November 15, 2019

Via Email

Board of Directors
Metropolitan Transportation Authority (MTA)

Re: Promptly Appoint Traffic Mobility Review Board and Follow Open Meetings Law

Dear Members of the MTA Board,

As organizations that recognize the importance of a strong, fully-funded public transportation system, we look forward to working with you as you advance and implement the Central Business District Tolling Program now that you have made the first important step of awarding the initial contract.

As such, we write to ask you to ensure the Traffic Mobility Review Board (TMRB):

1. is promptly appointed, with sufficient time to develop recommendations for the MTA Board regarding potential Central Business District (CBD) tolling charges, including any credits or exemptions; and

2. operates in accordance with the Open Meetings Law (Article 7 of Public Officers Law).

Public Authorities Law §553-k says the TMRB is to be appointed by the MTA Board and must develop recommendations on CBD tolling by no earlier than November 15, 2020 – one year from today. It is also charged with “reviewing” the MTA 2020-2024 Capital Program.
We believe the TMRB is subject to the Open Meetings Law (OML) based on our review of case law and advisory opinions from the Committee on Open Government (COOG). Specifically, the TMRB is considered a public body under section 102(2) of OML, performs a necessary step in the government decision-making process¹ and is created by statute.²

Importantly, COOG issued a December 2018 advisory opinion saying an advisory body similar to the TMRB, the MTA Sustainability Advisory Working Group, was subject to the Open Meetings Law after concerns that it was not meeting in public. That opinion is attached for your reference.

The Open Meetings Law requires that voting and deliberation by a public body be carried out only at a meeting during which a quorum has physically convened, or during a meeting which is held by videoconference. (The public is required to be able to attend in either case, with advance notice of the time and place of the meeting.)

It should also be noted that the Freedom of Information Law (FOIL) applies to certain materials provided by the MTA to the TMRB, such as statistical or factual information, or final agency policy determinations, as well as materials under discussion by the TMRB at its open meetings.

In sum, we urge you to immediately appoint the TMRB, and ensure that the body follows the Open Meetings Law. The public interest is best served when the public can understand the reasoning behind government decision-making.

Thank you for your consideration. Should you wish to discuss this matter further, please contact Rachael Fauss, Senior Research Analyst, Reinvent Albany at rachael@reinventalbany.org or 518-859-5307, or Lisa Daglian, Executive Director, PCAC, at ldaglian@mtahq.org or 212-878-7077.

Sincerely,

(signatories on following page)

Cc. Governor Andrew Cuomo
    Mayor Bill de Blasio
    New York State Legislature
    Kristin O’Neill, Committee on Open Government

¹ OML-AO-3726 https://docs.dos.ny.gov/coog/otext/o3726.htm
² See MFY Legal Services v. Toia 402 NYS 2d 510 (1977), and Smith v. CUNY, 92 NY2d 707; 713-714 (1999)
John Kaehny
Executive Director
Reinvent Albany

Peter Iwanowicz
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Tom Wright
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