

**AFFIDAVIT OF CARL E. PERSON, PETITIONER, IN OPPOSITION TO CROSS-MOTION,
SWORN TO JUNE 2, 2015 [416 - 427]**

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

In the Matter of the Application of
CARL E. PERSON,
Petitioner,
For a Judgment under Article 78 of the CPLR,
-against-
NEW YORK CITY DEPARTMENT OF
TRANSPORTATION,
Respondent.

Index No.
100484/15
AFFIDAVIT IN
OPPOSITION TO
MOTION TO
DISMISS

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Carl E. Person, being duly sworn, deposes and says:

1. I am the Petitioner in the above-captioned Article 78 Proceeding (the "Proceeding"), am fully familiar with the facts stated herein, and make this affidavit in opposition to the Respondent's motion to dismiss.

A. Standing to Commence Proceeding

2. Respondent argues that I have not alleged injury not shared by the other residents of New York County. But this is not the case. I have been injured because of various differences in my position when compared to most New York County residents.

3. I have alleged my damages, as follows:

DAMAGES

27. Petitioner has been damaged by the alleged activities of the Respondent in various ways including but not limited to:

- A. The loss of Petitioner's valuable professional time caused by transportation delays, at the rate of \$400/hour for an estimated 100 hours per year;
- B. Injuries caused by unnecessary emission of pollutants into the air causing an adverse physical and sometimes mental condition not obvious for an extended period of time but injurious nevertheless;
- C. Increased transportation costs resulting from delays, additional gas, oil and repairs, and increased automobile insurance;
- D. Increased parking costs;
- E. Denial to Petitioner of use of public property (i.e., parts of the sidewalks and streets in New York County) put to illegal private use by Respondent;
- F. Subjecting Petitioner to increased hazard while driving, and other risks while Petitioner is a pedestrian and if he should ever become a cyclist;
- G. Increased insurance costs associated with various increased risks (in addition to "C" above.

My Category as a Businessperson and Attorney

4. I am a businessperson, as owner and operator of a law firm in New York County.

As of 2014, there are 169,756 attorneys in New York State according to the American Bar Association.¹

1. http://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-by-state-current.authcheckdam.pdf

5. New York County had a population of 1,626,000 in 2013.² Assuming 100,000 of such lawyers are in New York County, this means that about 7.6 percent of the population of New York County is an attorney.

6. There were 190,445 small businesses or small business employers in New York City during 2011 (all 5 boroughs), according to Crain's New York Business.³ Assuming 30% of such businesses were in New York County, or 57,134 small businesses, in a population of 1,626,000, I am in a group of 3.5% of the population which is a small businessperson.

My Category as a Driver

7. I am a driver of an automobile in New York County and as such am one of no more than 221,916 individuals (the number of vehicle registrations for New York County during 2013⁴ and if assuming that 50% of the registered vehicles are commercial, only about 110,000 non-commercial drivers exist, including me. This puts the Petitioner into a group consisting of 6.7 percent of New York County's 1,626,000 population.

My Category as an Elderly Person - Age 79

8. I will be 79 years old in July, 2015, and more vulnerable than the average resident to the traffic delays because of the probable need for ambulance service to transport me to a hospital without the catastrophic delays now being forced upon vehicular traffic (including ambulances) by reason of the activities of the Defendant. I am threatened with unnecessary loss or shortening of my life by reason of these traffic delays.

Need for Court to Undertake Summary Inquiry as to the Defendant DOT's Congestion-Creating Activities in Manhattan

9. There is a need for the Court to undertake a summary inquiry as to the Defendant DOT's congestion-creating activities in Manhattan, in the form of a grand jury or otherwise. See

Bell v. Board of Ed. of Union Free School Dist. No.1 of Towns of Scarsdale and Mamaroneck, Westchester County, 434 N.Y.2d 222, 356 N.Y.S.2d 833, 313 N.E.2d 321 (1974). Some type of watchdog, receiver or referee should be appointed to supervise the dismantling of the DOT's congestion-creating activities in New York and to stop any further congestion-creating activities.

10. On Sunday, May 31, 2015, starting at 3:45 pm, I caught a cab stalled in congested traffic heading north on 8th Avenue at 55th Street, and asked the driver to take me to 225 E. 36th Street, between 2nd and 3rd Avenues. This trip took about 1 hour and cost \$42, because of the traffic congestion in virtually every block, enhanced by a 6th Avenue Fair (from 23rd to 57th Streets), and the closing of E. 36th Street between 5th Avenue and Madison Avenue. The distance being travelled was 2 miles, and the average miles per hour was about 2.

11. On Sunday, May 3, 2015, the Defendant facilitated the "TD Five Borough Bike Tour" (a 40-mile race for 32,000 cyclists) by closing all Manhattan streets east of 5th Avenue between 57th Street and Canal Street from 7:45 am to 5:00 pm, as well as the following streets:

MANHATTAN:

Whitehall Street between South Street and Water Street
 State Street between Whitehall Street and Battery Place
 Battery Place between State Street and West Street Washington Street
 between Battery Place and Morris Street
 Greenwich Street between Battery Park and Trinity Place
 Trinity Place between Greenwich Street and Cedar Street
 Church Street between Cedar Street and Canal Street
 White Street between 6th Avenue and Franklin Place
 Walker Street between 6th Avenue and Broadway
 6th Avenue between Franklin Street and West 59th Street
 West 59th Street between 6th Avenue and 5th Avenue / Alternate Route
 Grand Army Plaza between West 59th Street and East Drive (inside
 Central Park)/Alternate Route
 East Drive between Grand Army Plaza and Center Drive (inside Central
 Park)/Alternate Route
 Center Drive between 5th Avenue and East Drive
 East Drive between Center Drive and Adam Clayton Powell Jr.
 Boulevard
 Adam Clayton Powell Jr. Boulevard between West 110th Street and
 West 135th Street

East / West 135th Street, between Adam Clayton Powell Jr. Boulevard
 and Madison Avenue
 Madison Avenue between East 135th Street and East 138th Street
 Madison Avenue Bridge (Manhattan to Bronx)
 HRD/FDR Drive (South bound) between 3rd Avenue Bridge and East
 116th Street
 East 116th Street between FDR Drive and Pleasant Avenue
 Pleasant Avenue between East 116th Street and East 114th Street
 Harlem River Drive/ FDR Drive (South bound) between 116th Street and
 63rd Street Exit
 East 63rd Street between FDR Drive (South bound) and Queensboro
 Bridge Exit
 Queensboro Bridge Exit between East 63rd Street and East 60th Street
 Queensboro Bridge (West Bound Lanes from Manhattan to Queens)

[Source: <http://www.metro.us/new-york/info-new-york-city-street-closures-five-borough-bike-tour-2015/zsJoea---m53O4GKaSpxc/>]

12. I was caught driving in this mess, trying to get from the west side to the east side, and being blocked by NYC uniformed traffic personnel along 5th Avenue at every street intersection from 55th street down to 1 block north of Canal Street, without so much as a single sign saying where or how a motorist could venture into the east side of Manhattan. There is no excuse for this wasteful extravagance at the expense of cab drivers, motorists, passengers in vehicles and others injured by the cessation of traffic patterns throughout Manhattan at the whim of Defendant. There is a need for oversight, especially because of the overall non-published plan by NYC to create traffic congestion in Manhattan in as many ways as possible to be able to impose congestion pricing tolls on the current toll-free bridges leading into Manhattan, to raise about \$2 billion annual in extra revenues for NYC, as alleged in my Petition.

2...https://www.google.com/search?q=population+of+ny+county&oq=population+of+ny+county&aqs=chrome..69i57.4663j0j7&sourceid=chrome&es_sm=122&ie=UTF-8

3... <http://mycrains.crainsnewyork.com/stats-and-the-city/2011/small-business/number-of-small-businesses>

4... <http://dmv.ny.gov/statistic/2012reg.pdf>

13. This attention to creating congestion has resulted in a substantial decline in the conditions of the roads in Manhattan, with substantially more unintended bumps, potholes and disrepair, together with a substantially reduced percentage of road space available for vehicular traffic, including trucks stopping to unload goods, taxis stopping to pick up or discharge passengers, double-parked vehicles, bicycle traffic not staying in any bike lane or going counter to the direction of vehicular traffic, police cars stopping to ticket, tow trucks getting set to tow vehicles, vehicles easing into or out of "floating parking" spaces and making use of the reduced road space, with pedestrians trying to look out for 2-way bike traffic on 1-way streets, and bikes moving in and out of stalled traffic; and the elimination of timed lists; the reduction of maximum speed from 30 mph to 25 mph, an overcrowding and delays in subway transportation requiring greater use of vehicular traffic - all creating a dangerous obstacle for drivers, bicyclists and pedestrians, and slowing down traffic to a stop or crawl.

By Not Preparing an Environmental Impact Statement for the Bike Program, DOT Failed to Examine a More Suitable Alternative

14. If DOT has prepared an environmental impact statement, it would have had to consider possible alternatives to the bike lanes it has installed. One possible alternative, that would have not created congestion would have been to create bike lanes in NYC's parks in each Boro (Central Park in Manhattan), with bike stations in the parks, and free public transportation to the parks through reimbursement at the time of bike rental or return. Also, the High Line, a 1.45 mile long green space on the west side; Prospect Park in Brooklyn; Governor's Island; Bronx Park, Van Cortlandt Park and Soundview Park in the Bronx; Gateway National Recreation Area, Wolfes Pond Park and Bloomingdale Park in Staten Island; and Flushing Meadows park, Forest Park, Roy Wilkins Park, Astoria Park, Cunningham Park, Kissena Park, Gateway

National Park (Jamaica Bay, Breezy Point and Jacob Riis), Gantry Plaza State Park, Alley Pond Park and Juniper Valley Park in Queens. There was no need to create congestion to have bike lanes. All DOT had to do was put the bike lanes and bike stations in the parks. And rather than having commercial bike stands in the streets and on the sidewalks of Manhattan, DOT should have required store rentals, to keep the bikes off the streets, with access to the stores through the bike user's credit card.

**The Impact of Respondent's Alleged Activities
Is Far Greater on Me than a Typical Resident
of New York County**

15. I am adversely impacted as an attorney, small business person, driver and senior citizen (age 79) in New York County with injuries not shared by the average resident of New York County.

16. These injuries are alleged above, a copy of ¶ 27 of my Petition. See ¶ 3 above. The following subparagraphs of said ¶ 27 show damages to me not shared by New York County residents outside of my categories (with non-applicable text being crossed out):

- A. The loss of Petitioner's valuable professional time caused by transportation delays, at the rate of \$400/hour for an estimated 100 hours per year;
- C. Increased transportation costs resulting from delays, additional gas, oil and repairs, and increased automobile insurance;
- D. Increased parking costs;
- E. Denial to Petitioner of use of public property (i.e., parts of the ~~sidewalks and~~ streets in New York County) put to illegal private use by Respondent;
- F. Subjecting Petitioner to increased hazard while driving, ~~and other risks while Petitioner is a pedestrian and if he should ever become a cyclist;~~

G. Increased insurance costs associated with various increased risks (in addition to "C" above.

Conclusion as to Standing

17. I clearly meet the test set forth in Respondent's memorandum of law: "Standing to sue 'requires injury in fact which is distinct from the general public'" (p. 3), which is "not solely economic in nature" (p. 3).

B. 4-MONTH STATUTE OF LIMITATIONS DOES NOT BAR THIS ARTICLE 78 PROCEEDING

18. Respondent failed to announce its plan for creating congestion and imposing congestion pricing on the toll-free bridges leading into Manhattan, and as a result there is no date at which the 4-month period of the statute of limitations commences. The "OT Plan" is described by allegation in ¶ 1 of the Petition. Bloomberg's proposal for congestion pricing is also alleged in ¶¶ 1 and 4 of my Petition.

19. After the NYS Assembly on April 7, 2008 rejected NYC's plan for congestion pricing and NYC lost \$354 million in federal assistance for traffic congestion relief and mass transit improvements (see ¶ 8), Mayor Bloomberg and the DOT decided to create additional congestion by a series of traffic-related activities designed to create congestion (as described in ¶ 15) and has not published any estimate of the costs and losses expected from these activities (¶ 10). There has been no official plan published by DOT by which it plans to create congestion to impose congestion pricing, so that there is no date from which the 4-month period of the statute of limitations runs.

20. It is very unlikely that DOT or NYC would publish a statement that it is official policy in NYC to create congestion to be able to impose congestion pricing, so that nobody could

go into court to try to stop the activities. It is only when seeing the repeated activities in creating congestion in Manhattan that it becomes clear that creating congestion is the goal of DOT, for the purpose of obtaining congestion pricing as an arguable (but probably ineffective) way of reducing the congestion that it is creating. It seems that NYC wants the \$2 billion per year in congestion pricing and would probably create more congestion if that would increase the \$2 billion to a larger amount.

21. The accrual of a cause of action under Article 78 is by agency action. Here there has been no DOT (agency) action saying that it is going to create congestion for the purpose of obtaining congestion pricing, so that there was no agency action starting off the 4-month right to commence an Article 78 proceeding to review the action. The action is there nevertheless, but not published for anyone to see. And as long as DOT does not publish its intended action, there is no accrual of the right to commence an Article 78 petition.

22. There has been no notice of the DOT's intention to create congestion to impose congestion pricing, so that the statute of limitations has not started to run. See *Raffaele v. Town of Orangetown*, 224 A.D.2d 430, 431 (2nd Dept. 1996), which held:

The burden rests on the party seeking to assert the Statute of Limitations as a defense to establish that its decision provided notice more than four months before the proceeding was commenced (*see, Matter of Vil. of Westbury v. Department of Transp., supra*, at 73, 550 N.Y.S.2d 604, 549 N.E.2d 1175; *Matter of Castaways Motel v. Schuyler*, 24 N.Y.2d 120, 126–127, 299 N.Y.S.2d 148, 247 N.E.2d 124; *Matter of Chaban v. Board of Educ. of City of N.Y.*, 201 A.D.2d 646, 608 N.Y.S.2d 229).

This action was cited favorably by *Vadell v. City of New York Health and Hospitals Corp.*, 233 A.D.2d 224, 225, 649 N.Y.S.2d 714 (1st Dept. 1996), in which the court held:

CPLR 217 provides that an article 78 proceeding “must be commenced within four months after the determination to be

reviewed becomes final and binding upon the petitioner ...”
 “Finality” requires that the petitioner be aggrieved by the determination (*Matter of Martin v. Ronan*, 44 N.Y.2d 374, 380, 405 N.Y.S.2d 671, 376 N.E.2d 316; *Raffaele v. Town of Orangetown*, 224 A.D.2d430, 431, 637 N.Y.S. 2d 755, 756), and to be considered “binding”, notice must also have been provided (*Matter of Biondo v. New York State Board of Parole*, 60 N.Y.2d 832, 834, 470 N.Y.S.2d 130, 458 N.E.2d 371; *Raffaele, supra*, at 431, 637 N.Y.S.2d at 756). Here, for Statute of Limitations purposes, it is the respondent's burden to establish that it provided notice of termination to the petitioner more than four months prior to October 7, 1994 (*Raffaele, supra*, at 431, 637 N.Y.S.2d at 756 [citing cases]), and any ambiguity in the respondent's oral or written communications must be resolved in favor of the petitioner (see, *Matter of Biondo, supra* at 834, 470 N.Y.S.2d 130, 458 N.E.2d 371; *Raffaele, supra*, at 431, 637 N.Y.S.2d at 756).

In summary, there has been no notice published by the DOT so that the 4-month statute of limitations has not started to run.

C. Petitioner Has Stated a Claim for Relief

23. Respondent argues (at pp. 15-18 of its memorandum) that it is justified in treating components separately when deciding whether to prepare and file an environmental impact statement.

24. It also states that Petitioner's allegations should be viewed to see if they fit into any cognizable legal theory (p. 15). Petitioner's allegations are that NYC, starting with Mayor Bloomberg, has had a plan to deliberately create congestion with a series of component changes which when completed will create the degree of traffic congestion needed in New York County to enable NYC to impose tolls on the free bridges into New York County during rush hours (to deter a percentage of the traffic from entering New York) and in the process enable New York City to raise about \$2,000,000 per year in additional revenues, from persons of my driver category. I alleged in my Petition:

DOT'S ACTIVITIES ARE PART OF A SINGLE PLAN

16. The DOT's activities about which the Petition complains are important components of an overall plan to create additional traffic congestion in NYC to such an extent that the goal of congestion pricing will be accepted by voters and by the New York State Legislature, thereby enabling NYC to raise additional revenues of approximately \$2 billion per year in additional tolls without a direct increase in taxation.

25. New York City has never officially announced that this was its plan, although the plan has become painfully apparent to persons in my categories, because of the injuries caused by the massive delays in moving about New York City by automobile. As explained in a Wikipedia article (see Appendix hereto) Mayor Bloomberg came up with the congestion-pricing plan in 2008 with mixed results. The subsequent activities, Petitioner alleges, were designed to increase the congestion in New York County so that congestion pricing would be approved, and was an overall plan which should have been subject to review under the environmental laws, as alleged.

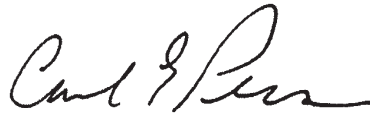
26. My Petition should be read as alleging that New York City willfully is avoiding the disclosures and review required by the environmental impact laws when deliberately trying to create congestion for the purpose of imposing tolls on New York's historically toll-free bridges into New York County.

27. By not announcing such plan, the Respondent is apparently claiming no such plan exists. On the other hand, if such a plan exists, it seems clear that this is a violation of New York law as alleged, and the Petitioner as someone not from the general public, and who has been injured by the violation of law, should be able to proceed with this lawsuit.

28. My suggestion is that the Court give me the opportunity to obtain discovery to prove that there is such a plan as I allege.

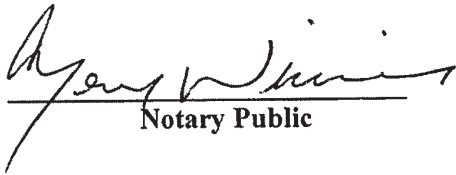
CONCLUSION

29. Petitioner respectfully requests that the Respondent's motion to dismiss be denied, with costs, or, alternatively, that the motion be adjourned for the Petitioner to obtain limited discovery on the issue of the existence of an overall plan to create congestion for the purpose of imposing congestion pricing.



Carl E. Person

**Subscribed and sworn to before me
this 2nd day of June, 2015.**



Notary Public

ARLENE WILLIAMS
Notary Public, State of New York
No. 01WM6218900
Qualified in Queens County
Commission Expires March 15, 20 18

APPENDIX TO PERSON AFFIDAVIT -
 WIKIPEDIA ARTICLE ON NYC'S CONGESTION PRICING PLAN [428 - 432]

APPENDIX

WIKOPEDIA ARTICLE ON NYC'S CONGESTION PRICING PLAN

Source:

http://en.wikipedia.org/wiki/Congestion_pricing_in_New_York_City

Congestion pricing in New York City

From Wikipedia, the free encyclopedia



Traffic at a red signal on Second Avenue in Manhattan.

Congestion pricing in New York City was a proposed traffic congestion fee for vehicles traveling into or within the Manhattan central business district of New York City. The congestion pricing charge was one component of New York City Mayor Michael Bloomberg's plan to improve the city's future environmental sustainability while planning for population growth, entitled *PlaNYC 2030: A Greener, Greater New York*.^[a] If approved and implemented, it would have been the first such fee scheme enacted in the United States.^[a] Nonetheless the proposal did not succeed as it was never put to a vote on the Assembly.^[a]

Contents

[references omitted]

History^[edit]

Mayor Bloomberg's goals for long-term sustainability through the year 2030 were first announced on December 12, 2006.^[a] On April 22, 2007 (*Earth Day*), *PlaNYC 2030* was unveiled.^[a] Along with transportation initiatives, the plan outlined steps to clean up *brownfields*, create affordable housing, utilize open spaces, provide cleaner and more reliable and efficient energy sources, improve water quality and infrastructure, achieve cleaner air quality, and address climate change issues.^[a] The transportation initiatives support greater use of *mass transit* through various improvements and additions to transit infrastructure and services. In addition, the initiatives also include increased use of *cycling*, expanded ferry services, increased traffic violation enforcement, and installations of *Muni Meters* and an *intelligent transportation system*.^[a]

Of the 16 proposed transportation initiatives in *PlaNYC*, the congestion pricing program is the only component that has to be approved by the *New York State Legislature* with financial support from the State;^[a] the remainder is within New York City's or its regional jurisdiction and is to be funded by

a new Sustainable Mobility and Regional Transportation Financing Authority,²⁸ which would also take in revenue from the congestion fees, estimated at \$380 million.²⁸

New York City applied to be part of the United States Department of Transportation's Urban Partnership Program, which would allocate money to cities that were willing to fight urban traffic congestion through tolling programs, express bus services or bus rapid transit, telecommuting, or technologies designed for the purpose.²⁹ In June 2007, U.S. Secretary of Transportation Mary Peters said that out of the nine finalist cities applying for the program, New York City was the farthest along in its traffic reduction planning and the city was eligible for up to \$500 million for funding the congestion pricing plan.²⁹ Since the final funding decision would be announced in August, Peters wrote in a letter to Governor Eliot Spitzer that if state approval was not met by July 16, "it is unlikely that New York City would be selected."³⁰ Although a commitment was not established by that date, on July 19, the State legislature approved the creation of a 17-member commission³¹ that will study different plans to reduce traffic in the city, including congestion pricing.³² Signed by Spitzer on July 27, the bill authorized New York to apply for at least \$200 million in federal funds.³³

On August 14, 2007, the U.S. Department of Transportation awarded from the Urban Partnership program \$354 million to New York City. It was the largest of the five grants awarded to cities, which included San Francisco, King County, Washington (Seattle), the Minneapolis area, and Miami.³⁴ Only \$10.4 million is allocated for launching the congestion pricing program and \$2 million for research. The rest of the grant will fund transportation infrastructure and services: \$213.6 million to improve and build new bus depots, \$112.7 million to develop bus rapid transit routes, and \$15.8 million for expanded ferry services.³⁵

The idea of congestion pricing was endorsed by the then Governor Spitzer,³⁶ Senate Majority Leader Joseph Bruno,³⁷ and other New York City politicians, such as City Council Speaker Christine Quinn,³⁸ Manhattan Borough President Scott Stringer,³⁹ and Representative Joseph Crowley of Queens and the Bronx,⁴⁰ as well as the U.S. Department of Transportation. Assembly Speaker Sheldon Silver and other politicians expressed skepticism about the plan, raising several questions about its viability, its environmental effects on neighborhoods bordering the congestion zone, the lack of state control in Bloomberg's proposal, and the imposition of a regressive tax on some commuters.⁴¹

On January 31, 2008, the New York City Traffic Congestion Mitigation Commission approved a plan for congestion pricing, which was passed by a vote of 13 to 2. Some changes over Mayor Bloomberg's original proposal were introduced, such as reducing the congestion zone, no charges for vehicles which stay within the zone, and a discount for low-emission trucks. The commission estimated that revenues from the congestion charge will generate \$491 million a year, which would be committed to improve and expand the region's mass transit.⁴² The proposal was approved by the New York City Council on March 31, 2008 by a vote of 30 to 20.⁴³ Another alternative considered by the commission, and promoted by Assemblyman Richard Brodsky, was to restrict access into the congestion zone one day a week based on the last digits of the license plates.⁴⁴ This sort of road space rationing system is currently practiced in two of the world's Top 10 megacities, São Paulo and Mexico City. Bloomberg's plan was endorsed by the then new Governor David Paterson, whose support was considered key to approve the bill in Albany.⁴⁵

The deadline to approve the plan by the State Assembly was April 7, 2008, for the city to be eligible to receive US\$ 354 million in federal assistance for traffic congestion relief and mass transit improvements.⁴⁶ On April 7, 2008, after a closed-door meeting, the Democratic Conference of the State Assembly decided not to vote on the proposal, "...the opposition was so overwhelming,...that he would not hold an open vote of the full Assembly," Sheldon Silver, the Assembly Speaker said.⁴⁷ Afterwards, the USDOT announced that they will seek to allocate those funds to relief traffic congestion in other cities.⁴⁸

Ironically, by July 2008, gasoline prices of over \$4.00 a gallon caused a dramatic 5 percent drop in vehicle trips into lower Manhattan, realizing goals that Bloomberg had envisioned for his congestion pricing scheme. This finding vindicated the plan's premise that higher driving costs would in fact reduce congestion, while at the same time rendering the plan completely unnecessary, at least while fuel prices stayed high.²²

Bloomberg's 2008 proposal [edit]

New York's proposal cites comparable congestion pricing programs in London, Singapore and Stockholm.²³ New York City's program is proposed to be a three-year pilot program, at the end of which the City and State would decide if the program should be made permanent.²⁴ When final legislative approval is given, the program could be put into effect within 18 months.²⁵

As proposed, the congestion pricing zone is defined as the island of Manhattan (bordered by the East and Hudson Rivers) south of 60th Street (originally 86th Street but changed after the commission's recommendation released on January 10, 2008).²⁶ Exempted roadways within the zone include the FDR Drive, New York Route 9A (West Side Highway and Henry Hudson Parkway included), the Battery Park Underpass, and the East River bridges (Queensboro Bridge, Williamsburg Bridge, Manhattan Bridge and Brooklyn Bridge) and their approaches. A free route from the East River bridges to the FDR Drive and from the Lincoln and Holland Tunnels to Route 9A would be designated.²⁷ Drivers who use toll crossings to or from the zone (e.g. Brooklyn-Battery Tunnel and Queens-Midtown Tunnel) would be charged the difference between the toll and the congestion charge.²⁸

The charge would apply on weekdays from 6:00 a.m. to 6:00 p.m. Proposed fees would be \$8 for cars and commercial vehicles and \$21 for trucks entering from outside the zone. Transit buses, emergency vehicles, taxis and for-hire vehicles, and vehicles with handicapped license plates would not be charged the fee. Taxi and livery trips that begin, end or touch the zone would have a \$1 surcharge. Vehicles would be charged only once per day.²⁹

Operations for monitoring vehicles within the congestion zone will be barrier-free and includes E-ZPass transponders and a license plate recognition system that involves cameras. The system for monitoring congestion pricing will be made separate from existing red-light camera systems. Drivers would be able to pay by a debit from their E-ZPass account or a debit from a pre-paid non-EZPass account linked to the vehicle's license plate number. For drivers without traffic payment accounts, they would have 48 hours to pay via phone, the Internet, text messaging, or cash transactions at participating retailers.³⁰

The accelerated MTA Capital Plan for 2008-2013³¹ details transit investments³² that revenue from congestion pricing would pay for. These include 44 subway station rehabilitations, increased bus service, new Select Bus Service bus rapid transit in all 5 boroughs, \$40 million for suburban park and ride facilities, Metro-North and LIRR station rehabilitations, third track work, East Side Access, Second Avenue Subway, and Fulton Street Transit Center, to name a few.

In addition to charging drivers, there have been additional proposals to further reduce traffic. One proposal from Sam Schwartz recommends removing tolls from the Verrazano-Narrows Bridge to encourage trucks en route from Long Island to New Jersey to use Interstate 278 through Staten Island and over a proposed twin-span Goethals Bridge, as opposed to using the now toll-free route via the Manhattan Bridge, congesting Manhattan's local streets, and out the Lincoln or Holland Tunnels. Furthermore, he suggests that government parking passes be limited; the number of taxis

be reduced dramatically; and the Belt Parkway be redesigned to allow commercial traffic to reduce congestion on Brooklyn's local streets.

Reaction^[edit]

The Campaign for New York's Future, a coalition of over 150 civic, business, environmental, labor, community and public health organizations that support the goals and strategic direction of PlaNYC, supported congestion pricing throughout the political discussion. They argued that the plan would reduce road congestion, shorten commutes, reduce air pollution, and raise funds for long-term mass transit upgrades.

The Tri-State Transportation Campaign, a member of the Campaign for New York's Future, released an analysis of Census data showing that the vast majority (approx. 93-99%) of workers in the MTA service area, and in individual legislative districts, did not drive to work in Manhattan.^[22] TSTC argued that the data showed that congestion pricing was progressive policy.

A March, 2008 Quinnipiac poll found that New York City voters supported Congestion Pricing 67 - 27 if the money were used for mass transit improvements, and statewide voters supported the plan 60 - 30, although the majority of New Yorkers were unaware that a \$1 taxi surcharge was included in the plan. Then-presidential candidate Barack Obama, scores of city and state legislators, as well as community leaders openly expressed support for the plan.

New York State Assembly Speaker Sheldon Silver opposed the plan, citing several issues. Since motorists would want to avoid the congestion pricing zone, he claimed they would choose to park in neighborhoods just outside the pricing zone. This, in turn, would allegedly create "parking lots" and add more traffic and pollution to those neighborhoods.^[23] Secondly, because the plan would reduce traffic in Manhattan's central business district, but, he thought, not necessarily elsewhere, neighborhoods with high asthma rates such as Harlem, the South Bronx, and Bedford-Stuyvesant would not benefit.^[24] The installation of cameras for tracking purposes might have raised civil liberties concerns.^[25] Silver stopped short of opposing the entire plan, and said he would continue to work toward an agreement.^[26]

Other opponents argued that the pricing could become a tax on middle- and lower-class residents, since those citizens would be affected the most financially.^[27] At the same time, higher-income commuters would not be turned off by paying the charges; thus the fee would not do much to discourage traffic into the congestion area.^[28]

In response to many of these issues, Bloomberg argued that a significant percentage of commuters would switch to public transportation, and most likely for all of their commute; thus cars would be taken off the road outside the Central Business District as well as within it. John Gallagher, a Bloomberg spokesman, also said that "toll shopping", a tendency for drivers to seek toll-free routes, will end as all commuters who go to the congestion zone will have to pay tolls.^[29]

On July 9, 2007 Assemblyman Richard Brodsky issued an adverse report, calling the proposal thoughtful and bold, but expressing skepticism on points including financial fairness and environmental impact.

It mentioned as insufficiently studied alternatives (though it did not recommend any of them):

- Rationing
- Better traffic enforcement

- Time-of day pricing on mass transit
- Taxes on gasoline, payroll, commuter, or stock transfer
- Fees on City parking permits

Brodsky also called the proposal a "regressive tax" on the poor and middle class and harmful to citizens of New York City's outer boroughs.¹⁴²

Keep NYC Congestion Tax Free, a coalition of about 80 civic, business and labor organizations and businesses throughout the New York metropolitan area, proposed non-intrusive, low-cost traffic mitigation measures with some half billion dollars or more in incidental revenues as an alternative to the city's congestion pricing scheme that it argued would also qualify for the federal grant. It also recommended revenue measures that would raise nearly \$1.8 billion to mass transit projects to induce less driving through better transit service.¹⁴³

Brooklyn and Queens strongly opposed the bill in the City Council, voting against it by a margin of nearly two to one. Brooklyn specifically becomes geographically isolated without access to its free bridges as Manhattan blocks its access to the mainland. A map of the council votes can be seen at <http://www.brooklyn-living.com/brooklynpress.html>. There have also been protests against congestion pricing at City Hall.

The City Council passed the bill, with the only "No" votes coming from Brooklyn, Queens and Staten Island, but on April 7, 2008, Speaker Silver announced that the Assembly would not vote on the measure.¹⁴⁴ Shortly thereafter, most of the federal grant that was to have gone to New York City was awarded to Chicago for bus-only lanes and more buses,¹⁴⁵ and Los Angeles for high-occupancy toll lanes.¹⁴⁶