

## **Legal Authority of New York City to Impose Carpool Rule and Tolls on East River Bridges**

(Note: The discussion of East River Bridges begins on page 8 of this memo.)

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### **Carpool Rule and Tolls on East River Bridges**

#### ISSUES

1. Does the Mayor of New York City have the authority under emergency and non-emergency conditions to impose a ban on Single-Occupant Vehicles (“SOVs”) on the East River bridges?
2. Which persons or bodies have authority, under State and City law, to impose tolls on the East River Bridges?

#### BRIEF ANSWERS

1. Under emergency conditions, the Mayor has broad powers to control traffic on the East River bridges, including the power to impose a SOV ban. Under non-emergency conditions, the Mayor’s power is limited by the State’s Vehicle and Traffic Laws. Although the Mayor arguably has the authority to pass a SOV ban under an omnibus provision in the State law, a decision by the State courts in 1981 in *Automobile Club of New York* rejected this position. The fact that the East River bridges were handed over to the City by the State in 1992, however, supports the argument that the Mayor has such statutory authority.
2. The Mayor has no independent authority to impose tolls on the East River bridges. The City does have such authority and may delegate such power to the Mayor, but has not so done. The imposition of tolls would likely require the preparation of an environmental impact statement.

## BACKGROUND

The clients in this matter are public interest groups whose aim is to improve public transportation and reduce traffic congestion. They include N.Y.P.I.R.G. Straphangers Campaign and Transportation Alternatives.

Following the events of September 11, 2001, former Mayor Giuliani declared a State of Emergency in New York City (“the City”), promulgated in an Executive Proclamation, pursuant to Executive Law art. 2-B, § 24. *See Proclamation of a State of Emergency*, Proclamation by Mayor Rudolph Giuliani (Sept. 11, 2001) (on file with Debevoise & Plimpton). In this and subsequent proclamations, the Mayor banned SOVs from all bridges and tunnels with an entry point below 63<sup>rd</sup> Street between the hours of 6:00am and 10:00am. *E.g.*, *Proclamation of a State of Emergency*, Proclamation by Mayor Rudolph Giuliani (Nov. 25, 2001) (on file with Debevoise & Plimpton).

Disturbed by the reduction in the number of cars entering Manhattan, several organizations, including the National Merchants Association and the Metropolitan Parking Association, enlisted the services of the Sam Schwartz Company to study the effect that the SOV ban had on Manhattan. The study concluded that there had been some economic impact on Manhattan, including a decrease in the number of people entering Manhattan on any given day. *See SAM SCHWARTZ COMPANY, EXECUTIVE SUMMARY* (2002). In response, our clients prepared their own study on the effect of the SOV ban, critiquing the analysis in the *Executive Summary*. *See PRELIMINARY ANALYSIS OF THE CARPOOL RULE IN NEW YORK CITY* (Schaller Consulting ed., Feb. 25, 2002).

In response to increasing pressure to remove the ban, on April 19, 2002, Mayor Bloomberg narrowed the scope of the SOV ban to include only bridges and tunnels with entry points below 14<sup>th</sup> Street. The time restrictions remained the same. Our clients are concerned that eventually the ban will be removed entirely. They also seek an analysis of the steps necessary to impose tolls on the East River bridges.

## SOV BAN

### **Emergency Powers**

The current SOV ban was not promulgated under the Mayor’s normal statutory authority. Rather, the restriction was enacted pursuant to the Mayor’s emergency

powers. *See* Proclamation (Sept. 11, 2001), *supra*. During a State of Emergency,<sup>1</sup> the Mayor has increased authority, including the ability to prohibit and control vehicular traffic. *See* N.Y. EXEC. LAW art. 2-B, § 24(1)(a) (2001). The Mayor may maintain a State of Emergency as long as long as local emergency conditions exist. N.Y. EXEC. LAW art. 2-B, § 24 (2001). The emergency order must be renewed every five days. *Id.* at § 24(2); *see* Proclamation (Mar. 5, 2002), *supra*, at § 8. So long as an emergency persists in the City, therefore, the Mayor can sustain the SOV ban.

### **Non-Emergency Conditions**

The Vehicle and Traffic Laws of New York State regulate the City’s ability to pass a SOV ban under non-emergency conditions. The Commissioner of Transportation (“the Commissioner”) is the administrator within the Mayor’s Office who normally promulgates traffic regulations. N.Y. CITY CHARTER ch. 71, § 2903(a)(1) (2001). The powers granted to the “legislative body” of New York City under the State’s Vehicle and Traffic Laws may be exercised by the Commissioner. N.Y. VEH. & TRAF. LAW § 1603(b) (2001). To maintain the SOV ban outside of an emergency context, therefore, the Commissioner’s right to impose the ban must be supported by statutory authority.

### **Statutory Framework**

Article IX, § 2(c)(6) of the New York State Constitution gives localities the power to adopt local laws relating to “the management and use of its highways, roads, streets, avenues and property,” so long as the local rules do not conflict with the State Constitution or State law. Assuming that bridges are included in the terms “highways, roads, streets, avenues and property,” the legitimacy of the SOV ban depends upon whether such a ban conflicts with the State Constitution or State law, in particular the Vehicle and Traffic Laws. *See* Informal Opinion No. 2001-1, 2001 N.Y. Att’y Gen. 1 (Jan. 16, 2001).

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<sup>1</sup> The chief executive may determine that the public safety is imperiled by an existing emergency or that there is a reasonable apprehension of immediate danger from a pending emergency situation. N.Y. EXEC. LAW art. 2-B, § 24(1) (2001). The statute gives some examples of what constitutes an “emergency”: disaster, rioting, catastrophe, or a radiological incident. N.Y. EXEC. LAW art. 2-B, § 24(1) (2001). The statute defines a disaster as “any natural or man-made [threat], including, but not limited to, fire, flood, earthquake, hurricane, tornado, high water, landslide, mud slide, wind, storm, wave action, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, radiological accident, water contamination, bridge failure or bridge collapse.” N.Y. EXEC. LAW art. 2-B, § 20(2)(a) (2001).

The Vehicle and Traffic Laws of the State of New York were meant to unify all traffic regulations in the State for the ease of drivers throughout New York. See N.Y. VEH. & TRAF. LAW § 1600 (2001); *Counihan v. J.H. Werbelovsky's Sons, Inc.*, 168 N.Y.S.2d 829 (N.Y. App. Div. 1957); *People v. City of Hornell*, 8 N.Y.S.2d 976 (N.Y. App. Div. 1937). This purpose was codified in § 1604, which expressly states that “[e]xcept as otherwise provided in this chapter, local authorities shall have no power to pass, enforce or maintain any ordinance, rule or regulation . . . excluding any [motor vehicle driver] from the free use of [the] public highways.” N.Y. VEH. & TRAF. LAW § 1604 (2001). There are some provisions, however, that give localities express powers to regulate their roads and highways.

Section 1640 grants the legislative body of any city or village the power to make specific laws relating to their streets. The city may, for instance, designate through highways, regulate the crossing of the roads by pedestrians, prohibit the parking or standing of vehicles, or exclude trucks from the roadways. N.Y. VEH. & TRAF. LAW § 1640(a)(1), (3), (4)-(6) (2001). Additionally, under § 1640(a)(16), the omnibus clause, the legislative body of any city may by local law or other means “[a]dopt such additional reasonable local laws, ordinances, orders, rules and regulations with respect to traffic as local conditions may require subject to the limitations contained in the various laws of this state.” N.Y. VEH. & TRAF. LAW § 1640(a)(16) (2001) (emphasis added).

Reasonableness under the omnibus clause is evaluated by (1) comparing the proposed action with the specific local actions allowed in the statute, (2) evaluating whether “adequate and useful” alternatives exist for motorists in light of the proposed action, (3) considering whether the proposed classification of vehicles is discriminatory, and (4) analyzing whether the action has some “relation to the public safety, convenience or necessity.” *People v. Grant*, 306 N.Y. 258, 263-65 (N.Y. 1954); see *People v. Randazzo*, 471 N.Y.S.2d 52 (N.Y. 1983); *Automobile Club of New York, Inc. v. Koch*, No. 16802/80, slip op. at 7-8 (N.Y. Sup. Ct. May 4, 1981), *aff’d*, 88 A.D.2d 853 (N.Y. App. Div. 1982).

Under § 1642, cities with more than one million residents receive additional powers to regulate traffic. N.Y. VEH. & TRAF. LAW § 1642 (2001). These additional powers include the right to charge tolls on roadways and to prohibit or regulate the use of “any highway by particular vehicles or classes or types thereof.” *Id.* § 1642(a)(3)-(4). The State did not expressly grant the City the power, however, to impose a SOV ban. *Automobile Club of New York*, slip op. at 9. Therefore, to pass such a law, the City must justify its actions under the omnibus provision of § 1640.

### ***Automobile Club of New York v. Koch***

A major stumbling block for any legislation by the City regarding a SOV ban is *Automobile Club of New York, Inc. v. Koch*, No. 16802/80, slip op. at 7-8 (N.Y. Sup. Ct.

May 4, 1981). In that case, the Office of the Mayor announced, via a regulation from the Commissioner, a SOV ban on four East River bridges during rush hour on weekday mornings. *Id.* at 3. The ban’s purpose was to improve environmental conditions in Midtown Manhattan. *Id.* The Automobile Club of New York and others sued to enjoin enforcement of the ban because of alleged “chaotic conditions” that would result from the ban, such as increased traffic at the East River toll tunnels. *Id.* at 4-5. The court held that the City did not have the authority to impose such a ban under either N.Y. Vehicle and Traffic Law § 1640 or § 1642 because (1) there was no express grant of authority from the State to impose such a traffic regulation, (2) the regulation was not sufficiently similar to any of the express provisions such that it would be authorized under the omnibus provision of § 1640, and (3) there were no reasonable alternative routes available for SOVs during the time period of the ban. *Id.* at 7-9. This case was unanimously affirmed by the Appellate Division for the reasons stated in the Trial Term’s opinion, summarized above. *Automobile Club of New York v. City of New York*, 88 A.D.2d 853 (N.Y. App. Div. 1982); *see also* Informal Opinion No. 2001-1, 2001 N.Y. Att’y Gen. 1, at \*3 (Jan. 16, 2001) (citing to the Trial Term’s opinion at 1981 N.Y. Misc. LEXIS 3518).

### **Critique of *Automobile Club of New York* and Analysis of Statutory Authority**

The reasoning in *Automobile Club of New York* is open to attack on several fronts. The omnibus provision of § 1640 allows for the enactment of local traffic laws that are not specifically found in enumerated exceptions, so long as they are “reasonable.” *See supra*. Whether a law is reasonable is determined by the four criteria discussed in *People v. Grant*, 306 N.Y. at 263-65, set forth above.

#### **1. Ban on SOVs Similar to Other Allowed Local Actions**

The ban on SOVs is similar to several enumerated exceptions in § 1640, including the ability to (1) designate streets for one-way traffic and (2) exclude trucks and commercial vehicles from certain roadways. N.Y. VEH. & TRAF. LAW § 1640(a)(4), (5) (2001). In *People v. Randazzo*, 471 N.Y.S.2d 52, 52-53 (N.Y. 1983), the Court of Appeals upheld a one-way street designation in Scarsdale that ran for only fifty feet during the hours of 4:00pm to 6:00pm and neither began nor ended at an intersection. The court found significant the fact that the one-way designation was not a blanket prohibition on traffic, but rather was only against southbound traffic for two hours each weekday, that the defendant failed to show that alternate routes were not available, and that there was no evidence to show that the ordinance favored residents over non-residents. *Id.* In *White Plains Automotive Supply v. City of Peekskill*, 497 N.Y.S.2d 389, 390 (N.Y. App. Div. 1985), the Appellate Division upheld Peekskill’s absolute ban on trucks over twenty-seven feet long. Although the ban decreased the value of the plaintiff’s warehouse property, the court held that the unsuitability of the residential Peekskill roads and the noise and pollution from the trucks, all researched by the town

through hearings and observations, warranted the ordinance. *Id.* at 391. A ban on SOVs could be found to be similar to both of these traffic restrictions. The ban would not be an absolute bar to traffic and would only operate during certain hours of the day. Additionally, the fact that a blanket restriction on trucks to protect public health and safety was upheld suggests that a similar limited ban on SOVs justified on similar grounds could be upheld under the principle that lesser powers are contained within broader grants of authority.

Several provisions in § 1642 also compare favorably with the ban on SOVs, such as the powers to restrict classes of vehicles, to designate rights of way, to limit parking, and to control the direction of movement of traffic and the use of traffic lanes. N.Y. VEH. & TRAF. LAW § 1642(a)(2)-(3), (10), (13) (2001). Although the court in *Automobile Club of New York* denied that the SOV ban fit expressly under the provision allowing for the restriction of classes of vehicles, the court did not consider whether the SOV ban was sufficiently similar to such a power as to be included under § 1640(a)(16)'s omnibus provision. *See* slip op. at 9. The City can “prohibit parking during certain specified hours in certain districts” to alleviate traffic and congestion, can regulate the use of traffic lanes, and can restrict certain vehicles’ use of the roadway, all of which are similar to a limited ban on SOVs. *See People v. Lewis*, 3 N.Y.S.2d 508 (N.Y. Magis. Ct. 1938). The ban on SOVs is arguably not a more drastic regulation of traffic than these examples and thus could be argued to be an appropriate exercise of the City’s authority under § 1640’s omnibus clause.

The court’s ruling in *Automobile Club of New York*, that the SOV ban does not come within the scope of the omnibus clause, however, may be the more realistic understanding of the Vehicle and Traffic Laws. *See Automobile Club of New York*, slip op. at 7-8. The exceptions granted in § 1640 and § 1642 have been held to be narrow grants of power. For example, in *People v. Grant*, 306 N.Y. 258, 261-65, in considering a predecessor law to the omnibus provision in § 1640(a)(16), the court overturned an ordinance banning all through traffic within a ten block area in North Hempstead, Long Island. The law was found to be too broad as compared with the enumerated powers granted to localities. *Id.* at 263. Additionally, the law favored local traffic over other traffic, particularly over employees of a local factory, and left no reasonable alternate routes for those employees to get to and from work. *Id.* at 263-65. In *People v. Verity*, the court overturned an ordinance designating a certain street as closed to all “through trucking.” 269 N.Y.S.2d 548, 548 (Dist. Ct. Nassau 1966). Even though the municipality had express statutory authority to restrict trucking, the court held that the town had to limit that restriction based upon the weight of the truck. *Id.* The fact that the exceptions themselves are narrowly construed suggests that an expansive interpretation under the omnibus clause, like that required to impose an SOV ban, may be rejected, as it was in *Automobile Club of New York*. *But see Bus Depot Holding Corp. v. Valentine*, 288 N.Y. 115, 123 (N.Y. 1942) (suggesting in dicta that the City would have the

authority to designate certain streets on which busses must travel in the city, but denying the City the authority to exclude busses from Midtown entirely).

## 2. The Availability of Alternative Routes

The availability of alternative routes is an important factor considered by the courts in approving a restrictive traffic regulation. *Compare People v. Randazzo*, 471 N.Y.S.2d 52, 52 (N.Y. 1983) (upholding a law in part because defendant could not prove that there were no alternate routes for traffic), and *Commonwealth v. Kennedy*, 195 A. 770, 775 (Pa. Sup. 1937) (upholding a law banning busses from an area of Easton, PA in part because of the availability of alternative routes), with *Associated Transport, Inc. v. City of Syracuse*, 274 A.D. 565, 567-68 (N.Y. App. Div. 1948) (overturning ordinances because they precluded all freight carriers from moving west of Syracuse because of a lack of alternative routes), and *Adley Express Co. v. Town of Darien*, 7 A.2d 446, 446-47 (Conn. Sup. Ct. 1939) (overturning a town ordinance restricting truck traffic because it left no reasonable alternative route). The court in *Automobile Club of New York* stated that “no evidence ha[d] been adduced that [the] alternative[s for SOV travelers were] adequate, safe and suitable.” See slip op. at 8. Should the City attempt to pass an SOV ban, there would need to be some evaluation and documentation of the existing alternatives for SOV travel. The City would have to rebut the claim that the only alternative routes are toll tunnels and that toll tunnels are an inadequate alternative, as this was the ruling of the court in *Automobile Club of New York*. *Id.* Additionally, an extensive presentation regarding the ease and availability of public transportation might be helpful to demonstrate alternatives to SOV travel. *But see* Janny Scott, *In New York, a Long Way From Here to Here*, N.Y. TIMES, May 24, 2002 (describing the length and difficulty of most New Yorkers’ commutes on public transportation).

## 3. The Lack of Illegal Discrimination

The ban on SOVs would not be discriminatory such that it would violate the omnibus clause in N.Y. VEH. & TRAF. LAW § 1640(a)(16). Illegal discriminatory classifications of vehicles are ones that favor residents over non-residents of a locality, or residents of the state over non-residents, or intrastate over interstate through traffic. *People v. Randazzo*, 471 N.Y.S.2d 52, 53 (N.Y. 1983); *People v. Grant*, 306 N.Y. 258, 264 (N.Y. 1954); *Cohen v. Board of Trustees*, 604 N.Y.S.2d 961, 963 (N.Y. App. Div. 1993); *Commonwealth v. Kennedy*, 195 A. 770, 773-74 (Pa. Super. 1937). For example, in *Grant*, the town of North Hempstead restricted all “through or transient vehicular traffic” from the village of New Hyde Park. *Grant*, 306 N.Y. at 260. The Court of Appeals overturned the statute in part because the restriction was based on an illegal classification favoring local residents over other motorists. *Id.* at 264 (“[T]he dominant purpose [of the statute] is to prevent Sperry Gyroscope employees from driving on the streets within the area unless they live there. . . . [N]o reasonable basis of classification has been formulated in the ordinance.”). The SOV ban does not illegally favor local

vehicles over non-local vehicles. The ban discriminates against all motorists of the same class – SOVs. *See Weiss v. Whalen*, 238 N.Y.S. 95, 99 (N.Y. Mun. Ct. 1929). This type of classification is not illegal.

#### 4. Public Policy Supports a Ban on SOVs

The City could support its enactment of a SOV ban by pointing to the public policy considerations underlying the ban – protecting and improving the City environment. Several cases suggest that environmental concerns are a sufficient basis to establish public necessity for a traffic provision. *See, e.g., Vecchio v. Griffin*, 533 N.Y.S.2d 634, 635-36 (N.Y. App. Div. 1988) (“[T]he ordinance [establishing a one-way, one-lane highway along portions of a road] is reasonably related to its legitimate stated purposes of preventing traffic congestion and unsafe driving conditions, as well as protecting the peace of citizens in their homes.”). Additionally, New York’s State Environmental Quality Review Act (“SEQRA”) obligates agencies of the state to protect the environment, N.Y. ENVTL. CONSERV. LAW § 8-0103 (2001), and was enacted to allow for broader regulation in New York of activity that may have an effect on the environment than was codified in the federal National Environmental Protection Act. *See* N.Y. ENVTL. CONSERV. LAW § 8-0109 cmt. C8-0109:3 (2001).

Furthermore, the State Constitution supports home rule by local governments where the local laws are not inconsistent with those of the State. N.Y. CONST. art. 9, § 2(c). The SOV ban is not inconsistent with State law, although the City may not have express authority to pass such a law. Moreover, the fact that responsibility for the East River bridges was transferred from the State to New York City in 1992 would tend to support an argument for New York City’s home rule right to regulate the traffic on those bridges. *See* DEPARTMENT OF TRANSPORTATION, OFFICE OF THE MAYOR, NEW YORK CITY, MANHATTAN BRIDGE REHABILITATION PROGRAM, *at* <http://www.nyc.gov/html/dot/html/bridges/manbridge.html>.

## TOLLS ON EAST RIVER BRIDGES

### **Authority to Impose Tolls**

The City is specifically empowered with the right to supercede the traffic laws and regulations of the State of New York in certain enumerated areas. N.Y. VEH. & TRAF. LAW § 1642 (2002). Among those enumerated areas are the “charging of 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.” N.Y. VEH. & TRAF. LAW § 1642(a)(4) (2002). “Highway” is defined in § 118 as “[t]he entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for the

purposes of vehicular travel.” N.Y. VEH. & TRAF. LAW § 118 (2002). There is no independent definition for “bridge” in the statute, although the two terms are used separately. *See, e.g.*, N.Y. VEH. & TRAF. LAW § 385 (2002) (referring to “highway or bridge”). It is reasonable to assume, however, that § 1642(a)(4) includes a part of the highway stretching over a bridge as the section uses the expensive phrase of “highway or any part thereof.”

These powers, however, are specifically vested in “the legislative body” of New York. N.Y. VEH. & TRAF. LAW § 1642 (2002). As such, as a matter of New York State law, any tolls that are to be imposed would have to be the result of a decision by the City Council, as opposed to the Mayor who, despite his broad residual powers<sup>2</sup>, has no power to usurp the delegated powers of the City Council. *See, e.g., Under 21 v. City of New York*, 492 N.Y.S.2d 522 (N.Y. 1985). By virtue of N.Y. VEH. & TRAF. LAW § 1603, however, the legislative body’s authority may “be delegated to any official, board or agency thereof designated by it or designated by law.” The New York City Council has delegated numerous powers to the Commissioner of Transportation, but has not delegated power of tolls to the Commissioner, thus the power appears to remain in the Council, although they have authority to delegate such power at a later date. *See* N.Y. CITY CHARTER ch. 71, § 2903 (2001). The State of New York could also impose the tolls; however, such a law would be subject to unilateral change by the City Council as specified in N.Y. VEH. & TRAF. LAW § 1642.

### **Implications of Federal Law**

Each of the Manhattan, Brooklyn and Williamsburg Bridges was built before the Bridge Act of 1906. This is the first federal act to require that tolls be “just and reasonable.”<sup>3</sup> *Automobile Club of New York, Inc. v. Port Authority of New York and New Jersey*, 887 F.2d 417, 418 (2d Cir. 1989). As such, the initial authorization and construction of the bridges provides no basis for federal regulation. Recent and ongoing repairs and renovations to these bridges have been funded by the Federal Bridge Replacement Act. 23 U.S.C.A. § 144. Section 144(h) incorporates the provisions of the General Bridge Act of 1946 (33 U.S.C.A. §§525-533) under certain circumstances: “Notwithstanding any other provision of law, the General Bridge Act of 1946 (33 U.S.C.A. 525-533) shall apply to bridges authorized to be *replaced, in whole or in part,*

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<sup>2</sup> N.Y. CITY CHARTER ch. 1, § 8 (2001).

<sup>3</sup> The provisions of this act and subsequent acts that speak to tolls have been repealed, but 33 U.S.C.A. § 508 refers to such acts and imposes the same “just and reasonable” standard. This has been interpreted as merely codifying the standard without broadening its applicability. *See, e.g., Molinari v. New York Triborough Bridge and Tunnel Authority*, 838 F.Supp. 718 (E.D.N.Y. 1993).

by this section....” (emphasis added). None of these sections address tolls, but 33 U.S.C.A. § 508 applies the “just and reasonable standard” to “tolls...over any bridge *constructed* under the authority of...the General Bridge Act of 1946.” (emphasis added). Because none of these bridges has been replaced, but merely repaired, and because § 508 only applies to bridges “constructed” under the 1946 Act, it appears the “just and reasonable” standard does not apply to these three bridges. As such, federal law does not appear to impose any special restrictions on the imposition of tolls on these three bridges. There is, however, no case law on this issue.

If the City were required to adhere to the “just and reasonable” standard, it should not prove to be a burdensome obstacle. Under such a requirement, a city or other authority may raise revenues through the imposition of tolls so long as those tolls are used for the construction, maintenance, and repair of the bridge along with a reasonable rate of return reflecting the cost of borrowing to further any of the above endeavors. *Automobile Club of New York, Inc. v. Port Authority of New York & New Jersey*, 887 F.2d at 419; *City of Burlington v. Turner*, 336 F.Supp. 594 (S.D. Iowa 1972). Furthermore, a city or other authority may use funds raised from tolls to offset the cost of other parts of the infrastructure of a city so long as those parts are sufficiently related to the structure upon which the toll is imposed. *Molinari v. New York Triborough Bridge and Tunnel Authority*, 838 F.Supp. at 725, *citing Automobile Club of New York v. Cox*, 592 F.2d 658, 667 (2d Cir. 1979).

## ENVIRONMENTAL IMPACT STATEMENT

N.Y. COMP. CODES R. & REGS. tit. 6, § 617.3 regulates when environmental impact statements are necessary and explains the process for complying with reporting and approval requirements. The law requires agencies of the state and regional and local governments to consider the environmental impact before undertaking actions that “may have a significant impact on the environment.” N.Y. COMP. CODES R. & REGS. tit. 6, § 617.1(c) (2002); *see also Williamsburg Around the Bridge Block Ass’n v. Giuliani*, 637 N.Y.S.2d 241, 245 (N.Y. Sup. Ct. 1995). If no such impact would occur, the agency need do nothing further. If there may be a “significant impact,” the agency must evaluate whether that impact may have an “significant adverse effect” on the environment. If so, an environmental impact statement must be prepared or commissioned. N.Y. COMP. CODES R. & REGS. tit. 6, § 617.1(c) (2002). Otherwise, no environmental impact statements are necessary. The City would have to make a careful analysis of the effects of the SOV ban, constituting a “hard look” at its environmental effects, to protect itself from challenge for not filing an EIS. *See Motor Vehicle Manufacturers Assoc. v. Jorling*, 577 N.Y.S.2d 346, 350 (N.Y. Sup. Ct. 1991); *H.O.M.E.S. v. New York State Urban Development Corp.*, 418 N.Y.S.2d 827, 832-33 (N.Y. App. Div. 1979). Even if an EIS were necessary, however, the State does not require that an action with a negative environmental impact be abandoned. N.Y. ENVTL. CONSERV. LAW § 8-0109(8) (2001); *see also* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.1(d).

Conceptually, the law identifies two different sets of actions, designated Type I and Type II. Type I actions are presumed to require environmental impact statements. These actions tend to be ones that require significant amounts of construction or involve potentially hazardous material. N.Y. COMP. CODES R. & REGS. tit. 6, § 617.4 (2002). Type II actions do not require environmental impact statements. N.Y. COMP. CODES R. & REGS. tit. 6, § 617.5 provides an extensive list of such actions, but also allows each agency to designate other actions as Type II actions so long as they are not Type I actions. The State Transportation Commissioner has made additional regulations regarding what activities are considered Type I or II actions. *See McKelvey v. White*, 583 N.Y.S.2d 988, 990 (N.Y. App. Div. 1992).

A ban on SOVs is not specifically mentioned on either list. An EIS may not be required to pass a ban on SOVs, as an EIS is normally only mandated for actions that will have a significant *adverse* effect on the environment. N.Y. COMP. CODES R. & REGS. tit. 6, § 617.4(a)(1) (2002). So long as there are no significant adverse environmental impacts associated with the SOV ban, no EIS would be necessary. *See* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.7(a)(2) (2002). An EIS may have to be prepared, however, if it were shown that the SOV traffic diverted from the banned bridges created a negative environmental impact elsewhere or significantly changed vehicle traffic volume or local traffic patterns. *See* N.Y. COMP. CODES R. & REGS. tit. 17, § 15.14(d)(2); *McKelvey v. White*, 583 N.Y.S.2d 988 (N.Y. App. Div. 1992).

The imposition of tolls also is not listed on either list, but seems more closely aligned with Type II actions. The most analogous enumerated Type II activity is the “installation of traffic control devices on existing streets, roads and highways”, N.Y. COMP. CODES R. & REGS. tit. 6, § 617.5(c)(16), as with both, the only environmental impact would be the potential change of traffic patterns. There is, however, a difference in scale, and a court could, and probably would, require the filing of an environmental impact statement or a negative declaration by the lead agency.<sup>4</sup> The tolls, if imposed by

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<sup>4</sup> The law tends to be applied broadly when there is a chance of such significant environmental impact. *See Powlis v. Guiliani*, 628 N.Y.S.2d 634 (N.Y. App. Div. 1995) (ruling that the removal of fire alarm boxes from city streets required an environmental assessment); *Jamaica Chamber of Commerce, Inc. v. Metropolitan Transp. Authority*, 608 N.Y.S.2d 758 (N.Y. Sup. Ct. 1993) (discussing the requirements resulting from a traffic routing experiment); *but see also Philger Realty Corp. v. Town Bd. of East Hampton*, 692 N.Y.S.2d 455, (N.Y. App. Div. 1999) (ruling a rezoning plan which reduced development need not be preceded by an environmental impact statement). Even though, this would presumably reduce traffic, a toll which would potentially change the traffic patterns of hundreds of thousands, if not millions, of drivers almost assuredly will lead a court to be prudent and order the preparation of an environmental impact statement.

the state legislature or the governor, would not require an environmental impact statement. N.Y. COMP. CODES R. & REGS. tit. 6, § 617.5(c)(37) (2002); *Cerro v. Town of Kingsbury*, 672 N.Y.S.2d 953 (N.Y. App. Div. 1998).

The National Environmental Policy Act of 1969, as codified at 42 U.S.C.A. § 4321, does not impose any further restrictions on the State of New York regarding environmental impact statements. This chapter only operates on federal agencies and imposes no duties upon states or on municipalities except to the extent that a nonfederal entity is found to be acting in partnership with the federal government. *Town of North Hempstead v. Village of North Hills*, 482 F.Supp. 900 (E.D.N.Y. 1979).

## CONCLUSION

The Mayor does not have express authority from the State to enact a SOV ban. The current SOV ban is a product of the Mayor's emergency powers, which were conferred upon him as a result of the September 11<sup>th</sup> terrorist attacks. The City could attempt to enact such a ban permanently under the omnibus provision of N.Y. VEH. & TRAF. LAW § 1640(a)(16). Although the courts have already overturned a similar Executive order in *Automobile Club of New York*, the City could point to the 1992 change in authority over the bridges as well as general principles such as environmental conservation and the home rule provision in the State Constitution as grounds for approving the legislation.

The City may impose tolls on the East River bridges. Such action must either be a product of City Council action directly or through its designee(s). Such an imposition would, at a minimum, require an analysis of the environmental impact and likely require the preparation of a full environmental impact statement. Federal law and regulations should have no effect on the City's ability to impose tolls.

## **Vehicle and Traffic Law of The State of New York**

### **Regulation of Traffic § 1642**

3. Upon a roadway which is divided into three lanes, allocate the center lane exclusively for traffic moving in a specified direction.
4. Order signs erected directing slow-moving traffic, trucks, buses or specified types of vehicles to use a designated lane, or with signs, signals or markings designate those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway.
5. Designate a portion of a slope as a path for the use of bicycles.
6. Order signs or markings to identify the portion of the highway to be used for bicycle travel.
7. Prohibit, restrict or regulate the operation of limited use vehicles on any street or highway.
8. Designate preferential use lanes for specified types or classes of vehicles.

### **§1642. Additional traffic regulations in cities having a population in excess of one million.**

(a) In addition to the other powers granted by this article, the legislative body of any city having a population in excess of one million, may by local law, ordinance, order, rule, regulation or health code provision prohibit, restrict or regulate traffic on or pedestrian use of any highway (which term, for the purposes of this section, shall include any private road open to public motor vehicle traffic) in such city. The provisions of section sixteen hundred shall be applicable to such local laws, ordinances, orders, rules, regulations, and health code provisions, provided, however, that such local laws, ordinances, orders, rules, regulations and health code provisions shall supersede the provisions of this chapter where inconsistent or in conflict with respect to the following enumerated subjects:

1. Weights and dimensions of vehicles.
2. Parking, standing, stopping and backing of vehicles.
3. The prohibition or regulation of the use of any highway by particular vehicles or classes or types thereof or devices moved by human power.
4. Charging of 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.
5. Establishment of minimum speed limits at which vehicles may proceed on or along such highways.

6. Operation of authorized emergency vehicles.
7. Control of persons and equipment engaged in work on the high- way.
8. Hitchhiking and commercial activities.
9. Use of medial strips and dividing malls or sections and use of shoulders of the highway.
10. Right of way of vehicles and pedestrians.
11. Use of the highway by pedestrians, equestrians and animals.
12. Turning of vehicles.
13. Regulation of the direction of the movement of traffic and the use of traffic lanes.
14. Regulation of the use of horns, lights and other required equipment of vehicles.