



CITY OF
PORTLAND, OREGON
OFFICE OF CITY ATTORNEY

Linda Meng, City Attorney
1221 S.W. 4th Avenue, Suite 430
Portland, Oregon 97204
Telephone: (503) 823-4047
Fax No.: (503) 823-3089

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1. **Resolution Title:** Authorize the City Attorney's Office to join in an amicus brief and participate in court proceedings in *City of New York v. Metropolitan Taxicab Board of Trade* (Resolution)
2. **Contact Name, Department, & Phone Number:** Ben Walters, City Attorney's Office, 34947
3. **Requested Council Date:** December 1, 2010

Consent Agenda Item: _____ or Regular Agenda Item: X

Explain why this DOES or does not require a presentation or Council discussion:

A brief opportunity for Council discussion of why Portland should participate in asking the Supreme Court to review the *New York City* ruling would be appropriate.

Emergency Item (answer below): _____ or Non- Emergency Item: X

If emergency, why does this need to take effect immediately: Under the Supreme Court's appellate rules, the amicus brief must be filed within 30 days after the case is placed on the docket. The City of New York filed its appeal on November 5, 2009, so the amicus brief is due December 9, 2010.

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4. **History of Agenda Item/Background:** In December 2007, New York City (NYC) passed rules requiring new taxicabs to achieve at least 25 City miles per gallon if put in service on/after October 1, 2008 and 30 City miles per gallon if put into service on or after October 1, 2009 (25/30 mpg rules).

In the case of *City of New York v. Metropolitan Taxicab Board of Trade*, the Second Circuit held that federal Energy Policy and Conservation Act (EPCA) preempted New York City's regulations to stimulate investment in hybrid and clean diesel taxicabs. The Appeals Court ruling is concerning both for its restrictions on the ability of cities to support efficient private vehicles, and for broadly construing the EPCA's preemption provision, which potentially places a myriad of valid state and local programs at risk.

In November 2010, the City of New York filed a petition of certiorari seeking Supreme Court review of the Second Circuit's decision. The City of Chicago's Law Department is preparing an amicus brief in support of New York City's petition. The City of Portland has been invited to join the amicus brief, along with other major U.S. cities.

Improving vehicle fuel efficiency has been a long-standing priority of the City's and is reflected in climate change policies dating to 1993. Most recently, the 2009 Climate Action Plan, adopted in October 2009 (Resolution 36748), calls for increasing the average fuel efficiency of passenger vehicles to 40 miles per gallon by 2030. While Portland has not yet adopted taxi policies similar to New York's, since taxis constitute a much smaller share of transportation emissions here, the City may want to pursue similar policies in the future.

5. **Purpose of Agenda Item:** This Resolution would authorize the City Attorney's Office to join in an amicus brief and participate in court proceedings in *City of New York v. Metropolitan Taxicab Board of Trade*.
6. **Legal Issues:** The breadth of the Appeals Court finding is wide enough that it does not apply only to cities and states that have green taxi rules in place, but might be construed to set precedent with regards to other incentive programs "related to" an existing federal authority, in particular those falling under the EPCA or Clean Air Act (CAA). This could potentially impact existing City of Portland policies such as the Local Renewable Fuel Standard, the requirement for commercial waste haulers to use 20 percent biodiesel, efforts related to incentivizing the adoption electric vehicles, and related goals and actions called out in the Climate Action Plan.
7. **What individuals or groups are or would be opposed to this ordinance?** None known, but potentially oil companies and others who benefit from increased gasoline use. **Supportive?** Potential supporters would include those concerned with the City actively pursuing efforts to address climate change concerns.
8. **How Does This Relate to Current City Policies?**
 The Appeals Court findings but might be construed to set precedent with regards to existing and future City policies, including:
 - Local Renewable Fuel Standard (Portland City Code 16.60): Requires gasoline sold inside the City of Portland to contain at least 10 percent ethanol, and all diesel sold to contain at least 5 percent biodiesel.
 - Solid Waste and Recycling, Clean and Efficient Fleet Practices for Franchisees and Permittees (Portland City Code 17.102.050): Authorizes the Director of the Bureau of Planning and Sustainability is to protect the public health and the environment by promulgating regulations to require the use of a blend of biodiesel fuel and emission

control devices in any collection vehicle with a diesel engine used by franchisees or permittees within the City. As of March 1, 2009, franchisees and permittees shall use a blend of biodiesel fuel as specified by the Director, consistent with the requirements set forth in Chapter 16.60.

- Climate Action Plan (Resolution 36748): Establishes the goal to reduce greenhouse gas emissions by 80 percent by 2050 (and 40 percent by 2030). Establishes 2030 Objectives to 1) Increase the average fuel efficiency of passenger vehicles by 40 miles per gallon and improve performance of the road system, and 2) Reduce the lifecycle greenhouse gas emissions of transportation fuels by 20 percent. The Climate Action Plan calls for the implementation of actions to 1) Support progressive strengthening of federal fuel efficiency standards, 2) Accelerate the transition to plug-in hybrids and electric vehicles, 3) Implement the second phase of the City's renewable fuels standard to require that diesel fuel sold in Portland includes at least 10 percent biodiesel and 4) Require that local government fleets, regulated fleets (e.g. taxis and waste/recycling haulers) and the fleets of local government contractors meet minimum fleet fuel efficiency standards and use low-carbon fuels.
- Electric Vehicles: The Portland Way (Resolution 36801): Report and resolution directing the City of Portland bureaus to implement policies, programs and strategies to promote and integrate electric vehicles into their scope of work.

9. **Community Participation:** None at this time.
10. **Other Government Participation:** Cities of New York, Chicago, Boston, Pittsburgh, Salt Lake City, Dallas and Austin.
11. **Financial Impact:** The City will provide in-kind support to the amicus brief, primarily through staff time in the City Attorney's Office with assistance from Bureau of Planning and Sustainability staff. There will be no financial impact as a result of this action.



Benjamin Walters
Chief Deputy City Attorney