

Office of the City Manager

INFORMATION CALENDAR

December 13, 2005

To: Honorable Mayor, and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Douglas Hambleton, Chief of Police

Subject: Hybrid Cars – Parking Rights (*CF-09*)

INTRODUCTION

City Council asked staff to provide an enforceability assessment of the proposal for the City to provide free parking at metered spaces, for the maximum time allowed at the meter, for fuel-efficient and clean-hybrid vehicles purchased in Berkeley.

CURRENT SITUATION AND ITS EFFECTS

Currently the City does not provide free parking benefits to fuel-efficient or clean-hybrid vehicles.

Were the City to allow permitted hybrid vehicles to park for free at meters for the maximum time allowed, Parking Enforcement Officers (PEO) would resort to enforcement of these vehicles in the manner that they enforce at malfunctioning meters – as time zones.

Currently PEOs enforce vehicles at malfunctioning meters as time zones, by chalking the tires of the vehicles, making notes as to the date, times, and locations of the chalked vehicles, and return to check on the vehicle after the maximum time allowed at the space. Vehicles found to have exceeded the maximum time are cited. Tire chalking has been the cause of injuries to many PEOs, resulting in worker's compensation claims and lost work time.

Feeding of parking meters, to extend time beyond the maximum time allowed, has been a longstanding problem in the downtown area. In 2002, a study of downtown Berkeley parking patterns, by UC Berkeley Professor Elizabeth Deakin, reported that as many as 700 downtown workers drove to work, and parked on the street all day long by feeding the meters.

Hybrid vehicles are manufactured by Toyota, Honda, Ford, and Chevrolet. There is a Toyota dealership in Berkeley, as well as a Honda dealership. There are no Ford or Chevrolet dealerships in Berkeley.

BACKGROUND

Legal Implications

The City Attorney's Office was asked to offer an opinion as to whether the City can adopt an ordinance allowing fuel-efficient and hybrid vehicles purchased in Berkeley to park for free at City metered spaces.

Based on an understanding that both Ford and Chevrolet make hybrid vehicles that can be considered "high efficiency", the City Attorney's Office analyzed whether the proposal would burden interstate commerce by offering a benefit only to Toyota and Honda (i.e. the auto manufacturers which have dealerships in Berkeley). Since all of the auto manufacturers conduct business throughout the nation, a burden on their ability to sell automobiles in any particular City could be considered a restriction on interstate commerce. Consequently, the proposal would have the effect of benefiting local economic interests and burdening non-local competitors. The City Attorney's Office concluded that this effect would probably be considered by the courts as an impermissible burden on interstate commerce.

However, the City Attorney's Office further advised that, if the free parking was offered to all high-efficiency vehicles without distinction as to where they were purchased, it appeared that the proposal would not violate the intrastate commerce limitations and would survive rational basis scrutiny. The memo stating the opinion of the City Attorney is attached.

Enforcement Issues

The following assumptions were made for the purpose of this response:

1. Metered spaces include spaces regulated by pay and display, as described in Berkeley Municipal Code (BMC) sections 14.40.030, and 14.40.040.
2. Qualified vehicles would be required to display a unique bumper permit, issued by Finance/Customer Service, for an annual fee of \$30.00 (same as an RPP permit).
Vehicle owners would be required to provide documentation to the Finance Dept. that their vehicle fits the criteria for issuance of a permit.
3. Chalk marking of tires and enforcement log notations would be the method of determining how long a permitted vehicle has been parked in one metered space.

Parking Enforcement Officers would be required to chalk the tires of permitted vehicles at metered spaces, and return to the vehicle to see if it had been moved. If the vehicle did not move, and the chalk mark had not been erased, the vehicle could be cited. A permitted vehicle could stay in a metered space for the maximum time allowed, and then move to the next block and park in a metered space for the maximum time allowed at that meter. The vehicle could move from block to block and park all day for free, without fear of being cited. This would result in PEOs tire chalking the same vehicles at different locations on the same day, without little likelihood of being able to issue parking citations. This would send a mixed message to the PEOs, who have been under increased oversight to work more efficiently so that they can achieve the City's annual parking citation revenue goals.

POSSIBLE FUTURE ACTION

The Police Department recommends that the City not provide the proposed free parking benefit to fuel efficient and hybrid vehicles.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

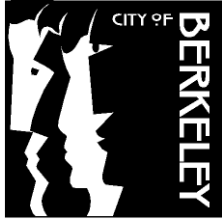
There is no way to estimate how many qualified vehicles would be purchased in Berkeley, and would take advantage of the free parking benefit. It is therefore impossible to determine the effect that the proposed free parking benefit would have on sales tax revenue, potential loss of parking fine revenue, or worker's compensation costs.

CONTACT PERSON

Douglas N. Hambleton, Chief of Police, 981-5700
Bruce Agnew, Lieutenant Traffic Bureau, 981-5983

Attachment:

1: Legal Opinion by Deputy City Attorney L. McKinney



Office of the City Attorney

September 28, 2005

TO: Lt. BRUCE AGNEW, Police Department

FROM: MANUELA ALBUQUERQUE, City Attorney
By: LAURA N. MCKINNEY, Deputy City Attorney

RE: Whether the City Can Adopt an Ordinance Allowing Fuel-efficient and Hybrid Vehicles Purchased in Berkeley to Park for Free at City Metered Spaces

You have referred a proposal by Councilmembers Wozniak and Maio to reduce carbon dioxide emissions in Berkeley by offering free on-street parking at metered spaces for “high efficiency vehicles purchased in Berkeley” to our Office for consideration. It is our understanding that you are seeking only a preliminary legal assessment of such a proposal because a number of practical problems exist regarding its implementation and enforcement. Given that, we have not conducted extensive research on the matter and, if adoption of such an ordinance was actually proposed, we would need to evaluate the issue further.

It is our belief that the City would not be preempted by state law from offering free parking at metered spaces to “high efficiency” vehicles since Vehicle Code Section 22508 delegates all power over parking meter traffic regulation to localities.

We also believe that an ordinance exempting Berkeley-purchased “high efficiency” vehicles from metered parking payments could likely survive an equal protection challenge. In a similar factual situation, the U.S. Supreme Court examined whether a county’s adoption of a preferential parking program for residents violated the equal protection clause of the Fourteenth Amendment of the U.S. Constitution.

In that case, the county asserted that it adopted its parking program in order to reduce air pollution. (*County Board of Arlington v. Richards* (1977) 434 U.S. 5, 6.) The Court explained that distinctions between residents and nonresidents are not presumed to be invidious and, therefore, the ordinance was only required to “rationally promote the regulation’s objectives.” The Court found that the ordinance’s objectives of “reduc[ing] air pollution and other environmental effects of automobile commuting” were rationally related to the preferential parking program since restricting “on-street parking available to commuters, encourag[ed] reliance on car pools and mass transit” and “assur[ed] convenient parking to residents who leave their cars at home during the day.” (*Id.* at 7.)

Lt. Bruce Agnew, Police Department

September 28, 2005

Page 2

Consequently, it appears that the proposal's goal of reducing carbon dioxide emissions would likely be found rationally related to offering parking incentives to those individuals who drive vehicles that emit less carbon dioxide than other vehicles.

However, since the proposal has the potential to effect interstate commerce by providing a market incentive for high efficiency vehicles sold in Berkeley, it likely violates the Commerce Clause of the U.S. Constitution.

“The Commerce Clause of the United States Constitution empowers Congress to ‘regulate Commerce with foreign Nations, and among the several States.’ The Supreme Court has interpreted the clause not only to grant legislative power to Congress, but also impliedly to limit the power of State and local governments to enact laws affecting foreign and interstate commerce. The implied limitation on State and local powers is referred to as the dormant Commerce Clause.” (*Air Transp. Ass'n of Am. v. City & County of San Francisco* (1998) 992 F. Supp. 1149, 1161 citing *Healy v. Beer Institute* (1989) 491 U.S. 324, 326 note 1.)

The courts have interpreted the Commerce Clause as restricting state and local efforts to favor local industry. For example, in *Wyoming v. Oklahoma* (1992) 502 U.S. 437, the Court held that a regulatory measure designed to benefit in-state economic interests by burdening out-of-state competitors was invalid as economic protectionism.

Your memo explains that both Ford and Chevrolet make hybrid vehicles that can be considered “high efficiency”. However, neither of these auto manufacturers have dealerships in Berkeley. Therefore, only certain types of hybrid vehicles (i.e. Toyota and Honda) would benefit from the proposal. As these manufacturers conduct business throughout the nation, a burden on their ability to sell automobiles in any particular City could be considered a restriction on interstate commerce. Consequently, the proposal would have the effect of benefiting local economic interests and burdening non-local competitors. This effect would probably be considered by the courts as an impermissible burden on interstate commerce.

However, if the free parking was offered to all high efficiency vehicles without distinction as to where they were purchased, it appears that it would not violate the intrastate commerce limitations and would survive rational basis scrutiny.