

REGULAR MEETING SEPTEMBER 2, 2014: The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, September 2, 2014 at 7:00 p.m.

PRESENT: City Manager Jeff Mikorski, Assistant City Manager Glen Kelly, City Attorney Steve Fanok, City Clerk Linda Little, Mayor Selin, Deputy Mayor Marti Shamberger and Council Members: Ron Bane, Bill Kawecki, Wes Nugent, Mike Fike, and Nancy Ganz.

The Meeting was called to order by Mayor Selin.

APPROVAL OF MINUTES: The minutes of the regular meeting of August 19, 2014, were approved as printed.

CORRESPONDENCE: Mayor Selin read a letter from Susan Case and Michael Simms in support of the "Heavy Truck" Ordinance. Councilor Fike asked all Council Members, due to his hearing handicap, if they could please speak loud and clear so he can hear well. **(Exhibit A and B Attached)**

PUBLIC HEARING – AN ORDINANCE AMENDING ARTICLE 1369.15 OF THE PLANNING AND ZONING CODE AS IT RELATES TO SIGN PERMITS.

James Giuliani, 256 Prairie Avenue, stated that he is concerned with the size of signs that are being placed in the downtown area and explained why this ordinance should not be passed. He noted that the B-4 (Downtown) area has a certain quality and look to it as it has for many years and the large signs that are going to be placed in the downtown area if the ordinance is passed, will water down the unique quality that our downtown has. Mr. Giuliani urged Council to take a better look at the proposed ordinance before passing it.

PUBLIC HEARING - AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE SALE OF REALTY OWNED BY IT IN THE FOURTH WARD OF THE CITY TO JONES PLACE, LLC.

There being no appearances, Mayor Selin declared the Public Hearing closed.

PUBLIC HEARING - AN ORDINANCE AMENDING SECTION 529.01 OF ITS GENERAL OFFENSES CODE IN REGARD TO OFFENSES RELATING TO PERSONS.

There being no appearances, Mayor Selin declared the Public Hearing closed.

PUBLIC HEARING - AN ORDINANCE AMENDING ARTICLE 301 OF THE CITY OF MORGANTOWN TRAFFIC CODE BY ADDING NEW SECTIONS 301.071 AND 301.111 TO IT, DEFINING THE TERMS "DOWNTOWN BUSINESS DISTRICT" AND HEAVY TRUCKS.

Evan Hansen, 295 High Street, stated that he was proud to see the way Safe Street Morgantown addressed the "Heavy Truck" Ordinance. He also mentioned that there are a lot of businesses in support of this ordinance and noted that it will address the safety concerns of many citizens in the downtown area. Mr. Hansen stated that there will be no scales required for the trucks because of how the ordinance is written and that City Police are well within their authority to enforce it. Mr. Hansen stated that he has three requests involving the language of the packet and they are signage, time of passage, and simply to pass the ordinance.

James Vannestrand, 416 Cedar Street, stated he would like to speak on behalf of Safe Streets Morgantown and teaches at the law school alongside with Bob Bastress. He noted that they did their own analysis of the federal highway transportation laws and regulations and stated that these statutes would not present any obstacles for City Council to adopt this ordinance. Mr.Vannestrand went on to explain each section of the analysis and in conclusion of his explanations stated that he appreciates Council for taking on such a complex matter and asked Council to please pass the ordinance. **(Exhibit C Attached)**

Kim Noble, 302 Duquesne Avenue, stated that she is in support of the “Heavy Truck” ordinance due to congestion and safety issues. She noted that she would like more citizens to visit the downtown area without hesitation due to the truck traffic, pollution, and noise, specifically the jake brake noise that the large trucks produce. She strongly supports the ordinance and hopes that Council will pass it.

Daniel McMullen, 486 Hite Street, stated that he would like to see the ordinance passed although noted that it’s not the heavy trucks from Greer causing the issues at hand, it’s smaller trucks that work in and around downtown Morgantown that cause these issues. Mr. McMullen expressed that the Police should focus enforcement on smaller trucks and other entities as well. He would also like to see the truckers have an alternate route around town. He noted that the truckers are using Greenbag Road more although there are many holes along that road and it’s not safe for travel.

Gary Loring, 314 High Street, stated that there was an ambulance that was halted for approximately 45 seconds at the intersection of Walnut and High Streets due to a large truck in the way. He also stated that recent repair at the same location has already deteriorated due to large trucks. He is concerned about the flower beds and how the pollution from the large trucks is affecting them. Mr. Loring noted that he is also concerned about the people on the sidewalks using skateboards and other modes of transportation having no regard for people who are walking; they fly out in the road without looking and he expressed that one day someone will get hurt from not following the rules. Mr. Loring stated that there is an alternate route that the truckers can take although it will take some time. He stated we are balancing the safety, the economy, and the environment here; he noted that it needs to be paid attention to.

PUBLIC HEARING - AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING ARTICLE 347 OF ITS TRAFFIC CODE BY AMENDING SECTIONS 341.01 (a) AND 347.01 (c), AND ADDING NEW SECTIONS 347.01 (d) AND 347.01 (e), AS THE SAME APPLY TO HEAVY TRUCKS WITHIN THE DOWNTOWN BUSINESS DISTRICT.

Don Spencer, 565 Harvard Avenue, handed out information to Council Members. He then stated in closing that Morgantown’s basic truck problem is not with the trucking companies and then noted that if the stone company wants to respect the commerce in the Downtown Business District and protect the neighborhoods directly involved and as many other large corporations do in other communities; it will change its dock location or it will compensate the trucking companies for the costs of traveling those additional three miles each way on Greenbag Road. Mr. Spencer commends Council for noticing the truck problem and also for showing the courage to take care of business people and residents of all ages and backgrounds in the City, and for taking the steps to pass the first reading of the ordinance. He stated that he fully supports Council in taking the second step tonight. **(Exhibit D Attached)**

UNFINISHED BUSINESS:

AN ORDINANCE AMENDING ARTICLE 1369.15 OF THE PLANNING AND ZONING CODE: The below entitled Ordinance was presented for second reading.

AN ORDINANCE AMENDING ARTICLE 1369.15 OF THE PLANNING AND ZONING CODE AS IT RELATES TO SIGN PERMITS.

After explanation from City Manager and discussion from Council Members, motion by Kawecki, second by Fike, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE SALE OF REALTY: The below entitled Ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE SALE OF REALTY OWNED BY IT IN THE FOURTH WARD OF THE CITY TO JONES PLACE, LLC.

After discussion, motion by Bane second by Kawecki, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING SECTION 529.01 OF ITS GENERAL OFFENSES CODE: The below entitled Ordinance was presented for second reading.

AN ORDINANCE AMENDING SECTION 529.01 OF ITS GENERAL OFFENSES CODE IN REGARD TO OFFENSES RELATING TO PERSONS.

After explanation from City Manager, motion by Shamberger, second by Nugent, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 301 OF THE CITY OF MORGANTOWN TRAFFIC CODE: The below entitled Ordinance was presented for second reading.

AN ORDINANCE AMENDING ARTICLE 301 OF THE CITY OF MORGANTOWN TRAFFIC CODE BY ADDING NEW SECTIONS 301.071 AND 301.111 TO IT, DEFINING THE TERMS "DOWNTOWN BUSINESS DISTRICT" AND HEAVY TRUCKS.

After recommendation from the City Manager to amend Ordinance, motion by Kawecki, second by Shamberger, to accept amendment. Motion carried 7-0. After discussion on the ordinance, motion by Fike, second by Shamberger, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING ARTICLE 347 OF ITS TRAFFIC CODE: The below entitled Ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING ARTICLE 347 OF ITS TRAFFIC CODE BY AMENDING SECTIONS 341.01 (a) AND 347.01 (e), AND ADDING NEW SECTIONS 347.01 (d) AND 347.01 (e), AS THE SAME APPLY TO HEAVY TRUCKS WITHIN THE DOWNTOWN BUSINESS DISTRICT.

After recommendation from Councilman Kawecki to amend ordinance, motion by Ganz, second by Kawecki, to accept amendment. Motion carried 7-0. After recommendation from Mayor Selin for a second amendment to the ordinance, motion by Bane, second by Ganz, to accept amendment. Motion carried 6-1. Kawecki voted no. After discussion on the Ordinance, motion by Shamberger, second by Fike, to adopt the above entitled Ordinance. Motion carried 6-1. Nugent voted no.

BOARDS AND COMMISSIONS: City Clerk, Linda Little, announced that there are still vacancies open for the Urban Landscape Committee in fourth and seventh wards. She also noted that if anyone is interested to please contact the City Clerk's Office or apply on our website.

PUBLIC PORTION:

Andrew Detrick, 672 North High Street, introduced himself as the City Council Liaison for WVU Student Government and noted that he is looking forward to meeting Council and also to having a productive year.

Chris Knight, 741, Richwood Avenue Apt. # 6, spoke about Devante Waites. He stated that he was stabbed and killed in a Morgantown club three weeks ago. He expressed how Devante was involved with his community where he resided in Fairmont, WV. He stated that we have a violence issue in downtown Morgantown and we all need to work together to put a stop to it.

Daniel McMullen, 486 Hite Street, noted that Wikipedia has the definitions of different classes of truck weight in case they would like to take a look at it. He also stated that he does video and audio production and would volunteer his time to track down the problem in regards to the "Heavy Truck" ordinance. Mr. McMullen also mentions that he heard that a crosswalk was recently removed in front of Saint John's Church and had concerns about that and also suggested that crosswalk usage should be enforced more in the City of Morgantown.

Dave Hopkinsin, 313 Morgan Lane, stated that he is here on behalf of the Coopers Rock Foundation. He stated that he would like to propose a Resolution in regards to the West Virginia Division of Forestry Timbering Project at Coopers Rock State Forest. He expressed that Coopers Rock is an important recreational resource to the Morgantown community and noted that when the DNR refused to repair the trails from the recent timbering project at Snake Hill, the citizens came to City Council and DNR totally reversed their decision to help fix and maintain the Snake Hill trails. He recognized that when City Council speaks, State agencies listen. Mr. Hopkinsin went on to explain the Forks of Scott Run-Pisgah Project and how it will affect the recreation at Coopers Rock State Forest and he hopes that the proposed Resolution will be added to the agenda for a future meeting.

Qwen Jones, 430 Civitan Street, President of the Coopers Rock Foundation, stated the restrooms at Coopers Rock are in a falling down state and most of them had to be boarded up. The foundation is trying to engage with the Division of Forestry to talk about revenue sharing and hope to have them invest in recreational facilities such as restrooms. She asked City Council if they would help support the foundation in any way to help improve Coopers Rock recreational facilities.

James Giuliani, 256 Prairie Avenue, stated that the planning commission has not been following the rules in the review process and that they need to start doing so. He expressed that Council made a decision tonight without fully understanding the ordinance. Mr. Giuliani urged Council to please help out Chancery Hill B-4 District.

SPECIAL COMMITTEE REPORTS: No Report

NEW BUSINESS:

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF ONE PARCEL OF REAL ESTATE: The below entitled Ordinance was presented for first reading.

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF ONE (1) PARCEL OF REAL ESTATE IN THE FOURTH WARD OF THE CITY OF MORGANTOWN FROM R-2, SINGLE AND TWO-FAMILY RESIDENTIAL DISTRICT TO B-1, NEIGHBORHOOD BUSINESS DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

After explanation from City Manager, motion by Kawecki, second by Nugent, to deny the above entitled Ordinance to second reading. Motion fails 0-7.

AN ORDINANCE TO PROVIDE THE ZONING CLASSIFICATION OF 13.40 ACRES: The below entitled Ordinance was presented for first reading.

AN ORDINANCE TO PROVIDE THE ZONING CLASSIFICATION OF 13.40 ACRES, MORE OR LESS, OF ADDITIONAL TERRITORY THAT WAS ANNEXED INTO THE CITY OF MORGANTOWN BY ORDINANCE 14-18 BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

After explanation from City Manager, motion by Shamberger, second by Ganz, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

AN ORDINANCE BY THE CITY OF MORGANTOWN VACATING, ABANDONING, AND ANNULLING A PORTION OF SUZANNE ROAD: The below entitled Ordinance was presented for first reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN VACATING, ABANDONING, AND ANNULLING A PART OR PORTION OF SUZANNE ROAD MEASURING FORTY (40) FEET IN WIDTH AND APPROXIMATELY EIGHTY-FIVE (85) FEET, AT ITS LONGEST POINT, IN LENGTH LOCATED AND SITUATE IN THE SECOND WARD OF THE CITY OF MORGANTOWN, MORGAN DISTRICT, MONONGALIA COUNTY, WEST VIRGINIA.

After explanation from City Manager and discussion from Council, motion by Shamberger, second by Nugent, to pass the above entitled Ordinance to second reading. Motion carried 6-1. Ganz voted no.

AN ORDINANCE BY THE CITY OF MORGANTOWN VACATING, ABANDONING, AND ANNULLING A PART OR PORTION OF DORIS ROAD: The below entitled Ordinance was presented for first reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN VACATING, ABANDONING, AND ANNULLING A PART OR PORTION OF DORIS ROAD MEASURING THREE HUNDRED EIGHT (308) FEET, AT ITS LONGEST POINT, IN LENGTH, AND SITUATE IN THE SECOND WARD OF THE CITY OF MORGANTOWN, MORGAN DISTRICT, MONONGALIA COUNTY, WEST VIRGINIA.

After explanation from City Manager, motion by Nugent, second by Shamberger, to pass the above entitled Ordinance to second reading. Motion carried 6-1. Ganz voted no.

CITY MANAGER'S REPORT:

INFORMATION:

1. **Bad Building Conference**

The City manager explained the process of the Bad Building Conference and requested Council to provide names of volunteers that would be interested serving on the BAD Building team. He noted that these members will be instrumental in developing a plan of action on improving the community by dealing with the BAD building in the City.

2. **Recreation Center Feasibility Study**

The City Manager stated that he participated with Monogalia County, West Virginia University, and BOPARC representatives (through the County Leadership Committee's recreation subcommittee) in the presentation of a Recreation Feasibility Study project to the Brickstreet Center Innovation and Entrepreneurship, in the WVU Collage of Business and Economics Department. He stated that working with Steven Cutright and his SBEN 438 class, a Recreational Feasibility Study for a recreation center will be created. Mr. Mikorski noted that two student teams will be working with the Recreation Subcommittee and BOPARC to look at the needs, wants, and funding opportunities for a recreation center in the City. He stated that this project was discussed at the August 21, 2014 BOPARC meeting.

REPORT FROM CITY CLERK: Linda Little wished Councilor Bane a happy birthday and also thanked Nancy Ganz and Ruth Donaldson for picking flowers for her birthday. She also thanked Margaret Frankenberry for making a cake for her birthday.

REPORT FROM CITY ATTORNEY: No Report

REPORT FROM COUNCIL MEMBERS:

Councilor Bane:

Councilor Bane stated that we need to support City Administration and Police Department through the enforcement of the "Heavy Truck" ordinance that was passed this evening and also asked the residents to be patient as we proceed with enforcement. He also noted that if we are

not able to proceed with the ordinance; we can look at alternative ways in an effort to encourage different routes for heavy trucks.

Councilor Kaweck:

No Report

Councilor Nugent:

No Report

Councilor Shamberger:

Councilor Shamberger informed the public that the City Administration is following procedure for the Home Rule process and noted that they have had three public hearings and out of all the meetings we only had three people attend those meetings. Councilor Shamberger expressed that she feels comfortable with the allotted ninety days to implement the "Heavy Truck" ordinance. Councilor Shamberger stated that there was a Woodburn Redevelopment meeting last week and informed Council that Chris Haddox applied for a grant with the West Virginia Redevelopment Corporation and that they are also applying for the West Virginia Preservation Grant which would enable them to use expertise on old buildings. She also noted that the Woodburn Community will be having a fundraiser in the next few months to show in good faith effort that they want to keep the building there. Councilor Shamberger mentioned that Chris Haddox will be attending West Virginia's Browns Field Conference to talk about the success that they are having with the redevelopment of Woodburn and also the commission will be meeting with BOPARC about programming the Woodburn space. Councilor Shamberger announced that the coordinating Council on Homelessness will be holding a meeting Tuesday at Health Right at 9:00 a.m. She also thanked Marchetta Maupin for her hard work in producing beautiful hanging baskets around town. She also inquired with the City Manager if they could start scheduling ward tours again and his response was yes.

Councilor Fike:

Councilor Fike expressed that he is starting to understand Councilor Ganz's point of view on the annulments of property and would like to find out more on perhaps using these properties in a more creative way instead of annulling them.

Councilor Ganz:

Councilor Ganz announced that the Traffic Commission will be holding a meeting in Council Chambers September 3rd. She expressed that her heart went out to Chris Knight as he was talking about Devante Waites death and reiterated that the City does have safety issues and that we need to work on safety for our residents. Councilor Ganz stated that we should partner with the university which will enable us to have more feet on the ground in terms of fire fighters and police. She mentioned that our budget has not increased although our need for services has and that concerns her. Councilor Ganz stated that she is a stake holder in Coopers Rock area and she is very interested in the tourism and resources available in Morgantown and that we should move forward quickly with this resolution and request that this item be put on the next Committee of the Whole and also requested to see an ordinance on revenue sharing from the Coopers Rock Foundation. With consensus of Council, they have agreed to move Coopers Rock Resolution forward to the next Committee of the Whole meeting. Councilor Ganz expressed her opinions on the Home Rule meeting that took place in Bridgeport. She stated that we did not leave Morgantown in a unified manner and that she was very disappointed that the Morgantown residents which showed up at the Home Rule meeting in Bridgeport did not attend any of the public hearing meetings held in Morgantown prior to the Bridgeport meeting to voice their opinions.

Mayor Selin:

Mayor Selin announced that it will be Green Night at the Library on September 18th. They will be talking about Urban Agriculture Ordinance that was brought forth last year. Mayor Selin made other announcements on upcoming events to include: Rivertown Meeting; Farmer's Market; Blood Drive; Metropolitan Theatre hosting Unforgettable Music; Lebanese Bistro will be hosting TarabRaqs Middle Eastern Music and Dance Ensemble and contemporary music of the Mediterranean region on acoustical instruments accompanied by belly dance; Art is Food Friday and Arts Walk. Mayor Selin stated that she will not be able to attend a meeting in Fairmont and would like to know if one of the Council Members would go in her place. She noted that the meeting will be about a

Connectivity Plan that the City of Fairmont made formal and would like to try to implement a connectivity plan in the City of Morgantown. She also noted that should like to look at all the vacant land that the City has and possibly use those as an outlet for connectors just like the one by Suncrest Middle School.

EXECUTIVE SESSION:

Motion by Nugent, second by Shamberger, to move to executive session pursuant to West Virginia Code Section 6-9A-4(2) (B) (9) in order to discuss real estate matters with the following persons present; Council Members, Jeff Mikorski, Glen Kelly, Steve Fanok, and J.R. Sabatelli. Time 10:02 p.m.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 10:30 p.m.

City Clerk

Mayor

*A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS IS AVAILABLE ON DVD AT THE MORGANTOWN CITY LIBRARY.

Exhibit A

Zimbra

llittle@cityofmorgantown.org

Letter

From : Susan Case <susancasewv@gmail.com>

Mon, Sep 01, 2014 02:56 PM

Subject : Letter**To :** citycouncil@cityofmorgantown.org, Jeff Mikorski <jmikorski@cityofmorgantown.org>, sfanok@cityofmorgantown.org

We request that this letter be read at your meeting on September 2, 2014, and entered into the official record of the meeting.

To Morgantown City Council, city manager, and city attorney:

The citizens and businesses of Morgantown are tired of the increasing numbers of heavy trucks driving through downtown Morgantown. We thank Council for considering the proposed ordinance to limit heavy truck traffic, and urge each of you to vote yes for final adoption tonight.

Some have claimed the City does not have the right to regulate traffic on streets that are controlled by the State. But, just because the Commissioner of Highways says you do not have authority does not make that statement true. Several expert attorneys and a majority of our district's state delegates have concluded that the City is well within its authority to regulate truck traffic within its limits, citing specific statutes clearly supporting that position. We haven't seen any similar legal evidence from the other side.

Therefore, it is time to move forward, convinced not only that you are doing what is best for Morgantown, but also that you are taking an action wholly within your authority.

The next question you will face, once you pass the ordinance, is how to enforce it. We personally believe that it cannot be fairly or effectively enforced until signs are erected warning drivers of the law and indicating an alternate route. So, either the State needs to erect signs, or the State needs to give the City the authority to do so. Therefore, once Council passes the ordinance, the logical first step would be for the City to meet with State highway officials to determine which agency – state or local – is going to put up the signs.

If, however, the State persists in claiming that the City does not have the right to pass this ordinance, there will be a problem that needs to be resolved. If that problem can be promptly resolved through negotiation – assuming that resolution results in the ordinance being implemented – then the problem will be solved. If not, then the City can take the State to court to get it resolved. That is one of the reasons we have courts – to resolve disputes over what the law says.

So, we urge you to pass the ordinance – because it will enhance safety, health, and quality of life in Morgantown, and also because it is clear you have the authority to do so.

And then, we urge you to take immediate action - moving forward with all deliberate speed - to implement the law, erect appropriate signs, and get the heavy trucks out of downtown Morgantown. We thank you.

Bill and Susan Case, 472 Lawnview Drive, Morgantown

Exhibit B

Zimbra

llittle@cityofmorgantown.org

Fwd: First Reading - Heavy Truck Traffic Proposed Ordinance**From :** Jennifer <jselin@hotmail.com>

Thu, Aug 21, 2014 06:17 AM

Subject : Fwd: First Reading - Heavy Truck Traffic Proposed Ordinance**To :** Little Linda <llittle@cityofmorgantown.org>, Mikorski Jeff <jmikorski@cityofmorgantown.org>

I would like this to be available to be read into the record at our first meeting in September.

Jenny Selin
Cell 304-685-6569

Begin forwarded message:

From: Michael Simms <michael@simmslegal.com>**Date:** August 19, 2014 at 12:40:43 PM EDT**To:** citycouncil@cityofmorgantown.org**Subject:** First Reading - Heavy Truck Traffic Proposed Ordinance

Dear Council Members,

I am an attorney and the owner of Simms Law Office, located at 68 High Street in Morgantown. My office has been located in downtown Morgantown for approximately seven and a half years, and I have witnessed firsthand the negative impact that heavy truck traffic has on the downtown business district.

The industrial trucking corridor, as it now exists on Pleasant and Walnut Streets, endangers the health, safety and emotional well-being of our residents, business owners and visitors. Drivers, cyclists and pedestrians are intimidated, disheartened and frustrated by the constant stream of gravel trucks that lumber through our community. These vehicles disobey our traffic and noise control ordinances, pollute the air, destroy our city streets, and generally ruin the quality of life for those living in the neighborhoods adjacent to West Virginia Route 7 on its approach to downtown Morgantown. The steady stream of truck traffic also stifles business development in and around the Pleasant and Walnut Street areas.

Safe Streets Morgantown has presented the City with comprehensive, well-written proposed amendments to Articles 301 and 347 of the Municipal Code. The amendments are narrowly and specifically tailored, are fully authorized by the State Code and are in line with the City's stated policy goals.

I respectfully remind the Council that "safety" cannot be quantified by simply looking at traffic collisions. "Safety" also encompasses our residents' and downtown business owners' emotional well-being, welfare and sense of security – all of which are directly and negatively affected by the subject heavy truck traffic.

There is no rational reason for the City to continue to allow the desires of the one percent to trump the voices of the people and their elected representatives. I implore you all to act decisively and pass the proposed amendments. Take control of the City's future, and continue to make downtown Morgantown vibrant, clean and safe for us all.

I would request that this email be read aloud during the public portion of tonight's City Council meeting agenda.

Sincerely,

Michael Simms

Simms Law Office
68 High Street
Morgantown, WV 26505

Phone: (304) 296-7776
Mobile: (304) 588-3469
Fax: (304) 296-7774

Safe Streets Morgantown

Outline of Analysis of Federal Highway Transportation Laws & Regulations

Federal laws and regulations that may affect the City of Morgantown's ability to adopt or enforce an ordinance restricting heavy through truck traffic:

49 U.S.C. §14501: Scope of Federal Authority over Intrastate Transportation

- Section (c) relates to “motor carriers of property”
- Subsection (c)(1) states the general rule that States cannot enact laws or regulations affecting interstate or intrastate transportation
- Subsection (c)(2)(A) provides a specific exception; subsection (c)(1) “shall not restrict the *safety regulatory authority* of a State with respect to motor vehicles, the authority of a State to impose highway route controls or *limitations based on the size or weight of the motor vehicle . . .*”
- The safety regulatory authority and the size and weight exception are two separate bases for State laws not being preempted by 49 U.S.C. § 14501(c)(1). *California Dump Truck Owners Ass'n v. Davis*, 302 F. Supp. 1139, 1144 (E.D. Cal. 2002)
 - To fall within the safety exception, the ordinance “must be genuinely responsive to safety concerns.” *Am. Trucking Associations, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1053 (9th Cir. 2009)
 - Court will likely consider the legislative history of the ordinance in determining whether the regulation was enacted in response to safety concerns. *Automobile Club of New York, Inc. v. Dykstra*, 520 F.3d 136, 145 (2d Cir. 2005) (“First, a court ‘must consider any specific expressions of legislative intent in the statute itself as well as the legislative history.’ Then, it must assess those ‘purported safety justifications . . . in light of the existing record evidence.’”)

Analysis: The language of the proposed ordinance, and the supporting documentation, make it clear that the City is exercising its “safety regulatory authority” in enacting the ordinance. Moreover, the proposed ordinance would impose limitations based on the size or weight of the vehicle. There is no federal preemption issue, as the proposed ordinance is consistent with the State’s (and City’s) authority under 49 U.S.C. § 14501(c)(2).

Federal Regulations: Commercial Motor Carrier Safety Assistance Program (MCSAP) (49 C.F.R. Part 350)

- Promotes adoption and uniform enforcement of safety rules, regulations, and standards compatible with the Federal Motor Carrier Safety Regulations (FMCSRs) and Federal Hazardous Material Regulations (HMRs).
- State must review any new law or regulation affecting commercial motor vehicle (CMV) safety to determine compatibility with FMCSRs and HMRs.
- State must conduct an annual review of laws and regulations for compatibility and report the results in its annual Commercial Vehicle Safety Plan (CVSP). In West Virginia, the CVSP is prepared by the Public Service Commission (PSC).

roads within its area of jurisdiction.” *Consolidated Freightways Corp. of Delaware v. Larson*, 647 F.Supp. 1479, 1483 (M.D.Pa.1986)

- States allowed to make own interpretations of “reasonable access”; “states may only exercise their police powers reasonably and in the interests of public safety.” *Consolidated Freightways*, 617 F.Supp. at 1484
- Reasonable access includes weight limitations requiring detours of a few miles to access the Interstate system from the amenities defined in the STAA. *Aux Sable Liquid Products v. Murphy*, 526 F.3d 1028, 1036 (7th Cir. 2008), *New Hampshire Motor Transp. Ass’n v. Town of Plastow*, 67 F.3d 326, 330 (1995).

Analysis: The proposed ordinance is a valid exercise of the City of Morgantown’s police powers in the interests of public safety, and does not violate the STAA. The proposed ordinance imposes “reasonable restrictions, based on safety considerations,” and is entirely consistent with the powers of the State (and cities) under 49 U.S.C. §31114(b).

Federal Regulations under STAA: 23 C.F.R. Part 650

- “No State may enact or enforce any law denying access within 1 road-mile from the National Network using the most reasonable and practicable route available except for specific safety reasons on individual routes.” 23 C.F.R. §658.19(d) U.S. 19 is identified as part of the National Network. *Appendix A to 23 C.F.R. Part 658*
- States are required to ensure compliance with these requirements “for roads under the jurisdiction of local units of government.” 23 C.F.R. §658.19(b)
- States are required to submit access provisions to the Federal Highway Administration (FHWA) for approval. 23 C.F.R. §658.19(f)(1)
- “The FHWA may, at a State’s request, approve State provisions that differ from the requirements . . . if FHWA determines that they provide reasonable access for STAA-dimensioned vehicles and do not impose an unreasonable burden on motor freight carriers, shippers and receivers and service facility operators.” 23 C.F.R. §658.19(f)(2)

Analysis: The proposed ordinance does nothing to deny access from the National Network (which includes the interstates and U.S. Route 19) to the amenities defined in the STAA. While the proposed ordinance affects access within 1 road-mile of the National Network, it is justified for “specific safety reasons on individual routes,” as authorized by 23 C.F.R. §658.19(d). “Reasonable access” has been defined to include weight limitations requiring detours of a few miles.

Have you been noticing that the trucks are also running on Saturdays? Some downtown business owners and residents living in Greenmont and South Park have definitely noticed.

There are lots of other things that people notice about the trucks in terms of ...

- 1) the safety benefits and security which are compromised while walking on a shaking Walnut Street Bridge,
- 2) the early morning convoys which concentrate diesel fumes and noise in narrow corridors of their streets and houses,
- 3) feeling apprehension when massive 80,000 pound rigs are consistently cutting over white lines while doing jug handle and button hook maneuvers in heavy traffic,
- 4) stopping what they are doing every time a truck uses engine brakes on slopes in the downtown and residential areas to control very heavy loads - which once in a while shift, spill, and create more problems for community traffic flow and for City clean-up crews - whose services go unreimbursed by the stone company and by the trucking companies.

But there are some things which are not noticed about the trucks. The trucks do pay taxes to the state and federal government, but there is no direct payment per load to the City of Morgantown for wear and tear on sidewalks, signs, and curbs or for any City public services which are required.

The stone company does pay property taxes which partially benefit the City for property near the Beechurst Power Plant, but it is not noticed that there are no B and O taxes paid from the stone business which benefit Morgantown directly. All financial transactions for trucking the stone take place per load outside of the City limits and not taxable by the City. And so when trucks drive through downtown to the Power Plant, or through downtown Morgantown to fracking well sites and pipeline projects in Wetzel County, they interrupt the commerce of all other business people free of charge! Even a single flower shop pays more B&O taxes than do the hundreds of trucks which lumber through the City day after day – beginning at 3:30-4:00 in the morning and awakening personnel who work at hospitals and nursing homes, people who work in stores, people who teach and study, and young children – all too early from their shortened essential sleep. The rolling thunder continues often until around 3 p.m. in the afternoon.

And have you noticed where the diesel fuel gets purchased? We have been led to believe that trucks benefit Morgantown by buying their fuel at places such as Sheetz and Kroger's. But in reality all fuels are exempt in WV Cities from B and O taxes and that means there is no direct benefit for the City of Morgantown from truck fuel sales. Regardless many, many gallons of diesel are purchased in Masontown and Richard and Dellslow where there is often a perception that taxes on fuel are less.

The City's heavy truck ordinance would require DMV registered heavy Federal Class 7 and Class 8 trucks to use the Interstate Highway 68 or else the Greenbag Road – which

was built in the early 1950' by a cement company, for guess what: to be a truck route going to a loading dock! Using the Greenbag road is a 3 miles longer drive to the Power Plant loading area off Beechurst than driving through the downtown but it has the same number of traffic lights - plus a higher speed zone area on South University Ave and on most of the Greenbag and Aaron's Creek Roads.

If the stone company would reactivate their loading area by the Water Treatment Plant...

- 1) the driving distance would be very nearly the same for trucking companies,
- 2) there would be only one stop sign and one traffic light on the Greenbag Route and only three traffic lights on the Interstate Route,
- 3) there would be reduced risk for the trucking companies and increased safety benefits for the high density business and residential districts in the City, and
- 4) the Morgantown Locks could be reactivated, benefitting recreation and commerce on the upper Mon River.

But let us be very clear about all this. Morgantown's basic truck problem is not with the trucking companies. If the stone company wants to respect the commerce in the Downtown Business District and protect the neighborhoods directly involved – as many other large corporations do in other communities - it will change its dock location or it will compensate the trucking companies for the costs of traveling those additional 3 miles each way on Greenbag Road.

- 1) This would be a case of a mega-business slightly reducing its profits in support of the commercial opportunities for other present and future business people in the downtown.
- 2) It would be an acknowledgement of the rights of families to live in a safer and healthier environment.
- 3) It would give property owners along Route 7 some incentive to fix-up and reinvest in their properties, and
- 4) it would help improve the overall livability of Morgantown – a community whose well being we all have a stake in - even for people do not live in the City– including the owners and employees and contractors and their families of a stone company on Decker's Creek.

I commend the Council for noticing the truck problem. I also commend you for showing the courage to care for business people and residents of all ages and backgrounds in the City, and for taking steps to pass the first reading of the ordinance. I fully support you in taking the second step tonight.

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Morgantown