.com/2008/11/11/how-east-river-bridges-have-stayed-toll-free/>.

⁵ Lee Dembart, "Broad Parking Ban in Manhattan Begins as Mayor Yields to Ruling," *The New York Times*, June 16, 1977, pp. 1-92, <https://www.nytimes.com/1977/06/16/archives/broad-parking-ban-in-manhattan-begins-as-mayor-yields-to-ruling-206.html>.

in 1976, in order to bring it into compliance with the CCA nearly a year after the deadline for compliance. However, Beame released his own report claiming that although the plan would increase city revenues, it would increase congestion over the bridges and thus pollution.⁶

Wrangling continued into Mayor Ed Koch's term, but the discussion effectively ended in 1981 when the Reagan administration declared New York in compliance with the CCA.⁷

Beyond this point, efforts to substantially reduce congestion and pollution caused by cars in New York ceased until after the turn of the century. As expected, there is little discussion on the racial implications of congestion pricing during 20th century discussions of various proposals to mitigate traffic. However, echoes of the same arguments used to both support and oppose congestion pricing during the 1900s can be found in those discussing its most current iteration, including within this report itself. For people of color, however, the situation has changed dramatically. The economic implications raised then are largely the same, but New York itself has undergone a large demographic shift to become a majority-minority city, meaning that the share of the burden now rests largely on people of color.

PlaNYC 2030 and Bloomberg's Congestion Pricing Plan

Congestion pricing discussion largely disappeared from public discourse after 1981, resurfacing nearly two decades later during the administration of Mayor Michael Bloomberg. As part of his 2007 *PlaNYC 2030*, which was a broad set of ten initiative areas for New York City's future development, including a shift towards becoming a greener city. Among its many transportation goals, the administration proposed a congestion pricing plan that was claimed would reduce traffic by 6.3%.⁸ The Bloomberg plan was noticeably different than the current proposal in several critical ways, which will be more fully discussed when discussing the latter. However, chief differences included:

- **Designating the toll zone as Manhattan below 86th Street**
- **Excluding the Queensboro, Williamsburg, Manhattan and Brooklyn Bridges and their approaches from tolling**

⁶ Edward Ranzel, "Study Opposes Harlem and East River Bridge Tolls," *The New York Times*, April 30, 1977, pp. 23-23, <https://timesmachine.nytimes.com/timesmachine/1977/04/30/80312446.html?pageNumber=23>.

⁷ Arthur Ochs Sulzberger, "City Drops Proposal to Charge Bridge Tolls," *The New York Times*, September 15, 1981, pp. 35-35, <https://timesmachine.nytimes.com/timesmachine/1981/09/15/013876.html?pageNumber=35>.

⁸ "PlaNYC: A Greener, Greater New York," PlaNYC: A Greener, Greater New York § (2007), http://www.nyc.gov/html/planyc/downloads/pdf/publications/full_report_2007.pdf.

- **A flat \$8 toll on entry for all non-truck autos, with a \$4 toll for in-zone trips**
- **A flat \$21 toll on entry for trucks, with a \$5.50 toll for in-zone trips**
- **Exemptions for yellow-cab taxis**

As we will see, these differences and others are quite dramatic. Moreover, the proposal was limited to a three-year pilot program in order to gauge its success as both a congestion reduction measure and a fundraiser. It was estimated that the plan would have raised nearly \$500 million for public transit,⁹ not including the \$354 million in federal funds that would have been allocated to the city. The plan, however, faced significant opposition from both residents and politicians. Residents were, as before, opposed to what was framed as a new tax on working in New York and would make commuting generally more miserable from an economic and time perspective. This was an especially pertinent concern for residents who did not have access to reliable or effective public transit and were thus forced by the necessity to drive – a situation that Bloomberg’s plan did not account for.

Political opposition was based largely around the impact on the areas surrounding Manhattan and came from both City Council and Assembly members who echoed largely similar concerns. Many of these can be found in then-Assemblyman Richard Brodsky’s report on the matter, which among other concerns claimed the toll was a ““regressive tax...targeted at residents of the Bronx, Brooklyn, and Queens and lets suburban commuters off the hook.””¹⁰ It is worth noting that while Brodsky does not mention communities of color, it is a sentiment that nonetheless matters to these communities. This report came just three years before the 2010 census, but by this point the city’s non-White population had already become a solid majority, especially in neighborhoods outside of Manhattan.¹¹ Many of these complaints were given a more powerful voice by then-Speaker of the Assembly Sheldon Silver, who despite representing a district in Manhattan that would potentially benefit from reduced congestion was a noted opponent of the plan. Chief among his concerns, which were echoed by outer-borough City

⁹ Jen Chung, “Bloomberg Accepts Commission’s Modified Congestion Pricing Plan,” Gothamist (Gothamist, March 7, 2008), <https://gothamist.com/news/bloomberg-accepts-commissions-modified-congestion-pricing-plan>.

¹⁰ Nypress, “New York Press - Brodsky’s Congestion Specifics,” Wayback Machine (Internet Archive, July 9, 2007), https://web.archive.org/web/20071008040754/http://www.nypress.com/blogx/display_blog.cfm?bid=76891105.

¹¹ “The Changing Racial and Ethnic Makeup of New York City,” The Furman Center for Real Estate & Urban Policy (New York University), accessed October 17, 2022, https://furmancenter.org/files/sotc/The_Changing_Racial_and_Ethnic_Makeup_of_New_York_City_Neighborhoods_11.pdf.

Council representatives in the eventual vote on the plan, was that commuters would simply park outside of the zone, which would simply shift the congestion and pollution from one area to another.

Ultimately the plan was approved by a handpicked commission 13-2, with a few changes including a shift of the upper boundary from 86th Street to 60th Street.¹² It then moved to the council, where despite opposition from Brooklyn, Queens, and Long Island lawmakers, it passed in a 30-20 vote.¹³ However, Bloomberg's plan ultimately died in Albany on April 7th, 2008, after the Assembly declined to bring the plan to the floor. The date is significant as it was the deadline for the Assembly to approve the plan to get the \$354 million in federal funds earmarked for implementing congestion pricing, which was not met due to the failure to pass the proposal.

Move NY's "Fair Plan"

There was little movement on congestion pricing following the defeat of Bloomberg's plan, but unlike before the idea had not deserted political consciousness. In 2015, a now-defunct environmental organization called the Blue Marble Project¹⁴ proposed a plan for dealing with the city's failing transportation network. Under the Move NY name, the plan boasted the involvement of ex-NYC Traffic Commissioner Sam Schwartz, known by the moniker "Gridlock Sam" for his prior involvement with congestion solutions.¹⁵ Their plan's primary feature was similar to previous proposals in that it proposed implementing tolls on most of the remaining toll-free crossings into a Central Business District (CBD) bounded by 60th Street, which includes both bridges and through 60th Street itself. Where it differs, however, is that it proposed lowering toll rates on several currently tolled crossings concurrently.¹⁶ By balancing tolls, they claimed, the distribution of traffic would even out between the various bridges *and* would incentivize public transit in areas where crossings were previously free by making driving less desirable.¹⁷ Move NY claimed that despite this, the tolling scheme would raise an estimated \$1.5 billion

¹² William Neumann, "State Commission Approves a Plan for Congestion Pricing," *The New York Times*, February 1, 2008, <https://www.nytimes.com/2008/02/01/nyregion/01congest.html>.

¹³ Diane Cardwell, "City Council Approves Fee to Drive Below 60th," *The New York Times*, April 1, 20AD, <https://www.nytimes.com/2008/04/01/nyregion/01congestion.html?ref=nyregion>.

¹⁴ "Approach," Blue Marble Project (Wayback Machine, November 1, 2007), <https://web.archive.org/web/20150810093740/http://bluemarbleproject.com/approach/>.

¹⁵ "About," Move NY (Wordpress, February 26, 2015), <https://movenewyork.wordpress.com/about/>.

¹⁶ "The Move NY Fair Plan," Move NY (Internet Archive, February 2015), <https://archive.org/web/>.

¹⁷ ¹⁷ "Move NY Fair Plan Executive Summary," Move NY (Move NY, January 2015), <https://movenewyork.files.wordpress.com/2015/02/2015-mny-final-ex-sum-copy.pdf>

annually.¹⁸ That impressive figure would be split between MTA and the NYC Department of Transportation (DOT) at a ratio of 75% to 25%

This plan claimed that in-zone travel would be reduced by up to 20%, and that travel times into the city would reduce by roughly 6%. It was also asserted that although yellow cabs and for-hire vehicles (FHV¹⁹s like Uber and Lyft would pay the tolls and an in-zone surcharge,²⁰ the overall reduced congestion would actually increase the incentive for travelers within the CBD to choose cabs and FHV¹⁹s, to the tune of 5 to 15 percent.²¹ Ultimately, they optimistically claimed that despite a reduction of 100,000 auto trips to the CBD, the number of travelers would net increase by 115,000, asserting that the difference would be made up by increased public transit utilization. While a relatively novel idea, the plan ultimately failed in 2016 as a law aimed at its creation at the state level (owing to the funding structure, tolling revenues were to be in a state-held fund) was not passed by the legislature. The bill was introduced in the state assembly but died in committee,²² without other major pushes to enact the legislation following.

One of the most glaring issues with the plan was that while it mentions the disparities inherent in the current system,²³ it ultimately fails to significantly equalize them. Environmental concerns play little into this plan, with its overwhelming emphasis on congestion tolling as a financial solution for the MTA to pay for capital improvements while “equalizing” driver experiences by making it so that no free bridges remained across the East River. This is sound in concept, until one remembers that economic inequality in New York is distributed along racial lines, with the proposed new toll locations disproportionately affecting people of color. A core problem with this scheme, as with all others, is that while tolls may ostensibly appear fair, they have disproportionate impacts. The \$5.54 fare that would have been charged across the East River would have equated to nearly \$1,500 annually for commuters; a tolerable 2% of the

¹⁸ “Move NY Brochure,” Move NY (Wordpress, February 2015), <https://movenewyork.files.wordpress.com/2015/02/2015-mny-final-ex-sum-copy.pdf>.

¹⁹ A note on the usage of FHV¹⁹s – while “medallion,” or the classic yellow cabs, are technically for-hire vehicles, for the purposes of this report the acronym FHV refers specifically to non-medallion rideshare services, such as Uber and Lyft

²⁰ FHV¹⁹s would actually face an additional surcharge of \$1.40 per three-mile trip in a “taxi zone” delineated as the area below 96th street.

²¹ “The Move NY Fair Plan” Move NY

²² “Bill No. A09633B,” Bill Search and Legislative Information (New York State Assembly, June 13, 2016), https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A09633&term=2015&Summary=Y&Actions=Y.

²³ “The Move NY Fair Plan” Move NY

median white person's income in 2015, but nearly double for the median Black person that same year.²⁴

The Central Business District Tolling Plan

The current congestion pricing plan has its origins in 2017, when then-Governor Andrew Cuomo announced his support for the idea of congestion pricing as a way of directly funding the MTA to support subway improvements.²⁵ In the face of numerous, highly public issues emerging in the city's decades-old subway network, including critical elements such as signaling repair, it was believed that the public frustration with said issues would propel the plan forward where other plans had failed. Following a task force investigation of the issue, the plan was included in the budget in 2019 as the "MTA Reform and Traffic Mobility Act"²⁶ which laid the groundwork for what the latest iteration of congestion would be. The act is sprawling, but several crucial elements bear special mention:

- **§1704-1**, which delegates the primary authority for the congestion pricing plan to the Triborough Bridge and Tunnel Authority (TBTA), which is an affiliate organization of the MTA
- **§1704-2**, which establishes the Manhattan CBD as all roads, ramps, etc. that are or enter into Manhattan excluding FDR Drive, the West Side Highway, the Battery Park underpass, and portions of the Hugh L. Carey Tunnel, and that the area cannot be altered
- **§1704-a (1)**, which gives the MTA²⁷ wide authority to design the tolling program provided it minds any limitations/allowances provided within the act. Importantly, it says that the plan must include variable tolling, meet the capital requirements of the

²⁴ Elsie Gould and Jessica Schnieder, "By the Numbers: Income and Poverty, 2015," Economic Policy Institute (Economic Policy Institute, September 13, 2016), <https://www.epi.org/blog/by-the-numbers-income-and-poverty-2015/>.

²⁵ Marc Santora, "Cuomo Calls Manhattan Traffic Plan an idea 'Whose Time Has Come,'" *The New York Times*, August 13, 2017, <https://www.nytimes.com/2017/08/13/nyregion/cuomo-rethinks-opposition-to-tolls-to-ease-manhattan-traffic.html>.

²⁶ "MTA Reform and Traffic Mobility Act (Part ZZZ)," Bill Search and Legislative Information (New York State Assembly, January 18, 2019), https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A02009&term=2019&Text=Y.

²⁷ The act in this instance and throughout technically grants all primary authority to the TBTA. However, as the TBTA is an affiliate organization (and thus functionally part of) the MTA, to reduce confusion this report will henceforth refer to the TBTA as the MTA unless the distinction is warranted

2020-2024 MTA Capital Program, and that passenger vehicles can only be tolled once per day. This money is put into a “lock box,” meaning the funds raised can only be used for the purposes of funding the Capital Program

- **§1704-a (2)**, which states that emergency vehicles and/or “a qualifying vehicle transporting a person with disabilities” are not subject to the toll
- **§1704-a (3)**, which establishes that the plan must include a plan for tax credits/ additional exemptions, the qualifying bar for which is set at \$60,000 annually.²⁸ This is the first mention of the Traffic Mobility Review Board, though to this point it is not established
- **§1704-a (4)**, which establishes that the plan must address tolling with regards to FHV’s, “as defined by, and subject to a surcharge imposed by, article twenty-nine-C of the tax law...informed by the recommendation of the traffic mobility board.” Article 29-C is a surcharge of \$2.75 for FHV’s picking up or dropping off passengers in the “congestion zone”, which is Manhattan below 96th Street²⁹
- **§1706-8**, which amends the Public Authorities Law to create the Traffic Mobility Review Board (TMRB), which is responsible for recommending adjustments to and approving the CBD Tolling Plan (CBDTP).³⁰ The board is six people and must include a mayoral pick, someone living in the Metro North Region, and someone living in the Long Island Railroad Region, with all members being appointed by the MTA

This is just a broad overview of what this law entails, but it should set the scene for what form congestion pricing could take, especially for people of color. A more detailed examination of this will occur later, but it is important to understand what some of the key selling points of this plan are to understand what is to come. Another aspect that bears repeating at this stage, however, is Article 29-C of New York tax law. This is a 2018 change that took effect in 2019, which levied a surcharge primarily on taxis and rideshares with trips that start, end, or include

²⁸ “Central Business District Tolling Program,” MTA (Metropolitan Transportation Authority), accessed October 19, 2022, <https://new.mta.info/project/CBDTP>.

²⁹ “2021 New York Laws TAX - Tax Article 29-C - Congestion Surcharge,” Justia Law (Justia Law, 2021), <https://law.justia.com/codes/new-york/2021/tax/article-29-c/>.

³⁰ “SECTION 553-K: Traffic Mobility Review Board,” Public Authorities (PBA) CHAPTER 43-A, ARTICLE 3, TITLE 3 (NY State Senate, April 19, 2019), <https://www.nysenate.gov/legislation/laws/PBA/553-K>.

Manhattan below 96th Street.³¹ The charge was implemented to begin to raise the funds required by the MTA while the agency formulated what would become the CBDTP. For taxis, this surcharge is \$2.50 per trip; for FHV's, the surcharge is \$2.75 per trip. In the three years since the law took effect, taxis and FHV's have raised nearly a billion dollars for the MTA.³²

Originally, the goal was to implement the new toll and the associated infrastructure installments (chiefly toll-by-mail and EZ-Pass systems) at the designated intake routes at the end of 2020. However, several factors made this deadline infeasible, chiefly the onset of the COVID-19 pandemic, which along with turning the world upside down added significant delays to the federal approval of the project, which is necessary for the project to move forward. It was also claimed that the personal animosity between Cuomo and then-president Donald Trump was contributing to the government's delay in approving the plan.³³ The latter concern was mitigated with Trump's loss in 2020 and President Joe Biden's subsequent inauguration in 2021, shortly after which the federal Department of Transportation under current Secretary Peter Buttigieg approved the plan.³⁴ With the approval, the MTA was given the green light to proceed into the next phase of the process, which was to conduct an environmental impact study of the plan considering a variety of factors with some degree of overlap with the provisions of the original law including:

- **Traffic impacts resulting from implementation**
- **The effects on pollution and surrounding environment**
- **The estimated costs of implementation and maintenance**
- **Impacts on the public, especially populations designated as "environmental justice communities," including on transit, health, and economic impact**
- **Safety implications**

³¹ "Congestion Surcharge," Department of Taxation and Finance (New York State, August 12, 2022), <https://www.tax.ny.gov/bus/cs/csidx.htm>.

³² Michael Gannon, "Rideshare Drivers Assail Congestion Pricing Plan," *Queens Chronicle*, August 25, 2022, https://www.qchron.com/editions/queenswide/rideshare-drivers-assail-congestion-pricing-plan/article_4883600b-be5d-50b6-8445-4ce4e94e99a6.html.

³³ Christina Gouldbaum and Winnie Hu, "Could the Trump Administration Block Congestion Pricing in New York?," *The New York Times*, September 29, 2021, <https://www.nytimes.com/2020/02/25/nyregion/-trump-congestion-pricing-nyc.html>.

³⁴ "NYC Gets Green Light From Federal Gov't for Next Step in Congestion Pricing Plan," *NBC New York*, March 30, 2021, <https://www.nbcnewyork.com/news/local/nyc-gets-green-light-from-federal-govt-on-next-step-in-congestion-pricing-plan/2972213/>.

This approval was met with both joy and anger, with the latter coming in large part from Connecticut and New Jersey, who comprise a portion of the 28-county area the MTA would consider to be the New York metropolitan area. New Jersey was, and remains, unhappy with the proposed plan, since auto commuters from New Jersey would be especially impacted. In August 2021, two New Jersey Congressmen proposed a bill that would bar the U.S. DoT from awarding certain grant money to the MTA unless New Jersey drivers were added to the exemption list, citing the fact that New Jersey commuters already pay close to \$16 to enter the city.³⁵ This legislation ultimately went nowhere, but emphasized the nascent opposition that the plan was beginning to generate. As the process inched forward, the first public hearings were held in which details began to emerge, including wild variances in the number of tolls that drivers would be expected to pay depending on the required time variances and the class/type of vehicle entering the CBD; the figure for passenger vehicles, for example, was on a scale of \$9 to \$23.³⁶ Opposition continued to grow, but buzz surrounding the topic was largely minimal.

Early in 2022, with the MTA reportedly reaching the end of its environmental assessment (EA) process, the federal government requested answers to more than 400 questions before the MTA could release it for public review.³⁷ By this point, the original target date for implementation had long since passed, though publicly state commitment remained strong. Then, on August 10th, 2022, the MTA released the 868-page³⁸ EA into the world, containing a wealth of information and for many, a wealth of questions and reasons to be upset.³⁹ The details will be discussed, but there were several chief areas that ultimately caught the attention of the public. First was the confirmation of the scenarios that the MTA was considering for implementation, which indeed ranged from \$9 - \$23 for non-commercial vehicles, and rates

³⁵ Associated Press, "Proposed Bill Would Penalize NYC for Congestion Pricing Plan," *NBC New York*, August 11, 2021, <https://newjersey.news12.com/proposed-bill-would-penalize-nyc-for-congestion-pricing-plan>.

³⁶ "MTA Holds Hearing on NYC Congestion Pricing, Plans for \$9-\$23 Toll," *ABC7 Eyewitness News*, September 25, 2021, <https://abc7ny.com/congestion-pricing-public-hearings-new-york-city-traffic/11040836/>.

³⁷ Clayton Guse, "Feds Send MTA 430 Questions on Plan for Congestion Pricing in NYC," *New York Daily News*, April 22, 2022, <https://www.nydailynews.com/new-york/ny-congestion-pricing-janno-lieber-federal-review-20220422-wwjvwbzsrvgprnfhwfjhylnca-story.html>.

³⁸ The page count of the EA's PDF file is 868 pages alone, without appendices. There are two virtual volumes of appendices encompassing appendices 2 through 19, which number respectively 1,966 and 1,173. This makes the EA total 4,007 pages.

³⁹ Jose Martinez, Rachel Holliday Smith, and Shantel Destra, "MTA Eyes Congestion Pricing Toll of Up to \$23 Per Vehicle Trip into Manhattan," *The City*, August 10, 2022, <https://www.thecity.nyc/2022/8/10/23299134/mta-congestion-pricing-toll-details>.

topping out at \$65 for commercial trucks. Concerns were also raised about the disparity in tolling between commercial and non-commercial vehicles versus taxis and FHV's, who stood to be tolled a potentially unlimited number of, with potentially drastic effects. And those are just the beginning – the reception was as numerous and varied as the number of scenarios that the MTA purportedly considered within the EA.



Figure 2: Figure 2-1 in the CBDTP EA, detailing the tolling zone and where new tolls would be implemented. Orange represents the toll zone, while the maroon lines and dollar signs denote on what crossings would be subject to congestion pricing.⁴⁰

⁴⁰ New York State Metropolitan Transportation Agency, *CBD Tolling Program Environmental Assessment*. 2-14. New York: Metropolitan Transit Authority, 2022. <https://new.mta.info/document/93446> (Accessed October 15, 2022)

On August 25th, MTA held the first of six back-to-back hearings, a little over two weeks after the release of the EA, in a virtual format. The first hearing received a staggering 391 speakers signed up, something that the MTA apparently did not expect – the transcript of that hearing⁴¹ notes that “Due to the overwhelming interest in this hearing,” conveys an air of slight disbelief. This pattern of “overwhelming interest” was repeated for the rest of the hearings; it is worth mentioning that the president and founder of The Black Institute, Bertha Lewis, gave testimony about congestion pricing on August 30th, 2022.⁴² Originally, the public comment period was supposed to end on September 9th,⁴³ but as the MTA’s official home page for the CBDTP states, the public period was later extended to September 23rd as the MTA “recogniz[ed] the significant public interest...and in response to requests.”⁴⁴ This brings us to the present time, during which the MTA is purportedly evaluating public comments to make adjustments to the proposed plan. Afterwards, the plan will go before the TMRB for approval, then to the MTA board, and finally it will go to the federal government for ultimate approval, which within the EA was projected to decide in January 2023. Given the continued fervor surrounding the topic, the amount of public comment on the subject, and the silence of the MTA about the state of the proposal, however, whether this deadline remains valid is questionable.

⁴¹ In Re CBDTP Congestion Pricing Program Environmental Assessment Public Hearing, Before Representatives of Project Sponsors, (August 25, 2022) (Lou Oliva, Hearing Officer). <https://new.mta.info/document/95461>. See pages 3-4

⁴² In Re CBDTP Congestion Pricing Program Environmental Assessment Public Hearing, Before Representatives of Project Sponsors, 196-200. (August 30, 2022) (Bertha Lewis, President, and Founder of The Black Institute). <https://new.mta.info/document/95481>

⁴³ “MTA,” MTA (MTA, September 2, 2022), <https://new.mta.info/press-release/public-comment-period-proposed-congestion-pricing-program-close-friday-sept-9>.

⁴⁴ “Central Business District Tolling Program” MTA

IV. EXAMINING THE CBDTP

At this point, it is time to examine the CBDTP itself, both the law and the EA itself. With regards to the former, there are several notable differences between this latest iteration and previous congestion pricing proposals. Perhaps most important is that the MTA, through the TBTA, is the primary administrator of the program; this contrasts with previous proposals, which usually placed responsibility on the NYC Department of Transportation (DOT). The law does require that the MTA interface with both the city and state DOTs, as well as the Federal Highway Administration (FHWA), but the MTA is in the “driver’s seat” of the operation both in planning and in implementation. The NYCDOT and NYSDOT are attached due to their legal purview as transportation agencies, while the FHWA is involved due to federal law mandating their involvement in a project of this caliber – indeed, the federal requirement that the MTA and co. had to produce an Environmental Assessment (EA, on which more will be said shortly) is much of the reason there is so much information available. This is because the CBD, as defined by the EA, would potentially involve tolling federal highways.

The MTA, being the prime mover in this instance provides context to some of the other key differences, especially in terms of guidelines for the program (or lack thereof). Of all previous proposals, this version is the closest to the Move NY plan in that it specifically reserves revenue from the plan for the MTA exclusively. Yet while that plan earmarked 75% of annual revenues for the MTA, it was also significantly more open-ended than this version. This version sets the objective of the plan near exclusively for raising money to fulfil the \$15 billion in capital funding that the 2020-2024 MTA Capital Program calls for, which has specific capital objectives included within it that the money must be used for. So, while other plans had general guidelines for how the MTA should use the money, this version has specific ones which were drafted by the MTA itself.

Beyond this, there are some of the other restrictions/requirements. The credits requirement, as well as explicit protection of both emergency vehicles and “qualified vehicles” transporting disabled individuals, are certainly important. But there is one particular rule that is more interesting – the requirement to include a scheme of variable tolling. While previous plans, most notably Bloomberg’s, included a simplistic version of this concept (in that weekend travel would not be counted), most emphasis on previous plans was placed on the notion that there would be

little in the way of variance. Under all of the previous plans, it is true that like in the CBDTP cars and trucks will be tolled differently – it is only logical given the size of the vehicles, their environmental footprint, their impact on congestion, and so forth. Yet the law specifically states that the final plan must be a form of variable tolling, which, as will be seen later, has dramatically impacted the plan, as well as the rationale for its implementation.

Reviewing the stated goals of the plan

Cracking open the behemoth of a read that is the MTA's EA on congestion pricing, it bears examining what the MTA explicitly states to be its primary goals in creating the EA. The first glimpse of this is present in the project's Executive Summary. At this stage, the MTA establishes that beyond the legal framework, they have a set of core objectives that they considered while putting together the EA:⁴⁵

- **Reduce daily vehicle-miles traveled (VMT) within the Manhattan CBD by at least 5 percent**
- **Reduce the number of vehicles entering the Manhattan CBD daily by at least 10 percent**
- **Create a funding source for capital improvements and generate sufficient annual net revenues to fund \$15 billion for capital projects for the MTA Capital Program**
- **Establish a tolling program consistent with the purposes underlying the New York State legislation entitled the MTA Reform and Traffic Mobility Act**

It is worth noting that both the 2019 MTA Modernization and Traffic Reform Act⁴⁶ and the EA⁴⁷ specifically state that *congestion* is the impetus for implement congestion pricing. This by itself is not an exceptional statement – as the MTA correctly states within the Executive Summary, congestion increases commuting and business costs while degrading productivity and the quality of bus and emergency services. Yet at this stage, and nowhere is it explicitly stated in the project goals, that the MTA considers the pollution aspect of congestion to be a factor of significant concern.

⁴⁵ See page ES-6 MTA, *CBD Tolling Program Environmental Assessment*.

⁴⁶ "MTA Reform and Traffic Mobility Act" New York State Assembly

⁴⁷ See page ES-5 MTA, *CBD Tolling Program Environmental Assessment*

As required by law, the MTA does also note that the plan is designed to help provide the MTA with a dedicated stream of funds. Within the EA, this is contextualized by referring to the 2020-2024 Capital Program⁴⁸ devised by the MTA to ““build on these achievements, [in reference to the MTA’s century-old operating history and assets] ensuring that the improvements put in place will be sustainable for years to come.””⁴⁹ The Capital Program is referenced to identify \$52 billion in investments that the MTA believes to be in critical need of upgrade or replacement to that effect; the tolling program that they are tasked with implementing must raise about \$15 billion, but the plan is really more so to establish a basis for leverage. What does this mean? Essentially, the MTA must create a plan that can raise \$15 billion, which can then be used to *borrow* \$15 billion that can be used to fund the capital plan immediately, with the congestion plan being the primary vector for the MTA to repay that debt. It is safe to assume that this general model, if approved, would be the basis for future Capital Programs by the MTA.

This may sound fine, but as alluded to there are already some troubling elements with the plan from the start, which is primarily a function of the enabling law. The premise of this plan is to reduce congestion within New York City, with the net effect of providing the MTA with the funds to upgrade and potentially expand its failing infrastructure. But that’s all the plan needs to be done by law, and the MTA has singularly failed to take the initiative to move beyond it. This is especially important in the context of the environmental effects of congestion and the impact both it and the congestion pricing model has on people of color. As will be discussed, there is some discussion of these effects; the former, in particular, features in the MTA’s official stance as a net benefit of the coming plan.⁵⁰ Yet in an Executive Summary that is by itself 34 pages long, the environmental effects are only obliquely mentioned within the simple table used to broadly generalize the impact of the various tolling scenarios. On pages ES-26 and ES-27, the impact on air and noise pollution are considered, with impacts being tacitly summed up in the “Potential Adverse Effect” column as a resounding “No.”⁵¹ Considering that the intent of the executive summary is to effectively make reading the main report unnecessary, and that the

⁴⁸ Henceforth referred to as “Capital Program”

⁴⁹ See page ES-6 MTA, *CBD Tolling Program Environmental Assessment*

⁵⁰ “Central Business District Tolling Program” MTA

⁵¹ MTA, *CBD Tolling Program Environmental Assessment*

environmental benefits of the plan are only vaguely alluded to, it is hard not to be at least somewhat worried.

As has and will continue to be demonstrated, this is an issue of significant importance. Tolling impacts real people, who have personal and professional investments in the outcome of this issue. Likewise, the money that will potentially be raised from this project has potentially enormous implications for the future of New York public transportation. Yet while it holds true that this EA's gargantuan size is perhaps proportional to the larger issue, it should be reiterated that this EA is a requirement of the federal government. While the statutes that the EA was submitted to broadly refer to agency cooperation and preservation of natural/historic features, the FHWA specifies that its EA process is also governed by the National Environmental Policy Act (NEPA). This is what both empowers and requires the FHWA to complete an EA. The kicker is that according to the FHWA, such an EA must be a "concise public document" which must, among other things, "briefly provide sufficient evidence and analysis" to determine the level of economic impact.⁵² While it would be beyond negligent to suggest that the FHWA, MTA, and both the city and state DOTs should have kept this document simple and potentially omit important information, these requirements are a small, ironic consolation to remember as one delves deeper into this document.

On the tolls

The centerpiece of the plan is of course the tolling scheme that the MTA has devised in order to reach the mandated \$1 billion. According to the EA, the process of arriving at the eventual set of scenarios that are now slated to be recommended to the TMRB was governed by both the legal criteria set forth by the 2019 MTA Reform and Traffic Mobility (MTARTM) law and the concurrent objectives in the EA. The process began with simple consideration of whether or not the objectives could be achieved without implementing congestion pricing. Chief among the effects/continuing policies of the "No Action Alternative," as the EA calls it, is that a cap on FHV licenses would continue to hold and that the MTA would proceed with its capital investment objectives, but only insofar as current funding would permit.⁵³ Finding that the

⁵² "NEPA Classes of Action," Environmental Review Toolkit (Federal Highway Administration), accessed October 20, 2022, https://www.environment.fhwa.dot.gov/nepa/classes_of_action.aspx.

⁵³ See page ES-7 MTA, *CBD Tolling Program Environmental Assessment*

project goals could not be achieved without taking action, the MTA then considered a variety of “preliminary alternatives,” which can be found below.

| ALTERNATIVE | PURPOSE AND NEED: Reduce traffic congestion in the Manhattan CBD in a manner that will generate revenue for future transportation improvements | OBJECTIVE 1: Reduce daily vehicle-miles traveled (VMT) within the Manhattan CBD Criterion: Reduce by 5% (relative to No Action) | OBJECTIVE 2: Reduce the number of vehicles entering the Manhattan CBD daily Criterion: Reduce by 10% (relative to No Action) | OBJECTIVE 3: Create a funding source for capital improvements and generate sufficient annual net revenues to fund \$15 billion for capital projects for MTA's Capital Program |
|---|---|--|---|--|
| NA-1: No Action | Does not meet | Does not meet | Does not meet | Does not meet |
| NTP-1: Parking pricing strategies | Does not meet | Does not meet (see note 2) | Does not meet | Does not meet (see note 2) |
| T-1: Pricing on full roadways: Raise tolls or implement variable tolls on existing toll facilities | Does not meet | Does not meet (see note 3) | Does not meet (see note 3) | Does not meet |
| T-2: Pricing on full roadways: Toll East and Harlem River bridges | Does not meet (see note 4) | Meets | Meets | Does not meet (see note 4) |
| T-3: High-occupancy toll (HOT) lanes | Does not meet (see note 5) | Does not meet | Does not meet | Does not meet (see note 5) |
| T-4: Zone-based pricing: CBD Tolling Program | Meets | Meets | Meets | Meets |
| O-1: Parking pricing: Reduce government-issued parking permits | Does not meet | Meets | Meets | Does not meet |
| O-2: Provide additional taxi stands to reduce cruising | Does not meet | Does not meet (see note 6) | Does not meet | Does not meet |
| O-3: Create incentives for teleworking | Does not meet | Does not meet | Does not meet (see note 7) | Does not meet |
| O-4: Ration license plates | Does not meet | Meets | Meets | Does not meet |
| O-5: Mandatory carpooling | Does not meet | Meets | Meets | Does not meet |
| O-6: Truck time-of-day delivery restrictions | Does not meet | Does not meet (see note 8) | Does not meet (see note 8) | Does not meet |

Figure 3: Table 2-2, which briefly describes various alternative plans according to the three major objectives laid out by the MTA within the EA.⁵⁴

At this point, it is worth mentioning something that is relatively buried in the first note – much of the analysis and “screening”, as it is described, was made using data and studies dating back to 2007 and 2008. One may recall that 2007 was the year that Bloomberg announced *PlaNYC 2030* and began working on developing his congestion pricing plan. This may raise some eyebrows, and it should. For an EA that began production in 2021, this makes the data that the MTA used in determining the effectiveness of these various alternative programs over a decade old. Similarly concerning is that in this massive document, work has not been shown to demonstrate exactly by how much, or how little, the alternatives to Alternative T4 (congestion pricing) failed to meet the criteria established by the MTA. While the footnotes provide some context, it is disappointing to see that the MTA did not go into detail as to why all other alternatives fail to meet the criteria.

⁵⁴ See page 2-4 MTA, *CBD Tolling Program Environmental Assessment*

Likewise, in the conclusion of Section 2, there is no mention of potentially combining or implementing multiple strategies concurrently, with the MTA merely establishing that congestion pricing alone is sufficient by virtue of meeting their criteria. For example, Alternative T2 (tolling East and Harlem River Bridges) is ruled out because “there is no law or agreement in place between the City of New York and MTA that would direct the revenue to MTA to support the Capital Program.” This comes right after the MTA stated that based on their research, it would actually reduce congestion and raise money!⁵⁵ **At no point, it seems, did it cross the MTA’s mind that they could try to negotiate with the City to ensure some of the revenue would be redirected to the MTA’s capital program, and run that program concurrently with a modified congestion pricing plan.**

Now, however, it is time to discuss the chart that has grabbed the public’s attention, and for good reason. The MTA establishes that congestion pricing is the only way to meet their criteria. According to their analysis, congestion pricing would firstly reduce daily vehicle-miles-travelled (VMT), which is effectively the total number of miles that automobiles travel in a day, by 7 to 9 percent – their objective is 5%. Secondly it would reduce the number of cars entering the city daily by an estimated 15 to 20 percent – their objective is 10%. And lastly, they claim it would generate between \$1 and \$1.5 billion dollars net annually, which meets the requirement to generate \$15 billion dollars.⁵⁶ Below is the chart the MTA has compiled to demonstrate the numerous ways in which congestion tolls could be levied:

⁵⁵ See page 2-7 MTA, *CBD Tolling Program Environmental Assessment*

⁵⁶ See page 2-39 MTA, *CBD Tolling Program Environmental Assessment*

| PARAMETER ¹ | SCENARIO A | SCENARIO B | SCENARIO C | SCENARIO D | SCENARIO E | SCENARIO F | SCENARIO G |
|---|--------------------|------------------------------------|--|--|---|---|---|
| | Base Plan | Base Plan with Caps and Exemptions | Low Crossing Credits for Vehicles Using Tunnels to Access the CBD, with Some Caps and Exemptions | High Crossing Credits for Vehicles Using Tunnels to Access the CBD | High Crossing Credits for Vehicles Using Tunnels to Access the CBD, with Some Caps and Exemptions | High Crossing Credits for Vehicles Using Manhattan Bridges and Tunnels to Access the CBD, with Some Caps and Exemptions | Base Plan with Same Tolls for All Vehicle Classes |
| Time Periods² | | | | | | | |
| Peak: Weekdays | 6 a.m. to 8 p.m. | 6 a.m. to 8 p.m. | 6 a.m. to 8 p.m. | 6 a.m. to 8 p.m. | 6 a.m. to 8 p.m. | 6 a.m. to 10 a.m.; 4 p.m. to 8 p.m. | 6 a.m. to 8 p.m. |
| Peak: Weekends | 10 a.m. to 10 p.m. | 10 a.m. to 10 p.m. | 10 a.m. to 10 p.m. | 10 a.m. to 10 p.m. | 10 a.m. to 10 p.m. | 10 a.m. to 10 p.m. | 10 a.m. to 10 p.m. |
| Off Peak: Weekdays | 8 p.m. to 10 p.m. | 8 p.m. to 10 p.m. | 8 p.m. to 10 p.m. | 8 p.m. to 10 p.m. | 8 p.m. to 10 p.m. | 10 a.m. to 4 p.m. | 8 p.m. to 10 p.m. |
| Overnight: Weekdays | 10 p.m. to 6 a.m. | 10 p.m. to 6 a.m. | 10 p.m. to 6 a.m. | 10 p.m. to 6 a.m. | 10 p.m. to 6 a.m. | 8 p.m. to 6 a.m. | 10 p.m. to 6 a.m. |
| Overnight: Weekends | 10 p.m. to 10 a.m. | 10 p.m. to 10 a.m. | 10 p.m. to 10 a.m. | 10 p.m. to 10 a.m. | 10 p.m. to 10 a.m. | 10 p.m. to 10 a.m. | 10 p.m. to 10 a.m. |
| Potential Crossing Credits | | | | | | | |
| Credit Toward the CBD Toll for Tolls Paid at the Queens-Midtown, Hugh L. Carey, Lincoln, Holland Tunnels | No | No | Yes | Yes | Yes | Yes | No |
| Credit Toward the CBD Toll for Tolls Paid at the Robert F. Kennedy, Henry Hudson, George Washington Bridges | No | No | No | No | No | Yes | No |
| Potential Exemptions and Limits (Caps) on Number of Tolls per Day | | | | | | | |
| Cars, motorcycles, commercial vans | Once per day | Once per day | Once per day | Once per day | Once per day | Once per day | Once per day |
| Taxis | No cap | Once per day | Exempt | No cap | Exempt | Once per day | No cap |
| FHVs | No cap | Once per day | Three times per day | No cap | Three times per day | Once per day | No cap |
| Small and large trucks | No cap | Twice per day | No cap | No cap | No cap | Once per day | No cap |
| Buses | No cap | Exempt | No cap | No cap | Transit buses—Exempt No cap on others | Exempt | No cap |
| Approximate Toll Rate Assumed³ | | | | | | | |
| Peak | \$9 | \$10 | \$14 | \$19 | \$23 | \$23 | \$12 |
| Off Peak | \$7 | \$8 | \$11 | \$14 | \$17 | \$17 | \$9 |
| Overnight | \$5 | \$5 | \$7 | \$10 | \$12 | \$12 | \$7 |

Figure 4: Table 2-3 “Tolling Scenarios Evaluated for the CBD Tolling Alternative”, evaluating different scenarios for congestion pricing tolls.⁵⁷

There is a lot to unpack with this chart. First is that, in a departure from all previous congestion pricing schemes, the MTA’s version will charge a congestion toll every day, at all times. Secondly, only four of the scenarios allow drivers to credit tolls paid on current tolled tunnels towards the congestion pricing charge, and only one (Scenario F) allows for drivers to credit tolls paid on currently tolled bridges towards the congestion pricing charge. There is much to be said about this, but next we come to the real meat – exemptions, limits, and approximate toll rates.

The only consistency between the seven scenarios is a legally mandated one – cars, motorcycles, and vans (of all things) can only be tolled once per day. There is also the appearance of one of the great issues with the MTA’s plan – the disparity between taxi and FHV tolls. In Scenarios C and E, taxis are entirely exempted from the congestion surcharge, while FHVs are tolled a maximum of three times. **In those scenarios, this means that FHVs are**

⁵⁷ See page 2-40 MTA, *CBD Tolling Program Environmental Assessment*

potentially paying a respective \$42 and \$69 for the first three trips taken during designated peak hours, which in both scenarios are 6 a.m. to 8 p.m. during weekdays. And that is *on top of* the \$2.75 per trip that FHV's are already paying to drive in Manhattan below 96th Street, which brings the first three trip totals to \$50.25 and \$77.25, respectively. Meanwhile, during the same time period, taxis will only pay \$7.50 in surcharges for the same potential rides! But while inequity exists in those two scenarios, in three scenarios (A, D, and G) both taxis and FHV's face the crippling prospect of paying the congestion charge an *unlimited* number of times, meaning a surcharge of anywhere from \$9 to \$12 *per ride*.

| PARAMETER ¹ | SCENARIO A Base Plan | SCENARIO B ⁴ Base Plan with Caps and Exemptions | SCENARIO C Low Crossing Credits for Vehicles Using Tunnels to Access the Manhattan CBD, with Some Caps and Exemptions | SCENARIO D High Crossing Credits for Vehicles Using Tunnels to Access the Manhattan CBD | SCENARIO E High Crossing Credits for Vehicles Using Tunnels to Access the Manhattan CBD, with Some Caps and Exemptions | SCENARIO F High Crossing Credits for Vehicles Using Manhattan Bridges and Tunnels to Access the Manhattan CBD, with Some Caps and Exemptions | SCENARIO G Base Plan with Same Tolls for All Vehicle Classes |
|--|-------------------------|---|--|--|---|---|---|
| TOLL RATES^{2,3} | | | | | | | |
| Off-Peak Toll | | | | | | | |
| Weekday Off-Peak Hours | 8 p.m. to 10 p.m. | 8 p.m. to 10 p.m. | 8 p.m. to 10 p.m. | 8 p.m. to 10 p.m. | 8 p.m. to 10 p.m. | 10 a.m. to 4 p.m. | 8 p.m. to 10 p.m. |
| Off-Peak Auto E-ZPass Rate | \$6.90 | \$7.61 | \$10.50 | \$14.27 | \$17.25 | \$17.25 | \$8.70 |
| Off-Peak Auto Tolls by Mail Rate | \$10.35 | \$11.42 | \$15.75 | \$21.40 | \$25.88 | \$25.88 | \$12.15 |
| Off-Peak Small Truck E-ZPass Rate | \$13.80 | \$15.23 | \$21.00 | \$28.53 | \$34.50 | \$48.75 | \$8.70 |
| Off-Peak Small Truck Tolls by Mail Rate | \$20.70 | \$22.84 | \$31.50 | \$42.80 | \$51.75 | \$63.75 | \$12.15 |
| Off-Peak Large Truck E-ZPass Rate | \$20.70 | \$22.84 | \$31.50 | \$42.80 | \$51.75 | \$61.50 | \$8.70 |
| Off-Peak Large Truck Tolls by Mail Rate | \$31.05 | \$34.26 | \$47.25 | \$64.19 | \$77.63 | \$78.75 | \$12.15 |
| Peak Toll | | | | | | | |
| Weekday Peak Hours | 6 a.m. to 8 p.m. | 6 a.m. to 8 p.m. | 6 a.m. to 8 p.m. | 6 a.m. to 8 p.m. | 6 a.m. to 8 p.m. | 6 a.m. to 10 a.m.; 4 p.m. to 8 p.m. | 6 a.m. to 8 p.m. |
| Weekend Peak Hours | 10 a.m. to 10 p.m. | 10 a.m. to 10 p.m. | 10 a.m. to 10 p.m. | 10 a.m. to 10 p.m. | 10 a.m. to 10 p.m. | 10 a.m. to 10 p.m. | 10 a.m. to 10 p.m. |
| Peak Auto E-ZPass Rate | \$9.20 | \$10.15 | \$14.00 | \$19.02 | \$23.00 | \$23.00 | \$11.60 |
| Peak Auto Tolls by Mail Rate | \$13.80 | \$15.23 | \$21.00 | \$28.53 | \$34.50 | \$34.50 | \$16.20 |
| Peak Small Truck E-ZPass Rate | \$18.40 | \$20.30 | \$28.00 | \$38.04 | \$46.00 | \$65.00 | \$11.60 |
| Peak Small Truck Tolls by Mail Rate | \$27.60 | \$30.45 | \$42.00 | \$57.06 | \$69.00 | \$85.00 | \$16.20 |
| Peak Large Truck E-ZPass Rate | \$27.60 | \$30.45 | \$42.00 | \$57.06 | \$69.00 | \$82.00 | \$11.60 |
| Peak Large Truck Tolls by Mail Rate | \$41.40 | \$45.68 | \$63.00 | \$85.59 | \$103.50 | \$105.00 | \$16.20 |
| Overnight Toll | | | | | | | |
| Weekday Overnight Hours | 10 p.m. to 6 a.m. | 10 p.m. to 6 a.m. | 10 p.m. to 6 a.m. | 10 p.m. to 6 a.m. | 10 p.m. to 6 a.m. | 8 p.m. to 6 a.m. | 10 p.m. to 6 a.m. |
| Weekend Overnight Hours | 10 p.m. to 10 a.m. | 10 p.m. to 10 a.m. | 10 p.m. to 10 a.m. | 10 p.m. to 10 a.m. | 10 p.m. to 10 a.m. | 10 p.m. to 10 a.m. | 10 p.m. to 10 a.m. |
| Overnight Auto E-ZPass Rate | \$4.60 | \$5.08 | \$7.00 | \$9.51 | \$11.50 | \$11.50 | \$6.96 |
| Overnight Auto Tolls by Mail Rate | \$6.90 | \$7.61 | \$10.50 | \$14.27 | \$17.25 | \$17.25 | \$9.72 |
| Overnight Small Truck E-ZPass Rate | \$9.20 | \$10.15 | \$14.00 | \$19.02 | \$23.00 | \$32.50 | \$6.96 |
| Overnight Small Truck Tolls by Mail Rate | \$13.80 | \$15.23 | \$21.00 | \$28.53 | \$34.50 | \$42.50 | \$9.72 |
| Overnight Large Truck E-ZPass Rate | \$13.80 | \$15.23 | \$21.00 | \$28.53 | \$34.50 | \$41.00 | \$6.96 |
| Overnight Large Truck Tolls by Mail Rate | \$20.70 | \$22.84 | \$31.50 | \$42.80 | \$51.75 | \$52.50 | \$9.72 |

Figure 5: Table 2E-1 "Tolling Scenarios Evaluated in this Environmental Assessment". This insightful table is buried within the appendices for reasons unknown, despite its clear importance in understanding the scenarios⁵⁸

When one looks at truck rates, however, a curious thing occurs. According to the footnotes, it turns out that the figures presented in the scenario breakdown are not entirely comprehensive – they are rounded figures for vehicles with EZ-Pass.⁵⁹ The rates are actually higher on accounts for those that do not have EZ-Pass, a detail that is mentioned but easy to miss

⁵⁸ New York State Metropolitan Transportation Agency, Appendices – Volume 1 (Appendix 2 – Appendix 4B.9). New York: Metropolitan Transit Authority, 2022. <https://new.mta.info/document/93451>

⁵⁹ See page 2-40, footnote 3. MTA, *CBD Tolling Program Environmental Assessment*

within the report itself but constitutes at minimum \$3 extra per charge for those not using EZ-Pass. Besides that, however, this table is pertinent when looking at the truck charge figures, which the aforementioned footnote directing readers to Appendix 2E mentions would see a range of \$12-\$82 per charge assuming EZ-Pass usage and depending on the scenario. Scenarios A, D, and G subject taxis, FHV's and all classes of trucks to an unlimited number of tolls. For taxis and FHV's each trip (not including the 2018 surcharge) would cost \$9, \$19, and \$12 during peak hours, respectively. Assuming the same variables, small trucks would pay \$18, \$38, and \$12 respectively while large trucks would pay \$28, \$57, and \$12, respectively. This seems reasonable, but there is a problem. Most individual trucks are not constantly crossing in and out of the CBD zone more than once or twice per day, but taxis and FHV's are.

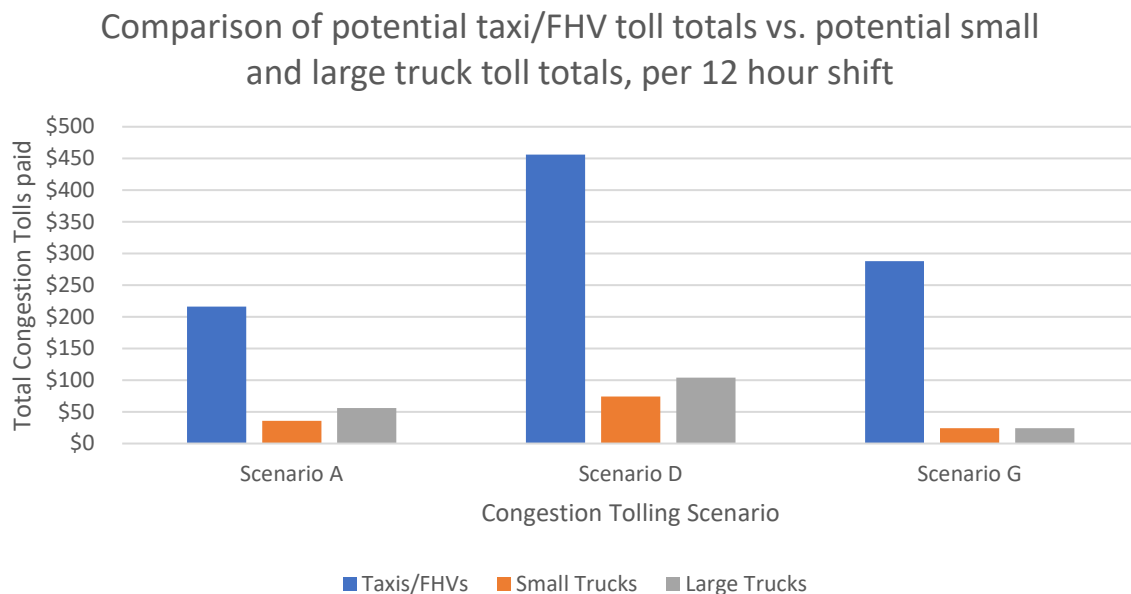


Figure 6: A comparison of potential total tolls paid by taxis/FHV's in a 12-hour period during peak congestion versus potential total tolls paid by small and large trucks. The figure assumes that a taxi/FHV picks up and delivers 2 passengers per hour,⁶⁰ and that every trip involves entering the CBD at some point, and generously assumes that an individual truck will enter the CBD twice in 12 hours

The above figure demonstrates just how crazy this potential disparity is by using a 12-hour taxi shift time frame during peak pricing hours. Assuming a taxi/FHV would maintain an average of two passengers per hour through a 12 hour shift may be extreme, of course. Yet even if the average passenger rate was halved, and the generous assumption that an individual truck

⁶⁰ "Taxi and Ridehailing App Usage in New York City," toddwschneider.com (toddwschneider.com, June 30, 2022), <https://toddwschneider.com/dashboards/nyc-taxi-ridehailing-uber-lyft-data/>.

would enter and exit the CBD twice remained constant, across all scenarios taxis and FHV's would *still* likely be paying double the total fees that trucks would be. Of course, if you take an environmental perspective and say that the taxis and FHV's are driving more so therefore it is rational that they be tolled more than trucks which may only enter once or twice a day, it seemingly works out. But this ignores both the pollution-saving aspects of ridesharing services (by transporting people who might have otherwise driven) and the fact that despite trucks making up a comparatively small portion of traffic, they produce over half of the pollution from automobiles.⁶¹

However, this is minor compared to the fundamental misunderstanding that the MTA has about the for-hire industry – how these tolls would apply, in the case of the capped scenarios. The logic is that in each scenario, the tolls would be “passed along” to the rider – simply rendered, the toll would be “added” to the total cost of the ride. For example, if the MTA decided to adopt Scenario A (under which FHV's would be tolled \$9 each trip) the customer would pay for the trip plus \$9; makes sense, right? This is the same sort of logic that applies to current tolls, and the \$2.75 surcharge that taxis and FHV's have been paying since 2019 (as originally planned.) However, this falls apart when one considers the plans that cap the number of tolls for FHV's and taxis. Consider Scenario F, the infamous one which would see a flat toll of \$23 levied on all vehicles, including FHV's, once per day. How do you pass this static toll along to the customer?

Previously, this paper brought up an average figure of two passengers per hour, which in a 12-hour shift would mean about 24 fares, making the passed along cost roughly a dollar. But here's the problem – there is no guarantee that a given driver will carry 24 passengers per day. Indeed, no number of passengers can be guaranteed; this means that it is impossible to predetermine how to “pass along” the fare equally to riders. What will end up happening is that in the scenarios where the tolls are capped, the driver will have no choice but to shoulder the cost of the tolls under Scenarios B, C, E, and F themselves. This will be explored later, but the cost of any of these scenarios for the driver is catastrophic.

⁶¹ Timothy O'Connor, “100% Zero-Emissions Trucks. How Close Are We?,” Environmental Defense Fund (Environmental Defense Fund, September 16, 2020), <https://www.edf.org/blog/2020/09/16/100-zero-emissions-trucks-how-close-are-we>.

The Environmental, Social, and Economic Impacts

Despite the MTA not explicitly stating the reducing pollution is a core objective of implementing congestion pricing, the EA is nonetheless an “Environmental” assessment. Much of the relevant sections deal with the environmental impacts on specific crossings and intersections which are projected to see substantial changes following the implementation of congestion pricing. Sections 4 broadly deals with the environmental impact of congestion pricing across roadways, public transit, “alternative” transit (such as bicycles) and pedestrian patterns, while Section 10 deals with air quality and Section 12 deals with noise pollution. Section 5 deals with the social effects of congestion pricing, including social cohesion, and Section 6 deals with the potential effects of congestion pricing on the economy of the Manhattan CBD.

Sections 4, 10, and 12 deal with what could be considered the “core”⁶² environmental impacts of congestion pricing, those again being broad environmental effects, air pollution, and noise quality, respectively. Section 4 is split across multiple sub areas, but the core conclusions to be drawn from the section as a whole are that travel patterns to and within the Manhattan CBD are projected to change to a significant extent. This is due to an overall increase in vehicle travel costs from various areas of the 28-county New York Metropolitan area, with increases ranging from 5% to over 37% depending on the scenario and originating location. Across the outer boroughs (Brooklyn, Queens, the Bronx, and Staten Island) the average increase is roughly 16.8%. Under Scenario E, the Bronx is projected to see highest increase in auto travel costs at 37.2%.⁶³ **In all scenarios, as shown in the table below, the outer boroughs are projected to provide over half of the total CBDTP revenues – the average across the scenarios is 59.76%.**

⁶² This is not to dismiss Sections 7, 8, 9, 11, 14, and 15 as being unimportant, as they deal with everything from parks to toxic waste implications. For the purposes of this report, however, they are of minor consequence

⁶³ See page 4A-29. MTA, *CBD Tolling Program Environmental Assessment*

| GEOGRAPHY | SCENARIO A | SCENARIO B | SCENARIO C | SCENARIO D | SCENARIO E | SCENARIO F | SCENARIO G |
|--------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| New York (Manhattan) | 13.5% / 14.0% | 13.0% / 13.5% | 15.7% / 13.6% | 19.6% / 12.5% | 17.9% / 12.4% | 20.0% / 12.5% | 13.1% / 13.5% |
| Kings (Brooklyn) | 19.0% / 17.9% | 18.9% / 17.8% | 20.3% / 18.7% | 17.1% / 16.5% | 17.1% / 16.7% | 17.5% / 16.5% | 19.1% / 18.0% |
| Queens | 17.9% / 16.4% | 18.1% / 16.6% | 17.7% / 17.6% | 15.8% / 16.4% | 16.6% / 16.5% | 16.4% / 16.1% | 18.2% / 16.7% |
| Bronx | 6.2% / 6.6% | 6.2% / 6.7% | 7.9% / 7.1% | 9.9% / 6.6% | 9.1% / 6.6% | 10.2% / 6.6% | 6.3% / 6.8% |
| Richmond (Staten Island) | 1.6% / 1.6% | 1.6% / 1.5% | 1.7% / 1.8% | 1.1% / 1.7% | 1.4% / 1.8% | 1.4% / 1.7% | 1.6% / 1.6% |
| Long Island | 7.6% / 6.8% | 7.7% / 6.9% | 7.2% / 7.0% | 6.3% / 6.7% | 6.8% / 6.8% | 6.3% / 6.6% | 7.7% / 6.9% |
| Hudson Valley | 6.6% / 7.1% | 6.6% / 7.2% | 8.4% / 7.7% | 10.4% / 7.1% | 9.4% / 7.1% | 10.8% / 7.2% | 6.6% / 7.1% |
| New Jersey | 17.7% / 20.0% | 17.8% / 20.0% | 11.6% / 16.5% | 10.0% / 21.9% | 11.8% / 21.4% | 7.8% / 21.9% | 17.5% / 19.6% |
| Connecticut | 2.4% / 2.5% | 2.4% / 2.6% | 3.1% / 2.8% | 4.0% / 2.6% | 3.5% / 2.5% | 4.1% / 2.6% | 2.4% / 2.6% |
| Other | 7.5% / 7.2% | 7.5% / 7.3% | 6.4% / 7.1% | 5.8% / 8.1% | 6.5% / 8.4% | 5.5% / 8.3% | 7.4% / 7.2% |

Figure 7: Table 4A-34 "Projected Percentage of Total Revenue/Percentage of Total Trip." The outer boroughs will be providing well over half of the program's projected revenue⁶⁴

Herein the ambitious projection of a 15%-20% decrease in vehicle trips to the CBD is reiterated, along with less celebratory information to the effect that while trips and VMT would decrease by anywhere from 7%-9%, transit times would not universally decrease and in some areas actually increase. Moreover, depending on the scenario, taxi/FHV utilization is projected to drop in an astonishing range of 1% to 22%!⁶⁵ Highways and intersections likewise presented a mixed bag, which depending on the scenario would see beneficial reductions in congestion in some areas but would see increased delays in others. Mass transit was also projected to see limited expansion in subway ridership (roughly 1%-2%)⁶⁶ and while the ensuing lack of stress on the system received a positive spin in the report, it underscores an issue that should be becoming clearer – the CBDTP is only reducing vehicle usage if you consider the CBD alone. This is further emphasized when it comes to parking; the MTA says (in so many words) that they did not do significant study into the effect on parking outside of the CBD. Making the common-sense observation that tolling the CBD would *perhaps* cause demand for parking outside of the CBD to increase, the MTA passes the buck by saying that the MTARTMA requires the city to do it.⁶⁷

Section 10, dealing with the effect the CBTP would have on air pollution in the NYC Metro area, presented mixed conclusions. The CBD, Manhattan itself, Queens, Brooklyn, Rockland, and Hudson counties were all projected to fall following implementation across the next several decades. **However, air pollution was projected to worsen in those same decades in the Bronx, Staten Island, Nassau, and Bergen counties, with the remaining counties in**

⁶⁴ See page 4A-48. MTA, *CBD Tolling Program Environmental Assessment*

⁶⁵ See page 4A-51. MTA, *CBD Tolling Program Environmental Assessment*

⁶⁶ See page 4A-48. MTA, *CBD Tolling Program Environmental Assessment*

⁶⁷ See page 4D-11. MTA, *CBD Tolling Program Environmental Assessment*

the NYC Metro area estimating increases and decreases in individual pollutants. The EA concludes that all changes are within the boundaries established by applicable state and federal laws and recommends no mitigation measures or follow-up studies.⁶⁸ Section 12, dealing with noise pollution, projects no meaningful changes in noise pollution at relevant intersections or roadways and indeed anticipates an overall decrease in noise. However, this does come with the caveat that the net change would be below the human threshold of recognition.⁶⁹

Section 5 deals with the impact that the CBDTP would have on “Social Conditions”, which include neighborhood character, social cohesion, population, and existing social policy as potential impact areas. The MTA generally presents the changes as either net positives or as remaining neutral, leaning heavily on anticipated reductions in travel times and a lack of change to essential service travel times. However, while the summary tables denote that little to no mitigation is required, buried within these sections are areas of potential harm that apparently fail to meet the MTA’s criteria for mitigation, or which it believes are covered by existing provisions. For example, in Section 5A.5 it is stated that:⁷⁰

“...a variety of community facilities and services, such as food pantries and meal delivery services, religious facilities, cultural institutions, social service providers, and home healthcare providers, rely on vehicles to transport people, goods, services, supplies, or staff into and out of the Manhattan CBD. Community service providers that are not exempt from the toll and do not have other travel options would have to absorb the cost of the toll.”

In this instance, the MTA seemingly dismisses this by asserting that for patrons of these facilities and services, the CBDTP is unlikely to substantially affect them due to alternative travel options besides driving.⁷¹ This, along with similar examples involving public servants such as teachers and healthcare workers, seem to indicate that the MTA considers “user” experience to outweigh “provider” experience in assessing damage. Within the CBD, the MTA is especially optimistic about the effect of the program on neighborhood character by claiming that reduced traffic would encourage increased pedestrian flow, to the net benefit of local

⁶⁸ See pages 10-49 and 10-50. MTA, *CBD Tolling Program Environmental Assessment*

⁶⁹ See page 12-11. MTA, *CBD Tolling Program Environmental Assessment*

⁷⁰ See page 5A-45. MTA, *CBD Tolling Program Environmental Assessment*

⁷¹ Ibid.

businesses.⁷² Similarly, they are confident that anticipated environmental and economic benefits⁷³ of the CBDTP will make the plan consistent with existing public policy.

Section 6 deals with the economic impact of the CBDTP, though it notably states that “Through congestion relief, the CBD Tolling Alternative would provide an economic benefit to the Manhattan CBD, *and thus to the region and nation.* [italics added for emphasis]”⁷⁴ The MTA seems to conflate increased economic prosperity within the CBD as having necessarily beneficial effects on the surrounding regions, and explicitly emphasizes that “economic benefit” is derived near-totally from a reduction in commuter travel times.⁷⁵ The MTA similarly claims that besides the taxi, FHV, and food delivery, there would be no substantial injury to CBD industries, and even regarding those industries claim that regardless of scenario, there would be no significant damage to the viability of those industries. Likewise, the MTA projects little to no change for businesses located on the outskirts of the CBD, claiming that because these areas already experience high volumes of traffic due to their proximity to the CBD any changes will be easily adapted to.⁷⁶

The Environmental Justice Section

Section 17 of the EA is titled “Environmental Justice”, with the section covering potential impacts on “low-income and minority populations (collectively, environmental justice populations)” and assessing whether or not those changes would further disadvantage those populations.⁷⁷ The MTA establishes that while federal regulations require a general impact study, the highest impact zones would be those closest to the CBD, with Manhattan, Brooklyn, Queens, Staten Island, and the Bronx topping the 10-county list that the local analysis was conducted in. Importantly, within the section the blanket term of “environmental justice populations” is noticeably reductive. It separately defines “minority” and “low income,” with the former being along general census guidelines (eg. Black or African American, Hispanic, Native American, Asian American, etc.) and the latter as “A person whose household income is

⁷² See page 5B-18. MTA, *CBD Tolling Program Environmental Assessment*

⁷³ In this instance, the MTA implies that these benefits would spring from the reduced transit times for businesses

⁷⁴ See page 6-76. MTA, *CBD Tolling Program Environmental Assessment*

⁷⁵ See page 6-77. MTA, *CBD Tolling Program Environmental Assessment*

⁷⁶ See page 6-78. MTA, *CBD Tolling Program Environmental Assessment*

⁷⁷ See page 17-1. MTA, *CBD Tolling Program Environmental Assessment*

at or below the U.S. Department of Health and Human Services poverty guidelines.”⁷⁸ To give the latter more context, the Department of Health and Human Services sets the poverty level for an average New York family of 3⁷⁹ at \$23,030.⁸⁰ This combined definition is vague at best, and discriminatory at worst owing to its general blindness to the diversity of racial and economic experiences within New York, not to mention the extensive overlap the two concepts have within the city.

| ORIGIN (PLACE OF RESIDENCE) | ALL COMMUTERS | MINORITY COMMUTERS | % OF COMMUTERS WHO ARE MINORITY |
|---|------------------|--------------------|---------------------------------|
| New York City | 1,074,244 | 549,993 | 51.2% |
| Bronx County | 99,929 | 89,406 | 89.5% |
| Kings County (Brooklyn) | 277,884 | 142,988 | 51.5% |
| New York County (Manhattan) | 454,981 | 163,832 | 36.0% |
| Queens County | 210,661 | 143,214 | 68.0% |
| Richmond County (Staten Island) | 30,789 | 10,553 | 34.3% |
| Long Island Counties | 96,458 | 28,897 | 30.0% |
| New York Counties North of New York City | 89,410 | 26,962 | 30.2% |
| New Jersey Counties | 226,300 | 103,685 | 45.8% |
| Connecticut Counties | 27,697 | 5,658 | 20.4% |
| TOTAL | 1,514,109 | 715,195 | 47.2% |

Figure 8: Table 17.5 "Origins for All Commuters and Minority Commuters to the Manhattan CBD (All Modes)." Minority commuters are just under half of all commuters to the Manhattan CBD, and over half of those are from the five boroughs.⁸¹

Unsurprisingly, people of color are a sizable commuter body to the Manhattan CBD, with over half of total minority commuters coming from within the city itself. Of particular interest are that within New York, a sizable majority of commuters from the Bronx and Queens are people of color. The following table adds further context by establishing that of the 78% of commuters that commute to the CBD through public transit, 82% of that number are people of color.⁸² By comparison, only 10% of Black and brown commuters drive, yet as Table 17-7 demonstrates, the majority of car commuters are from Queens, followed by Brooklyn and then

⁷⁸ See page 17-6. MTA, *CBD Tolling Program Environmental Assessment*

⁷⁹ Technically 2.55 persons, rounded up to 3. From New York City Department of City Planning | Population Division, "Declines in Household Size & Ramifications for Growth," ArcGIS StoryMaps (Esri, February 9, 2022), <https://storymaps.arcgis.com/stories/95d48fee08084089941fc598641bb713>.

⁸⁰ "HHS Poverty Guidelines for 2022," Assistant Secretary for Planning and Evaluation (U.S. Department of Health and Human Services, January 12, 2022), <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

⁸¹ See page 17-17. MTA, *CBD Tolling Program Environmental Assessment*

⁸² See page 17-18. MTA, *CBD Tolling Program Environmental Assessment*

the Bronx. As will be discussed shortly, these breakdowns lead to significant conclusions that the MTA overlooks in its subsequent analysis.

Estimated Breakdown of Minority Vehicle Commuters to the CBD, by borough

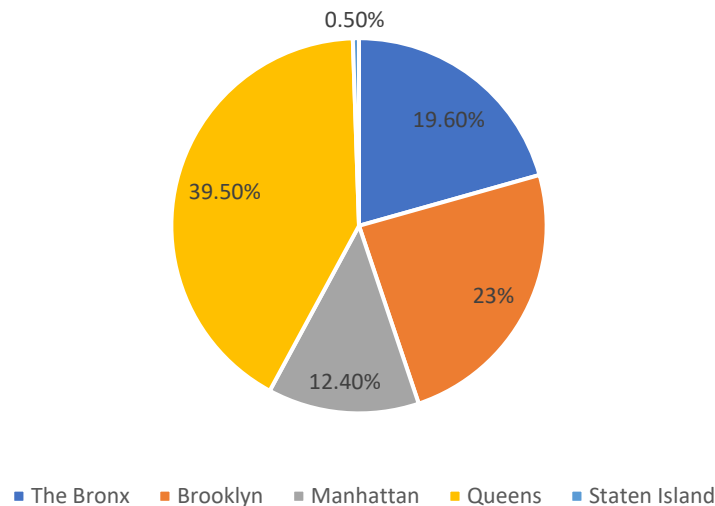


Figure 9: Estimated percentage of minority commuters by borough. Created using data from Table 17-7⁸³

Low-income drivers, on their own, make up a substantially smaller proportion of commuters than people of color on their own – the MTA states that the total percentage is 14.4%, with commuters from within the five boroughs comprising 17.9% of that figure.⁸⁴ However, this figure is substantially more problematic than the one for race, due in large part to the issue of how they define poverty within the impact study area. This is especially pertinent when one considers the substantial overlap between race and poverty – the figure the MTA presents in this instance seems entirely too low.

Within this section, the MTA once again addresses the issue of taxis and FHV's. Using data from the Taxi and Limousine Commission (TLC)'s 2020 fact book, the MTA firmly establishes that "13,587 yellow cabs, 2,895 green cabs, and 101,663 FHV's licensed by the TLC." In the next paragraph, they cite the TLC's statistics to the effect that:⁸⁵

⁸³ Ibid.

⁸⁴ See page 17-20. MTA, *CBD Tolling Program Environmental Assessment*

⁸⁵ See page 17-22. MTA, *CBD Tolling Program Environmental Assessment*

“...approximately 96 percent of yellow and green cab drivers and 91 percent of FHV drivers were born in countries other than the United States. Based on this data, more than half the taxi or FHV drivers are from countries in Asia, Africa, and the Caribbean that have high percentages of populations that would be considered minority populations for this analysis.”

The figure below is a further breakdown of that statement.

| COUNTRY OF ORIGIN | YELLOW CAB | GREEN CAB | TRADITIONAL FHV | HIGH VOLUME FHV |
|-----------------------------------|------------|------------|-----------------|-----------------|
| Bangladesh | 23% | 23% | 4% | 9% |
| China | – | – | 5% | 3% |
| Côte d'Ivoire | – | 2% | – | – |
| Dominican Republic | 2% | 12% | 31% | 14% |
| Ecuador | – | 3% | 6% | – |
| Egypt | 4% | 3% | 2% | 3% |
| Ghana | 4% | – | – | – |
| Guinea | – | 3% | | |
| Haiti | 6% | 3% | 3% | 3% |
| India | 8% | 8% | 4% | 5% |
| Morocco | 3% | – | – | – |
| Nepal | – | – | – | 3% |
| Pakistan | 9% | 12% | 6% | 9% |
| Senegal | 2% | – | – | – |
| United States | 4% | 3% | 8% | 9% |
| Uzbekistan | – | – | 3% | 3% |
| TOTAL REPORTED | 65% | 72% | 69% | 58% |
| OTHER ORIGINS NOT REPORTED | 35% | 28% | 31% | 42% |

Figure 10: Table 17-10 "Country of Birth for Taxi and FHV Drivers, 2018–2019."⁸⁶

This information provides critical insight into the diversity of minority commuters, especially those in the FHV industry. As demonstrated, the amount of diversity in these communities is staggering – New York is full of communities with distinct identities and economic conditions. For some readers, it may seem as though we are splitting hairs – even if it was broad, bland, and unspecific, the MTA has done their mandated duty to consider at-risk populations. But the reality is that no racial group is monolithic; this is especially true in New York. The MTA’s reductionist bundling of these diverse identities, as well as separating race from economic situation, is therefore a large impediment to understanding how individual communities would fare under this plan. The same goes for FHV/taxi drivers, who not only

⁸⁶ See page 17-23. MTA, *CBD Tolling Program Environmental Assessment*

generally fall into *both* of the broad categories but have specific considerations that the EA fails to adequately analyze and consider. In this exceptionally long assessment, the MTA denies the spirit of the laws requiring “environmental justice” populations to be considered by doing the bare minimum – something that we consider unacceptable given the stakes of the project, and the time taken to produce this document.

The lack of insight is unfortunate, but even with the limited analysis conducted by the MTA, some conclusions can be drawn about the impact. While they already claimed that taxi/FHV drivers would not be significantly impacted by congestion pricing in spite of projected demand shrinkage of up to 22%, perhaps their conclusions in this section will make up for that particular instance of oversight. In fairness, they find that yes, “environmental justice” populations would suffer from the CBDTP when there is no alternative transit available, and that people of color would be disproportionately impacted by the tolling scenarios due to their overwhelming representation in the taxi/FHV sector.⁸⁷ However, they find no adverse impacts on these communities with regards to other areas of potential concern including the transit, environmental, and social areas.

This, however, is immediately followed up by Section 17.6.4, ominously titled “Offsetting Benefits.” In this section, the MTA effectively makes the case that while these populations *will* be disproportionately impacted by the CBDTP, the net benefits of the program outweigh those concerns.⁸⁸ They then list off the litany of anticipated and projected benefits such as reduced travel times, marginally improved air quality, and the fact that establishing a dedicated funding stream for the MTA would be of special benefit to these same “environmental justice communities” (EJC) due to those communities’ disproportionate reliance on mass transit.⁸⁹ Effectively, the MTA urges the reviewing bodies to disregard these now-established areas of concern in favor of the greater good that CBDTP is purported to bring.

The following section is an extension of the arguments in Section 17.6.4, wherein the MTA first reiterates that their plan is the only option for New York to implement congestion pricing while meeting the criteria they have established. It then both informs on, and suggests

⁸⁷ See page 17-48. MTA, *CBD Tolling Program Environmental Assessment*

⁸⁸ See page 17-54. MTA, *CBD Tolling Program Environmental Assessment*

⁸⁹ Ibid.

additional, programs that would help to mitigate the impact of the CBDTP on these vulnerable communities. Some of the existing programs make sense, such as reduced-fare transit and bike shares. The MTA also bizarrely includes the free Staten Island Ferry as an example of existing easement for EJs,⁹⁰ despite presenting data only pages ago demonstrating that the number of individuals capable of utilizing this service number in the low thousands.

The MTA then presents its suggestions for further easements in light of the fact that “the cost of the new toll would result in a disproportionately high and adverse effect on low-income populations who need to drive into and out of the Manhattan CBD” despite currently existing ones.⁹¹ Many of these suggestions are, while still far from substantial enough, not utterly terrible, including things such as: easing or eliminating fees associated with EZ-Pass, expanded education regarding existing transit easements, and enhancing bus service to improve service to communities of color. Yet the MTA makes it clear by omission that substantial credits for outer-borough commuters are utterly off the table, which would by far be the most effective proposal. In no uncertain terms they commit to providing credit for residents of the Manhattan CBD *exclusively*, and only for households making under \$60,000 annually.⁹²

Regarding the taxi/FHV problem, the MTA is far less charitable. They propose two things – first, that the MTA would work with the city and state to ensure that for taxis/vehicles with passengers, the passenger would pay the toll. **This would have devastating consequences for drivers, who have no choice but to shoulder the tolls.** For example, under Scenario F, the \$23 one-time toll, a driver that drives 5 days a week for 50 weeks a year would pay \$5,750 per year just on the congestion tax. That figure does *not* include the 2019 surcharge *or* other taxes on drivers. For a driver making \$40,000 annually after tax, Scenario F would represent a 14% increase in overall expenses on that already tenuous income. There is, as previously mentioned, no straightforward way to “pass along” the cost of tolls under the capped scenarios, as this would again have to rely on a perfect prediction of the number of fares a driver carries per day, which is functionally impossible to do at this point.

⁹⁰ See pages 17-57 and 17-58. MTA, *CBD Tolling Program Environmental Assessment*

⁹¹ See page 17-58. MTA, *CBD Tolling Program Environmental Assessment*

⁹² Ibid.

It gets worse, however. Because the toll cannot be effectively passed along equally, the driver has to pay it themselves, and this would happen *in the absence of* any factors that might increase their income. In other words, there is no immediate evidence that the CBDTP would increase the amount of revenue a driver *can* earn to offset this additional burden. The argument could be made that the toll would increase demand for FHV services as current drivers try to avoid the toll, or that the decrease in congestion would allow for more efficient FHV services (thus increasing the number of fares taxis and FHV's can carry in a given time.) But to assume that either, or both, of those occurrences are guaranteed is excessively hopeful.

In truth, the only way to offset this devastating tax would be to increase the overall price of the trip for customers to *roughly* account for the number and cost of tolls, divided by an anticipated number of daily fares. But even though the EA projected an idea of how much the industry would shrink, there is no way to determine exactly how the number of fares will change following the implementation of any of the scenarios. Any price increase would be a wild guess for several months until a new daily ridership per vehicle average could be determined, and both over and underestimating the increase could end up driving away *more* potential fares. FHV drivers, therefore, end up in an inconvenient situation; work more and hope they can pick up enough fares to offset the extra tax, or try to raise prices and hope that the number of fares does not decrease. This is hardly fair, especially since FHV drivers disproportionately fall under the environmental justice category. **Ironically, this vulnerable population of FHV drivers suffers even more because unlike all other vehicles, FHV's are the only vehicle class to pay both the 2019 surcharge and the congestion toll!**

Adding insult to these already egregious injuries is the second one, titled "Mitigation Related to *Possible* Job Losses [*italics added for emphasis*]." This is the MTA's desperate attempt to downplay its own findings about the devastation to the rideshare industry that the CBDTP is nearly guaranteed to cause.⁹³ The actions under this title are minor and even somewhat insulting. In exchange for their jobs, the MTA offers displaced drivers a level of assistance to become certified as a driver *within the MTA*, which caused significant uproar when first made public.⁹⁴ For those displaced drivers not quite interested in becoming a bus driver, the

⁹³ See page 17-60. MTA, *CBD Tolling Program Environmental Assessment*

⁹⁴ Post Editorial Board, "New York Post," *New York Post* (New York Post, August 24, 2022), <https://nypost.com/2022/08/24/mta-offer-to-cabbies-squeezed-by-congestion-pricing-adds-insult-to-injury/>.

MTA offers the potential opportunity to still be employed by them, but as a paratransit service provider. The section then concludes by summarizing its findings with as great of a spin as possible without distorting the truth too harshly.

Related Discussion

Up until this point this section has focused on the CBDTP EA itself, but there are some related areas that bear discussion before moving on due to their overall bearing on the issue of congestion pricing.

The 2020-2024 MTA Capital Program

This plan has been mentioned multiple times to this point but has not been fully defined; a disservice given its foundational role in both the 2019 MTARTMA and congestion pricing itself. Every five years since 2009, the MTA submits a capital improvements plan that serves as the blueprint for the MTA's construction and development efforts for the next five years.⁹⁵ These plans are ostensibly intended not only to lay out a roadmap of the next few years, but to provide context for whatever budget adjustments the MTA is asking for in order to fund those efforts. The breadth these plans encompass is vast, ranging from shoring up existing routes and infrastructure to expanding the mass transit network for the future.

⁹⁵ MTA, "Construction & Development," MTA (Metropolitan Transportation Authority), accessed October 20, 2022, <https://new.mta.info/agency/construction-and-development>.

Capital Investments in the 2020-2024 MTA Capital Program (in billions of dollars)

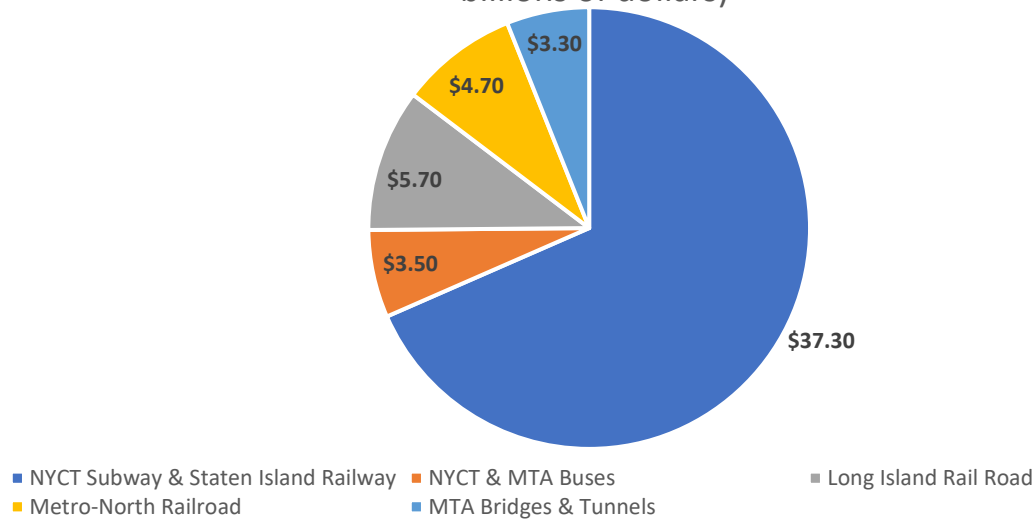


Figure 11: Visualization of the 2020-2024 MTA Capital Program, visualized. Data taken from the MTA.⁹⁶ Note that the \$3.3 allocated to MTA Bridges and tunnels does not need approval for allocation

The current plan,⁹⁷ which approved in 2020, encompassed the largest “investment” in MTA history. It totals a staggering \$54.8 billion, roughly broken down according to the figure above. Each “slice” of this capital plan itself represents anywhere from three to six priority projects, including billions for signal upgrades, new subway cars and buses, new track, and accessibility upgrades. The plan also specifically earmarks funds within these slices for the \$6.9 billion Phase 2 of the Second Avenue subway.⁹⁸ All of this is grand; it would be hard for anyone not in the pockets of the auto industry to say that improving and expanding New York’s mass transit is a bad idea. But with a funding demand of this extent, it begs the question of where exactly the funding would come from.

The MTA has a budget of over \$18 billion annually, with fares comprising most of the operating revenue, as well as state and city subsidies, taxes, federal grants, and assistance with

⁹⁶ MTA, “MTA Board Presentation,” MTA Board Presentation (Metropolitan Transportation Authority, September 2019), <https://new.mta.info/document/10401>.

⁹⁷ Metropolitan Transportation Authority, “MTA 2020-2024 Capital Program,” MTA (Metropolitan Transportation Authority, January 2020), <https://new.mta.info/capital/2020CapitalProgram>.

⁹⁸ MTA, “MTA Board Presentation”

major projects, and so forth.⁹⁹ Labor and non-labor costs¹⁰⁰ make up nearly two-thirds the agency's expenditures, meaning roughly \$12 billion – the remaining roughly \$6 billion is split between debt servicing, pension funding, health expenses. However, between the MTA's budget and the 2020-2024 plan, there was a difference between the amount required to fund the plan and the amount of money that the MTA actually had to fund it. This is where congestion pricing comes in. The idea was to have the MTA as the sole administrator and beneficiary of the congestion plan as a way of “making up the difference” between the budget and the proposed improvements, as well as providing the MTA with an additional funding source for years to come.

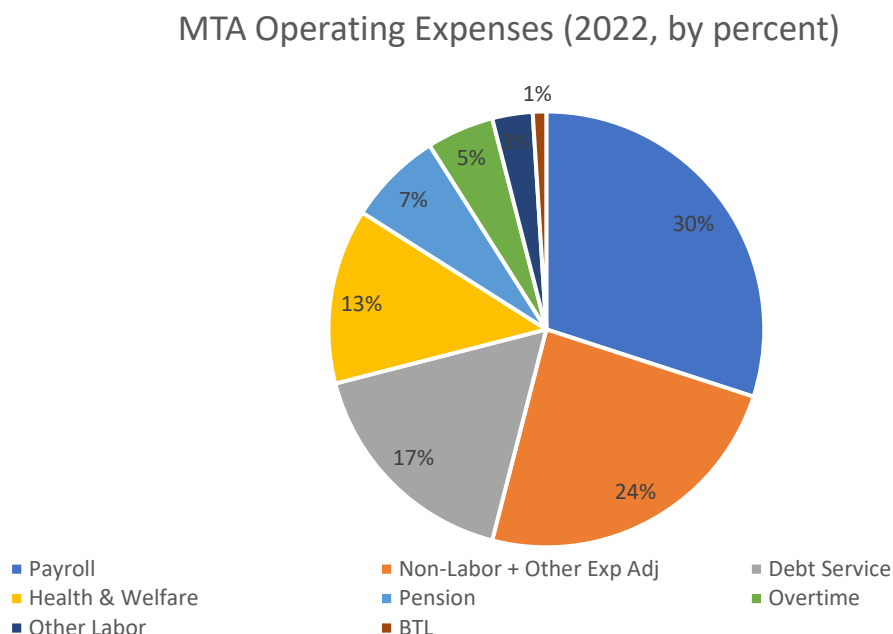


Figure 12: MTA Expense Budget by Expense Category in percentages, 2022. The budget total is 18.563 billion dollars¹⁰¹

As previously stated, the pandemic significantly disrupted and delayed the implementation of congestion pricing, which was initially scheduled to begin in late 2020 to generate the revenue needed to make up that shortfall. Well into 2022, and with the plan now

⁹⁹ MTA, “MTA Operating Budget Basics,” MTA (Metropolitan Transportation Authority), accessed October 21, 2022, <https://new.mta.info/budget/MTA-operating-budget-basics>.

¹⁰⁰ This category encompasses material aspects of the MTA's operation – the actual track, busses, subways cars, and so forth

¹⁰¹ Metropolitan Transportation Authority, “MTA February Financial Plan 2022 Adopted Budget (2022 – 2025).” (New York, February 2022). <https://new.mta.info/document/76706>

currently anticipated to start in 2023 if everything goes well, the 2020-2024 plan has thus been carried out in a reduced capacity.

The Traffic Mobility Review Board

The Traffic Mobility Review Board (TMRB) is likewise a concept that has been alluded to previously, yet not fully explored despite its undeniable importance in the final stage of the process. The 2019 MTARTMA law establishes the TMRB essentially as an authority representing New York's position on the eventual recommendation the MTA will make for implementing the CBDTP, and one of the two places that the CBDTP must be approved by. The other is the FHWA; astute readers may recall that the FHWA was heavily involved in the production of the CBDTP EA. The TMRB also has the power to make certain suggestions about the final form of the proposal prior to approval. **As both a recommending and approving authority, the TMRB thus wields immense power in the final stage of signing off on the CBDTP which, at time of writing, the project is currently in.** The only other approval that the project needs is that of the FHWA, and because of their extensive involvement in the creation of the EA and the analysis done, they are expected to look upon whatever the TMRB approves of in a far more favorable light.

The TMRB is a six-person board, made up of a chairperson and five other members. Below are the requirements that the law requires for the board to operate:¹⁰²

- **It must have all six members**
- **One member must be appointed by the Mayor of New York City**
- **One member must live in the Metro North Region¹⁰³**
- **One member must live in the Long Island Railroad Region¹⁰⁴**
- **All members must have qualifications in one or more of the following areas:**
 - **Public transit**
 - **Mass transit**
 - **Finance**

¹⁰² "SECTION 553-K: Traffic Mobility Review Board"

¹⁰³ The Metro North Rail is a series of commuter rail lines between New York City and Connecticut, operated by the MTA. It broadly services the counties between the city and Connecticut, which within the EA are considered impact regions of the NYC Metro area

¹⁰⁴ Like Metro North, the Long Island Railroad is operated by the MTA, and broadly services Long Island which is likewise within the impact region of the CBDTP

- **Management**

- **The chair and all members not appointed by the mayor are to be appointed by the MTA**

On July 27th, 2022, the MTA announced that it had selected the chair and four members that would sit on the TMRB ahead of the public release of the EA.¹⁰⁵ Four days later, New York Mayor Eric Adams announced his own appointment for the spot reserved for the Mayor's choice, filling out the TMRB as an entity.¹⁰⁶ So who are the six people who will effectively decide the final form that the CBDTP will take for the city?

Their names, portraits,¹⁰⁷¹⁰⁸¹⁰⁹¹¹⁰¹¹¹¹¹² and positions¹¹³ are pictured below. To be clear, all of these individuals appear to be qualified, based on the guidelines set out in the law, to serve on the TMRB. **However, it is problematic that the MTA as the primary author of the CBDTP has the authority under the law to appoint over 80% of the board responsible for determining whether the plan is acceptable.** Beyond this, however, there is another area of concern, specifically related to the composition of the TMRB. As the EA notes, all five boroughs of New York City top the list of regional impact. New York is a majority minority city, and over half of city residents are women.¹¹⁴ Yet over half of the board are male, and there are only two women *and* two people of color on the board, with only one member being both.

¹⁰⁵ "MTA," MTA (Metropolitan Transportation Authority, July 27, 2022), <https://new.mta.info/press-release/mta-announces-major-progress-congestion-pricing-traffic-mobility-review-board>.

¹⁰⁶ "NYC," NYC (City of New York, January 8AD), <https://www1.nyc.gov/office-of-the-mayor/news/562-22/mayor-adams-nominates-john-samuelsen-traffic-mobility-review-board>.

¹⁰⁷ HR&A Staff, "Carl Weisbrod," HR&A (HR&A Advisors), accessed October 21, 2022, <https://www.hraadvisors.com/team/carl-weisbrod/>.

¹⁰⁸ Rich Bockmann, "John Banks Rebny: Real Estate Board of New York," The Real Deal New York (Korangy Publishing Inc, July 3, 2015), https://therealdeal.com/issues_articles/banks-takes-baton/.

¹⁰⁹ Staff, "Scott Rechler," Federal Reserve Bank of New York (Federal Reserve Bank, January 2022), <https://www.newyorkfed.org/aboutthefed/orgchart/board/rechler>.

¹¹⁰ MTA, "John Samuelsen," MTA (Metropolitan Transportation Authority), accessed October 21, 2022, <https://new.mta.info/people/john-samuelsen>.

¹¹¹ MTA, "Elizabeth Velez," MTA (Metropolitan Transportation Authority), accessed October 21, 2022, <https://new.mta.info/people/elizabeth-velez>.

¹¹² Aaron Elstein, "Most Powerful Women - 18. Kathryn Wylde," Crain's New York Business (Crain Communications, June 14, 2019), <https://www.craigslist.com/awards/most-powerful-women-2019-kathryn-wylde>.

¹¹³ "Central Business District Tolling Program" MTA

¹¹⁴ Staff, "New York City, New York Population 2022 (Demographics, Maps, Graphs)," World Population Review (World Population Review, 2022), <https://worldpopulationreview.com/us-cities/new-york-city-ny-population>.



Carl Weisbrod, Chair of the TMRB and ex-Chair of the NYC Planning Commission



John Banks, President Emeritus of the Real Estate Board of New York



Scott Rechler, Chair of the Regional Plan Association and CEO & Chairman of RXR



John Samuelson, International President of the Transport Workers Union



Elizabeth Velez, President, and Principal of the Velez Organization



Kathryn Wylde, President, and CEO of the Partnership for New York City

To be clear, this is not to suggest that any member of the board is incapable of thinking and acting critically with regards to the CBDTP and its impacts on various populations. Moreover, it is true that the CBDTP has an impact area far beyond that of New York City, including outlying regions with differing demographic balances that also need to be considered. But New York *will* see the largest impacts compared to those outlying regions, and New York *is*

a highly diverse city. Likewise, as has been demonstrated, the MTA has a massive stake in having the CBDTP approved in its current form – a stake worth *billions* of dollars in annual revenue. Therefore, it is fully justified to worry that in light of those two facts, the TMRB may choose to approve the plan without giving issues of racial and gender inequity the weight that they deserve.

V. CONGESTION PRICING AND COMMUNITIES OF COLOR - PROBLEMS:

As has been demonstrated by both examining the history of this concept and the latest iteration of it, there is an overall lack of consideration for how the plan would affect our city's vulnerable populations. As has been touched upon throughout the report to this point, the CBDTP has largely downplayed the effects of the plan on people of color and has avoided the sort of critical study that one should expect from a plan as sprawling as this one. Even in instances where the EA recognizes that the plan would cause material damage to our communities, it noticeably skirts the sort of creative and aggressive thinking that could help to solve those problems. The overall impression one comes away with is that the MTA sought to do the bare minimum with regards to understanding and dealing with these issues, with the hope that the trumpeted benefits would help to drown out potential opposition from these communities and their representatives.

Fundamental Issues

While specific issues exist and will be discussed in-depth shortly, the fact is that many of these issues were doomed to materialize because of fundamental issues with how the CBDTP was conceived and legislated. Nowhere in the 2019 law is the MTA specifically commanded to consider or study racial factors related to the project, and while the law does provide for a system of toll credits, there is no specific imperative to make these credits more accessible for people of color. Likewise, while the FHWA requirements under NEPA do make it clear that "Assessment of the social, economic, and environmental impacts of a proposed action or project" is required, there is an identical lack of specificity over how significant the racial implications of a project are to be considered.

According to the MTA, they complied with their legal outreach obligations which included putting up a website, compiling a concise fact sheet, and running both regular and ad-based campaigns in print and digital media.¹¹⁵ Chiefly, however, was the requirement to hold public meetings and hearings, including with EJ communities; the MTA held 19 total, all virtual, of which ten were general and nine were EJ-specific. Four of the general meetings were held

¹¹⁵ See pages 18-3 and 18-4. MTA, *CBD Tolling Program Environmental Assessment*

specifically for areas of New York City, and three of the EJ-specific meetings were held in New York as an overall region.¹¹⁶ The MTA also apparently established “Environmental Justice Working Groups”, which according to them were intended to give those communities the opportunity to work with the MTA and provide insight into the potential impacts of the CBDTP.¹¹⁷ This is all fine on the surface, and the MTA has dutifully included brief summaries of the comments provided during all of these events. They even make it clear that they will, in accordance with NEPA, continue to do outreach at the necessary stages in order to inform the public and impacted communities about various developments.

But therein lies the problem – the MTA did what they were required to do under the law, and nothing more. The EA does not provide specifics on exactly what went into their various outreach strategies, but of the 19 webinars the highest number of participants was the second one, which was for the CBD region itself. The overall average number of viewers for all of these webinars was in the high double digits; for the EJ community-specific ones, that number drops to low double digits.¹¹⁸ Moreover, regional meeting distribution of these webinars demonstrates a seeming lack of common sense within the MTA. The EJ meetings are the best example of this. The nine meetings were split *equally* between New York, New Jersey, and Connecticut despite the disproportionate impact the project would have on minority and low-income populations in New York City. The average participant count for the New York EJ webinars was around 40 for all three; for New Jersey and Connecticut *combined*, the average was 21.¹¹⁹

One can give MTA the benefit of the doubt that their public outreach to our communities was backed by a prolific information campaign, and that it failed to deliver a large pool of commentors. But only in the universe of government and conservative factfinders does that excuse them from the responsibility of finding or, if necessary, *collecting*, the data to make informed insights. Indeed, reading this EA presents the overwhelming impression that the preparers did not even have enough common-sense understanding about the city’s population beyond the five-block radius around the MTA headquarters on Wall Street! This is not limited to

¹¹⁶ See Table 18-2, page 18-6. MTA, *CBD Tolling Program Environmental Assessment*

¹¹⁷ See page 18-7. MTA, *CBD Tolling Program Environmental Assessment*

¹¹⁸ See page 18-6. MTA, *CBD Tolling Program Environmental Assessment*

¹¹⁹ *Ibid.*

population insights and habits either; it extends to businesses and community-level analyses as well throughout the report. Did the MTA even *consider* direct outreach to people of color or low-income individuals through polling, mailers, or similar methodology, in order to gather a statistically relevant pool of quantitative and qualitative data about social, economic, and environmental situations? What about direct outreach to businesses on the same issues? If there was any notion to do so it clearly died in committee; nowhere in the EA is original data of that nature mentioned or presented in support of any assertions about impact on the various areas, including for people of color and/or low-income communities.

Economic

Throughout the most recent series of public hearings, and in media “discussion” on the topic, one particular phrase was often spoken by detractors; that the CBDTP would be a “regressive tax.” A regressive tax is named as such because such taxes are generally uniform in their application – whether you are rich or poor, you pay the same tax rate. While a uniform tax is paid equally, however, it does not apply equally. The tax eats up a disproportionately larger amount of a lower-earning individual’s income compared to a high-earning individual, which is regressive as it ends up net taxing those that have less more than those who have more.

The CBDTP in its current form is undoubtedly a regressive tax not because of its uniformity, but by the fact that there is practically no easement whatsoever for lower-income people. Unfortunately, in our city, low income and race happen to go hand in hand, as the above and below charts demonstrate all too well. New York is one of the most unequal cities on Earth – despite now only making up around 40% of the city’s population across the five boroughs, White residents disproportionately occupy the city’s highest paying jobs. They also have a median wage that is over 50% greater than the median wage for Black people,¹²⁰ and over 60% greater than the median wage for Hispanic people.

¹²⁰ And this is using the figure for “All Whites.” Using the “Non-Hispanic Whites” figure, it’s over 60% greater.

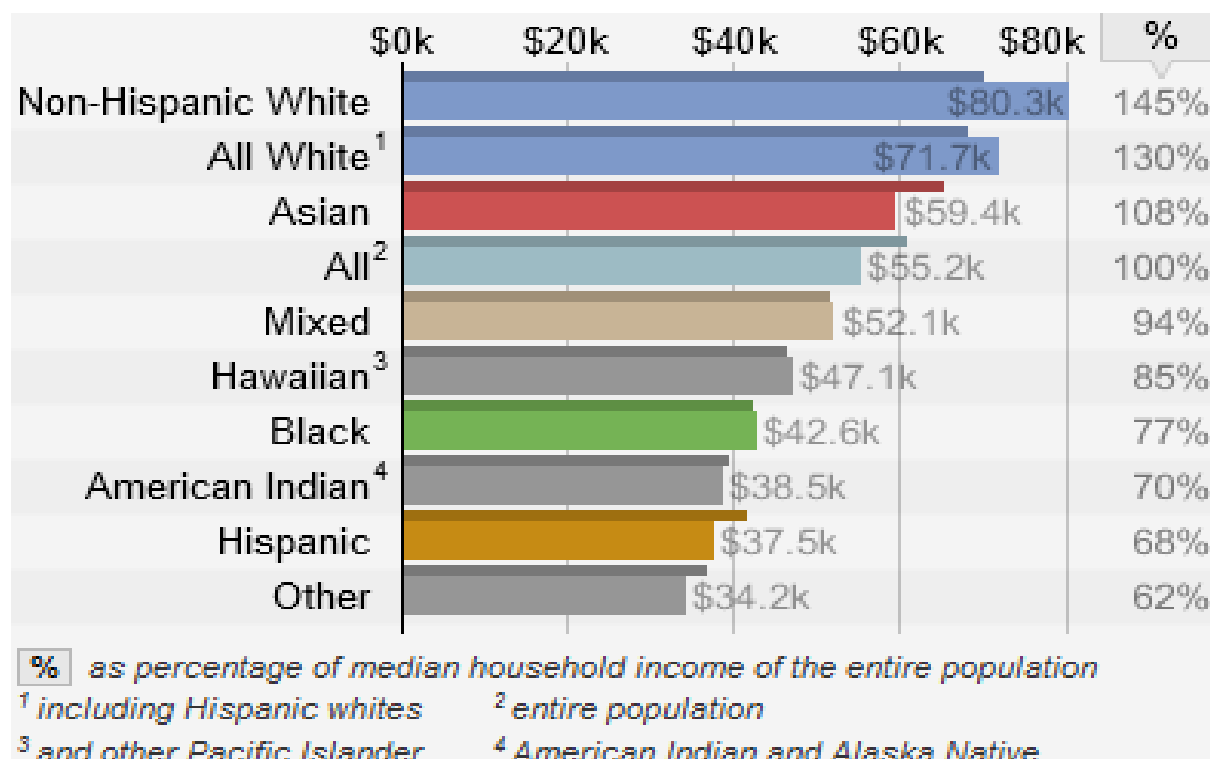


Figure 13: Median Household Income by Race in New York City.¹²¹

In other words, the MTA’s decision to assess the plan’s impact on people of color and low-income earners separately under the “environmental justice community” label takes on an entirely new dimension. Rather than reading as a somewhat odd choice of phrasing and rendering the data, it now reads as either a staggering display of ignorance or deliberate choice to avoid the mitigation implications that assessing them together would bring. It is honestly difficult to say which of those two things is worse, but neither of them are flattering for the MTA.

¹²¹ Staff, “Household Income in New York, New York (City),” Statistical Atlas (Statistical Atlas), accessed October 21, 2022, <https://statisticalatlas.com/place/New-York/New-York/Household-Income>.

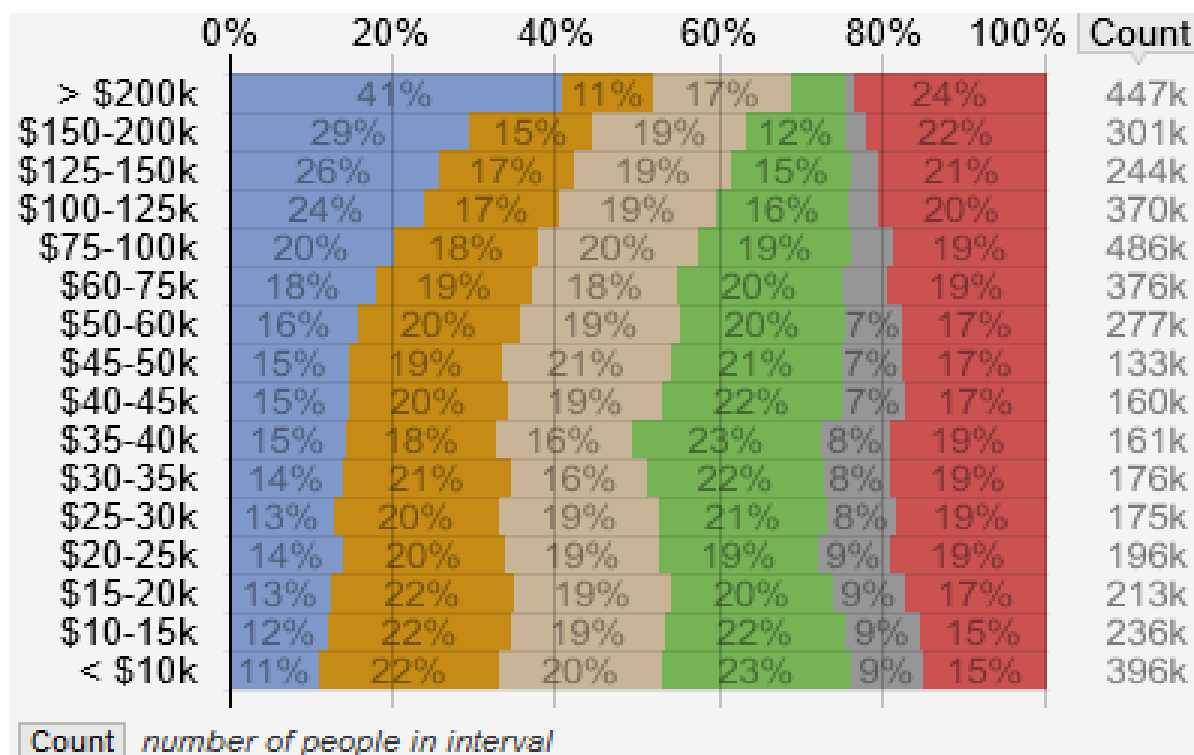


Figure 14: Independent Household Income Distribution by Race.¹²² Blue is non-Hispanic White, Yellow is Hispanic, Beige is mixed-race, Green is Black, Gray is Other, and Red is Asian.

In fairness, the MTA did acknowledge this partially within Section 17, but they stopped short of making the connection. This is because, as discussed, they were using the Health and Human Services poverty level figure to assess the CBDTP's economic impact. Why they chose this figure is not explicitly spelled out; it can be assumed, however, that the MTA rationally deduced that someone who can barely afford to eat would be economically devastated if they had to pay a toll to enter the CBD by vehicle. While that makes sense, it can also be seen as a strategic decision by the MTA to establish an artificially low cutoff for the number of people who would be hurt by the CBDTP. By doing so, the MTA could "truthfully" claim that the economic impact would be marginal.

It should be stressed that this is not asserting with certainty that the MTA made a deliberate decision to choose the poverty rate in order to maliciously mask the true economic impact of the CBDTP. In all likelihood, they used the poverty rate because when one thinks about "poverty," the image that comes to mind is almost certainly a person to whom \$9-\$23

¹²² Statistical Atlas "Household Income in New York, New York (City)"

would be extremely dear. But theoretically, how many more people would fall into the impact zone if the MTA had used a cutoff such as, for example, cost of living? As a baseline, 1.4 million people in New York fall into the federal poverty zone;¹²³ using rough demographic approximation, the vast majority of that number are likely to be people of color. Keep this in mind.

The federal poverty numbers used are extrapolated from poverty thresholds determined by the Census Bureau; these are calculated as three times the cost of a minimum food diet in 1963, adjusted for family size.¹²⁴ Apart from Alaska and Hawai'i, this number is deliberately *not* geographically based – so in the EA, the poverty levels referenced are the baseline for the 48 continental states.¹²⁵ This means that a household of four in Kansas and a household of four in New York have the same poverty threshold of \$27,750;¹²⁶ if any household of four in the 48 continental states makes less than that, they are in poverty. The problem should be evident at this point, but to be clear; it does *not* cost the same to live in Kansas as it does in New York. Because the guideline is based on a static input (the minimum food diet in 1963) and not adjusted by geography, the federal poverty level excludes people in places with a higher cost of living, who may not be able to afford even basic things like housing, food, and/or healthcare.

To put this in perspective; most estimates typically use a household size of four, which as established has a poverty threshold of \$27,750. New York City is one of, if not the most, expensive cities in the world to live in. Of course, the cost of living in New York varies greatly depending on a variety of factors; debt levels, spending habits, and other extraneous/individual factors play into the cost extensively. However, just on rent and utilities alone the average price for a 900 square foot apartment is over \$3,000 per month, an annual total of over \$36,000.¹²⁷ For a family of four, this is nearly \$10,000 over the poverty level, and before other essential

¹²³ Spectrum News Staff, "New Report Examines State of Poverty in New York City," Spectrum News NY1 (Charter Communications, May 22, 2022), <https://www.ny1.com/nyc/all-boroughs/inside-city-hall/2022/05/06/new-report-examines-state-of-poverty-in-new-york-city>.

¹²⁴ Institute for Research on Poverty, "How Is Poverty Measured?," Institute for Research on Poverty (Board of Regents of the University of Wisconsin System), accessed November 28, 2022, <https://www.irp.wisc.edu/resources/how-is-poverty-measured/>.

¹²⁵ Does not include Alaska and Hawai'i, which each have their own poverty guidelines

¹²⁶ U.S. Department of Health and Human Services, "HHS Poverty Guidelines for 2022,"

¹²⁷ "Cost of Living in New York City, United States. Oct 2022 Prices in New York City.," Expatistan (Expatistan, October 2022), <https://www.expatsistan.com/cost-of-living/new-york-city>.

expenses like food and healthcare. This difference between rent and poverty level is more pronounced because the average family size of New York is actually 2.55, which rounded up to 3 means a poverty level of \$23,030 and a difference of over \$10,000 annually for the same apartment.¹²⁸ Again, this is prior to other essentials like food and healthcare, which raise the overall cost of living significantly, but the point should be clear. The MTA using the federal figures means they fail to capture people and households who are above the poverty level yet still struggle to afford New York and thus would be just as devastated by new tolls as those who are technically in poverty. FHV drivers in particular fall within this zone, especially if they are sole providers. To a certain extent the MTA has corrected for this, by implementing a tax credit system for households making under \$60,000, but only for households *within* the CBD¹²⁹ – not outside of it. As a result, drivers and commuters who may fall into the zone between being in federally-defined poverty and being able to absorb the commuting costs who also live in the outer boroughs are out of luck – the MTA says pay up or find a way to get into the city without your car.

This is catastrophic in many ways. Economic costs aside, this plan also unfairly disadvantages people of color who, in many cases, drive out of necessity because they lack access to mass transit, or cannot afford the time and cost of existing MTA transportation. Below is the map of current subway routes, during regular service. In Queens especially, but also in Brooklyn and the Bronx, there are massive areas where subway service simply does not exist. This reduces commuters to decide between the remaining options – bus or car. One may be inclined to say that buses provide a reasonable alternative, especially the rush buses on routes specifically designed in order to get commuters to the CBD.

Yet these options are not cost effective. Regular busses cost the same as a subway (\$2.75), but the express ones cost \$6.75 per fare – a total of \$13.50 per day spent commuting, for a weekly total of \$70.50.¹³⁰ Moreover, this is just the minimum. Many commuters may actually have to take more than one bus, or combine their bus with a subway trip, due to their location or the limits of service in their area. These are “multi-fare zones,” areas where commuters must

¹²⁸ U.S. Department of Health and Human Services, “HHS Poverty Guidelines for 2022,”

¹²⁹ “Central Business District Tolling Program” MTA

¹³⁰ MTA, “Everything You Need to Know about Fares and Tolls in New York,” MTA (MTA), accessed October 24, 2022, <https://new.mta.info/fares>.

take two or more separate transit services to reach their destinations, and the cost can end up near or exceeding \$20 per day depending on the services used. Those familiar with mass transit in the city may, at this point, recall that the MTA offers 7-day and 30-day unlimited travel plans, which are intended to reduce the cost of mass transit for people using it every day. At first glance these seem to provide a clear solution regardless of whether an individual takes a single subway or hops between buses; however, there is a problem.



Figure 15: MTA subway routes.¹³¹ Note the "dead zones", especially in Queens.

¹³¹ MTA, "Maps - Subway, Regular Service," MTA (MTA), accessed October 24, 2022, <https://new.mta.info/maps>.

Unlike subways and local buses, there is no monthly unlimited plan for express services – the best one can hope for is a 7-day unlimited express and local bus plus subway card for \$62, while a local bus and subway unlimited 30-day card for \$127.¹³² But all these plans have another problem – the up-front cost. For many of the commuters that these plans would benefit, the cost of these passes are cost prohibitive – paying \$62 for a pass that only saves you \$8.50 a week is hard, especially when you have mouths to feed and bills to pay.¹³³ Compared to all of these, commuting by car seems far more logical, and thus why so many people in the outer boroughs decided to do so. Gas may be expensive, but with toll-free crossings plus the flexibility that a personal vehicle offers, it is far more cost effective even when you factor in the congestion and the fight for parking.

Finally, there is the MTA’s utter contempt for taxis and FHV’s, which manifests in every proposed scenario as what is effectively an economic sanctioning of the industry’s presence within the city. Originally, as discussed, the 2019 law implemented a congestion surcharge of \$2.75 on every single FHV/taxi ride within the designated zone, a precursory action to the eventual CBDTP which would “add in” other types of drivers/vehicles. This was fine because since the tax was applied per ride, it could be passed along to the rider in an easy and effective manner. However, the MTA, which in the CBDTP did establish how other vehicles could be “added in” to a congestion pricing scheme, included FHV’s and taxis *as well* without negating or removing the previous \$2.75 surcharge. **This would make for-hire drivers the *only* drivers/industry that would be taxed twice under the plan, which is totally unfair.**

Moreover, as previously discussed, half of the proposed scenarios make passing along the cost of tolls to riders nearly impossible, meaning that drivers would shoulder the tolls themselves with no clear way of compensating for the added cost.

On the topic of shouldering unfair costs, it should be made clear yet again that FHV drivers as a population are *not* capable of absorbing additional costs. This is evident just from considering the job itself. Due to the nature of the work, FHV drivers are not salaried and earn

¹³² Ibid.

¹³³ This is even more pronounced for the 30-day unlimited plan, which if only used for work trips can end up costing more than just paying individual fares. In a 30-day period, there are theoretically 22 workdays, meaning at minimum 44 trips (one swipe to and from work). If the commuter travels the minimum, the cost is \$2.89 per trip, 14 cents more than just a single fare. The commuter would have to take a minimum of 47 trips to barely break even

based on a number of factors, including how often they work, how many fares they take, and where they are based. As such, the average and median annual pretax income can vary significantly; one estimate of the median puts it at roughly \$45,000,¹³⁴ another estimate of the average puts it at roughly \$42,000,¹³⁵ and some averages place it as low as \$25,000, even when some earn up to or above \$70,000.¹³⁶ For simplicity future examples will use a previous example salary of \$40,000 pretax, but it is critical to remember that by and large FHV and taxi drivers have a highly uncertain income. The problem of an unstable and generally lower salary is made worse by the fact that FHV drivers are not considered employees of their respective brands, but rather independent contractors.¹³⁷ While this means greater flexibility for drivers, it also means that drivers pay higher taxes and do not receive employee benefits like healthcare from the company they drive for.

As discussed, New York is extremely expensive to live in, from housing to food. If a driver is the sole provider for their household and makes \$40,000 gross then after taxes, rent, and utilities, the amount left over for everything else is small. Yet beyond other necessities like food and healthcare, the latter of which FHV drivers do not receive, there is another critical expense which makes the economic situation of drivers even more tenuous - their cars. For drivers, their car is their livelihood, and they must shoulder all of the costs of their livelihood alone in a city that is already far from ideal for cars. This means potentially paying parking fees for the car when not in use, as well as costly maintenance to ensure that the car not only remains serviceable but is also hospitable for passengers – ratings are life. For taxi drivers, there is the expensive medallion they must buy to legally operate yellow cabs. This can involve taking on significant debt to purchase them and thus sacrificing revenue in order to repay it, which likewise cuts into their real profits.¹³⁸ Against this economic backdrop, one can see how the 2019 \$2.75 congestion surcharge is already problematic even though it could be directly passed along to the rider; a

¹³⁴ Salary.com, “Uber Driver Salary,” Salary.com (Salary.com, October 27, 2022), <https://www.salary.com/tools/salary-calculator/uber-driver/new-york-ny>.

¹³⁵ Comparably, “Uber Driver Salary,” Comparably (Comparably), accessed November 28, 2022, <https://www.comparably.com/salaries/salaries-for-uber-driver>.

¹³⁶ Intuit Mint, “Rideshare Driver Salary in New York Metro Area, NY,” Mint (Intuit), accessed November 28, 2022, <https://mint.intuit.com/salary/rideshare-driver/new-york-metro-area-ny>.

¹³⁷ Brett Helling, “Are Uber Drivers Independent Contractors or Employees?,” Ridester (Ridester, February 23, 2022), <https://www.ridester.com/uber-drivers-independent-contractors-employees/>.

¹³⁸ Amir Khafagy, “NYC Yellow Taxi Medallion Crisis, Explained,” Documented, November 23, 2021, <https://documentedny.com/2021/11/23/taxi-cab-medallion-explained/>.

higher cost could lead to fewer customers, in turn putting livelihoods in jeopardy. **To double tax these drivers, and in many scenarios make it so that they drivers themselves must pay the toll, is a death sentence.**

The cost of double taxing FHV and taxis extends beyond the economic, however. One may recall that people of color dominate the industry, many of whom are also immigrants to the United States. For decades, the FHV industry has been a steppingstone for immigrants to establish a new life in not just the city, but America. When many people think of hard work, they typically envision a physically laborious job, but the truth is that driving an FHV is no less difficult. Drivers work long shifts, sitting for hours on end while searching for customers with little physical activity. The job is psychologically taxing as well as every bathroom break, every five-minute stretch period, or even glancing away from the street or app to eat represents a potentially lost fare. Adding this to the previously discussed financial stressors of the job, one can see that this is an industry that is already under significant pressure.

All of this is further compounded by, again, the overwhelming representation of non-white people in the FHV space. It is hard not to see the MTA's decision to target taxis and FHV as an attack on the city's communities of color, given the overwhelming representation of immigrants and people of color in the industry. True, they do drive in and out of the city more than commuters do, and thus theoretically contribute to the congestion and pollution more. The problem, however, is that the MTA seems to consider the impact that the CBDTP would have on the industry and thus the people who depend on it as a minor consequence. Under the plans where the industry would be tolled three or more times per day, taxis and FHV would be forced to pass along the costs to the riders – they have no choice. Fares that involve Manhattan below 96th Street already cost \$5.80 before the taxi even begins to drive,¹³⁹ and depending on the time of day or distance travelled, that number can easily become quite large. The same goes for FHV, though they face even higher costs. With the addition of CBDTP tolls, the base cost could easily top \$15 if not more; again, without the car having even moved.

¹³⁹ Including initial cost, the 2018 congestion surcharge, and 80 cents for location and an "improvement" fee. TLC, "Taxi Fare," NYC Taxi and Limousine Commission (City of New York), accessed October 24, 2022, <https://www1.nyc.gov/site/tlc/passengers/taxi-fare.page>.

The MTA is right; business will suffer. Who wants to pay over \$20 to travel from 91st Street to Times Square when you can take a subway for \$2.75, or bike for free? But what they bury in clinical language is the devastation that drivers will suffer as customers confront that reality. It would not be a stretch of imagination to say that commuters who had been relying on FHV's to commute may even decide, if they have a car and lack access to public transit, to drive themselves because the cost would be lower to do so. Thousands of immigrant jobs, with most of them being held by immigrants of color, will evaporate as drivers no longer make enough to support themselves, their families, or potentially even their vehicle payments. The loss of income would in turn impact the communities that many of these drivers live in – they would no longer be able to support their local businesses and other community services, which in turn would potentially lead to businesses to close, leading to a further spiral of jobs being lost and businesses being closed.

Furthermore, the MTA's mitigation offers of free training and employment by the MTA to those drivers who would lose their jobs is paternalistic, insufficient, and insulting.

There is simply no other way to characterize the sheer audacity of the MTA killing thousands of jobs and then offering what is effectively a coupon to take the exam to become a bus driver to those thousands of newly unemployed drivers at \$25 per hour.¹⁴⁰ It is not nothing, but it is an oversupply crisis in the making and relies to heavily on things working out how the MTA envisions them doing so. The Capital Plan envisions a significant expansion of the bus fleet, but it is not enough to adequately employ all the drivers who would lose their jobs thanks to congestion pricing, and the timeline for when those would be procured is vague. It likewise assumes that the fares lost due to the same tolling increases would now be taking MTA busses to get around, which the MTA itself is unsure of within the EA itself.

As mentioned, for many being a driver is a pathway to establishing oneself in a new country, even if the salary is not what it once was. Even though one may need to be constrained into a shift schedule in order to effectively capitalize in the industry, there is also an intangible pride in driving yourself and, in the case of FHV's, being your own boss to an extent. Then, it is taken from you and the people who took it from you offer what they claim is the same, except

¹⁴⁰ MTA, "How to Become a Bus Operator," MTA (Metropolitan Transportation Authority), accessed October 24, 2022, <https://new.mta.info/careers/bus-operator>.

now you are not free and not your own boss. To say that it is degrading barely scratches the surface, especially when one considers that many of these drivers purchased cars, paid insurance, and so forth; essentially, investing in their own businesses. It is like having your nice house, that you worked decades to save up for and buy, being taken from you and then being offered a shack as compensation.

Environmental and other

The MTA correctly assesses that congestion causes pollution, and that that pollution is a perennial problem in our city's Black and brown communities. The CBDTP was supposed to save our communities from this by making it costly to drive polluting vehicles in and through these areas, thus reducing the amount of pollution. Yet as we have seen, the CBDTP will not do this. The trucks that make up the majority of the city's pollution will not abate, both out of necessity and because the amount they will pay is disproportionately lower than what other drivers, chiefly taxis and FHV's, will pay. The death of the FHV industry will certainly reduce the number of vehicles travelling, and some people will make the shift to public transit or, for those that can, they will stop commuting entirely and just work from home.

But while a decline of 7%-9% conceptually sounds fine, even great, it is important to remember that the MTA's goal was to reduce congestion into and within the CBD, bounded by 60th Street and not including the highways belting the area. As has been explored, both by the MTA and the report, the logical question is that once the CBDTP is implemented, how will the people who still want to drive to the city adapt? The more well-off individuals will simply curse the government and pay, but the rest will simply look for an alternative place to park that does not involve crossing the line. Congestion will be distributed into the areas surrounding the CBD, and while the MTA claims that the increases are likely to be minor, common sense tells us that that will not be the case.

So where exactly would the congestion, and the pollution it brings, shift to within the city? Under the CBDTP, the only bridges remaining to not be tolled would be across the Harlem River, which crosses between the Bronx and Harlem, in Manhattan. It is reasonable to expect, as the MTA does, that some people would try to evade tolls by going out of their way to enter Manhattan through those bridges, and then finding parking before taking a bus or the subway into the CBD. This would inevitably increase congestion, and thus pollution, in one of New

York's most famous Black and brown neighborhoods; this would cause commuters to either fighting for parking within Harlem and surrounding areas or on their way closer to the Manhattan CBD. The Upper East Side, Upper West Side, Lincoln Square, and Lennox Square would be the destinations of the latter commuters. These areas are predominantly White¹⁴¹ and were particularly vocal about the impact that the CBDTP would have on their neighborhoods; indeed, reviewing the most recent round of public comment sessions, these residents are perhaps one of the most represented groups among those speaking out against the CBDTP.¹⁴²

What about the neighborhoods around the East River bridges, which would be tolled under the CBDTP? These areas are 57% white, but still have a sizable number of Black and brown residents.¹⁴³ Moving even just a few blocks beyond the immediate area of the bridges, and the number of people of color dramatically rises while the number of white residents correspondingly decreases. Brooklyn and, to a lesser extent, Queens would see similar increases in commuters fighting with locals for parking near subways and thus these areas would see increases in congestion and, therefore, vehicle pollution.

The reality is that while there is likely to be some environmental benefit caused by the people who are no longer driving, the pollution is not so much disappearing as it is shifting from the CBD to the outlying areas. While the areas within the immediate area of crossings into the CBD have either been or have gentrified to become predominantly White, traditionally Black and brown neighborhoods that are removed from the crossings are just as likely to see increases in congestion and pollution. The MTA's methodology asserts that these areas would see declines while seeing increases in both mass transit and non-vehicular travel,¹⁴⁴ but while traffic is projected to fall in the regions mentioned, these are projections for 2045 – two decades from

¹⁴¹ "NYC Planning Population Factfinder - Demographics of Upper East/West Sides, Lincoln Square, Lennox Hill," NYC Population FactFinder (City of New York, 2022), <https://popfactfinder.planning.nyc.gov/explorer/selection/8572f821d1b5cbf1d83f6ad716a4609148c98fa7?acsTopics=demo-sexAndAge%2Cdemo-mutuallyExclusiveRaceHispanicOrigin%2Cdemo-hispanicSubgroup%2Cdemo-asianSubgroup&censusTopics=populationDensity%2CsexAndAge%2CmutuallyExclusiveRaceHispanicOrigin%2ChousingOccupancy&compareTo=0&showCharts=true&showReliability=false&source=decennial-current>.

¹⁴² In Re CBDTP Congestion Pricing Program Environmental Assessment Public Hearing, Before Representatives of Project Sponsors (August 30, 2022)

¹⁴³ NYC, "NYC Planning Population Factfinder - NTAs Williamsburg, South Williamsburg, Brooklyn Heights, Greenpoint, Brooklyn Navy Yard, Downtown Brooklyn-DUMBO-Boerum Hill, ,Carroll Gardens-Cobble Hill-Gowanus-Red Hook, Queensbridge-Ravenswood-Dutch Kills, Long Island City-Hunters Point," NYC Population FactFinder (City of New York, 2020), <https://popfactfinder.planning.nyc.gov/#12.29/40.70157/-73.9451>.

¹⁴⁴ See page 4A-13. MTA, *CBD Tolling Program Environmental Assessment*

now. **Meanwhile, the MTA admits that one of the primary short-term outcomes of the CBDTP would be that commuters would take new routes to avoid paying the tolls; these routes would almost all include travel through predominantly Black and brown communities.**

The other major issue is the MTA itself. This is not a problem that exclusively concerns people of color, though as demonstrated they are the primary users of the MTA's various mass transit options, and therefore do/would be impacted to a greater extent. But given what the CBDTP is trying to achieve, the problems with the MTA are ones that, if the plan is implemented, would be near-universal in their effects.

The problems with the MTA are, to be fair, not entirely its fault. Unlike many other mass transit systems worldwide, the MTA receives comparatively little public funding, which has forced it to make financial decisions that are ultimately passed on to riders through fare raises, service cuts, and decreased experience quality.¹⁴⁵ As covered previously, the MTA's budget is around \$18 billion dollars; just 7% of that figure comes from state and local subsidies, compared to the 50% the MTA gets from fares and tolls.¹⁴⁶ The subway system, which the MTA is arguably best known for, is over a century old, and due to the lack of funding to replace aging infrastructure, more is spent on piecemeal fixes and upgrades than on desperately-needed expansions or massive upgrades. Indeed, one of the core reasons for the renewed push to implement congestion pricing was the 2017 subway crisis, one of the key factors of the crisis being aging and unsafe infrastructure.¹⁴⁷ Busses, which provide critical mass transit to areas without significant subway infrastructure, cost more to operate than they take in in fares despite the high efficiency that they operate with.

Furthermore, as mentioned previously, the MTA suffered heavily when the COVID-19 pandemic hit – an extraneous factor that devastated ridership (and thus critically needed fares) and from which it still has not recovered. The pandemic also served as a flashpoint for the

¹⁴⁵ Devjyot Ghoshal et al., "Less Money, More Problems," The Story of MTA (Columbia University), accessed October 24, 2022, <http://www.columbia.edu/~kyl2120/mtaproject/>.

¹⁴⁶ MTA, "MTA Operating Budget Basics"

¹⁴⁷ Emma G Fitzsimmons, "Cuomo Declares a State of Emergency for New York City Subways," *The New York Times*, June 19, 2017, <https://www.nytimes.com/2017/06/29/nyregion/cuomo-declares-a-state-of-emergency-for-the-subway.html>.

reemergence of other problems, which have similarly hurt the MTA. Chief among them has been subway crime, especially highly publicized violent crime. At time of writing, nearly 10 people have been murdered in the subway system so far in 2022, and overall crime is up significantly compared to last year.¹⁴⁸ Persistent problems also include pests, litter, and other issues which have damaged the subway's image in the public mind

It is easy to read this and see the MTA as, like many other government institutions, a struggler desperately trying to do its job while being vilified for its failings. But the MTA is not entirely blameless. Like most other businesses and organizations, labor comprises the largest share of expenditures at 32% of the MTA's budget, but the problem is not so much with that, but with who. Up-to-date numbers are not easily accessible, but in 2019 the top brass of the MTA were each making upwards of \$300,000, and of the top 100 earners the lowest salary was \$200,000.¹⁴⁹ Combined, this represents over \$1 billion just for the MTA's top earners; it should be noted at this point that the average salary in 2019 was \$76,303.

Moreover, the MTA's payroll system is apparently under very little internal scrutiny, leading to some truly incredible abuses that make one question the overall veracity of the MTA's required payroll funding. In 2018, Thomas Caputo, a Long Island Railroad track inspector, was actually the highest paid employee in the MTA. It turned out that Caputo and several others had engineered a payroll fraud scheme by abusing overtime. In the year in question, Caputo claimed to have worked the equivalent of 10 hours of overtime *per day*, on top of a 40-hour work week.¹⁵⁰ The fact this sort of outrageous abuse took place is ground to question exactly how cash-strapped the MTA really is. Caputo and his co-conspirators went well beyond the pale, but if they were able to do it, then surely others are as well, who are not being caught. **Moreover, the fact that such egregious fraud took place at all is, as stated, grounds for serious concern**

¹⁴⁸ Emma G Fitzsimmons, "New York City Will Increase Police Presence in Subways to Combat Crime," *The New York Times*, October 22, 2022, <https://www.nytimes.com/2022/10/22/nyregion/nyc-subway-police-combat-crime.html>.

¹⁴⁹ OpenPayRolls, "Metropolitan Transportation Authority Highest Paid Employees," OpenPayRolls (OpenPayRolls, 2019), <https://openpayrolls.com/rank/highest-paid-employees/new-york-metropolitan-transportation-authority>.

¹⁵⁰ "The United States Attorney's Office, Southern District of New York," *The United States Attorney's Office, Southern District of New York* (United States Department of Justice, February 4, 2022), <https://www.justice.gov/usao-sdny/pr/highest-paid-mta-employee-2018-sentenced-8-months-overtime-fraud-scheme>.

about whether the MTA is avoiding the hard work of internal self-regulation in favor of simply asking for more,

The MTA is also far from transparent about exactly how it spends money or the factors that decide who is qualified to act as a supplier of materials or service. In 2011, for example, the MTA awarded a massive contract to a firm that had been found to have paid bribes to officials for businesses.¹⁵¹ This was *after* the NY State Comptroller Thomas DiNapoli had blocked approval for a contract to another firm with a similar pattern of fraudulent behavior. The opaqueness of the MTA runs far deeper than that, however. The 2018 surcharge on taxis and FHV's, for example, was intended to be a funding source for the MTA that has, one may recall, raised over a billion dollars since it took effect in 2019. Yet there is no easily accessible way for people to see where this money went to – we can only make guesses and inferences based on the MTA's published budgets and capital plans, which is a big problem.

New York's mass transit is in a dire state; anyone who rides it knows it. It needs massive upgrades and expansions, both in principal and as a result of the CBDTP. But how can we, the public, sympathize with the CBDTP as a funding mechanism for the MTA when it looks like a cash grab to disappear into the nebulous fog? This is doubly amplified by the fact that the MTA seems intent on making the demographic it relies on most heavily for ridership pay the price for the upgrades that would benefit from them. The MTA has all the hallmarks of a mismanaged agency, born of issues that are not entirely its fault but have expanded from symptoms to causes in and of themselves.

¹⁵¹ Josh Margolin, "\$105m MTA Contract for 2nd Scandal Firm," New York Post (New York Post, November 3, 2011), <https://nypost.com/2011/11/03/105m-mta-contract-for-2nd-scandal-firm/>.

VI. WHO REALLY BENEFITS FROM CONGESTION PRICING

Having thoroughly examined both the plan itself as well as its extremely negative impacts for both the city at large and especially communities of color, it is time to render more clearly who wins and loses under the general umbrella of this plan. As with any policy or law, there are bound to be winners and losers, and with congestion pricing many individuals and organizations could end up being winners. However, the MTA's vision of congestion pricing, as it currently exists, cannot be expected to reliably benefit our city in a way that justifies the hurt suffered by those who would lose out.

Winners

The MTA and public transit

The MTA is by far the clearest beneficiary of the plan – indeed it is effectively spelled out in the law that they *have* to be a winner. The plan is explicitly designed to give them the power, and at minimal cost responsibility, administer a program that would print them money for the benefit of public transit at the expense of their archrivals, the auto industry. But as has been discussed, the MTA winning a dedicated funding stream can only be considered a victory when there is evidence that the money will be spent effectively. The capital plan is only a half-step, which combined with the entirely unfair emphasis on the Second Avenue subway, ensures that the MTA will reap an effective profit by catering to the wealthy, predominantly white areas of Manhattan at the expense of communities of color in the outer boroughs.

It should be noted, however, that for the broader public transportation industry this plan represents a significant step in the right direction. Public transportation has for decades been eviscerated and denigrated by those at the highest levels. The broader nation's fascination with individual transportation, and its encouragement by auto-backed politicians, has contributed substantially to the pollution and transit problems that we all face. Cities like New York, and their vulnerable populations, have suffered the effects of both of those issues; the smog, the noise, and a transit system that is in decay from neglect and disrespect. To call congestion tolling a "tax" on auto commuters is the style of rhetoric that those who are entirely opposed to the idea of congestion pricing use. Yet this version of the plan, flawed as it is, has demonstrated

how taxing cars can provide a meaningful solution to both pollution and the public transportation woes that have forced so many to take cars in the first place. Even if this terrible plan is implemented, it will accomplish one significant net benefit – making public transportation a viable competitor to the car as a commuting method.

The Trucking Industry

Trucks are far more egregious polluters than the average passenger car, yet under every conceivable scenario, trucks are far from being proportionately tolled. It is difficult to say that trucks, which our city undoubtedly relies on for the mass transit of food and other goods, should have their professions made that much more difficult. But even if environmental considerations have taken a back seat to economic ones, that is still no excuse for the plan to not at least seek to modify the trucking industry in New York as it currently exists. The MTA was given practically unlimited authority to shape this plan, including exemptions, in a way that would accomplish the relatively abstract goals given to it. It is a mystery why they did not exercise their imaginations to, say provide reductions or exemptions for trucks that are more fuel efficient and/or less polluting, a move that would have helped to meaningfully accelerate efforts to turn New York into a green city.

White Suburban Commuters

Despite loud and incessant complaining from New Jersey in particular, the reality is that white commuters are winners by virtue of the income gap between themselves and people of color. Of course, paying upwards of \$30 per day in tolls alone is not an ideal situation for any commuters, and especially for lower- and middle-income suburbanites from New Jersey or even the outer boroughs. Yet in the former case, one must not forget that much of New Jersey is covered by a robust public transit network, through both the New Jersey Transit system and bus service directly to the Port Authority. New Jersey's mass transit has its own issues, of course, many of which mirror issues facing the MTA. But that is not a sufficient excuse to explain why New Jersey, through their elected officials, is so opposed to congestion tolling.

The truth is, whether data explicitly bears it out or not, that there is a decidedly snobby, even racist, attitude among many white commuters that public transit is for poor (read: black and brown) people. This is an unacceptable reason to demand exemption privileges, full stop.

Losers

People of Color

The previous section details exactly how people of color lose out so extensively under the current proposal for the CBDTP. Here, it will suffice to summarize these points into one cohesive statement; our communities lose under this deal because the short-term pain will be far more devastating than the eventual benefits will be. There is no justifiable reason that, as demonstrated, our communities should bear a disproportionate share of the costs the MTA ostensibly needs to fix our transit system. Even though we ride it the most, we already pay for it with our fares, and we have come to rely on it because when it is available, we do not need to have a car. The suburban commuters, who overall bear a lesser burden than we would, have had both the option and the means to not take public transport. Of course, they would rail against more money for the MTA for the sake of improving the system. They do not use it and cannot grasp how important it is for us to have decent, generally reliable mass transit, and therefore they cannot understand why we would demand that they pay the price for their polluting personal transportation. But under the CBDTP, there is no parity or acknowledgment of the struggles commuters of color would face and therefore they, their families, and their communities lose out.

FHVs

FHVs and taxis are, apart from communities of color in New York overall, the single biggest losers under this plan. They already pay and/or pass along enormous amounts of taxes, including the 2019 congestion surcharge implemented prior to the release of the CBDTP. Yet the MTA has made them out to be the sole villain in the congestion debate, marking the drivers who are already marginalized and at risk as the only group deserving to be taxed twice. They are overwhelmingly people of color, meaning that the impact of the new tolls under almost every single plan will disproportionately devastate those communities with taxi and FHV drivers living within. Reading the CBDTP and the MTA's analysis of the situation, between the lines it feels like there is almost some sort of grudge. Taxis and FHVs take passengers that might have otherwise used public transit and thus put their cash into the MTA's coffers, and as we have established the MTA is both very broke and very desperate for this new source of funding. Why else would the MTA not have, for example, chosen to levy more aggressive fees on individual commuters and thereby force them to either take public transit or rely on taxis and FHVs, overall

reducing the amount of congestion and thus pollution? In the alternative scenarios, that particular idea (or others, such as trying to incentivize different driving patterns) never comes up. As a result, the industry appears to be on the chopping block.

The Environment

The environment is not a “loser” in the same way that the others are. The MTA proves that, at least within the CBD, there will be reductions in the number of vehicles and the distance they travel, which means less pollution. But given how much the MTA has relied on environmental messaging to push the report’s soundness, the fact that these reductions seem to only cover the CBD is...problematic. Less smog in Manhattan is good, but as this report has argued, the MTA did relatively minor analysis that the shift in traffic patterns for the cars that would not simply vanish. Their pollution will continue to spew, just not necessarily in Manhattan. And therefore, how big will those reductions ultimately be? They will certainly probably exist, but they will not be as big or impactful as the MTA asserts, they will be, at least not in the city at large. The plan was never specifically about the environment; that was more of a secondary benefit to the stated goals of reducing congestion and providing the MTA with a funding source. As a result, our city will still be polluted by auto smog, yet most people will be blind to this fact and political will for the continued green-ing of New York will fade.

VII. IN THE OTHER LANE

This report has, until this point, been solely consumed with dissecting the CBDTP and questioning the reasoning behind choices made within for the purpose of demonstrating that we do not consider this plan to be what New York needs. It is important to reiterate, however, that we do not consider the concept of congestion pricing itself to be without merit. Likewise, we recognize that there is a pressing, critical need to resolve the problems of congestion, pollution, and the gap in the MTA's capital plans which would lead to a mixture of both definite and potential benefits for the entire city, including our marginalized communities. We are not, as MTA head Janno Lieber would like to label us, 'traffic deniers.' We simply demand explanations and adjustments to the plan to be made so that the purported benefits do materialize for all communities.

On that note, we turn to the discussion of why the plan is good, in brief. First and foremost is that it will, at least according to the MTA, reduce congestion. As discussed, this means thousands, if not tens of thousands, of commuters deciding to ditch their cars for the last mile into the city. This will improve the experience of entering the city (and thus collecting the tolls) for those that do not decide to stop driving the day the plan goes into effect. We will not go as far as the MTA to suggest that this is a good thing; as previously alluded to, the MTA overwhelmingly makes this out to be a positive result of reduced congestion because it will increase productivity for employers located in the city. **It seems wrong to characterize the primary benefits of reduced congestion as an employer side-benefit - that is the sort of neoliberal thinking that played such a heavy role in getting us to this point in the first place.**

Regardless, however, those that decide to switch to mass transit will not only be helping to reduce congestion. The pollution will, as stated, be reduced slightly and while that is far from sufficient for a city of New York's size and in relation to the overall threat of climate change, some reduction is better than none. Moreover, for those that decide to make the switch, there is another benefit that few have discussed in the public debate; they will become more invested in the safety, efficacy, and reliability of the MTA's mass transit options. As stated previously, opponents of public transit typically are not those that use it frequently, let alone rely on it to get to work. But with an influx of people having to use trains, light rail, subways, or busses, the size

of the population concerned with the state of NYC and NYC Greater Metropolitan Area transit options will similarly increase, and they will be more likely to support policies that will improve our mass transit systems. As discussed, this will have a positive impact on everyone but especially communities of color who have relied on these systems for so long.

Which leads to the next benefit of the CBDTP in its current form – the funding stream for the MTA to make capital improvements. The plan would create anywhere from \$1 to \$1.5 billion in annual revenue in the short term which would fund the capital investment plan that promises to substantially upgrade mass transit in the city. Given that increased government subsidies are apparently off the table in Albany, this increased revenue will be significant in the MTA's drive to modernize existing systems at the minimum. It could even potentially fund the construction of new lines or extensions to existing lines which would make mass transit more accessible to people in transit deserts, especially in the eastern parts of Queens. This, in turn, would lead to more vehicle commuters abandoning their cars in favor of faster, cheaper mass transit which would build upon the initial success of the CBDTP to reduce congestion. While in the long term the CBDTP may become less viable as more people abandon cars, increased ridership will in turn increase the power of arguments to increase subsidies for the MTA or otherwise tweak the plan in order to further disincentivize car commuting.

Which is another aspect of the situation that, while not explicitly a benefit, should be considered. Congestion pricing in various forms has been suggested for over a century at this point, and unlike previous proposals this time it technically is law. This report and other commentators disapprove of the current plan based on its projected outcomes and impacts, while the MTA has proposed the plan on the forward-thinking optimism of its impacts. There is a reasonable argument to be made for implementing it sooner rather than later in order to see exactly what benefits and negatives do manifest, and how severe they are. This in turn would allow for informed revisions to the plan, which would be of greater merit than the hypothetical ones that this report and others have made based solely on theory.

Lastly, as more of a synthesis for the above, the CBDTP in its current form represents a practical step in the right direction towards the ideal city, at least in our conception. This ideal New York is a city that is clean, green, and dominated not by automobiles but by pedestrians, cyclists, buses, and subways. These systems will be cheap and accessible to all and, unlike the

current system which is heavily stratified along both economic and racial lines, the majority of residents and commuters will have an investment in maintaining the overall transportation ecosystem in a way that is universally beneficial. In this ideal, essential services like ambulances, disabled transport, and even the rideshare economy will have access to roads that are nearly entirely uncongested, improving their efficiency and ability to serve the city as a whole.

VIII. CONCLUSION

Congestion and its effects are a perennial problem within large cities, and New York is as large as they come. This report has demonstrated that the current situation is the result of decades of decisions and overall socioeconomic shifts that have led to our city being dominated by personal transportation, rather than mass transit. The result is that we are isolated, late, and less healthy both physically and mentally simply by living in New York, let alone when we are trying to go somewhere.

We have examined and discussed the CBDTP that the MTA showcased in the EA released in August 2022. This plan is both not enough and entirely too much. The anticipated reductions in traffic and congestion are both good, but the MTA failed to demonstrate that it would translate into meaningful reductions in the amount of pollution for the communities around the Manhattan CBD that would have to endure commuters seeking to evade the new tolls. The tolls themselves are too much for our city's marginalized communities, who are forced either by financial weakness or by the lack of effective public transit to drive.

These commuters, along with the struggling taxi and FHV industry, will endure the most of the new tolls that they have no choice but to bear in order to earn a living. Meanwhile, the true polluters, suburban commuters, and trucks, suffer comparatively little under the new plan, despite their complaints to the contrary. There is virtually no assistance or mitigation offered for those that would bear a disproportionate share of the burden.

Ultimately, only the MTA truly wins under this plan. They will get their dedicated revenue source to make the upgrades that they have outlined. Yet these will take years for them to deliver, and under the current plan, much needed expansions to the city's subway system are not even on the docket in the next few years. It would be disingenuous to go so far as to say that the MTA did not try hard – their EA is a testament to the contrary. However, we are left with the overwhelming impression that they deliberately avoided the consideration of certain alternatives, hybrid plans, or similar out-of-the-box ideas that could have potentially mitigated some of the areas where we and others have complained about the most.

The CBDTP is not a bad idea in conception, but it has failed miserably in its current form. New York needs congestion pricing – there is no doubt about that. But this plan is too flawed to

be considered an adequate solution to the problem. As a city, New Yorkers cannot in good conscience support a plan that would decimate an entire industry and regressively tax its poorest communities for the sake of marginal improvements and nebulous promises about future improvements. As an organization, TBI firmly opposes this current form of congestion pricing and, among other issues, demands that the MTA do the right thing and retract this EA in order to do the research and study that should have been done, before returning with a plan that will address the concerns that we and others have raised.

IX. DEMANDS

While we believe that the concept of congestion pricing has much to offer New York, the current iteration spearheaded by the MTA critically fails communities of color, who would be the vast majority of those paying the exorbitant fees under consideration. In order for this concept to achieve viability in a way that does not do more extensive harm to our communities, we demand:

- **Immediately**
 - **The MTA immediately do the following:**
 - **Withdraw the Environmental Assessment from consideration**
 - **Halt the approval process**
 - **Apologize for the inadequacies of the report**
 - **The MTA re-analyze the congestion pricing plan to consider or more fully investigate:**
 - **Community-by-community impact assessments**
 - **Alternative revenue generation that would not place the burden largely on individual commuters**
 - **Alternative congestion reduction measures such as those described in the current Environmental Assessment**
 - **That the 2019 law be amended to expand the Traffic Mobility Review Board from six members to 11 members; one per each Borough President, who would serve as members of the community**
 - **That the CBD tax credit be extended to all residents in New York City, instead of just residents of the CBD**
 - **That the eligible income limit of the CBD tax credit be raised to \$80,000 from \$60,000**
 - **Exclude taxis and FHV's from any additional taxes/tolls to prevent double taxation**
 - **An independent public audit of the MTA to identify areas of mismanagement and inefficacy**
- **Moving forward**

- **Public commitment from the MTA to prioritize extensions of the subway network into “transit deserts”**
- **State level:**
 - **Legislation be introduced to establish an audit of the MTA at least once every five years**
 - **Legislation be introduced to establish permanent public funding for the MTA**

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