



City of Cambridge

Committee Report #4A

IN CITY COUNCIL

December 15, 1997

VICE MAYOR BORN

ORDERED: That the City Manager be and hereby is requested to have the City Solicitor, with other departments such as Traffic, Parking and Transportation to prepare draft legislation that would limit local deliveries by geographic area, truck size and specific times.

In City Council December 15, 1997.
Adopted by the affirmative vote of nine members.
Attest:- D. Margaret Drury, City Clerk.

A true copy; *D. Margaret Drury*

ATTEST:-
D. Margaret Drury
City Clerk



City of Cambridge

Committee Report #4B

IN CITY COUNCIL

December 15, 1997

COUNCILLOR DAVIS

ORDERED: That the City Manager be and hereby is requested to ask appropriate personnel in the City to get together with the Harvard Square businesses to discuss voluntary truck delivery restrictions; and be it further

ORDERED: That the appropriate personnel search for solutions used in other communities and refer them to the Traffic and Transportation Committee.

In City Council December 15, 1997.

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

D. Margaret Drury
D. Margaret Drury
City Clerk

City of Cambridge

The Traffic and Transportation Committee held a public meeting on Tuesday, November 25, 1997 in the City Council Chamber at six o'clock and forty minutes p.m. to discuss the size of trucks making local deliveries in congested areas in the city.

Present at the meeting were Councillor Henrietta Davis, Chair of the Committee, Vice Mayor Kathleen L. Born, Donald Drisdell, Deputy City Solicitor, Sue Clippinger, Director of Traffic, Parking and Transportation and Donna P. Lopez, Deputy City Clerk.

Councillor Davis opened the meeting by stating that the call of the meeting was to discuss the communication from Scott P. Lewis regarding the regulation of heavy commercial trucks making local deliveries. Councillor Davis stated that the Truck Committee would be making a report on truck routes and this meeting was an opportunity to narrowly discuss the communication from Mr. Lewis.

The Committee heard from Attorney Scott P. Lewis, author of the communication, (**Attachment A**), a member of the Truck Committee who stated that he was requested to submit a report on the size of trucks making deliveries in the City. He reiterated that tonight's discussion is about local deliveries rather than through truck traffic.

Mr. Lewis stated that there is a hierarchy of applicable federal and state laws in this matter. He informed the committee that there are two principal federal constraints, the Commerce Clause of the Constitution and two statutes enacted by Congress, the Surface Transportation Assistance Act and the Tandem Trailer Safety Act (STAA). The Commerce Clause, he stated, forbids imposing an undue burden on or discriminating against interstate commerce. He stated that any local regulation which satisfies the requirements of the STAA would be allowed by the Commerce Clause. Mr. Lewis informed the committee that local regulators could not deny certain kinds of heavy commercial trucks reasonable access between the interstate highway system and terminals and points of loading and unloading for household goods under the STAA. The city would not be prohibited from banning large trailer trucks to make local deliveries unless they were destined to a terminal or were carrying household goods, he said. He further stated that the Federal Highway Administration regulations under the STAA's definition of terminal is very broad and is defined as any location where freight either originates, terminates or is handled in the transportation process. He stated that the city has opposed this definition. He stated that until the STAA is revised or removed, the city can expect the opponents to heavy commercial truck restrictions to argue they have a reasonable access right to make local deliveries under the provisions of STAA. If the Court upholds this argument, the city would be unable to prohibit the use of heavy commercial trucks to make local deliveries outright. Mr. Lewis further stated that the city could impose a reasonable time of day restriction to local streets.

Mr. Lewis stated that under the state law, the Massachusetts Highway Department (MHD) must approve any sign excluding heavy commercial vehicles before it takes effect. This law applies to all exclusion of trucks, he said. The MHD has adopted a manual on Uniform Traffic Control Devices which provides a truck exclusion from a municipal public way may be authorized as long as a suitable alternative route is provided. Mr. Lewis stated that it could be argued that the City could bypass MHD approval by adopting an ordinance under Chapter 40A which would restrict the use of heavy commercial trucks, however, this argument would be challenged because the zoning authority is limited.

Mr. Lewis stated that the truck industry is well organized. Legal challenges may be filed, he said, but that this does not mean that you should not take action. He stated that imposing a reasonable time of day restriction which would require truckers to use designated loading zones in commercial districts during designated hours would be easier to defend, but without MHD approval, might be set aside by the courts. He stated that the city ought to have a clear strategy to proceed in this way.

Vice Mayor Born told of a situation where a 65 foot semi-trailer truck was delivering to the Broadway Market and left only one lane of traffic accessible. The truck was too big for the delivery zone and this created a serious situation. Mr. Lewis responded that the regulations do not support any right to double park.

Vice Mayor Born questioned whether it would be feasible to make deliveries between the hours of midnight and 6:00 a.m.? Mr. Lewis stated that a policy issue of night time deliveries might be good in some ways, but it might not be a good idea for other reasons. Vice Mayor Born questioned how narrow can the city be about limiting time. Mr. Lewis stated that access permitted was reasonable if it met needs for access requested. He continued, saying if you place a 15 minute window, that could be too limiting. Vice Mayor Born asked Mr. Lewis how geographically limiting could the City be? Mr. Lewis responded that the city would likely be more successful if the regulations were tailored to circumstances. It might be useful to think of parts of streets and maybe one solution for one street might not be good for another street. Vice Mayor Born asked Mr. Lewis if it was a good idea to regulate size, type, time and geographical area. Mr. Lewis responded in the affirmative.

Vice Mayor Born asked if posting a sign requires an approval. Mr. Lewis stated that the pending suit between the city and Portland Stoneware is moot because Portland Stoneware has moved out of the City. The city brought suit against the MHD to have its policy declared invalid. The MHD has asked the court to dismiss the suit because of Portland Stoneware's move out of the city.

Vice Mayor Born asked if there were regulations possible on the size of the trucks. Mr. Lewis responded in the affirmative.

At this time, Councillor Davis stated that the issue of this meeting was the size of trucks making local deliveries.

Councillor Davis asked if parking regulations could be used as a tool to regulate deliveries at certain times of the day. Mr. Lewis stated that it is an issue of municipal power and state law.

Councillor Davis asked if door-to-door delivery was required. Mr. Lewis responded it has to be reasonable access. Councillor Davis stated that moving vans are regulated and there is a fee charged. Are we making judgments for moving vans to make deliveries. Mr. Lewis responded that the resident pays a fee to move their furniture and if we limit the hours, this could be challenged. It is an issue of reasonable access, he said.

The Committee heard from Kevin Michael Kiley, President of the Massachusetts Motor Transportation Association, Inc. who stated that he was interested in working with the city to resolve this issue. Mr. Kiley urged stricter enforcement of loading zone violations. The truck industry, he said, does not want to go down residential streets, but there are no truck routes. He informed the committee that a normal size supermarket has at least 12 deliveries per week and 100% of deliveries to hospitals are done by truck. He stated that the truck is here to stay.

Councillor Davis had heard frustration at seeing a large truck delivering a small package. Mr. Kiley stated that the trucking industry would rather deliver at night, but the merchants are opposed to this. Councillor Davis asked Mr. Kiley if the trucking industry would oppose time restrictions. Mr. Kiley responded that the industry would oppose any restriction.

Mr. Kiley further stated that the trucking industry does not go out of its way to cause congestion. Only 4% of congestion, he said, is caused by trucks. He asked how the city would weigh the economic conditions if the city banned trucks.

Vice Mayor Born asked if Boston had a truck restriction. Mr. Kiley responded in the negative, but he said that Boston has truck routes.

The Committee heard from Larry Hartmann, 197 Brattle Street, who stated that the rivalry is between the government and the trucking industry. He stated that he feels that time restrictions are a good compromise and that he objects to huge trucks using city streets. Cambridge, he said, has let trucks deliver anytime, anywhere and now we need to try something new.

The Committee heard from Roger Woodhull, California Products Corporation, Waverly Street, who stated that his company receives and delivers goods by trucks. He stated that he tries to work with neighborhoods and tries to route deliveries together to maximize delivery times. Mr. Woodhull asked if it is necessary to focus on legislation as a means of control, or if it is possible to work with businesses in a voluntary way. He informed the Committee that local businesses would be willing to work with the city and would not like mandatory compliance.

Councillor Davis told of a solution with an oil delivery company that was making deliveries when children were entering school. A solution was worked out between the school and the oil company to change the time.

The Committee heard from Gladys Gifford, 15 Hilliard Street, President of the Harvard Square Defense Fund, who distributed a prepared statement, which is attached to this report as **Attachment B**. Ms. Gifford stated that traffic calming measures will not solve this issue. She stated that the message of Scott Lewis' memo is that you cannot do it, so don't try. If Cambridge could make a toe hold, it would be a positive force for the whole state. She cited the Plaistow case as a model of other ways to regulate trucks. The court upheld the zoning approach, she said. She said that she would like the Law Department to get another opinion. She further stated that Professor Laurence Tribe will be providing the Harvard Square Defense Fund with an opinion on this issue which will be submitted to the City Council and the Law Department. She also stated that it was disgraceful to have people have their property and their lives ruined by trucks going through the city. She informed the Committee that the Body Shop has huge trucks delivering in Harvard Square. She stated that there must be a way to limit this size of truck making deliveries in the city.

Ms. Gifford stated that Harvard Square is the hub of the city, but the public does not want to come to the Square because of the trucks. Get the trucks off the sidewalks and streets, she urged. She stated that trucks should be banned and that hours of delivery can be addressed through a zoning ordinance.

Councillor Davis questioned whether merchants were asked to change delivery times. Ms. Gifford responded in the negative. Merchants do not want to get up in the early morning, she said.

Vice Mayor Born stated that Mr. Lewis felt that limiting delivery during certain hours of the day was a possibility. She stated that Mr. Lewis opened the door to the idea that legislation should be specific to time of day and geography. The City is moving toward a solution, she stated. Ms. Gifford stated that we have to look at the size of the trucks, as well. This gets into a different legal issue when we talk about size, she said.

The Committee heard from Attorney Thomas Bracken, representing the Harvard Square Defense Fund, who stated that Chapter 82, Section 2 requires municipal restrictions on trucks to be approved by the MHD and it is clear that they will not approve time and size restrictions. He stated that there is nothing that will break the truck lobby. He stated that the City can use the zoning law to prevent noise and as an effort to ban trucks on our streets. Mr. Bracken stated that a judge could use the zoning law to protect the citizens. The court upheld the night time ban in the Plaistow case. The City of Cambridge can ban trucks on streets based on the Plaistow case, he said. He urged the Committee to be positive and not play into the highway lobby. Mr. Bracken stated the MHD approval was only required if the city used signage and signage would not be needed if the zoning law is utilized. Then approval is needed from the Attorney General, not MHD.

The Committee heard from Susan Miller-Havens, member of the Truck Advisory Committee, who stated that Star Market and residents of Homer Avenue worked out an arrangement for special delivery times. She stated that Harvard Square merchants need some pressure placed on them to develop a similar arrangement.

Vice Mayor Born questioned Mr. Lewis on the powers of the City. Mr. Lewis responded that the strategy is to try to maximize the use of the regulatory powers most clearly available to municipalities by focusing on time-of-day restrictions in certain geographical areas.

The Committee heard from Brian Pfeiffer, 147 Brattle Street, who stated that this issue is over-lawyered. He stated that the complexity of this issue has prevented citizens, the City and merchants from developing a solution. He further stated that the delivery issue in Harvard Square is out of control. He urged the City to look to the Conservation Law Foundation to help with a solution.

Vice Mayor Born suggested the possibility of having the City Solicitor prepare legislation that would limit local deliveries by geographic area, truck size and specific times so that the City Council can look at it. Mr. Drisdell stated that the Law Department needs the involvement of other departments such as Traffic, Parking and Transportation to formulate the specifics.

Councillor Davis stated that a traffic regulation or an ordinance would be needed and it should be referred back to this Committee. Vice Mayor Born suggested that another meeting be scheduled in January. At that time, she said, a format for an ordinance or traffic regulation that would limit time and size of deliveries in geographic areas should be submitted.

The Committee then heard from Gweneth Knight, 149 Brattle Street, who stated that if an agreement is worked out between a store and the neighborhood, a problem may later occur if the store manager is transferred. She urged the Committee that the City needs an overall structure to effect these changes. Councillor Davis stated that she would not like to give up on the idea of also working on voluntary agreements between businesses and residents.

At this time, Susan Miller-Havens urged the Vice Mayor and Ms. Gifford as an experiment, to talk to the Body Shop. Ms. Gifford responded that the City needs to take the leadership in this issue, it should not be done by residents.

The Committee heard from Robert Johnson, 326 Concord Avenue, who stated that he is a truck driver and told the Committee that he delivered to an area (he could not remember where), and there was an ordinance restricting the delivery time. There was a \$200.00 fine. He informed the Committee that Downtown Crossing is an area where deliveries are restricted. He asked how Boston accomplished this solution. He stated that Cambridge does have a regulation against pulling a truck onto the sidewalk and it can be enforced.

Councillor Davis raised the possibility of an Internet search on truck delivery restrictions.


At the conclusion of the meeting, Councillor Davis submitted the following motion:

ORDERED: That the City Manager be and hereby is requested to ask appropriate personnel in the City to get together with the Harvard Square businesses to discuss voluntary truck delivery restrictions; and be it further

ORDERED: That the appropriate personnel search for solutions used in other communities and refer them to the Traffic and Transportation Committee.

The hearing adjourned at 8:25 p.m.

For the Committee,

Henrietta Davis
Councillor Henrietta Davis 
Chair

*Attachment A***PALMER & DODGE LLP**

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October 15, 1997

Donald A. Drisdell, Esq.
Deputy Solicitor
Cambridge City Hall
795 Massachusetts Ave.
Cambridge, MA 02139*Re: Regulation of Heavy Commercial Trucks Making Local Deliveries*

Dear Don:

You have asked us to consider the City Council's request for a report on "what means and methods are available to the city for the purpose of regulating the size of trucks making local deliveries in congested areas of Cambridge." Here are our thoughts.

There is little doubt that deliveries by large semi-trailer trucks can create significant problems in a congested city, such as Cambridge, and that the regulation of truck traffic on local streets falls within the police power of a municipality. Unfortunately, however, the City's power to regulate truck traffic is subject to constraints imposed by both federal and state law. Any efforts to ban heavy commercial trucks from making local deliveries — or to limit them to specified hours — are likely to be met with strong opposition from the trucking industry and, possibly, from federal and state regulators.

Federal Law. There are two principal federal constraints: the Commerce Clause of the Constitution (which forbids imposing an "undue burden" on, or discriminating against, interstate commerce) and two statutes enacted by Congress, the Surface Transportation Assistance Act and the Tandem Trailer Safety Act (collectively, the "STAA"). Because we believe that it is likely that any local regulation which satisfies the requirements of the STAA would also be permitted by the Commerce Clause, we have focused our analysis of federal law on the STAA itself and the implementing regulations promulgated by the Federal Highway Administration ("FHWA").

The STAA provides that state and local regulators may not deny certain kinds of heavy commercial trucks (specifically including the "huge 65-foot semi-trailer trucks" described by the City Council) "reasonable access" between the interstate highway system and both (i) "terminals" and (ii) "points of loading and unloading for household goods carriers" 49 U.S.C. § 31114(a). On the basis of this statutory provision itself, the City would not be prohibited by the STAA from banning the use of large semi-trailer trucks to make local deliveries unless they were destined to a "terminal" or were carrying "household goods."

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As you know, however, the FHWA's regulations under the STAA define a terminal very broadly, as "at a minimum, any location where: ... [f]reight either originates, terminates, or is handled in the transportation process" 23 C.F.R. § 658.5(r). It has been argued that this regulation makes *every* local delivery point a protected "terminal" within the meaning of the STAA. We have argued, however, that if the regulation were construed in this way, it would conflict with the language and purpose of the STAA and would, therefore, be invalid. The courts have never addressed these arguments.

Unless and until the FHWA regulation is set aside, revised or narrowly construed by the Courts, the City can expect the opponents of any restrictions on the use of heavy commercial trucks to argue that they have a right under the STAA to "reasonable access" to every location in the City where they make local deliveries. If this argument were accepted by the courts, the City would be unable to prohibit outright the use of heavy commercial trucks to make local deliveries. Even if truckers have a federal right to "reasonable access" to points of local delivery, however, as a matter of federal law the City *could* still impose reasonable time-of-day restrictions on their access to local streets, as the United States Court of Appeals for the First Circuit recently held in *New Hampshire Motor Transport Ass'n v. Town of Plaistow*, 67 F.3d 326, rehearing denied, 67 F.3d 333 (1995).

State Law. The Massachusetts legislature has provided in G.L. c. 85, § 2 that "any sign excluding heavy commercial vehicles" must be approved by the Massachusetts Highway Department ("MHD") before it can take effect. The MHD, in turn, has taken the position that proposed truck exclusions must conform to the Department's current "manual on uniform traffic control devices." The manual has for some time provided that "[a] truck exclusion from a municipal way may be authorized provided a suitable alternative route is available," and the MHD has argued that a city must allow truck access by *some* route to every place of business "at all times." The City has challenged this interpretation because, in our view, it is inconsistent with the provisions of c. 85, § 2, but the courts have yet to resolve the dispute.

Although the manual on uniform traffic control devices does not appear to address the question of whether a city could restrict the use of certain *sizes* of trucks to make local deliveries, we would expect the MHD to take the position that any municipal ordinance that would exclude any class of heavy commercial trucks from making local deliveries (whether imposed as an outright ban or as a time-of-day limitation) could not take effect without the MHD's approval. While the City could argue, as it has in other contexts, that the MHD's position is unjustified by c. 85, § 2, we cannot assure you that the courts would agree.¹

¹ It has, for example, been pointed out that by its express terms, the approval provision of § 2 is only implicated when the City seeks to post a sign proclaiming a truck exclusion. If it were possible to implement an enforceable exclusion without posting a sign (and this is surely a questionable proposition), it could be argued

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To our knowledge, the City has never attempted to restrict the use of heavy commercial trucks to make local deliveries without the MHD's approval. The City does currently enforce ordinances prohibiting trucks weighing more than 2½ tons from using certain streets, but we are informed that each of these restrictions was (a) based on an engineering or safety study; (b) called out to the trucking community by signs posted on the restricted streets and (c) submitted to and approved by the MHD. If the City were now to attempt, *without MHD approval*, to impose restrictions on the use of large semi-trailer trucks to make local deliveries — either through an outright ban or a time-of-day restriction — a legal challenge is very likely. Serious issues would be raised by any outright ban, especially if it applied to deliveries to a "terminal" or place of loading or unloading "household goods" protected by the STAA. Reasonable time-of-day restrictions — for example, an ordinance that required truckers to use designated loading zones in commercial districts during specified hours to make their local deliveries — would be simpler to defend, but in the absence of MHD approval might well be set aside by the courts.²

We share the City's concern about the growing volume of truck traffic, including local deliveries, in Cambridge, and we are eager to help you shape a creative strategy to mitigate its adverse impact on the quality of life in the City. It is important to recognize, however, that any efforts to regulate truck traffic are likely to be highly contentious and to present challenging legal issues. It is, in our view, important to develop a carefully considered, coherent strategy — potentially involving negotiations with the MHD and FHWA, legislative efforts on Beacon Hill, and possibly litigation — before embarking upon

that MHD approval would be unnecessary. The MHD, however, would be expected to argue that § 2 preempts municipalities from enforcing any commercial truck exclusions without MHD approval, even if signs are not used.

It has also been argued that the City could by-pass any required MHD approvals by adopting an ordinance under the Zoning Enabling Act, G.L. c. 40A, restricting the use of heavy commercial trucks. We would expect any effort of that sort to be met by serious objections that (i) such restrictions are not authorized by c. 40A and (ii) in any event, the exercise of zoning authority is limited by conflicting state statutes, including, potentially, c. 85.

Neither of these arguments has, apparently, ever been considered by the courts.

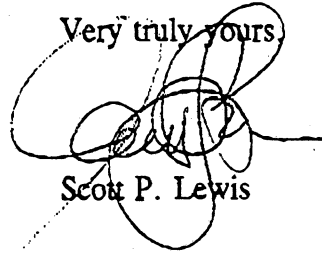
² Even if the City were able to adopt an ordinance banning the use of heavy commercial trucks to make local deliveries, or restricting their operations to designated hours, serious practical enforcement problems would surely arise. Trucks do not arrive in the City bearing signs showing whether they are driving through the City or making local deliveries, and the Police Department would have a difficult task sorting out what to do. Local enforcement problems would obviously be compounded if the City sought to implement truck restrictions without posting signs providing notice of what they are.

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any systematic effort to restrict the use of heavy commercial trucks to make local deliveries in the City.

Thank you for giving us an opportunity to provide some input on this interesting problem. If you have any questions, please give me a call.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott P. Lewis", is written over the typed name. The signature is somewhat stylized and scribbled.

Scott P. Lewis

/s

Comments of
The Harvard Square Defense Fund, Inc.
on proposed restrictions on large trucks
making deliveries in congested areas

To: Traffic and Transportation Committee

I am Gladys Gifford, President of the Harvard Square Defense Fund, Inc., ("HSDF"). HSDF is a non-profit organization incorporated under Chapter 180 of the Massachusetts General Laws. It consists of about 500 members, most of whom live and work in the Harvard Square area. The organization is concerned with preserving the architectural and historic character and uniqueness of Harvard Square and in improving the safety, air quality, cleanliness and overall quality of the area for people using the sidewalks and open spaces, shopping, eating and enjoying the entertainment in Harvard Square as well as the people who live nearby. HSDF participates in public hearings, such as this one, and administrative and court proceedings in an effort to prevent inappropriate development and uses of land, and to preserve the safety, health and enjoyment of people using the facilities of Harvard Square, and to reduce traffic congestion, air pollution, noise, crowding and litter.

As you know, the streets in Harvard Square are narrow, curvy, and heavily congested with cars, trucks and pedestrians. Many of the trucks making local deliveries are semi-trailers, 18 wheelers and other large vehicles. They frequently take up 3 - 4 of the scarce metered spaces, which prevents shoppers from parking. When legal spaces are not available, as is often the case, the trucks simply double park. I and other members of the HSDF have observed that these large trucks often make small deliveries to stores and restaurants in Harvard Square. I saw a delivery of only three small cartons from an 18 wheeler to "The Body Shop" located at the busy corner of Massachusetts Avenue and Church Street. The use of such large trucks exacerbates the traffic congestion and seems entirely unnecessary. We believe such deliveries feasible can and should be made from smaller trucks. This congestion problem is made even worse by large trucks which appear to be using the local streets in

Harvard Square as a short-cut through Cambridge from origins and to destinations outside the City. On several occasions, large trucks have not been able to negotiate the sharp turns and have jack-knifed, causing traffic blockage for long periods of time.

Therefore, the HSDF fully supports the proposed restrictions on large trucks in congested areas, primarily in Harvard Square. We urge the Committee also to consider limiting the time of deliveries to early in the morning and late at night.

Our legal counsel, who in 1972 - 1973 was Regional Counsel to the U.S. Environmental Protection Agency and thereafter has specialized in environmental law, including zoning, noise control, transportation and land use matters, advises us that the City has the legal authority to adopt and enforce such restrictions. He respectfully disagrees with Scott Lewis' conclusion in his October 15, 1997 letter to Donald Drisdell that federal and state statutes which restrict the authority of municipalities to control large trucks likely would prevent the City from adopting and enforcing the measures being proposed here.

Mr. Lewis discusses the Surface Transportation Assistance Act and the Tandem Trailer Safety Act ("STAA") which provides that municipalities may not deny large trucks "reasonable access" between the interstate highway system and (i) "terminals" and (ii) "points of loading and unloading for household goods carriers." The word "terminals" is not defined in the statute. Mr. Lewis correctly concludes that the statute does not prohibit the City from banning large semi-trailers from making local deliveries when they are not destined to a "terminal" and are not carrying household goods. However, he then refers to a FHWA regulation which defines the word "terminal" and states "it has been argued that this regulation makes every local delivery point a protected terminal within the meaning of the STAA." Mr. Lewis does not indicate in what forum it has been argued that the regulation has this overly broad effect nor does he identify the person or group who advanced such an argument. Apparently the argument

has not been made in a court of law. Such an interpretation of the regulation would be inconsistent with the language of the statute. If Congress had intended that "every local delivery point" is a protected facility under STAA, it would have used appropriate language to that effect and would not have used the term "terminal". Certainly "The Body Shop" and other stores, restaurants, coffee shops and movie theaters in Harvard Square are not "terminals" as that word normally is used.

Mr. Lewis then cites state law as a further means to defeat the City's efforts to solve this traffic problem. Specifically, he refers to G.L. c. 85, §2 which provides that "any sign excluding heavy commercial vehicles" must be approved by the Massachusetts Highway Department (MHD) before it can take effect. Based on the City's recent experience with the MHD, approval of a restriction on the size of trucks is unlikely. While Mr. Lewis recognizes in his footnote #1 that if the exclusion is adopted and enforced without posting signs such as under the zoning authority, approval of the MHD may not be necessary, he then suggests that any such effort to avoid the necessity of MHD approval would be met with "serious objections" by the MHD. Mr. Lewis may be correct that MHD would object, but we do not believe such an objection would be warranted. The Legislature gave the MHD authority to approve only those truck restrictions whose enforcement depends on signage. It did not confer such authority over municipal restrictions which do not involve signage. Measures adopted under the zoning authority generally are not enforced through signage. Persons using land and operating in the City are deemed to be on notice of zoning restrictions. The City could give actual notice of the restrictions by writing to all large trucking companies known to be doing business in Cambridge on a regular basis and informing them of the requirements.

The Massachusetts Zoning Law, Mass. General Laws Chapter 40A, and the Cambridge Zoning Ordinance adopted thereunder, provide authority to adopt and enforce measures restricting trucks, which need only be approved by the Attorney General, who is not beholden to the trucking lobby as is the MHD.

Specifically, the Zoning Act states that the purposes for which municipalities may enact zoning requirements include promoting the health, safety and convenience of the inhabitants, lessening congestion in the streets, encouraging the most appropriate use of land, and preserving and increasing amenities. Requirements that would eliminate or minimize traffic congestion caused by heavy trucks as well as the noises, vibrations, pollution and safety risks they cause making deliveries in densely populated areas plainly are within the scope of these stated zoning purposes. The Cambridge Zoning Ordinance, which contains similar purposes, currently regulates trucks by imposing off street parking and loading requirements in order to lessen congestion in the streets.

The United States Court of Appeals for the First Circuit recently held in New Hampshire Motor Transportation Association v. Town of Plaistow (67 F. 3d 326) that the Town properly used its zoning powers to ban trucks during the night time from its streets to access a "terminal" in a neighboring town. In upholding the ban, the Court said that the Town had a "legitimate interest in curbing noise, odor and dust in residential areas" and concluded that "the curfew is akin to zoning and traffic restrictions traditionally applied on a local level." The Court held that such a restriction on trucks attempting to enter a protected "terminal" did not deprive the trucks of "reasonable access" as required by STAA. Mr. Lewis recognizes that, based on the Plaistow case, reasonable time-of-day restrictions on truck deliveries are permissible under STAA. A limitation on the size of trucks does not appear to be any more restrictive than a limitation on the time of day trucks may use City streets. Cambridge has a legitimate interest in lessening traffic congestion caused by large trucks in heavily populated areas, a purpose for which the Legislature stated a municipality may enact restrictions.

The Court in Plaistow also rejected the truckers argument that the curfew violated the Commerce Clause of the U.S. Constitution as an unreasonable burden on interstate commerce. The Court said that the limited time of the

restrictions did not unreasonably interfere with the truckers doing business at the terminal, particularly when balanced against the night-time adverse impacts of the trucks on residents as testified to at trial.

In March of this year the Federal District Court for Massachusetts relied on the Plaistow decision in holding that the City of Cambridge lawfully can ban trucks from entering the Portland Stoneware facility during certain daytime hours. The ban did not require approval of the MHD. (Portland Stone Ware Co., Inc. v. City of Cambridge, Action No. 94-10701). The City had requested MHD approval of the limited time-of-day restriction of heavy commercial trucks on the surrounding residential streets, but the MHD refused, stating that the City must permit "access to one's place of business, by direct or reasonable alternate routes...at all times." In upholding the City's restriction, notwithstanding the MHD's refusal to approve it, District Judge Woodlock wrote in his decision:

"Following the First Circuit's lead in Plaistow, I find that the "Do Not Enter" regulation imposed by the City of Cambridge was based on expressed concerns about health and safety in the surrounding residential neighborhood." (page 15)

Legal authority for adopting the truck restrictions this Committee is considering also can be found in the Massachusetts Supreme Judicial Court's decision in Arthur D. Little, Inc. v. Commissioner of Health and Hospitals of Cambridge, 395 Mass. 535 (1985). In that case, the Court upheld a regulation issued by the Cambridge Commission of Health and Hospitals prohibiting the "testing, storage, transportation and disposal" within the City of all chemical warfare agents. A.D.L. challenged the regulation because compliance would prohibit its testing program for the U.S. Department of Defense on small amounts of such materials for the purposes of developing methods for safely disposing of the large quantities of these agents, then stored in caves in the West. A.D.L. argued that the regulation was preempted by the supremacy clause of the U.S. Constitution, the grant of war and defense powers to the

Federal Government and the commerce and contract clauses of the U.S. Constitution. In holding that the Federal Constitution and statutes did not preempt the Cambridge Commissioner from adopting the regulation, the Court said that it and the United States Supreme Court "have been particularly reluctant to overturn State laws which are deeply rooted in local feeling and responsibility." 395 Mass. at 546. The Court went on to explain that "this principle applies with special force to laws designed to protect the public health and welfare, a subject of particular, immediate and perpetual concern to any municipality". The Court concluded:

"Accordingly, municipal health and safety regulations, such as that at issue here, carry a heavy presumption of validity, and are only rarely preempted by Federal law...The states traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort and quiet of all persons." 395 Mass. at 546

Another source of authority for adopting a heavy truck exclusion, which would not require MHD approval, is the Cambridge Noise Ordinance. The purpose of this Ordinance is to minimize noise from both stationary and mobile sources. It was enacted under the police powers of the State, which authorize municipalities to enact ordinances to protect the public health, safety and welfare. Section 8.16.010 of the Ordinance states its purpose as follows:

"This chapter provides standards for the control of noise pollution and prohibits those acts which most frequently create noise pollution. The general objectives of these standards are to secure the public health, comfort, convenience and safety of, and to promote the welfare, prosperity, peace and quiet of, the citizens of the City. (Ord. 877 (part), 1977: prior code §13-10(1))"

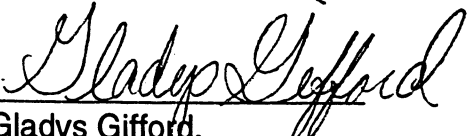
The Definitions section of the Noise Ordinance (Section 8.16.020) defines noise pollution to mean: (a) to cause temporary or permanent hearing loss in persons exposed; (b) to otherwise be injurious, or tend to be, on the

basis of current information, injurious, to the public health or welfare; (c) to cause a nuisance; and (d) to interfere with the comfortable enjoyment of life and property or the conduct of business.

In Plaistow the truckers also argued that the federal Noise Control Act, which sets decibel standards for trucks operating on public roads and prohibits any state or political sub-division from adopting or enforcing a different standard applicable to such trucks, pre-empted the Town's effort to regulate truck noise. However, the Court held that the Noise Control Act was not designed to remove all state and local control over noise and noted, to the contrary, that the statute says that primary responsibility for the control of noise rests with the state and local governments. Moreover, the Plaistow Court noted that the curfew not only was designed to control noise in residential neighborhoods, but also included controlling "odors, dust, smoke, refuse matter, fumes and vibrations," none of which effects are covered by the Noise Control Act.

While it can be expected that any meaningful truck restrictions will be attacked by the trucking lobby, we believe that measures carefully constructed under the zoning authority can withstand such an attack. Clearly, we believe it is time to make a serious effort to adopt measures to mitigate the adverse effects which large trucks are having in our City. Therefore, the HSDF urges your Committee to recommend to the City Council adoption of measures to limit the size of trucks making deliveries in Harvard Square and similarly congested areas and the time of day of such deliveries.

Respectfully Submitted
Harvard Square Defense
Fund, Inc.

by 
Gladys Gifford,
President

Committee Report #4

S-769

A report from Councillor Henrietta Davis, Chair of the Traffic and Transportation Committee for a meeting held on November 25, 1997 for the purpose of discussing the size of trucks making local deliveries in congested areas in the city.

In City Council December 15, 1997

Report Accepted

PLACED ON FILE

Two Orders Adopted