

SAFE STREETS MORGANTOWN  
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June 17, 2014

**BY HAND AND EMAIL**

Morgantown City Council  
389 Spruce Street  
Morgantown, West Virginia 26505

RE: Proposed Ordinance Regulating Heavy Truck Traffic in the Downtown Business District

Mayor Selin, Deputy Mayor Shamberger, Members of City Council:

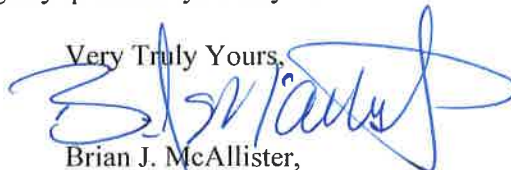
For many years, we acquiesced in believing that our City is powerless to regulate the movement of large trucks traveling through our downtown business district on state roads. Because a fair reading of West Virginia Code §§ 17-4-27 and 17C-17-12 justifies the opposite conclusion, and because we in Morgantown concluded that the movement of large trucks through our downtown business district is detrimental to the health and vitality of nearby neighborhoods as well as to the downtown business district itself, we include herewith a proposed ordinance regulating heavy truck traffic through our City's downtown. We also include the applicable statutory provisions, which grant Morgantown the authority to regulate traffic in this manner.

Please place this proposal on the Committee of the Whole agenda for June 24. At that time, we will ask that you immediately advance the proposed ordinance to the regular agenda and that you pass and enact the proposed ordinance as efficiently as possible. By regulating the movement of heavy trucks through and within the City's downtown business district, this Council will not only act in conformity with the authority specifically bestowed upon it by our Legislature, but you will simultaneously advance the collective will of our fellow citizens, as clearly expressed within our Comprehensive Plan, the Downtown Strategic Plan, the Morgantown Monongalia Metropolitan Planning Organization Long-Range Transportation Plan, the Morgantown Pedestrian Safety Plan, and designations in our Planning and Zoning Code. Additionally, you will erase years of frustration borne of our unsuccessful attempts to satisfactorily resolve this issue by negotiation.

Downtown businesses will benefit by the enactment and enforcement of this ordinance. Neighborhoods and residents will benefit by the enactment and enforcement of this ordinance. Accordingly, Morgantown will unquestionably benefit by the enactment and enforcement of the ordinance we now present for your consideration.

Mr. Evan Hansen and I will attend the Committee of the Whole meeting on June 24, 2014, so that you can make inquiry on this topic as you see fit. We thank you for your attention to this very important proposal, and we look forward to answering any questions you may have on the 24<sup>th</sup> of June.

Very Truly Yours,



Brian J. McAllister,  
Cobun Avenue

BJM

Enclosures: Downtown Business District Heavy Truck Limitation Proposal;  
W. Va. Code §§ 17-4-27 and 17C-17-12.

Cc: Jeff Mikorski, ICMA-CM  
Steve Fanok, Esquire  
Linda Little, CMC

## **DOWNTOWN BUSINESS DISTRICT HEAVY TRUCK LIMITATION**

**WHEREAS**, the 2013 Comprehensive Plan identifies the reduction of freight trucks within city limits as a community priority<sup>1</sup>; and

**WHEREAS**, key findings from the Comprehensive Plan's public input process revealed that "[t]he presence of large trucks within the city evoked frustration from many respondents. The community wants to see truck traffic rerouted around the city and prohibited within the city's core"<sup>1</sup>; and

**WHEREAS**, the Morgantown Monongalia Metropolitan Planning Organization's 2013-2040 Long Range Transportation Plan recommends reduction of "truck traffic in residential neighborhoods and on other streets where significant numbers of bicycles and pedestrians are present"<sup>2</sup>; and

**WHEREAS**, the City of Morgantown Planning and Zoning Code classifies the City of Morgantown into districts according to their intended function<sup>3</sup>; and

**WHEREAS**, the purpose of the General Business District (B-4) is to "promote development of a compact, pedestrian-oriented central business district..."<sup>3</sup>; and

**WHEREAS**, the 2010 Morgantown Pedestrian Safety Plan advises that "the most serious compromises to a safe walking environment are a) sidewalk designs which provide little or no barrier between pedestrians and heavy and/or fast moving vehicles; b) noxious emissions from truck engines and other exhausts; and c) loud noise from trucks and other heavy vehicles beginning before daylight and continuing late into the afternoon. Each of the three conditions seriously compromises the walkability, the livability and the desirability of the City and the sense of safety which is important to pedestrians" and furthermore, that "driving of large truck vehicles over curbs and sidewalks" has been reported as "troubling to pedestrians"<sup>4</sup>.

**WHEREAS**, the Downtown Strategic Plan aims to enhance the cultural, environmental, historic, educational, economic, recreational, and transportation elements of downtown Morgantown in part by enhancing pedestrian access<sup>5</sup>; and

**WHEREAS**, the Downtown Strategic Plan recommends improved pedestrian connections through the creation of enhanced streetscaping and setbacks, pedestrian streets, enhanced alleys and multipurpose trails<sup>5</sup>; and

**WHEREAS**, the City of Morgantown and the State of West Virginia continue to invest significant public resources in streetscaping, pedestrian crosswalks, pedestrian access, and curbing in the Downtown Business District;

**BE IT THEREFORE RESOLVED** that the City Traffic Code is amended as follows:

**Article 301 shall be amended to include:**

**301.071: Downtown Business District**

“Downtown Business District” means the entirety of the B-4 General Business District as defined in the City of Morgantown’s Planning and Zoning Code, but does not include Beechurst Avenue, University Avenue south of Beechurst Avenue, and Don Knotts Boulevard south of University Avenue.

**301.111: Heavy Truck**

“Heavy Truck” means any vehicle which is designed or operated for the transportation of property and 1) has combined declared gross weight of over 20,000 pounds as combined declared gross weight is defined in W. Va. Code § 17A-3-3(c), and 2) has three or more axles in total.

**Article 347.01(a) shall be amended to read:**

(a) General Prohibition. No person shall operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in West Virginia Code Article 17C-17 upon any street or highway within the Municipality, except pursuant to special written permit issued by the Commissioner of Highways or the City Manager. Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer.

No holder of a permit issued by the Commissioner of Highways shall be required to obtain any local permit or license or pay any local fee or charge for movement on any State route within the Municipality; however, it shall be unlawful **1) to operate any such vehicle or combination of vehicles upon any roadway within the Municipality which is not a State route, except as provided in subsection (c) hereof; and 2) to operate any Heavy Truck within the Downtown Business District, except as provided in subsections (c) and (d) hereof.**

**Article 347.01(c) shall be amended to read:**

(c) Local Permit and Conditions. Upon application and for good cause, the City Manager may issue a local permit authorizing an applicant to move an oversize or overweight vehicle or combination of vehicles upon local streets **or to operate a Heavy Truck on streets and highways located within the Downtown Business District.**

No permittee shall be required to obtain a special permit from the Commissioner of Highways for the movement of the vehicle or combination of vehicles on streets or highways under local jurisdiction **or for the movement of Heavy Trucks within the Downtown Business District;** however, the approval of the Commissioner of Highways shall be required for movement upon State routes as provided in subsection (a) hereof.

The City Manager may grant a permit for a single or round trip, or for such period of time, not to exceed one year, as the City Manager in his discretion deems advisable, or for the duration of any construction project. The City Manager may limit or prescribe terms or conditions of operation for such vehicle or combination of vehicles by designating the route, hours, speed or such other restrictions as may be necessary for the preservation of the public peace, property, health and safety. The City Manager may require the posting of bond or other security necessary to compensate for any damage to a roadway or road structure. **Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer.**

For each such permit, the City Manager shall charge five dollars (\$5.00) and for each hour of time or any part thereof spent by each police officer in supervising the movement of such vehicle, the applicant shall pay the sum of ten dollars (\$10.00).

Signs shall be posted indicating “no thru trucks - gross weight 5 tons” or words of similar import to apprise drivers of the limitations imposed by subsection (b) hereof. No driver shall disobey the instructions indicated on any such sign.

Violation of any of the limitations, terms or conditions of the permit granted by the City Manager shall be cause for immediate revocation or suspension of such permit, and denial of request for any future permit. Such violation shall also subject the violator to the penalty prescribed by Section 303.99.

**Article 347.01(d) shall be added to read:**

**347.01(d) Heavy Truck Limitation in Downtown Business District.**

No person shall operate a Heavy Truck in the Downtown Business District.

This provision does not limit or restrict:

(1) The operation of any Heavy Trucks in the Downtown Business District when that operation is necessary to conduct business at a destination within the Downtown Business District where merchandise or material is loaded or unloaded during the normal course of business;

(2) The operation of emergency or military vehicles;

(3) The operation of any governmental or quasi-governmental vehicle in the performance of any official function or duty;

(4) The operation of solid waste disposal vehicles;

(5) The operation of vehicles lawfully engaged in the business of towing, hauling or carrying wrecked or disabled vehicles;

(6) The operation of trucks upon any officially established detour in any case where a truck could lawfully be operated on the street for which such detour was established;

(7) The issuance of a special permit by the City Manager as provided in subsection (c).

**Article 347.01(e) shall be added to read:**

Signs shall be posted indicating “no thru trucks – limit 10 tons” or words of similar import to apprise drivers of the limitations imposed by subsection (d) hereof.

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<sup>1</sup>**Comprehensive Plan Ordinance of Morgantown, West Virginia, 2013**, available at <http://www.morgantownwv.gov/about/crossroads-2012-comprehensive-plan/>, Section 4, Transportation.

<sup>2</sup>**Morgantown Monongalia Metropolitan Planning Organization 2013-2040 Long Range Transportation Plan**, available at <http://plantogether.org/LRTP%20Chapter%203%20Transportation%20Goals%20and%20Objectives.pdf>.

<sup>3</sup>**Morgantown Planning and Zoning Code**, Section 1349.01 available at <http://www.morgantownwv.gov/wp-content/uploads/Planning-and-Zoning-Code-2012.pdf>; see also the **Morgantown Zoning Map**, available at [http://www.morgantownwv.gov/wp-content/uploads/official\\_zoning\\_map\\_07-01-2012.pdf](http://www.morgantownwv.gov/wp-content/uploads/official_zoning_map_07-01-2012.pdf).

<sup>4</sup>**2010 Morgantown Pedestrian Safety Plan**, available at [http://www.morgantownwv.gov/wp-content/uploads/MPSB-Plan-8\\_13\\_2010.pdf](http://www.morgantownwv.gov/wp-content/uploads/MPSB-Plan-8_13_2010.pdf).

<sup>5</sup>**Morgantown Downtown Strategic Plan**, available at <http://www.morgantownwv.gov/government/reports/>.

West's Annotated Code of West Virginia

Chapter 17. Roads and Highways

Article 4. State Road System

W. Va. Code, § 17-4-27

§ 17-4-27. Same--Control of connecting parts of state road system within municipalities

Currentness

The state road commissioner shall exercise the same control over connecting parts of the state road system in municipalities, except the regulation of traffic, that he exercises over such system generally, but he shall assume no greater duty or obligation in the construction, reconstruction and maintenance of streets which are part of the state road system than he is required to assume in the case of state roads outside of municipalities. In order, however, to promote the safe and efficient utilization of such streets, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any municipality on any highway or street hereafter constructed with state or federal aid shall be subject to the approval of the state road commissioner.

#### Credits

Acts 1933, Ex. Sess., c. 40; Acts 1945, c. 109; Acts 1967, c. 175.

<Acts 1995, c. 169 repealed the state road commission, and transferred powers and duties to the West Virginia commissioner of highways. See § 17-1-2.>

Notes of Decisions (9)

W. Va. Code, § 17-4-27, WV ST § 17-4-27

Current with laws of the 2014 Regular and First Ex. Sess. with effective dates through June 2, 2014

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West's Annotated Code of West Virginia

Chapter 17C. Traffic Regulations and Laws of the Road

Article 17. Size, Weight and Load (Refs & Annos)

W. Va. Code, § 17C-17-12

§ 17C-17-12. When state road commission or local authorities may restrict right to use highways

Currentness

(a) Local authorities with respect to highways under their jurisdiction may by ordinance or resolution prohibit the operation of vehicles upon any such highway or impose restrictions as to the weight of vehicles to be operated upon any such highway, for a total period of not to exceed ninety days in any one calendar year, whenever any said highway by reason of deterioration, rain, snow, or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced.

(b) The local authority enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of any highway affected thereby, and the ordinance or resolution shall not be effective unless and until such signs are erected and maintained.

(c) Local authorities with respect to highways under their jurisdiction may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles, or may impose limitations as to the weight thereof, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways.

(d) The state road commission shall likewise have authority as hereinabove granted to local authorities to determine by resolution and to impose restrictions as to the weight of vehicles operated upon any highway under the jurisdiction of said commission and such restrictions shall be effective when signs giving notice thereof are erected upon the highway or portion of any highway affected by such resolution.

**Credits**

Acts 1951, c. 129.

<Acts 1995, c. 169, repealed the state road commission and transferred powers and duties to the West Virginia commissioner of highways. See § 17-1-2.>

W. Va. Code, § 17C-17-12, WV ST § 17C-17-12

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