To: Interested Parties

From: Roderick M. Hills, Jr.

Regarding: Authority of New York City to impose tolls on city-owned bridges and roads

Date: March 28, 2016 [finalized June 21, 2016, “draft” designation removed July 6, 2017]

This memo provides my opinion regarding New York City’s (“the City’s”) legal authority to impose tolls on city-owned bridges and roads. To summarize, the City is authorized to impose tolls on city-owned bridges and roads by §1642(a)(4) of the New York Vehicle & Traffic Law (“VTL”), which provides that cities with over a million residents (i.e., New York City) may impose “tolls, taxes, [and] fees … for the use of the highway or any of its parts where the imposition thereof is authorized by law” (emphasis added). That final emphasized phrase is most rationally construed, in light of the provision’s plain text, common sense, and historical context, to mean that New York City is authorized to impose tolls on City-owned roads and bridges, just so long as these tolls are defined by either a state law enacted by the state legislature or a local law enacted by City Council. Indeed, construing this state statute to mean that the City may impose tolls on the use of city-owned roads and bridges only when such imposition is authorized by some other state law would render the clause into an absurd tautology, authorizing the local legislature to impose tolls on the use of public highways only when such tolls are already otherwise authorized by state law. To avoid so rendering the clause into a meaningless redundancy, “authorized by law” must be construed to mean “authorized by either state or local law.”

I emphasize the limited scope of this memo, which examines only the scope of the City’s legal powers under the VTL. This memo makes no recommendation about whether imposing tolls or fees on bridges and roads is a prudent or sensible policy for the City to adopt: It simply defends the legal power of City Council to adopt such a policy, if the City’s democratically elected representatives deem such a choice to be a good one. Likewise, this memo does not examine whether or how the City’s legal powers under the VTL are constrained by other relevant state and federal statutes, aside from the VTL. There may be other limits on the procedures by which the City can impose tolls on roads and bridges, such as the obligation to provide an environmental assessment of any proposed tolls pursuant to New York’s State Environmental Quality Review Act (“SEQRA”),1 Likewise, legal doctrines aside from the VTL impose substantive limits on the sorts of tolls that the City may adopt, prohibiting, for instance, tolls that impose a discriminatory burden on interstate commerce.2

Putting to one side these questions of whether tolls on bridges and roads are wise policy, the precise procedure that must be followed in enacting such tolls, and the existence of

1N.Y. ENVTL. CONSERV. LAW § 8-0103 (2001).
2Selevan v. N.Y. Thruway Auth., 584 F.3d 82 (2nd Cir. 2009).
I. Background on the City’s authority to impose tolls on roads and bridges

The question of whether the City has the legal authority to impose tolls on the use of its bridges and roads has become salient in the last decade with recent proposals to control traffic congestion through some form of “congestion fee.” “Congestion fees” are simply tolls charged for the use of public highways based on the time and route of the use to insure that traffic moves at an efficient rate into and out of the City’s central business district (defined as some part of lower Manhattan). The details of the various proposals for congestion fees vary. All such plans have in common, however, the idea that the use of the public highways by each additional vehicle typically imposes a marginal cost on the movement of traffic that ought to be controlled by some sort of regulatory system.

The Bloomberg Administration proposed a system of congestion fees for ratification by the state legislature in June of 2007, and, in response, the state legislature created a seventeen-member Traffic Congestion Mitigation Commission (“TCMC”), jointly appointed by the governor, mayor, city council speaker, and leadership of the state legislature, to consider the proposal. After holding hearings in the Fall of 2007, the TCMC recommended a modified version of the Bloomberg Administration’s congestion fee proposal, and the New York City Council (the Council”) passed a resolution by a margin of 30-20 in favor of the TCMC’s proposal. Nonetheless, the proposal died in the spring of 2008 after Democratic members of the Assembly blocked a vote on it.3

The refusal of the state legislature to enact proposed legislation favored by a majority of the Council gives rise to the question of whether the Council has sufficient authority under existing state laws to enact some sort of system of congestion fees without further state authorization. This memo analyzes this question, concluding that the Council does indeed enjoy such authority under VTL §1642(a)(4).

VTL §1642(a)(4) is one clause in a broader grant of twenty-two powers enacted by the state legislature in 1957 by L.1957, ch. 698 and conferring a broad range of powers to regulate public highways on “the legislative body of any city having a population in excess of one million.” VTL §1642(a) provides that such a “legislative body of a city may” exercise these enumerated powers “by local law, ordinance, order, rule, regulation or sanitary code provision” and further provides that “such local laws, ordinances, orders, rules, regulations and sanitary code provisions

3 Bruce Schaller, New York City’s Congestion Pricing Experience and Implications for Road Pricing Acceptance in the United States, 17 Transport Policy 266 (2010).
shall supersede the provisions of this chapter where inconsistent or in conflict with respect to [twenty-two] enumerated subjects.” The topics that follow this declaration include a broad array of powers to regulate vehicles and roads, such as powers to regulate vehicle speeds, traffic signals, littering on the highway, and parades on public roads. Of particular relevance to the debate over congestion fees, VTL §1642(a)(4) confers powers on cities with more than one million people to “[c]harge tolls, taxes, fees, licenses or permits for the use of the highway or any of its parts, where the imposition thereof is authorized by law.” By contrast with the other twenty-one clauses contained in VTL §1642(a), VTL §1642(a)(4) is the only clause qualifying the grant of power by requiring that the exercise of the power be “authorized by law.”

II. **Section 1642(a)(4)’s plain text authorizes the New York City Council to impose tolls on city-owned roads and bridges.**

It is conventional legal wisdom that the meaning of any statute should first be inferred from the statute’s text. N.Y. Stat. Law § 92(b) (McKinney 2015) (“The intention of the Legislature is first to be sought from a literal reading of the act itself . . . .”); see also Allstate Ins. Co. v. Libow, 482 N.Y.S.2d 860, 863 (App. Div. 1984) (“[T]he courts are first bound to ascertain such intent from a literal reading of the words and language in the statute itself.”), aff’d, 65 N.Y.2d 807 (1985). The plain text of VTL §1642(a)(4) confers on the City the power to impose “tolls, taxes, [and] fees” on the use of roads if these charges are authorized by a local law enacted by the City Council, because such charges would be “authorized by law” within the plain meaning of the statute. The condition that the “tolls, taxes, [and] fees” be “authorized by law” nowhere requires that the necessary authorization take the form of a state rather than local law. Section 1642(a)(4) refers only to “law” in general, without any qualification. Absent any limiting language, therefore, “the imposition” of a “toll, tax, [or] fee … by law” is most naturally read to mean that necessary authorization can be provided by either state or local law. McKinney’s N.Y. Statutes §114 (“If there is nothing to indicate a contrary intent on the part of the lawmakers, terms of general import in a statute ordinarily are to receive their full significance”).

This unqualified reading of “law” in VTL §1642(a)(4) is further suggested by three other principles of statutory interpretation.

First, the broader reading of “law” to mean local as well as state laws is consistent with the use of the term in other similar state statutes. The VTL contains no statutory definition of “law,” but § 2(6) of the New York Municipal Home Rule Law specifically defines the word “law” to mean “a state statute, charter, or local law” (emphasis added). Given that both VTL §1642 and the Municipal Home Rule Law have as their special focus the powers of local government, it is natural to adopt a similar reading of the term “law” for both statutes. This harmonization of meaning across statutes is the prescribed approach to statutory interpretation in New York and elsewhere. McKinney’s New York Statutes § 236 (“where the same word or phrase is used in different parts of a statute, it will be presumed to be used in the same sense throughout, and the same meaning will be attached to similar expressions in the same or a related
The broader reading of “authorized by law” is also consistent with VTL § 1642’s focus on local powers. When dealing with statutes conferring powers on local governments, one should presume that references to “law” refer to both local and state law, since both are ordinarily a source of power for local officials. By contrast, state statutes dealing with state institutions (for instance, New York’s Public Official Law § 92(6)) define “law” to refer exclusively to a “state or federal statute, rule or regulation.”

Second, the VTL itself uses the phrase “authorized by law” in a way strongly suggesting that it encompasses both state and local law. VTL § 1603(b), for instance, provides that the powers conferred by the VTL on “the legislative body of any city having a population in excess of one million … may be exercised … by any official, board or agency thereof authorized by law, immediately prior to the effective date of this section, unless and until any such power shall be transferred to any other official, board or agency of such city by local law or state statute” (emphasis added). Common sense suggests that the first and second preceding italicized phrases are equivalent expressions. Otherwise, the quoted language from VTL §1603(b) would have barred City officials from regulating traffic prior to 1957 (when the current version of the VTL was enacted) unless they drew their authority from State statute rather than city charter. Such an interpretation is contrary to the conventional understanding of City officials’ powers over traffic, which have historically been derived from both state and local laws. See Cherubino v. Meenan, 253 N.Y. 462, 465–66 (1930) (noting that the power of police commissioners to regulate traffic “is to be found in most of the city charters”).

Third, the canon against construing statutes to contain redundancies also suggests that the unqualified term “law” in VTL § 1642(a)(4) means what it implies — all law, state and local. When the State legislature wanted the phrase “authorized by law” to refer only to “State law,” it expressly qualified the term “law” with the modifier “state,” as in New York Banking Law § 293 (“[T]he banking board shall have no power to permit any insurance activities other than those expressly authorized under state law”) or New York Public Authority Law § 3651(12)(e) (defining “financeable costs” to mean, inter alia, those amounts necessary “to finance any county deficit to the extent authorized by state law”) (emphasis added). If the term “law” were construed to mean only “state law” without any express qualifier, then the New York Code’s use of the phrase “authorized by state law” in these other statutes would be redundant. Given the normal judicial assumption that “the Legislature did not deliberately place in the statute a phrase intended to serve no purpose,” McKinney’s N.Y. Statutes § 114, the term “law” should be read to refer to both local and state law unless it is expressly qualified to refer only to the latter.

In construing VTL §1642(a)(4)’s phrase “authorized by law” to refer to both state and local law, I do not suggest that this phrase encompasses only local law. In light of section 1642(a)’s preamble, which authorizes cities with more than one million people to act by “local law,” the unqualified term “law” should not be read implicitly to contain the qualification “local.” Instead, the unqualified term “law” should be read according to its plain terms, to refer to both state and local law. Only such a broad reading insures that the restrictive modifiers in the
phrases “state law” and “local law” that are used elsewhere in state statutes are not rendered redundant.

III. The canon of construction disfavoring ineffective and illusory grants of power indicates that section 1642(a)(4) authorizes the City to impose “tolls, taxes, [and] fees” on the use of city-owned highways by enacting a local law.

Aside from honoring plain text, interpreting VTL §1642(a)(4) to authorize the City Council to impose “tolls, taxes, [and] fees” on highway use through a local law also avoids the absurdity of construing VTL §1642(a)(4) to mean nothing whatsoever. Common sense as well as judicial doctrine indicates that “the Legislature did not deliberately place in the statute a phrase intended to serve no purpose,” McKinney’s N.Y. Statutes §98, comment. If VTL §1642(a)(4) were construed to authorize congestion fees only when such fees are already authorized by some other state law, however, then VTL §1642(a)(4) becomes entirely gratuitous language that accomplishes nothing, because the other state statute would by itself suffice to authorize congestion fees without any help from VTL §1642(a)(4). In effect, such an interpretation reads VTL §1642(a)(4) to mean that state law authorizes tolls on highway use when state law authorizes tolls on highway use – an empty tautology created by construing the phrase “authorized by law” to cancel out the rest of the clause. Such a meaningless provision should not lightly be attributed to the state legislature. McKinney’s N.Y. Statutes §98, comment (“[A] statute must be read so that each word therein will have a meaning and not so that one word or sentence will cancel and render meaningless another word or sentence”)(emphasis added).

The principle that statutory language must be read, if possible, to have some actual effect has been specifically applied by the Court of Appeals to statutory grants of authority to finance transportation infrastructure. In Robia Holding Company v. Walker, 257 N.Y. 431 (1931), the Court of Appeals held that a 1916 amendment to the City’s 1901 charter authorized the City to impose tolls on the use of the proposed Triborough Bridge. The language of this 1916 amendment did not expressly authorize such tolls. Instead, the 1916 amendment provided only that the City had the power to issue bonds to pay for “revenue-producing” improvements, defined by the charter as “that class of improvements…the expenditure for which shall, at the time it is authorized, be determined by the board of estimate and apportionment to have a substantial … prospective earning power.” Citing this absence of an express grant of tolling power, the New York City Corporation Counsel in the Walker Administration took the position in 1927 that the City lacked legal authority to create a toll-charging and bond-selling authority to finance the Triborough Bridge Authority. The Board of Estimate nevertheless approved the proposal for the construction of a city-owned Triborough Bridge to be funded by bonds secured

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4 Robia, 257 N.Y. at 434.
by toll revenue. The Robia Holding Company challenged the legality of these bonds on the ground that the tolls themselves lacked sufficiently specific authorization.

The Court of Appeals in Robia Holding Company rejected the Robia Holding Company’s narrow construction of the City’s powers, holding instead that the general power to issue bonds for “revenue-producing improvements” necessarily implied the further power to impose tolls on the use of a city-owned bridge. While acknowledging that the state legislature “has never in express terms granted to the city power to impose charges for the use of bridges, tunnels and ferries,” the Court also observed that the city’s other powers “may be so phrased that even he who runs [sic] may read in the language used a clear intention to include subsidiary powers appropriate to its exercise.” Arguing that the language conferring power on the City “must be construed in accordance with its purpose and plain intent,” Robia held that “[n]o arbitrary rule can limit or extend the effect of the language used beyond its intentment when that intendment plainly appears in the light of all surrounding circumstances.” According to the Robia Court, the power to impose tolls on the use of the proposed bridge was necessarily implied by the City’s power to issue bonds for “revenue-producing improvements” in combination with the City’s power to build bridges, because only such an implied tolling power could make the bridges “revenue-producing.” To require the state legislature to enact another statute expressly stating that bridges were among the revenue-producing improvements contemplated by the charter “would impute to an intention to make its grant of authority illusory.” “We find no reason,” the Court concluded, “for imputing to the Legislature so extraordinary an intention.”

Robia’s specific authorization for the City’s tolling of the Triborough Bridge was rendered practically ineffectual by the City’s decision not to go forward with the Triborough Bridge, which was instead constructed by a special authority created by the state legislature. Likewise, the specific charter language construed by Robia Holding Company was deleted from the charter by 1936 City Charter. Robia’s general principle that a specific grant of authority cannot be construed so narrowly as to be “illusory,” however, remains sound law. It is, indeed, merely the specific application to grants of power over transportation infrastructure of the more general principle that “a statute must be read so that each word therein will have a meaning and not so that one word or sentence will cancel and render meaningless another word or sentence.” McKinney’s N.Y. Statutes §98, comment (emphasis added). Under this general principle, VTL §1642(a)(4) is most sensibly construed to confer on the City Council the power to impose “tolls, taxes, [and] fees” on the use of highways when such charges are authorized by either local or

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6 Robia, 257 N.Y. at 438.
7 Robia, 257 N.Y. at 438-39.
8 Robia, 257 N.Y. at 439.
9 The 1936 New York City Charter had replaced section 169 of the 1901 New York City Charter, on which Robia Holding Company had relied, with a more limited provision defining improvements that could be financed with serial bonds or corporate stock. Laurence Arnold Tanzer, The New York City Charter, Adopted on November 3rd, 1936, with Source Notes, A History and Analysis, and Summary 91-92 (1937)(describing new §§243-244 governing serial bonds and corporate stock that replaced the old charter’s provision for revenue-producing improvements).
state law, without waiting for further and more specific statutory authorization from the state legislature. To construe VTL §1642(a)(4) as authorizing “tolls, taxes, [and] fees” only if such charges are “authorized by” another state law is to “cancel and render meaningless” the entire grant of power through a gratuitously narrow reading of one clause.

In relying on Robia Holding Company for the general idea that a grant of authority should not be construed to be “illusory,” we recognize that the 1916 charter’s grant of power over “revenue-producing improvements” at issue in Robia is arguably more specific than the broad grant in VTL §1642(a)(4). Nevertheless, the general proposition recognized in Robia Holding Company applies to VTL §1642(a)(4). One should not lightly “impute to an intention [to the state legislature] to make its grant of authority illusory.” Just as Robia Holding Company found “no reason for imputing to the Legislature so extraordinary an intention,” so too, there is no basis for inferring that the state legislature somehow sought to enact a meaningless clause when it included VTL §1642(a)(4) in its catalogue of “additional traffic regulations” that the City was entitled to enact. To construe VTL §1642(a)(4) to mean that the Council can impose tolls on the use of public highways when some other state law authorizes tolls on public highways is to render the entire clause a nonsensical tautology – precisely the interpretation that Robia requires the interpreter to reject if statutory language permits a less trivial interpretation.

IV. The legislative history of VTL section 1642 is consistent with interpreting VTL §1642(a)(4) to confer on City Council the power to impose tolls on the use of city-owned bridges and roads.

VTL §1642 was enacted against the backdrop of intense political debates in the early 1950s over the proper scope of New York City’s powers to manage its transportation infrastructure. While this historical background is not conclusive, it is completely consistent with the interpretation of VTL §1642(a)(4) as conferring the power on the City Council to impose tolls on the use of city-owned roads and bridges by local law.

Section 1642(a)(4) was enacted in the wake of a two-year effort by city leaders to come up with new revenue sources with which to finance transportation infrastructure. In an effort to generate political support for legal authority to tap new revenue sources, Mayor Robert Wagner and Governor Averell Harriman jointly appointed a blue-ribbon Joint State-City Fiscal Relations Committee in 1955. Chaired by banker and philanthropist Benjamin J. Buttenwieser, this “Buttenwieser Committee” was charged with making recommendations for improving the fiscal operations of the City. The Buttenwieser Committee’s report, issued in November 1956, started from the premise that the City should be given fiscal powers commensurate with its governmental responsibilities: “[T]here is something incongruous,” the Buttenwieser Report declared, “in the picture of a resistant state government denying the city the authority to tax its

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10 Robia, 257 N.Y. at 439.
own resources to finance essential services.” Consistent with this principle, the Committee recommended that the state legislature authorize the City to impose a variety of fees and taxes.

With respect to the financing of the City’s infrastructure, the Committee recommended that the City’s entire system of roads, bridges, tunnels, buses, and subways be turned over to a New York City Transportation Authority with power to impose tolls on East River bridges, using the revenue to cover the costs of maintaining the infrastructure. In addition to acquiring the City’s own infrastructure, this Authority would also purchase the bonds of the Triborough Bridge Authority, using the latter’s revenue from its bridge tolls as well as the new tolls recommended for City-owned bridges.

The reaction to the report from political leaders was swift and, in the words of one commentator, often but not universally “venomous.” Robert Moses, Chair of the Triborough Bridge Authority, denounced the proposal as a “turgid stream of words” filled with “weatherbeaten cliches, discarded debris and dead cats of research.” In particular, Moses objected to the Committee’s “ill-considered, unsupported personal and extraneous attacks on public authorities” such as his own Triborough Bridge Authority. Good-government groups like the Citizens Budget Commission, however, praised the report for boldly confronting the City’s fiscal problems through increasing the City’s fiscal powers.

Shortly after the Buttenwieser Committee issued its report, the New York State Legislature amended the VTL in January 1957 to confer a list of twenty-two new powers on New York City, including the power to “[c]harg[e] tolls, taxes, fees, licenses or permits for the use of the highway or any of its parts, where the imposition thereof is authorized by law.” The bill jacket did not reveal the purpose of this new grant of authority to impose tolls.

Read in light of the Buttenwieser Committee’s report and the reaction thereto, however, the most natural reading of VTL §1642(a)(4) is that the state legislature rejected the Buttenwieser Committee’s most controversial recommendation to create a new special authority for all city-owned transportation infrastructure but accepted the Committee’s recommendation that the City Council itself be given the power to impose tolls on city-owned roads and bridges. This construction is not only consistent with the mixed reaction to the Committee’s

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12 Id. at 39
13 Id.
14 Id. See also Robert Moses, Another New York State Constitutional Convention, 31 St. Johns L. Rev. 201, 208 (1957)(describing proposals in “the recent Buttenwieser report” as a “wild program” filled with “crazy assertions and foolish remedies”). Moses’ diatribe against the Buttenwieser Committee’s report focused on the creation of a rival transportation authority. He queried “where are these supermen to be found” to staff such a new authority, and he ridiculed the idea that “car, bus, and truck users bail out the rapid transit system” by paying tolls for previously free bridges. “Moses Describes Report as ‘Words’: Sees ‘Turgid Stream’ of ‘Cliches’ In Transit Recommendations,” New York Herald Tribune, Dec 6th, 1956, at 21.
15 Moses, Another State Constitutional Convention, at 208.
16 L. 1957, ch. 698, at page 1546.
recommendations but also with the distinctive language of VTL §1642(a)(4). VTL §1642(a)(4) authorizes “tolls, taxes [and] fees” only “where the imposition thereof is authorized by law.” By contrast, the 1957 statute confers authority on the City’s “legislative body” to exercise all of the other twenty-two powers without any such qualification, thereby allowing the “legislative body” to carry out these other listed powers according to the default procedures preceding the list -- “by local law, ordinance, order, rule, regulation or sanitary code provision.” §1642(a) (emphasis added). As the italicized language makes plain, all of the other twenty-two powers can be carried out by not only by a “local law” but also by the action typical of an administrative agency -- an “order, rule, [or] regulation.” The implication of the distinctive clause in VTL §1642(a)(4) requiring that “tolls, taxes, [and] fees” be “authorized by law” is that the City’s “legislative body” may not delegate the power to define such tolls to an administrative agency but instead must itself define the toll by a “law” enacted through the local legislative process and not merely administrative procedures.

Such a reading of VTL §1642(a)(4) fits well with the historical context in which powerful city leaders like Robert Moses denounced the idea of a new special authority to control city-owned infrastructure. Rather than create or authorize the creation of such an entity controlled by an unelected chair similar to Robert Moses, the state legislature placed responsibility for enacting tolls squarely in the lap of the City’s elected Council. By requiring tolls to be defined and approved by the New York City Council, the state legislature protected drivers from democratically unaccountable executive actions that might otherwise be taken by a new City-created special authority. Construing VTL §1642(a)(4) to authorize only legislatively defined tolls also fits well with longstanding principles of administrative law. There is a long-held doctrine in New York that the State legislature cannot delegate taxing power to purely executive agencies.17 By insisting that highway and bridge tolls be authorized by either a State or local law, VTL §1642(a)(4) protects this traditional non-delegation doctrine regarding executive taxation uncabined by legislated standards. The protection of the principle that taxation must be controlled by legislative action also explains why, alone of all the powers conferred by VTL §1642, the power to impose tolls on roads was limited by the requirement that such tolls be “authorized by law.” Unlike the other traffic regulations included in VTL §1642, the power to impose tolls implicated the principle that taxation requires legislation and not merely rule-making by unelected executives.

In sum, the legislative history of VTL §1642(a)(4) provides no reason to depart from the interpretation that is most consistent with plain text and common sense. VTL §1642(a)(4) authorizes the City Council to impose “tolls, taxes, [and] fees” on the use of city-owned highways through a local law, most likely because such legislative rather than merely administrative action insures that such charges, by being “authorized by law” within the meaning

of VTL §1642(a)(4), avoid the danger of an administrative agency’s imposing fees or taxes without specific legislative authorization.

V. General common-law and statutory limits on local governments’ interference with the public access to highways do not override VTL §1642(a)(4)’s specific authorization for City Council to impose “tolls, taxes [and] fees” by local law.

VTL §1642(a)(4)’s specific grant of authority is not overridden by the general principle that, absent express state authorization, local governments may not impede the public’s access to public highways, because VTL§1642(a)(4) is precisely the express state authorization required by this principle. Judicial decisions striking down local laws impeding public access to highways that lack such specific state statutory authorization are, therefore, irrelevant to the legality of tolls specifically authorized by VTL §1642(a)(4).

New York law has long followed the common law idea, dating from the dawn of the automobile in the early twentieth century, that “[t]he right to use of the highways is said to rest with the whole people of the State, not with the adjacent proprietors or the inhabitants of the surrounding municipality.”18 This common law right of access to public highways, free from local encumbrances, was codified by §1600 of the VTL, which prohibits local laws from conflicting with any provisions of the VTL unless “expressly authorized” by the VTL itself. VTL §1604 more specifically prohibits local laws impeding public access to public highways by prohibiting local laws, “[e]xcept as otherwise provided by this chapter,” from (1) requiring from any owner of a motor vehicle . . . any tax, fee, license or permit for the use of the public highways, (2) or excluding any such owner . . . from the free use of such public highways . . . or (3) in any other way restricting motor vehicles . . . or their speed upon or use of the public highways; or (4) setting aside for any given time a specified public highway . . . .”19

Invoking these statutory provisions and the principle of free mobility underlying them, the Court of Appeals and lower courts have repeatedly held that local laws interfering with motorists’ use of the roads are preempted by the VTL when such local laws lack specific authorization by the VTL itself.20 None of these decisions, however, cast any doubt on a “toll, tax, [or] fee” that is specifically authorized by VTL §1642(a)(4).

For instance, Automobile Club v. City of New York21 struck down a rule promulgated by the City’s Commissioner of Transportation in 1980, banning single-occupant private passenger

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19L. 1929 ch. 54, § 54.
20People v. Grant, 117 N.E.2d 542, 542 (N.Y. 1954) (invalidating town’s local law prohibiting transit on a particular street and noting that “streets are subject exclusively to regulation and control by the State as sovereign, except to the extent that the Legislature delegates power over them to political subdivisions ….”); People v. Delprete, 633 N.E.2d 1092, 1093 (N.Y. 1994)(striking down local law restricting parking in a residential area and referencing the “common-law rule that the right to use the highways is said to rest with the whole people of the State ….”)
cars from using four East River bridges to drive into Manhattan on weekday mornings. In holding that this executive rule was prohibited by the VTL, Justice Dier stated that “the only such enumerated subject [within VTL §1642(a)] which bears any apparent relation to the question at hand is described” was VTL §1642(a)(3), providing that the City had the power to “prohibit[] or regulat[e] the use of any highway by particular vehicles or classes or types thereof or devices moved by human power.”22 Construing this language to “refer to the intrinsic characteristics of the vehicle and not to the manner of its use,” Justice Dier set aside the prohibition on single-occupancy vehicles as “not specifically, clearly and explicitly delegated” by the VTL.23

Neither Automobile Club nor any other similar decision casts any doubt on a toll that is “specifically, clearly, and explicitly delegated” by VTL §1642(a)(4). Instead, Automobile Club simply stands for the unexceptional principle that the City may not limit the use of automobiles on public highways unless such limits can find a home in some specific grant of power within the Vehicle and Traffic Law. That Justice Dier did not mention §1642(a)(4) as a possible source of such authority is hardly surprising: VTL §1642(a)(4) would not naturally provide authority for a ban, rather than a fee or toll, imposed on the use of cars. Moreover, even if the Transportation Commissioner’s rule had taken the form of a toll, the rule was not specifically authorized by any local legislation, as required by the reading of VTL §1642(a)(4) offered above. Local legislation defining a system of congestion fees that was properly ratified by the Council would not be vulnerable to such an attack.

More generally, the worry expressed in judicial precedents about recognizing a general local governmental power to control access to the public highways is inapplicable to a specific statutory power conferred only on New York City to impose “tolls, taxes, [and] fees” on the use of public highways. The Court of Appeals has recognized that local governments’ generally regulating access to highways creates a risk that statewide freedom of movement will be mired in a web of parochial local restrictions imposed by hundreds of towns, villages and cities. By contrast, the specific power conferred by VTL §1642(a)(4) applies only to New York City and was most likely enacted in 1957 to address the unique problems of financing, and insuring unimpeded traffic movement on, infrastructure internal to New York City such as the East River bridges. The interests affected by such infrastructure are overwhelmingly concentrated in New York City, and all of these interests are represented by the New York City Council. By delegating a general power to the Council to decide whether and how to finance the City’s own infrastructure with fees, taxes, tolls, licenses, or permits, the state legislature insured that the decisions about traffic problems unique to New York City would not be bogged down in Albany but could be addressed by the Council, the legislative body representing the people most affected by such decisions about city-owned infrastructure.

22 Id. at 12.
23 Id.
Conclusion

In sum, the broad reading of VTL §1642(a)(4) to authorize tolls “authorized by [local] law” makes sense not only of VTL§1642(a)(4)’s plain text but also of its historical context and the controversies surrounding special authorities. By contrast, reading §1642(a)(4) to authorize only those fees otherwise already authorized elsewhere by state law transforms the clause, to use Robia Holding Company’s phrase, into an “illusory” grant of power, an empty redundancy the enactment of which should not be lightly imputed to the state legislature. Rather, the historical context of VTL §1642(a)(4) strongly suggests that the state legislature was responding to genuine, well-publicized, substantive concerns about limits and ambiguities in the City’s authority by providing the City with a new power to finance its infrastructure generally with tolls, provided that such tolls are approved by a local law rather than imposed by executive fiat of a special authority.