

**Supreme Court of the State of New York  
Appellate Division: Second Judicial Department**

D35692  
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Submitted - May 29, 2012

PETER B. SKELOS, J.P.  
THOMAS A. DICKERSON  
JOHN M. LEVENTHAL  
SHERI S. ROMAN, JJ.

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2011-08195

DECISION & ORDER

In the Matter of G&C Transportation, Inc., et al.,  
appellants, v Jean-Ann McGrane, et al., respondents.

(Index No. 6244/08)

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Giordano & Stern, LLP, Cornwall-on-Hudson, N.Y. (Bruce Stern of counsel), for appellants.

Tarshis, Catania, Liberth, Mahon & Milligram, PLLC, Newburgh, N.Y. (Michael E. Catania of counsel), for respondents.

In a hybrid proceeding, in effect, pursuant to CPLR article 78 to review a determination of the City Council of the City of Newburgh dated February 25, 2008, adopting City of Newburgh Ordinance No. 3-2008, which amended Chapter 272 of the City of Newburgh Code of Ordinances, and action, inter alia, in effect, for a judgment declaring that Chapter 272 of the City of Newburgh Code of Ordinances, as amended by Ordinance No. 11-2010, is invalid on the ground that it is unconstitutional, the petitioners/plaintiffs appeal from an order and judgment (one paper) of the Supreme Court, Orange County (Ecker, J.), dated June 24, 2011, which denied their motion for summary judgment, granted the respondents/defendants' cross motion for summary judgment and declared that Chapter 272 of the City of Newburgh Code of Ordinances, as amended by City of Newburgh Ordinance No. 11-2010, is valid, constitutional, and enforceable.

ORDERED that the order and judgment is affirmed, with costs.

City of Newburgh Ordinance No. 3-2008 (hereinafter the ordinance), amended, in its entirety, Chapter 272 of the City of Newburgh Code of Ordinances (hereinafter Chapter 272), which pertained to the regulation of taxicab services within the City of Newburgh (hereinafter the City). City of Newburgh Ordinance No. 11-2010 further amended the ordinance. The petitioners/plaintiffs, who provide taxicab services in the City, challenged various provisions of the ordinance and, after its subsequent amendment, now challenge the same provisions of the amended ordinance. The

July 25, 2012

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petitioners/plaintiffs argue generally that the ordinance and amended ordinance were enacted in excess of the regulatory powers vested in the respondents/defendants, and that the ordinance and amended ordinance violate the New York and United States Constitutions and, therefore, must be declared invalid.

A local ordinance is cloaked with the same strong presumption of constitutionality as a statute (*see Town of Huntington v Park Shore Country Day Camp of Dix Hills*, 47 NY2d 61, 65; *Marcus Assoc. v Town of Huntington*, 45 NY2d 501, 505). It need only be determined whether the ordinance in question is a reasonable measure for achieving valid goals of the municipality (*see Bobka v Town of Huntington*, 143 AD2d 381, 383-384).

Contrary to the contention of the petitioners/plaintiffs, the ordinance and amended ordinance are reasonably related to the legitimate stated purposes of better serving and protecting local residents, visitors, and legitimate taxi companies from, among other things, unlicensed and underinsured taxicab drivers. The petitioners/plaintiffs' conclusory submissions do not sustain their burden of establishing beyond a reasonable doubt that the ordinance and the amended ordinance were not reasonably or rationally related to those legitimate stated purposes (*see Vecchio v Griffin*, 143 AD2d 1003, 1004; *Bobka v Town of Huntington*, 143 AD2d 381, 383-384). Accordingly, since the petitioners/plaintiffs failed to sustain their burden of establishing the unconstitutionality of the ordinance or amended ordinance beyond a reasonable doubt, the Supreme Court properly, *inter alia*, declared that the amended ordinance is valid, constitutional, and enforceable.

The petitioners/plaintiffs' remaining contentions are without merit.

SKELOS, J.P., DICKERSON, LEVENTHAL and ROMAN, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court