



City of Cambridge

Committee Report #4

IN CITY COUNCIL

June 8, 1998

COUNCILLOR DAVIS

ORDERED: That the City Manager be and hereby is requested to provide the City Council with a report on hazardous cargo and what needs to be done to complete the ADL study on hazardous cargo.

In City Council June 8, 1998.

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

A handwritten signature in cursive script that reads "Margaret Drury".

ATTEST:-

D. Margaret Drury
City Clerk



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ATTEST:-

D. Margaret Drury
City Clerk



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D. Margaret Drury
City Clerk

Councillor Born stated that she was glad the city is organized. She asked if the truck enforcement team is limited to stopping trucks that are overweight or are they able to stop a truck that is riding on the sidewalk. Sergeant Ahern responded that any officer can write a citation for any traffic violation.

Sergeant Ahern stated that fifty-three foot trailers are now allowed in Massachusetts. Drivers of fifty-eight foot trailers are currently trying to get permits in Massachusetts, he said.

Councillor Born asked how the weight of a truck is determined. Sergeant Ahern responded that the weight is determined by the axle weight and all trucks now have three axles. Councillor Born stated that about one-third of all trucks are overweight and asked if the truckers know they are overweight. Sergeant Ahern stated that the truckers know what the trucks weigh, they take a chance because most cities and towns do not weigh trucks. Cambridge does weigh trucks, he said. Councillor Born stated that if trucks are weighed in Cambridge maybe the truckers will take other routes, but if the fines are too small this will not discourage them. Sergeant Ahern stated that rubbish trucks, recycling trucks and cement trucks are usually overweight. Councillor Born asked if trucks can be stopped in Somerville. Sergeant Ahern responded in the affirmative. Deputy City Manager Richard Rossi stated that a truck can be taken out of service if it is found to be grossly overweight. Sergeant Ahern added that if a truck is grossly overweight only the state police can take the truck out of service. Cambridge police officers issue the citations, he said.

Councillor Sullivan thanked Superintendent Murphy and Sergeant Ahern. He further stated that the streets of Cambridge are safer because of the truck enforcement unit. Superintendent Murphy stated that restricted truck routes have been posted and this has been stressed at the training at the Academy and by Sergeant Ahern. Awareness has been emphasized throughout the department on 86's (locations selected for enforcement) and the officers are stopping vehicles.

Councillor Sullivan inquired whether as of June 8th the Police Department is able to stop hazardous waste trucks. Sergeant Ahern responded in the affirmative. Councillor Sullivan further stated that there is an increase of truckers in the city because of the Big Dig. He would support a second truck enforcement unit. Mr. Rossi stated this is a good idea.

Councillor Davis stated that the Truck Reports A and B both recommend enhanced enforcement. In Report A, she said recommendation number one is Enhanced Enforcement and in Report B recommendation number five is Aggressive Enforcement of Existing Regulations. Report B she said indicates that aggressive enforcement is not sufficient and Report A indicates that further staff training and additional resources are required. Adding another truck enforcement unit will support the recommendation in Report A, she said. Mr. Rossi responded that it is a great stride, but it is not the only means. The training, awareness of the patrol officers and the statistical data are forthcoming on a daily basis, he said.

Councillor Davis stated that she has received complaints about night time truck enforcement. She asked what is missing from the enforcement of the truck restriction on Putnam Avenue. Mr. Rossi stated that the city may need to provide night time assignments for Putnam Avenue. Truck enforcement is an added assignment to the Police Department duties, he said. Mr. Rossi further stated that there has been improved enforcement with the increased training of the officers. The city will continue this goal by assigning permanent officers to Putnam Avenue, he said. Councillor Davis stated that she has received complaints of speeding on Kirkland and Cambridge Streets. At this time Councillor Davis made the following motion:

ORDERED: That the City Manager be and hereby is requested to instruct the Police Commissioner to meet with the neighbors of Kirkland and Cambridge Streets with regard to the truck problems and to report back to the City Council.

This motion carried on a voice vote.

Councillor Davis stated that she wants to hear that there is follow through with speeding trucks on Cambridge Street. She asked when there will be enforcement. Mr. Rossi responded that on or before June 10th Cambridge Street will be skim coated and then enforcement will proceed.

Councillor Russell asked how the speed trailer will be used by the Police Department. Sergeant Ahern stated that the speed trailer will be used to target the speed and will give the Police Department a target time and location of speeding.

Councillor Triantafillou asked about the statistical data for Brattle Street. Sergeant Ahern responded that there were 1064 citations issued from May, 1997 to April, 1998 of which 52 are for trucks. She asked why Brattle Street is not posted as a restricted roadway. Ms. Sue Clippinger, Director of Traffic, Parking and Transportation, responded that Brattle Street is not posted because the truck traffic would be relocated to other streets such as Concord Avenue and Mount Auburn Street and the city feels that trucks should be shared by numerous streets. Councillor Triantafillou further stated that this was a problematic decision on the part of the administration to not post Brattle Street when the Massachusetts Highway Department (MHD) gave us approval. She requested that this be revisited because there is no data to support this decision.

Councillor Davis opened the discussion up for the public on the issue of enforcement.

Dorothy White, 70 Kirkland Street, stated that speeding truck traffic needs to be measured.

Mr. Solon Beinfeld, 70 Kirkland Street asked about the statistical data for Kirkland Street. Sergeant Ahern responded that there were 250 citations issued, 28 are for trucks and 222 are all other violations. The truck team made 102 stops. The officers issued 55 citations issued out of 77 violations. Forty-five trucks were weighed of which 23 were found to be overweight. Councillor Davis stated that Kirkland Street seems to need community policing attention. Councillor Triantafillou stated that she has received complaints from Mr. Beinfeld and asked Sergeant Ahern if he had received complaints from Mr. Beinfeld. Sergeant Ahern responded in the negative.

Douglas Lee, 33 Lexington Avenue, asked what is the distribution of what offenses being enforced with the issuance of citations and what is the effectiveness of the enforcement. He feels the penalties are mild and that trucks with five axles are doing considerable damage to city streets.

Vici Casana, 87 River Street, asked Sergeant Ahern how many restricted streets are covered by two police officers. Sergeant Ahern stated that there are forty-seven restricted roadways in the city, but some streets do not warrant an officer. He stated that the officers concentrate on streets such as Walden Street, Rindge Avenue, Fulkerson Street, Binney Street and Massachusetts Avenue. Ms. Casana asked how long does the shift take on each street. Sergeant Ahern stated that the officer can spend one half hour to forty-five minutes per street and if no violation occurs during that time the officer moves on. Ms. Casana asked how often in a week the officer is on a particular street such as River Street, Western Avenue and Putnam Avenue. Sergeant Ahern stated that he is not sure, this is up to the officers' discretion. Ms. Casana stated she feels the unit is understaffed. Sergeant Ahern stated that the officers are strictly assigned to truck enforcement and he can always use more help.

Elie Yarden, 143 Pleasant Street, stated that the Police Department has done a magnificent job and he is pleased they could present statistical data. He stated that the state police have seen things in Cambridge they have not seen elsewhere. He feels that enforcement of hazardous materials as outlined in Appendix J will not take place.

At eight o'clock and five minutes p. m. the discussion ended on the enforcement issue.

Councillor Davis proceeded with the data collection portion of the meeting

Ms. Sue Clippinger, Director of Traffic, Parking and Transportation informed the committee that her department has embarked on cordon counts. She stated that cordon counts were taken in 1970, 1981 and 1987. She informed the committee that a cordon count will be taken this Spring of the total number of vehicles around the city starting on April 11th and ending May 15th at fifty-one locations, sixteen locations will include counts on trucks with hazardous placards. There will be a seven day machine count and a two day manual count. There will be a count at O'Brien Highway and Alewife for one week and one Saturday. She stated that the counts will be analyzed by the consultant and by city staff. This information will be shared with the Truck Advisory Committee, the City Council and anyone wishing this information, she said. However, she said, this information will not be available until the end of the summer.

Councillor Davis opened the meeting to hear from the public on the issue of data collection.

6.

Douglas Lee, 33 Lexington Avenue, stated that he asked for data two years ago and he never saw any data. Tonight, he said, was the first time he heard that cordon counts have been done. He stated that the Truck Advisory Committee is not in favor of Brattle Street being posted as a restricted street because of the dispersion of traffic. If Brattle Street were posted the truck traffic from Brattle Street would use another street. He stated that he wanted to see the data of where the truck traffic will go. Mr. Lee informed the committee that evaluation of options does require data.

Councillor Davis asked Mr. Lee about the data he was not able to view. Mr. Lee responded that he knows volume counts exist but he does not know where to get this information in this city. Councillor Toomey asked who said that this data does not exist. Councillor Davis asked Ms. Clippinger about this data. Ms. Clippinger stated that she gave Mr. Lee the counts on two different occasions and that the counts are available in her office.

Councillor Russell asked Mr. Lee if the Truck Advisory Committee recommended that Brattle Street be posted. Mr. Lee responded that the Truck Advisory Committee did not recommend that Brattle Street be posted as a restricted street. Mr. Lee stated that he received classification counts, but these counts were never brought to the meetings.

Councillor Russell asked who took the counts. Ms. Clippinger stated that thirty-seven locations have classification counts. They were done when the city was seeking state approval to get a truck restricted street. Councillor Toomey stated that if this information was requested and is available it should be provided. Ms. Clippinger informed Councillor Toomey that Mr. Lee was given the information. She further stated that she would be happy to dispense this information. Councillor Toomey stated that the purpose of this committee was to work with everybody. Whatever information is available should be provided, he said. Councillor Born asked what form this information is in, is this information pieces of paper. Ms. Clippinger responded in the affirmative. Councillor Born asked whether this information was summarized. Ms. Clippinger responded in the negative. She further stated that the cordon counts done three years ago were summarized by the size of vehicle. Trucks, she said, were not analyzed. Councillor Triantafillou asked what it would take to get the information summarized. Ms. Clippinger stated that the classification counts will take a large amount of time to summarize the data. The cordon counts, she said, are on a spread sheet and she will get this information to Mr. Lee. Councillor Triantafillou stated that the entire city wants this information, but the City Council does not know the city has this data. She asked if this data is useless. Ms. Clippinger stated that the classification counts are not useful because of the amount of time needed to summarize the data. She informed the committee that the current counts will be beneficial because they will show the entrances and exits of vehicles in the city.

Vici Casana, 87 River Street, stated that Appendix E entitled Truck Classification Counts only has dates with no counts. She urged the city to do a count. She stated that on August 16, 1994, a site count was done. She stated that this was a start, but more needs to be done and more frequently. Ms. Casana stated that August was the month with the lowest amount of trucks. She urged more data be collected.

Susan Miller Havens, 151 Brattle Street, stated that she is pleased that a cordon count is being done. She further stated that orders were introduced by Councillors Russell and Sullivan to have counts done and they were not responded to. She stated that the committee feels powerless.

Elie Yarden, 143 Pleasant Street, stated that the issue of data collection affects many things. He used land use, transportation and zoning issues as areas of importance where data collection is very important. He stated he would like to see cordon counts done at certain points in the city and would like to see through traffic data collected also.

Councillor Russell asked if the Fire Department could have data on hazardous cargo. Ms. Clippinger stated that she does not know. Councillor Russell asked that this information be provided for the next meeting. She requested that Captain Ferrazini be invited to the next meeting. On a voice vote this motion -
Carried.

Councillor Davis asked what are the plans to complete the Arthur D. Little (ADL) study on hazardous waste. Ms. Miller-Havens responded that the ADL study was outdated. She stated that the trucking companies had to volunteer for the ADL study and they were not willing so the study was not funded. Councillor Toomey stated that there is a huge amount of hazardous cargo going through the city. He asked whether there is a requirement that the city be notified. Ms. Clippinger responded in the negative.

At the conclusion of the meeting, Councillor Davis requested that Kirkland Street, Concord Avenue and Brattle Street be added to the ADL study. This motion carried on a voice vote. Councillor Davis made a further motion that reads as follows:

ORDERED: That the City Manager be and hereby is requested to provide the City Council with a report on hazardous cargo and what needs to be done to complete the ADL study on hazardous cargo.

8.

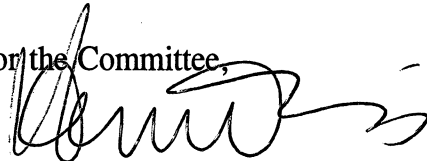
The motion carried on a voice vote.

Councillor Davis requested that the communications received from David Hoicka and Thomas B. Bracken be made part of this report. They are labeled as ATTACHMENT B and ATTACHMENT C.

Councillor Davis announced the next meeting of the Traffic and Transportation Committee will be held to discuss the issue of the night time truck ban.

On motion of Councillor Russell the meeting adjourned at eight o'clock and fifty minutes p. m.

For the Committee,

A handwritten signature in black ink, appearing to read "Henrietta Davis", written over the printed name below.

Councillor Henrietta Davis,
Chair

ATTACHMENT A-1

TRUCK TEAM ENFORCEMENT JANUARY 1997 - APRIL 1998

LOCATION	STOPS	CITES	VIOL	WEIGHED	OVERWT
Aberdeen	1	1	1	0	0
Ames	1	1	2	0	0
Albany	3	3	3	2	1
Alewife	2	2	3	2	2
Beech	239	197	227	6	1
Bennett	1	1	2	0	0
Binney	139	91	128	59	38
Blanchard	54	39	46	4	2
Brattle	55	44	64	21	0
Broadway	29	18	41	8	7
Brookline	2	2	3	1	1
Cambridge	59	29	43	10	3
Cameron	4	2	2	0	0
Cardinal Medeiros	35	19	28	24	12
Cedar	2	0	0	0	0
Columbia	92	57	74	11	7
Concord	55	47	72	30	13
Coolidge	11	10	12	0	0
East	7	6	12	3	2
Edmunds	0	0	0	0	0
Eliot	3	4	5	0	0
Everett	1	1	1	0	0
Fayerweather	4	4	6	0	0
Fifth	5	3	5	0	0
First	15	10	13	4	2
Fulkerson	124	46	53	4	2
Garden	17	18	27	6	4
Gore	43	28	29	2	1
Granite	2	3	7	1	1
Green	12	14	22	0	0
Hampshire	3	2	2	0	0
Harvard	2	2	2	0	0
Huron	7	4	5	4	1
Irving	3	2	2	0	0
JFK	4	5	10	1	0
Kirkland	102	55	77	45	23
Lakeview	1	1	1	1	1
Landsdowne	18	16	18	15	7
Linnaean	1	0	0	1	0
Magazine	2	2	3	0	0
Magoun	0	0	0	0	0
Main	37	33	47	6	3
Mass Ave [C]	164	137	210	28	15
Mass Ave [N]	147	146	190	34	18
Mt Auburn	26	23	27	7	4
Oxford	19	9	9	1	1
Pacific	1	1	1	0	0
Pearl	2	3	5	0	0
Pemberton	1	1	1	1	1

TRUCK TEAM ENFORCEMENT JANUARY 1997 - APRIL 1998

Pleasant	4	3	6	3	0
Prospect	435	321	364	20	9
Putnam	13	10	14	2	1
Regent	2	2	2	2	1
Richdale	2	2	2	1	1
Rindge	158	55	61	2	2
River	50	35	44	1	1
Shepard	1	3	5	0	0
Sherman	1	1	2	0	0
Sidney	16	13	13	10	7
Sixth	19	10	11	2	2
Smith	55	33	46	19	13
Somerville	3	3	5	1	1
Sparks	2	2	2	2	1
Third	99	65	71	8	5
Upland	3	3	4	0	0
Vassar	8	9	12	3	21
Walden	103	78	98	25	20
Ware	1	1	2	0	0
Washburn	6	1	1	0	0
Western	37	36	45	11	7
White	2	2	2	0	0
Windsor	10	7	7	0	0
TOTAL	2587	1837	2360	454	265

**Truck Team
"1997"
Year End Report**

Location	Stops	Citations	Violations	Weighed	Overweight
Aberdeen	1	1	1	0	0
Ames	1	1	2	0	0
Alewife	1	1	1	1	1
Albany	4	5	11	3	2
Beech St.	154	126	143	6	1
Binney St.	90	52	70	41	25
Blanchard	53	34	41	4	2
Brattle St.	36	26	40	15	6
Broadway	14	10	12	3	2
Brookline	1	2	2	1	1
Cambridge	36	24	35	8	3
Cameron	1	2	2	0	0
Cardinal Medeiros	31	16	24	21	10
Cedar	1	0	0	0	0
Columbia St.	56	36	50	9	5
Concord Av.	56	42	63	21	13
Coolidge	10	9	11	0	0
East	4	6	12	3	2
Ellery	1	2	3	1	1
Fayerweather	3	3	3	0	0
Fifth	4	3	3	0	0
First	6	2	3	2	1
Franklin	3	2	2	0	0
Fulkerson St.	89	32	36	4	2
Garden	14	14	19	5	3
Gore St.	37	24	24	2	1
Granite	2	3	7	1	1
Green	9	12	20	0	0
Hampshire	2	2	2	0	0
Huron	4	3	5	1	1
Irving	3	2	2	0	0
JFK	1	1	1	1	0
Kirkland St.	79	41	58	35	16
Lakeview	1	1	1	1	1
Landsdowne	9	5	5	9	4
Linnaean	1	0	0	1	0
Main	18	16	24	3	3
Mass. Ave. (Central)	112	92	140	16	11
Mass. Ave. (North)	100	98	124	25	12
Mt Auburn	13	13	15	6	4
Oxford	14	8	8	1	1

**Truck Team
"1997"
Year End Report**

Pearl	2	3	5	0	0
Pemburton	1	1	1	1	1
Pleasant	1	3	6	0	0
Prospect St.	305	210	233	19	8
Putnam	4	4	7	1	0
Richdale	2	2	2	1	1
Rindge Av.	95	38	42	2	2
River St.	36	27	36	1	1
Second	1	2	1	1	1
Seventh	0	0	0	0	0
Shepard	1	3	5	0	0
Sherman	1	1	2	0	0
Sidney	11	10	10	10	7
Sixth	17	8	9	1	1
Smith Plc	46	27	36	17	12
Somerville	1	1	1	1	1
Sparks	1	1	1	1	1
State	1	1	1	1	1
Third	55	31	33	5	2
Walden St.	83	62	76	20	16
Ware	1	1	2	0	0
Washburn	4	0	0	0	0
Western	17	14	19	6	3
White	1	1	1	0	0
Windsor	5	4	5	0	0
Upland	1	1	1	0	0
Vassar	1	1	2	1	1
TOTAL	1769	1229	1562	339	194

TRUCK ENFORCEMENT JANUARY 1998 - APRIL 1998

LOCATION	STOPS	CITES	VIOL	WEIGHED	OVERWT
Albany	2	2	2	2	1
Alewife	1	1	2	1	1
Beech	82	71	84	0	0
Bennett	1	1	2	0	0
Binney	49	39	58	18	13
Blanchard	11	5	5	0	0
Brattle	19	18	24	6	0
Broadway	15	8	29	5	5
Brookline	1	1	1	0	0
Cambridge	23	5	8	2	0
Cameron	3	0	0	0	0
Cardinal Medeiros	4	3	4	3	2
Cedar	1	0	0	0	0
Columbia	36	21	24	2	2
Concord	9	5	9	0	0
Coolidge	1	1	1	0	0
East	3	0	0	0	0
Edmunds	0	0	0	0	0
Eliot	3	4	5	0	0
Everett	1	1	1	0	0
Fayerweather	1	1	3	0	0
Fifth	1	1	2	0	0
First	9	8	10	2	1
Fulkerson	35	14	17	0	0
Garden	3	4	8	1	1
Gore	7	4	5	0	0
Granite	0	0	0	0	0
Green	3	2	2	0	0
Hampshire	1	0	0	0	0
Harvard	2	2	2	0	0
Huron	3	1	0	3	0
JFK	3	4	9	0	0
Kirkland	23	14	19	10	7
Landsdowne	11	11	13	6	3
Magazine	2	2	3	0	0
Magoun	0	0	0	0	0
Main	19	17	23	3	0
Mass Ave [C]	52	45	70	12	4
Mass Ave [N]	47	48	66	9	6
Mt Auburn	13	10	12	1	0
Oxford	5	1	1	0	0
Pacific	1	1	1	0	0
Pleasant	3	0	0	3	0
Prospect	130	111	131	1	1
Putnam	9	6	7	1	1
Regent	2	2	2	2	1
Rindge	44	17	19	0	0
River	14	8	8	0	0
Sherman	1	1	1	0	0

TRUCK ENFORCEMENT JANUARY 1998 - APRIL 1998

LOCATION	STOPS	CITES	VIOL	WEIGHED	OVERWT
Sidney	5	3	3	0	0
Sixth	2	2	2	1	1
Smith	9	6	10	2	1
Somerville	2	2	4	0	0
Sparks	1	1	1	1	0
Third	44	34	38	3	3
Upland	2	2	3	0	0
Vassar	7	8	10	2	1
Walden	20	16	22	5	4
Washburn	2	1	1	0	0
Western	20	22	26	5	4
White	1	1	1	0	0
Windsor	5	3	2	0	0
TOTAL	844	638	839	118	66

TRUCK TRAFFIC ASSIGNMENTS

1997	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	TOTAL
SEU DAYS	81	50	59	50	85	95	90	95	100	96	120	100	1077
SEU NIGHTS	137	109	196	196	251	257	219	187	192	187	224	171	2270
1998	JAN	FEB	MAR	APR	TOTAL								
SEU DAYS	100	100	110	213	523								
SEU NIGHTS	285	230	213	110	838								

May 97 → APRIL 98

ATTACHMENT A-3

STREET	GROUP	1	2	3	4	5	6	7	8	9	11	12	13	SEU DAY	SEU NIGHT	BIKE	TOTAL	TOTAL CITES
BAY ST	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	ALL OTHERS	1	1	0	2	6	1	7	1	0	0	0	0	0	1	3	0	23
BEECH ST	TRUCKS	4	12	0	0	0	0	0	0	0	0	0	0	159	6		181	
	ALL OTHERS	73	20	7	13	2	6	5	15	20	1	2	1	74	226	12	461	642
BLANCHARD	TRUCKS	0	2	0	0	1	0	0	0	0	0	0	0	34	0	0	37	
	ALL OTHERS	1	1	1	1	0	0	0	0	1	0	0	0	12	0	0	17	54
BRATTLE (not posted)	TRUCKS	2	0	1	0	0	0	0	0	0	0	0	0	43	4	2	52	
	ALL OTHERS	103	43	32	105	24	34	86	65	22	3	9	46	54	319	67	1012	1064
CAMERON	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	ALL OTHERS	1	11	2	3	1	0	1	0	0	8	0	14	6	2	7	56	56
CHESTER	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	ALL OTHERS	0	0	0	0	0	0	0	0	0	1	1	0	0	0	1	3	3
CLARENDON	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	ALL OTHERS	0	0	0	0	0	0	0	0	0	0	0	0	0	6	0	6	6
COLUMBIA	TRUCKS	0	0	0	2	5	1	4	0	5	0	0	0	53	4	2	76	
	ALL OTHERS	19	27	26	32	27	16	55	41	38	1	10	8	75	35	13	423	499
COLUMBUS	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	2	
	ALL OTHERS	0	1	0	1	0	1	0	0	0	0	0	0	14	315	0	332	334
COOLIDGE	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	9	0	0	9	
	ALL OTHERS	0	0	0	2	0	2	1	0	0	0	0	0	11	0	0	16	24

GROUP		1	2	3	4	5	6	7	8	9	11	12	13	SEU DAY	SEU NIGHT	BIKE UNIT	TOTAL	TOTAL CITES
COOLIDGE HILL	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	2	5
	ALL OTHERS	0	0	0	0	0	2	0	0	0	0	0	0	1	0	0	3	
DAY	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	12
	ALL OTHERS	0	2	0	0	0	1	1	1	2	0	1	0	2	1	1	12	
DOVER	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	49
	ALL OTHERS	3	31	2	1	1	0	1	1	1	1	2	0	4	0	1	49	
EDMUNDS	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
	ALL OTHERS	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	2	
EIGHTH	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	6
	ALL OTHERS	0	1	0	0	2	0	0	0	0	0	0	0	3	0	0	6	
FIFTH	TRUCKS	0	0	1	0	0	1	0	0	0	0	0	0	4	0	0	6	40
	ALL OTHERS	0	5	2	2	0	0	6	2	6	0	0	0	8	3	0	34	
FRANKLIN	TRUCKS	0	0	0	0	0	1	0	0	0	0	0	0	4	1	0	6	118
	ALL OTHERS	3	6	9	8	8	10	7	1	10	2	1	2	22	16	7	112	
FULKERSON	TRUCKS	1	3	2	0	1	0	2	0	0	0	0	0	41	0	0	50	459
	ALL OTHERS	21	66	15	7	9	5	40	22	72	3	12	7	85	45	0	409	
GORE	TRUCKS	3	0	4	1	0	0	0	0	1	0	0	0	14	0	0	23	422
	ALL OTHERS	66	120	117	3	10	1	27	4	12	2	1	0	35	0	1	399	
GREEN	TRUCKS	1	0	0	0	0	0	0	1	0	0	0	0	30	1	0	33	393
	ALL OTHERS	17	31	43	30	28	11	42	25	21	6	8	7	40	38	13	360	
HARRISON	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	ALL OTHERS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	

GROUP	1	2	3	4	5	6	7	8	9	11	12	13	SEU DAY	SEU NIGHT	BIKE UNIT	TOTAL	TOTAL CITES
HURLEY	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	5	0	0	5	
	ALL OTHERS	0	1	2	2	0	0	3	0	1	0	0	2	0	0	11	16
IRVING	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	ALL OTHERS	0	2	0	0	0	6	0	1	4	0	1	10	0	1	26	26
KIMBALL	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	
	ALL OTHERS	0	0	0	0	0	0	0	0	0	0	0	7	303	0	310	311
KIRKLAND	TRUCKS	0	1	0	0	0	1	0	0	2	0	0	21	3	0	28	
	ALL OTHERS	23	27	5	28	4	32	1	0	9	0	1	32	57	3	222	250
MADISON	TRUCKS	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	
	ALL OTHERS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
MAGOUN	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	7	0	0	7	
	ALL OTHERS	0	0	1	2	0	0	0	0	0	0	0	0	0	1	4	11
MASON (not posted)	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	2	0	0	2	
	ALL OTHERS	35	15	14	24	7	6	24	53	8	6	0	17	10	17	239	241
OTIS	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1	
	ALL OTHERS	0	2	7	0	0	2	7	4	15	0	8	9	0	0	54	55
OXFORD	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	8	0	0	8	
	ALL OTHERS	4	4	2	0	2	0	1	0	1	0	0	8	2	2	26	34
PROSPECT	TRUCKS	1	5	13	0	0	0	7	4	2	0	2	294	139	2	469	
	ALL OTHERS	157	188	155	103	115	62	149	104	91	20	59	296	449	42	2008	2477

	GROUP	1	2	3	4	5	6	7	8	9	11	12	13	SEU DAY	SEU NIGHT	BIKE UNIT	TOTAL	TOTAL CITES
PUTNAM	TRUCKS	1	0	0	2	29	0	4	3	3	0	0	1	5	6	0	54	245
	ALL OTHERS	32	7	5	12	21	0	21	6	22	1	8	8	39	7	2	191	
RINDGE	TRUCKS	7	4	0	0	0	0	0	0	0	0	0	0	34	2	0	47	303
	ALL OTHERS	31	61	12	16	10	8	9	19	10	8	9	11	38	10	4	256	
RIVER	TRUCKS	2	0	2	4	44	0	6	10	18	0	0	0	48	16	0	150	1184
	ALL OTHERS	63	20	66	105	88	19	73	31	50	12	9	13	232	226	27	1034	
RUSSELL	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	3	0	0	3	10
	ALL OTHERS	1	2	0	0	1	0	0	0	1	1	0	0	1	0	0	7	
SCIARAPPA	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	11
	ALL OTHERS	0	4	1	2	0	0	1	0	0	0	2	0	1	0	0	11	
SCOTT	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	8
	ALL OTHERS	0	0	0	0	1	0	0	1	2	0	0	0	2	0	2	8	
SEAGRAVE	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	24
	ALL OTHERS	0	0	0	0	0	1	0	0	0	0	0	0	1	23	0	24	
SEVENTH	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1	8
	ALL OTHERS	0	4	0	1	0	0	0	0	1	0	0	0	0	1	0	7	
SIXTH	TRUCKS	2	0	1	0	0	0	2	0	0	0	0	0	20	0	0	25	219
	ALL OTHERS	3	17	10	1	3	3	78	5	7	0	6	0	48	12	1	194	
SPRING	TRUCKS	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	40
	ALL OTHERS	0	6	2	1	3	6	2	4	1	0	7	0	5	1	1	39	
THIRD	TRUCKS	0	2	1	0	2	2	0	1	10	0	0	0	34	9	0	61	276
	ALL OTHERS	7	32	13	7	2	10	37	20	18	0	1	4	41	22	1	215	

	GROUP	1	2	3	4	5	6	7	8	9	11	12	13	SEU DAY	SEU NIGHT	BIKE UNIT	TOTAL	TOTAL CITES
WALDEN	TRUCKS	0	0	0	0	0	0	0	1	0	0	0	0	49	0	0	50	218
	ALL OTHERS	9	23	9	11	11	0	18	11	18	0	5	4	33	14	2	168	
WASHBURN	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1	7
	ALL OTHERS	1	1	0	0	0	0	0	0	0	0	0	0	0	1	3	6	
WESTERN	TRUCKS	7	5	5	0	0	0	1	1	4	0	0	0	59	5	1	88	1954
	ALL OTHERS	139	267	128	72	76	23	78	68	92	16	65	48	621	102	71	1866	
WINDSOR	TRUCKS	1	0	2	0	0	0	0	0	0	0	0	0	11	0	0	14	200
	ALL OTHERS	11	16	16	17	14	6	13	18	23	1	0	6	31	8	6	186	
WINTER	TRUCKS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
	ALL OTHERS	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	2	
GRAND TOTAL		858	1100	737	623	558	281	820	544	624	94	230	217	2911	2461	302		12342

David Hoicka
10 Lopez Street
Cambridge, MA 02139
May 27, 1998

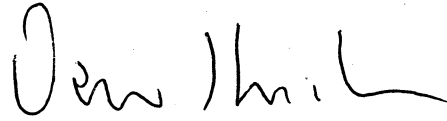
To the Honorable, the Cambridge City Council,
and the Traffic and Transportation Subcommittee

Night-Time Truck Ban:

I am writing in support of the night-time truck ban for Cambridge.

Particularly for River Street, Mass. Ave near Central Square, Brookline Street, -- and also along Kirkland Street -- and the nearby neighborhoods, night-time truck traffic is inappropriate to a residential community, and should be relocated elsewhere.

Therefore, I respectfully encourage the enactment of the night-time truck traffic ban.


David Hoicka,
547-4000

cc. Councillor Henrietta Davis
Vicki Casana

5/24/98 Copy sent to the Mayor + All Councilors.

BRACKEN AND BARAM
33 MOUNT VERNON STREET
BOSTON, MASSACHUSETTS 02108

ATTACHMENT C

THOMAS B. BRACKEN
MICHAEL S. BARAM

(617) 742-4950
FAX (617) 742-4953

Memorandum

To: Secretary, Cambridge City Council

Re: Traffic and Transportation Committee
Hearing on Truck Reports, 5/27/98

From: Thomas B. Bracken

Date: May 22, 1998

Enclosed are ten copies of a memorandum I prepared responding to Professor Richard Fallon's 4/28/98 memorandum regarding the authority of the City Council to adopt a night-time curfew on through trucks on all City streets. Please distribute the memorandum to the Councillors in connection with the hearing on 5/27/98

Memorandum

To: Cambridge City Councillors

Re: Truck Advisory Committee Report B, Proposed Night-Time Curfew on
Through Trucks
Response to Memorandum prepared by Richard H. Fallon, Jr.

From: Thomas B. Bracken

Date: May 22, 1998

Pursuant to City Council Order 19, the Deputy City Solicitor retained Richard H. Fallon, Jr., a Professor at the Harvard School of Law, to address the legal issues raised by the proposed night-time ban in Truck Committee Report B, submitted by a majority of the citizen members of the Committee. Professor Fallon prepared a memorandum dated 4/13/98 in which he raises doubts as to the authority of the City to impose such a ban. In so doing, he misconstrues the facts of one of the federal court cases supporting a night-time ban (Plaistow), and he does not even mention another court case (Portland Stone Ware) which follows Plaistow in upholding a ban on trucks entering a terminal in Cambridge during certain hours. At the 4/28/98 hearing of the Traffic and Transportation Committee, I responded to Mr. Fallon's memorandum and presentation. My comments are set forth below in greater detail.

Plaistow Decision

The U.S. Court of Appeals for the First Circuit, which includes Massachusetts, held in New Hampshire Motor Transport Association, et. al. v. Town of Plaistow, 67 F. 3d 326 (1995), that the town properly used its zoning powers to ban trucks during the night-time from its streets to access a truck terminal in a neighboring town. The terminal served as a regional hub for many trucking companies serving the entire New England area. The ordinance under which the town imposed the ban was general and did not even mention trucks, providing that:

"Any uses that may be obnoxious or injurious by reason of the production or emission of odors, dust, smoke, refuse matter, fumes, noise, vibration or other similar conditions, or that are dangerous to the comfort, peace, enjoyment, health or safety of the community, whether it contributes to its disturbance or annoyances are prohibited in all districts."

The town issued a cease and desist order to the terminal under the authority of this ordinance stating that: "heavy commercial trucking arriving at and leaving the site is emitting odors, smoke, fumes, noise and vibrations around the clock." When night-time traffic to the terminal did not cease, the town sought an injunction in State Court. The Court entered a permanent injunction limiting the night-time traffic to the terminal. The terminal and the truckers then brought suit in the Federal District Court, which upheld the injunction, noting Plaistow's "legitimate interest in curbing noise, odor and dust in residential areas". The U.S. Court of Appeals affirmed the District Court decision holding that the ban was not pre-empted by any federal laws, including the Surface Transportation Assistance Act, the Hazardous Materials Act, the Noise Control Act, and the Commerce Clause. The Court held that while the Surface Act prohibits regulations denying trucks "reasonable access" between the national interstate highway network and "terminals" and other specified facilities, Plaistow's 9 hour "curfew" on trucks accessing the terminal did not deny "reasonable access", since trucks still could access the terminal for 15 hours each day. The Court also held that the "burden" which the truckers claimed was imposed by the 9 hour restriction did not violate the Commerce Clause, because even though the terminal could not operate for 9 hours each day,

"On the other side of the scale, the impact on local residents is not some remote or conjectural specter. The curfew order was obtained only because of local experience with the terminal; and residents testified at trial about the effect on their lives of unrestricted deliveries. The curfew is akin to zoning and traffic restrictions traditionally applied on a local level, (citations omitted), and there is no regulation by federal authorities that provides substitute protection."

The Federal District Court for Massachusetts recently relied on the Plaistow decision in holding that Cambridge lawfully can ban trucks from entering the Portland Stoneware facility during certain daytime hours. (See Portland Stone Ware Co. v. City of Cambridge.)

In addressing the relevance of the Plaistow decision to the proposed night-time ban on through trucks cutting through Cambridge, Professor Fallon attempts to narrow the scope of the Plaistow decision to apply to a restriction on trucks using a "purely residential street". The Court in Plaistow made no such finding as to the nature of the restricted streets. The Court found that trucks enter the terminal from interstate highways and over a street in Plaistow, "the first portion of which", the Court said "passes through Plaistow's residential zone." A finding that trucks pass through a "residential zone" by no means is a finding, as Professor Fallon seems to believe, that the street is "purely residential." Indeed, many streets zoned residential contain mixed uses as allowed by grandfather protection, exemptions for educational, religious and governmental uses, special permits and variances. Moreover, the injunction which the Court upheld in Plaistow imposed a blanket night-time curfew on the terminal's operation, without regard to what streets trucks used to reach the terminal.

The Federal District for Massachusetts followed Plaistow in Portland Stone Ware Co. upholding restrictions on trucks using certain streets to access the facility during specific times of day (4 hours per day, 7 days a week). The Court made no finding that the affected streets were "purely residential". Instead, the Court said that the restriction was imposed to protect the health and safety in the "surrounding residential neighborhood." The Court said:

"The First Circuit, during the pendency of my Abstention Order in this case, addressed whether time-of-day restrictions on truck travel through residential neighborhoods violated the STAA. New Hampshire Motor Transport Ass'n v. Plaistow, 67 F.3d 326 (1st Cir. 1995), *cert denied*, 116 S. Ct. 1352 (1996). There, the court upheld a nighttime truck ban finding that the imposed restrictions were reasonable in light of the town's 'legitimate interest in

curbing noise, odor and dust in its residential areas.' Id. at 329. See also Hager v. City of West Peoria, 84 F.3d 865, 873 (7th Cir. 1996).

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."

Professor Fallon's misconstruction of the findings in Plaistow, and his failure to even consider the findings in Portland Stone Ware, has lead him to erroneously conclude that Cambridge has firm legal grounds for restricting trucks only on "purely residential streets", and that the legality of restrictions on other streets is doubtful, even when the restrictions would benefit residential neighborhoods. The Professor's analysis is incorrect and, moreover, is meaningless because in Cambridge there are no "purely residential streets" used by through trucks and there are no "purely commercial, industrial or institutional streets" which could be designated as suitable truck routes.

As Councillor Russell pointed out at the hearing, most streets in Cambridge contain mixed uses. For example, Kirkland and Brattle Streets, which are used as a major corridor for oil trucks from terminals in Everett and Chelsea to distant destinations, are primarily residential streets surrounded by residential neighborhoods, but they are not "purely residential streets". Kirkland Street contains several small commercial shops near Beacon Street and institutional buildings owned by Harvard for three blocks from Francis Avenue to Oxford Street. Brattle Street from Mason to Sparks Streets generally is considered a residential street, but it is not "purely residential" because abutters include the Harvard Theological School, the Longfellow House (used as a museum), a house next door now used as a think-tank and formally was a school, the Christian Science and Quaker churches on Longfellow Park and the Armenian Church at the corner of Sparks and Brattle Streets.

The Truck Advisory Committee spent almost two and one-half years looking for a night-time truck route through the City which would not adversely affect any residential neighborhoods. We were unable to identify any such route. To the extent

that trucks banned on some streets would use other City streets, the Committee considered that shifting the adverse affects of trucks from one neighborhood to another was unfair and unnecessary. Therefore, the authors of Report B concluded that the only fair approach was to restrict through trucks on all City streets at night, while allowing trucks to use City streets if necessary to the conduct of business in Cambridge. Professor Fallon's assumption that there are residential streets to which a night-time ban reasonably can be imposed and that there are non-residential streets which can serve as alternate truck routes, is completely unrealistic.

Scope of Exemption to Night-Time Curfew

Professor Fallon misunderstands the exemption provided in the proposed night-time curfew. The curfew as set forth in Report B provides that it applies to all "through trucks", but specifically does not apply to trucks "with points of origin or delivery in the City". Professor Fallon appears to interpret this exception to apply only to terminals in the City and not to "facilities for food, fuel, repairs, and rest", which also are protected facilities under the Surface Transportation Act. Based on this misinterpretation, he concludes that the proposal is discriminatory against these activities protected by the federal statute. Such is not the case. The exemption applies to all points of origin or delivery in the City which, by its plain language, applies to terminals, as well as to "facilities for food, fuel, repairs and rest" and all other facilities in the City even though not specifically protected under the Surface Transportation Act.

Effect of Night-Time Ban on Trucks with Origins and Destinations Outside Cambridge

Professor Fallon criticizes the proposed night-time curfew by stating "an exemption allowing night-time use of Cambridge streets to permit night-time deliveries in Cambridge, but not elsewhere, is likely to invite challenge as not only discriminatory, but as unreasonable under the Surface Transportation Assistance Act." We submit that the curfew does not interfere with "reasonable access" as required by the Act. Through trucks still can access their destinations by using routes other than

Cambridge streets, including the interstate highway system designed for their use (Routes 93, 95, 128, 2 and the Mass. Turnpike), whereas trucks seeking access to Cambridge destinations obviously must use streets within Cambridge to reach their destinations. During the 9 hour curfew period trucks are not prevented accessing any destination, whether in Cambridge or outside. During the remaining 15 hours through trucks can use Cambridge streets. Such a time-of-day restriction was held reasonable in Plaistow.

All municipalities bordering Cambridge can be directly accessed from the interstate highway system or other major highways, as follows:

<u>Municipality</u>	<u>Access</u>
Medford	Routes 93, 16, 28, 38 & 60
Somerville	Route 93, McGrath Highway
Belmont	Routes 2 & 60
Arlington	Routes 2, 3 & 60
Watertown	Mass Pike, Route 16

Professor Fallon criticizes the exemption of trucks making local deliveries with the following rhetorical question:

"If it is not too disruptive of residential tranquillity for a truck to pass through Cambridge streets to a destination in Cambridge, why is it any more disruptive for the same truck to pass along the same streets to a destination in Arlington, for example?"

No one associated with Report B has made such an absurd contention. Of course, it is no more disruptive to residents for large trucks to use City streets in the middle of the night to make local deliveries than it is for through-trucks to use these same streets. However, the proponents of Report B believe it is reasonable to allow night-time deliveries in the City in order not to disrupt business practices in the City since the use of City streets is the only way to make such deliveries. Trucks making deliveries

outside the City can find feasible access without using Cambridge streets, as explained above.

Hazardous Cargoes

The City of Boston has exercised its police power authority by restricting trucks carrying hazardous cargo totally from residential areas and in some commercial areas during certain times of day. The Boston Fire Marshall has banned hazardous cargo carrying trucks from traveling on the Mass. Pike under the Prudential Center, which results in many of these trucks being diverted onto Cambridge Streets. Boston also has announced its intention to prohibit hazardous cargo carrying trucks from using the depressed Central Artery, because of the potential fire hazard, even though the tunnel will utilize sophisticated, state-of-the-art ventilation and sprinkler systems. This means that trucks carrying flammable products, which currently use the elevated Central Artery to reach the Mass. Pike, Southeast Expressway, Routes 93 and 95, will be required to find alternate routes. We can expect that a major route for many of these trucks will be through Cambridge. This increased truck traffic will exacerbate the already serious noise, air pollution and safety problems created by these trucks on primarily residential streets.

Therefore, the authors of Report B believe it is imperative that Cambridge take measures to restrict the use of City streets by hazardous cargo trucks. Professor Fallon's speculation that if Cambridge adopts such restrictions this action will have a "domino" effect by surrounding municipalities adopting similar measures. There is no showing other municipalities would act in this manner. However, the Supreme Judicial Court rejected this speculative and hypothetical theory when it upheld a Cambridge Ordinance prohibiting Arthur D. Little, Inc. from conducting certain chemical tests in its Cambridge laboratory. The Court said:

"Nor are we persuaded by what the commissioner has termed 'ADL's domestic domino theory.' Even if the Cambridge regulation alone does not substantially interfere with national defense, ADL asserts that other municipalities

may enact similar prohibitions, and thus seriously hinder the DOD's ability to study chemical warfare agents. We believe that the scenario posited by ADL is far too 'hypothetical,' *Rice v. Norman Williams Co.*, 458 U.S. 654, 659 (1982), to warrant preemption."

See Arthur D. Little, Inc. v. Commissioner of Health and Hospitals of Cambridge, 395 Mass. 535, 546 (1995)

Commerce Clause

In addressing the applicability of the Commerce Clause to the proposed night-time curfew, Professor Fallon makes the following unsupported assertion:

"As a result, the entire burden imposed by the Report B proposal (the burden of being hampered in conducting trucking activities or receiving truck shipments during the night) is born wholly by people outside of Cambridge, while the entire benefit (the benefit of quieter streets) is realized wholly by people inside Cambridge."

There is no showing that the curfew will place an unreasonable burden on truckers. As discussed above, through truckers who now use Cambridge residential streets during the night-time have the option of rescheduling their trips through Cambridge during the 15 hour period when the curfew is not in effect or utilizing the interstate highway system around the greater Boston area, including routes 93, 95 128 and the Massachusetts Pike. Nor is there a showing that there would be any burden on the people receiving deliveries outside Cambridge. There is no rational reason why the receivers of such deliveries should be concerned whether the trucks arrive at their destinations via the use of Cambridge streets or the highway system designed for such trucks. The Plaistow decision holds that restricting trucks for 9 hours during each 24 hour period, the duration of the proposed Cambridge night-time curfew, did not constitute a "burden" on interstate commerce, even though the Court recognized the curfew disadvantaged the subject terminal by forcing it to close down for 9 hours each

night. Under the proposal in Report B no terminal, within or outside Cambridge, would be disadvantaged.

State Authority for Adopting Truck Restrictions

- The Zoning Act

The Massachusetts Zoning Act, M.G.L. c. 40A, states that the purposes of zoning include promoting the health, safety and convenience of the inhabitants. The Cambridge Zoning Ordinance states (Article 1.000, §1.30) that the purposes of the Ordinance include:

- lessening congestion in the streets
- conserving health
- conserving the value of land and buildings
- preventing pollution of the environment
- protecting residential neighborhoods from incompatible activities, and
- furthering the amenities of the City.

The Zoning Ordinance currently regulates trucks through the “Off Street Parking and Loading Requirements” as set forth in Article 6.000, which states:

“It is the intent of this Article 6.000 to reduce traffic congestion and thereby promote the safety and welfare of the public, by establishing requirements for off street parking and loading in conjunction with the use of land.”

In order to encompass time-of-day restrictions on trucks using City streets, the intent could be broadened to read as follows:

“It is the intent of this Article 6.000 to reduce traffic congestion, noises, vibrations and fumes caused by trucks, thereby promoting the safety and welfare of the public, by establishing requirements for off street parking and loading

and for the use of City streets in conjunction with the use and enjoyment of land."

The Noise Control Act

Amendment Article 49 to the Constitution of the Commonwealth of Massachusetts provides certain basic rights which the people of the Commonwealth have, including freedom from excessive and unnecessary noise. M.G.L. c. 40, §21 provides that towns may make ordinances and by-laws for various purposes, including:

Clause 22: "For controlling and abating noise from whatever source, including, without limiting the generality of the foregoing, the right to restrict or limit the use of automobile horns and the operation of motor vehicles in such a manner as to cause excessive noise."

Acting under this Constitutional and statutory authority and under the police powers, which authorize municipalities to enact ordinances to protect the public health, safety and welfare, Cambridge has adopted a Noise Ordinance (Chapter 8.16). Section 8.16.010 states the purpose of the Ordinance 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 (I))

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;
- d. To interfere with the comfortable enjoyment of life and property or the conduct of business.

Regulations restricting night-time through trucks on City streets lawfully could be enacted under this authority. The Supreme Judicial Court held in Arthur D. Little, Inc. v. Commissioner of Health & Hospitals of Cambridge, 395 Mass. 535, 546, (198) that:

"...Municipal health and safety regulations...carry a heavy presumption of validity, and are only rarely preempted by Federal law. *Travelers I, supra* at 612. See *Malone v. White Motor Corp.*, 435 U.S. 497, 513 n.13 (1978). 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.'" (citations omitted).

- State Law Specifically Authorizing Municipalities to Regulate Trucks

Massachusetts General Laws c. 40, §22 provides in part:

"Except as otherwise provided in section eighteen of chapter ninety and subject, so far as applicable, to section two of chapter eighty-five and sections eight and nine of chapter eighty-nine, a city or town may make ordinances or bylaws, or the board of aldermen or the selectmen or the town council may make rules and orders, for the regulation of carriages and vehicles used therein, and may set penalties for the violation thereof; and may set and receive an annual fee for each license granted to a person to use any such carriage or vehicle therein."

Chapter 90, §18 provides in part:

"The city council, the transportation commission of the city of Boston, the board of selectmen, park commissioners, a

traffic commission or traffic director, or the department, on ways within their control, may make special regulations as to the speed of motor vehicles and may prohibit the use of such vehicles altogether on such ways; provided, however, that except in the case of a speed regulation no such special regulation shall be effective unless it shall have been published in one or more newspapers, if there be any, published in the town in which the way is situated; nor until after the department, and in the case of a speed regulation the department and the registrar, acting jointly, shall have certified in writing that such regulation is consistent with the public interests..."

Professor Fallon believes that the proposed 9 hour night-time curfew on through trucks would require approval by the Massachusetts Highway Department, although he concedes that the matter "is not free from doubt" (memo. p. 28). His belief is based on M&M Transportation Company v. Town of Wellesley, 333 Mass. 11 (1955). However, this case does not support Professor Fallon's belief. In the M&M case the Court held invalid a regulation which banned heavy commercial vehicles from certain City streets because the regulation had not been certified by the Department of Public Works. This decision seems to properly apply the statute since such vehicles were banned "altogether", i.e. 24 hours each day. Moreover, since the ban was posted by signs State approval was required under M.G.L. c. 85, §2. The night-time curfew proposed in Report B is not a prohibition against trucks using City streets "altogether", since it is limited to particular trucks (those weighing over 2 tons and traveling from origins and to destinations outside Cambridge) and during only 9 hours of each day. Indeed, Scott Lewis, the City's special counsel for litigation involving truck restrictions, advised the Truck Committee at a meeting that this provision applies only to the "closure" of streets, and not to restrictions on use by certain types of vehicles.

In Commonwealth v. Dobbins, 344 Mass. 272 (1962) the Commonwealth contended that M.G.L. c. 40, §22 is a broad delegation of authority to towns which authorized the City of Pittsfield to adopt an ordinance banning night parking on any street. In upholding the ordinance, the Court stated that "...every presumption is to be indulged in favor of the validity of such regulation." The Court continued:

"The power to regulate the use of the streets of a city implies the power to prohibit the use of them under certain circumstances.' *Attorney General v. Boston*, 142 Mass. 200, 203, quoted in *Burgess v. Mayor & Aldermen of Brockton*, 235 Mass. 95, 102." *Commonwealth v. Kimball*, 299 Mass. 353, 358. Cities have a wide discretion as to what is reasonable in particular situations. *Commonwealth v. Sargent*, 330 Mass. 690, 692.

Applicability of M.G.L. c. 85, §2 to the Proposed Night-Time Ban

This statute prohibits municipalities from regulating motor vehicles on "state highways" and provides that regulations of motor vehicles on "city streets" which exclude heavy commercial vehicles, which are enforced by "any sign" must be approved by the Massachusetts Highway Department. Report B proposes that the night-time ban be adopted under zoning authority or the police powers and that it be enforced by the means normally used to enforce regulations and ordinances adopted under such authority. Such enforcement does not involve signage. Professor Fallon asserted at the hearing that in his view it would be "impossible to enforce a night-time ban without signage." However, he apparently does not understand that zoning ordinances are not enforced by signage. Moreover, to post a sign on every street in the City of Cambridge alerting truckers to the night-time ban would be infeasible, expensive and unnecessary. Thus, MHD's approval of the proposed restriction is not required.

Professor Fallon raises the specter that if the City of Cambridge violates M.G.L. c. 85, §2 it risks losing highway funds. He apparently has reference to the provision in this section which provides:

"If any city or town installs and maintains any of the aforesaid traffic control devices without requesting or obtaining the required approval or after being notified of such disapproval, or in noncompliance with said manual, the Department shall withhold or withdraw the unexpended balance of any funds assigned to said city or town under the

provisions of section thirty-four of chapter ninety or sections twenty-five and twenty-six of chapter eighty-one."

However, as discussed above, the City would not be subject to any withholding of funds unless it "installs and maintains" any "traffic control devices". The authors of Report B do not propose implementing truck restrictions through the use of "traffic control devices."

Conclusion

The authors of Report B appreciate the efforts of the Law Department to obtain an outside legal opinion on the authority of the City Council to adopt a night-time curfew on through trucks, particularly in view of the Plaistow case. However, we do not believe that the memorandum of Professor Fallon is very instructive or that it raises legitimate impediments to enacting the night-time curfew as proposed in Report B. We look forward to working with the City Council, the Traffic and Transportation Committee and the Law Department in developing regulations to implement the proposal.

* It is not clear that signs are even "traffic control devices" as that term is used in M.G.L. c. 85, §2. In several prior portions of Section 2 references are made to "signs, traffic control signals, traffic devices, school zones, parking meters or markings" which implies that the drafters of the statute contemplated that signs are separate and distinct from traffic control devices.

City of Cambridge

The Traffic and Transportation Committee conducted a public meeting on Wednesday, May 27, 1998 at six o'clock and forty-five minutes p. m. in the Sullivan Chamber.

The purpose of the meeting was to continue discussions on the City Manager's Truck Advisory Committee Reports.

Present at the meeting was Councillor Davis, Chair of the Committee, Councillors Sullivan, Born, Russell, Triantafillou and Toomey, Richard Rossi, Deputy City Manager, Donald Drisdell, Deputy City Solicitor, Harold Murphy, Superintendent of Operations Division of the Police Department, Sergeant Steve Ahern, Traffic Unit, Police Department, Sue Clippinger, Director of Traffic, Parking and Transportation and Donna P. Lopez, Deputy City Clerk.

Councillor Davis opened the meeting by stating that the committee will be discussing the enforcement issue and data collection aspects of the reports.

Superintendent Murphy outlined the selective enforcement statistics from 1997 through April, 1998 as outlined in ATTACHMENT A. He stated that on Prospect Street there were 2,477 citations issued of which 469 are for trucks, and on River Street 1,184 citations were issued of which 150 are trucks. He further stated of the 2587 vehicles stopped from January, 1997 to April, 1998, 1837 citations were issued. He said that 454 trucks were weighed of which 265 were overweight. This enforcement has been done by the selective enforcement unit, he said.

Sergeant Ahern stated that there are two officers assigned to the truck team who have received federal training to inspect and weigh trucks. Only three officers, he stated, can stop trucks with no cause and weigh the vehicle and issue a fine if the truck is found to be overweight. He stated that trucks can be issued a permit to be overweight for a fee. There is a five percent (5%) overweight limit built in as defined by the Massachusetts Motor Vehicle Laws, he said. Sergeant Ahern stated that his officers cannot do enforcement of hazardous cargo in Cambridge. Only the DOT inspectors can, he said. He informed the committee that if a vehicle is unsafe, his officers call the state police at Concord and they respond. Sergeant Ahern stated that Cambridge police officers are assigned to a location and are trained in the Police Academy on what to look for under Article 12.

Councillor Davis invited comments from the City Council on the issue of enforcement.

Committee Report #4

5-436

Communication was received from Donna P. Lopez, Deputy City Clerk, transmitting a report from Councillor Davis for a meeting held on May 27, 1998 for the purpose of continuing discussions on the City Manager's Truck Advisory Committee Reports.

In City Council June 8, 1998

Report Accepted
PLACED ON FILE
ORDER ADOPTED