

February 4, 2022

TO: City Council Member Ron Messer, Chair
Law and Safety Committee of City Council

FROM: Brian K. Riblet, City Manager *BKR*

SUBJECT: Law and Safety Committee Meeting of Monday, February 7, 2022

As a reminder, the Law and Safety Committee is scheduled to meet on Monday, February 7, 2022 at 3:30 p.m. Those agenda items to be discussed include:

1. Overview of Emergency Operation Plan—Staff will be present to provide an overview of the Emergency Operation Plan to the Committee.
2. Other Business - The purpose of the agenda item is to provide an opportunity to discuss any issue or ask any questions that may be on your mind.

Also attached are the minutes from the December 6, 2021 meeting of the Law and Safety Committee for review and approval at Monday's meeting.

Should you have questions or concerns prior to the agenda topic or have additional items to be discussed at the meeting, please do not hesitate to contact me.

c: Law and Safety Committee Members (2)
Mayor and City Council Members (4)
John Crowell, Police Chief
Paul Wright, Fire Chief
Connie Gaylor, Administrative Coordinator
File

AGENDA

**February 7, 2022
3:30 P.M.
City Hall**

1. Call to Order
2. Guests and Residents
3. Communications
4. New Business
 - a. Overview of the Emergency Operation Plan
5. Old Business
6. Executive Session
7. Approval of Minutes: December 6, 2021
8. Other Business
9. Adjournment

These minutes are a draft of the proposed minutes from the Law and Safety Committee of the City Council meeting. They do not represent the official record of proceedings until formally adopted by the Law and Safety Committee of City Council. Formal adoption is noted by signature of the Chair within the minutes.

City of Montgomery
Law and Safety Committee of City Council Meeting
December 6, 2021

Present

Brian Riblet, City Manager
John Crowell, Chief of Police
Terry Donnellon, Law Director
Gary Heitkamp, Public Works Director
Paul Wright, Fire Chief
Connie Gaylor, Clerk of Council

Committee Members Present

Lee Ann Bissmeyer, Chair
Ron Messer
Ken Suer
Sasha Naiman

Guests and Residents

Brian Burress-7550 Kennedy Lane
J.P. Burleigh, Esq.

The Law and Safety Committee of Council convened its meeting for December 6, 2021 at 3:30 p.m. with Mrs. Bissmeyer presiding.

No Engine Brake Discussion

Mr. Heitkamp explained that on June 21, 2020, he received an email from Elizabeth Burress of 7550 Kennedy Lane requesting that "No Engine Brake" signs be installed on Ronald Reagan Cross County Highway (SR 126) within the limits of the City of Montgomery due to the noise generated by trucks applying their engine brakes (aka jake brakes). Ms. Burress had communications prior to that with Elizabeth Lyons of ODOT District 8 regarding the matter. Ms. Lyons indicated that it is a local matter as ODOT does not restrict engine brakes, however local governments can by passing a resolution. He stated that upon receiving this email, Staff performed research, discussed the matter, and provided a response to Ms. Burress on August 17, 2020 indicating that Staff was not in favor of installing the signs due to concerns that the signs are ineffective and can be difficult to enforce. On May 15, 2021, City Council and Staff received an email from Brian Burress of 7550 Kennedy Lane requesting that the use of engine brakes (aka jake brakes) be prohibited on Ronald Reagan Cross County Highway within the limits of the City of Montgomery. The request claims that noise caused by trucks applying engine brakes is disruptive and has recently increased. Staff discussed the request again and provided a response to Mr. Burress on May 26, 2021 citing ODOT's Traffic Engineering Manual (TEM) Section 201-7 which states "imposing such restrictions may be inconsistent with federal law, and thus pre-empted and unenforceable", and thus Staff had not changed their stance. (Section 201-7 of the TEM is attached for your information.) On September 9, 2021, Terry Donnellon, Law Director, received a letter from Sean S. Suder, counsel for Brian Burress, requesting that the Council of the City of Montgomery enact an ordinance prohibiting the use of engine brakes in and around the new roundabout where Cross County Highway meets Montgomery Road, claiming that there has been a marked increase in noise since the construction of the roundabout. Upon receiving Mr. Suder's letter, Staff discussed the request again, and opted to conduct a truck traffic count on Ronald Reagan Cross County Highway in order to determine the amount of truck traffic

These minutes are a draft of the proposed minutes from the Law and Safety Committee of the City Council meeting. They do not represent the official record of proceedings until formally adopted by the Law and Safety Committee of City Council. Formal adoption is noted by signature of the Chair within the minutes.

Law and Safety Committee Minutes

December 6, 2021

Page 2

experienced in the East Bound direction of Cross County Highway during a typical weekday. West Bound traffic was not considered as trucks would be accelerating from Montgomery Road towards I-71, thus not braking. Staff utilized CT Consultants, the City's engineering consultant under contract, to perform the truck traffic counts. CT Consultants was tasked to count all trucks (both single unit trucks and tractor-trailer trucks) heading east on Cross County Highway, and to count the number of trucks that emitted noise consistent with application of an engine brake. The count was performed on Wednesday, October 6, 2021, which was randomly chosen, from 6:00AM and 6:00PM. In addition, Mr. Heitkamp stated that he emailed Tom Arnold with ODOT District 8 on October 20, 2021 regarding the matter. Mr. Arnold responded on October 21, 2021 stating that he "would be reluctant to pass an engine brake restriction for SR 126 since it is a freeway or the end of a freeway". Mr. Arnold also cited Section 201.7 of the TEM.

Mr. Heitkamp stated that with the information available at this time, Staff does not feel it is necessary to enact an ordinance prohibiting the use of engine brakes and installing "No Engine Brake" signs on Cross County Highway. This is based on a number of considerations:

- The ineffectiveness of a "No Engine Brake" ordinance and associated signage. It is staff's opinion that these ordinances and signs are largely ignored by truck drivers.
- The majority of noise generated from Cross County Highway traffic is not a result of engine brake application. Staff has experienced a very similar noise to engine braking at the subject location when trucks are accelerating in the west bound direction.
- Truck traffic volume has been higher than normal over the past couple of years due to the construction of the roundabout project, the on-going construction of the Montgomery Quarter development project, and most recently construction of a new parking field at Moeller High School. Once construction is concluded, it is anticipated the number of trucks entering and exiting Cross County Highway will reduce, and thus the subsequent noise will be diminished.
- Staff has received minimal complaints over the past couple of years regarding the noise of Cross County Highway, even with the amount of construction activity occurring in close proximity to Kennedy Lane and Hartfield Place.
- Staff feels that enacting a "No Engine Brake" ordinance will be difficult to enforce.

Mr. Heitkamp recommends that staff continue to monitor the truck traffic and resultant noise to determine if further action is warranted in the future.

Chief Crowell explained that the difficulty of enforcement is having an officer assigned to that area to listen for the jake brake sound to be heard. He stated that even if they did hear it if the driver stated it was used for a safety reason, they couldn't issue a citation for using it. He stated he wasn't sure know effective a restriction would be.

Mr. Donnellon added that a long study was done in the past couple of years to update the Noise Ordinance and while we may perceive something as being loud or noisy, it may not be outside of the acceptable decibels. He stated that if a "No Jake Brake" rule was

These minutes are a draft of the proposed minutes from the Law and Safety Committee of the City Council meeting. They do not represent the official record of proceedings until formally adopted by the Law and Safety Committee of City Council. Formal adoption is noted by signature of the Chair within the minutes.

Law and Safety Committee Minutes

December 6, 2021

Page 3

95 added to the Ordinance that provisions would have to be made on how to measure it and
96 if it was a sustained noise which in this case it is considered incidental.

97
98 Mrs. Bissmeyer asked if there was signage that could slow drivers so they wouldn't drive
99 so fast and need to use the Jake brake.

100
101 Mr. Heitkamp stated he felt there is signage to that effect now, but he would verify the
102 exact wording.

103
104 Mr. Suer asked Mr. Burress if he would like to address the Committee.

105
106 Mr. Burress deferred to his counsel, J.P. Burleigh.

107
108 Mr. Burleigh explained that he was co-counsel with Suder LLC. He explained that Mr.
109 Burress has been a resident since 1994 and is concerned with the increased noise
110 resulting from the roundabout. Mr. Burleigh thanked staff for employing a consultant to
111 try to understand the problem however, he felt that one day of traffic study did not
112 capture the entire problem. He stated that while he understands that all laws have a
113 problem with enforceability that doesn't mean that it is not good to have them in place.
114 He stated that even if the noise could be reduced by a half that would be a big difference.
115 Mr. Burleigh stated that Mr. Donnellon referred to concerns about reasonability. He
116 explained that engine brake prohibitions are common and not unique to Montgomery nor
117 created by Mr. Burress.

118
119 Mr. Burleigh referenced the Traffic Engineer Manual of 2017 that was used as a basis for
120 not enacting a Jake brake prohibition and stated that Section 4917 refers to a private
121 opinion provided to ODOT not the public. He stated that since Ronald Reagan is a
122 highway and not an interstate route that it wouldn't apply. He stated that the Noise
123 Control Act of 1972 allows federal agencies to promulgate rules in interstate commerce.
124 He stated that there is no conflict between regulations and that signs are not preempted
125 by federal law. He stated that federal courts have interpreted the Acts to be left to the
126 local governments to handle on their own.

127
128 Mr. Burress explained that he recently travelled through Pennsylvania on Interstate 76
129 where there were "No Jake Brake" signs installed. He stated that he felt regulations based
130 on a decibel meter is the wrong thing to do. He stated that the study reflects 20% of the
131 traffic on Ronald Reagan was trucks with Jake brakes and he felt it was high seeing how
132 15 to 20 homes back up to the highway. He stated that he felt the location of the exit
133 ramp since the installation of the roundabout was a contributing factor as before the
134 construction the trucks had the loop in which to slow down before coming to the traffic
135 signal and now the distance is much shorter. He added that he didn't feel that
136 Montgomery police enforce traffic laws.

137
138 Mr. Suer asked Mr. Burress how much general noise he received.

139

These minutes are a draft of the proposed minutes from the Law and Safety Committee of the City Council meeting. They do not represent the official record of proceedings until formally adopted by the Law and Safety Committee of City Council. Formal adoption is noted by signature of the Chair within the minutes.

Law and Safety Committee Minutes

December 6, 2021

Page 4

Mr. Burress stated that it is very noisy when he is in his back yard. He stated that he has learned to accept normal noise but the jake brake noise is greater than it used to be.

Mr. Suer stated that over time the number of communications from residents regarding the noise has slowly increased due to their properties abutting the highways. He stated that even with sound walls the noise would still be there. He stated that he understood the engine brakes give a very distinctive sound. He also explained that it has to be considered that our police department covers three shifts so there are a limited number of officers and cruisers available each shift.

Chief Crowell added that there are two patrol officers and one sergeant performing traffic control each shift.

Mr. Suer stated that patrol officers can't be everywhere at all times so it is not realistic to think there will be an officer posted in that area every day, all day. He stated that he would be interested in knowing how many communities have used signs and how effective they are. Mr. Suer added that the truck traffic is unusually higher because of the construction. He added that staff knows the companies involved in the development and could reach out to them to pass along the noise concerns.

Mr. Burress stated that he understands it is a safety concern to try to limit the use of the brakes, but he is hearing that the City doesn't want to enforce the law.

Mr. Suer replied that is not what is being said he was pointing out the difficulty of being able to enforce it.

Mr. Burleigh stated that it is the role of the legislative body to address these kind of concerns. He stated that why noise is a normal part of traffic, engine brakes are unusual and unnecessary.

Mr. Messer stated that he thought it was a good suggestion to work with the developers to control the use of them by informing their drivers of the roundabout and traffic changes. Mr. Messer stated that per the study that Mr. Korros did, the vast number of trucks were around 8:00 a.m. He stated that it may require more investigation to be done on the noise in the morning.

Mr. Burress stated that it was his theory is that it was traffic coming off of 126.

Mrs. Bissmeyer asked what kind of trucks have these kind of brakes.

Mr. Burleigh responded that it was not all trucks just semitrucks. He stated that were designed to be used during an emergency.

Mrs. Bissmeyer asked if there would be any liability on the City if the signs prohibiting them were installed.

These minutes are a draft of the proposed minutes from the Law and Safety Committee of the City Council meeting. They do not represent the official record of proceedings until formally adopted by the Law and Safety Committee of City Council. Formal adoption is noted by signature of the Chair within the minutes.

Law and Safety Committee Minutes

December 6, 2021

Page 5

Mr. Donnellon stated that there would not be. He stated that we could enact a no jake brake rule, but the question was should we. He said if it is an issue of sound that those typically comes from a multi-axle diesel truck. He asked if a sign would solve the problem.

Mrs. Bissmeyer stated that she felt the quality of life should be the primary concern. She stated that if there was no downside to the City and if it reduces the noise that a sign could be a compromise.

Mr. Donnellon stated that he would like to measure the noise to see if it was beyond a level of what we could tolerate in a residential area. He stated he would like to see a study on noise not on traffic count.

Mr. Riblet asked Mr. Burress if this was an issue prior to the Montgomery Quarter and roundabout construction.

Mr. Burress replied not that he noticed.

Mr. Riblet explained that he would attribute it to the construction of the roundabout and the Montgomery Quarter. He added that it would be several years before the construction was complete but that it would diminish as the construction continued to get finished. He stated that communications have been sent to the development team regarding noise in an effort to defray the use of the brakes and noise. He also stated that Tom Arnold with ODOT is an expert in his field and the City highly respects his opinion. He stated that staff will continue to monitor the traffic and seek ways to alleviate things now prior to making any changes.

Mr. Burress added that nothing that was said was meant to disparage the police department. He stated that he would support a tax ordinance to hire additional staff for the police department.

Chief Crowell explained that he knew noise is a quality-of-life issue and the use of stop signs and speed limit signs are used to address safety issues. He stated that enforcement can look uneven as they continually monitor where safety issues are the most prevalent in an effort to patrol those areas.

Mr. Suer stated that he would suggest that this issue be tabled until further study is conducted on the noise levels.

Mr. Messer stated that he is very data driven and he would like to see further study done around this issue.

Mr. Suer moved to table the jake brake discussion. Mr. Messer seconded. The Committee unanimously agreed.

Mr. Burleigh thanked the Committee for their time and the discussion. He offered his services if needed.

These minutes are a draft of the proposed minutes from the Law and Safety Committee of the City Council meeting. They do not represent the official record of proceedings until formally adopted by the Law and Safety Committee of City Council. Formal adoption is noted by signature of the Chair within the minutes.

Law and Safety Committee Minutes

December 6, 2021

Page 6

Minutes

Mr. Suer made a motion to approve the minutes of the August 2, 2021 meeting. Mr. Messer seconded. The Committee unanimously approved the minutes.

Other Business

Mrs. Bissmeyer asked if the Council Sunshine funds could be used to purchase meals for the staff that work holidays or snow events. Chief Wright thanked Mrs. Bissmeyer for the offer but explained that there are several local businesses who donate quite a bit of food on the holidays.

Mr. Heitkamp also thanked Mrs. Bissmeyer but stated that the number of drivers who would be present during a snow event was small and arranging for food wouldn't be necessary.

Adjournment

Mr. Suer made a motion to adjourn the meeting. Mr. Messer seconded. The Committee unanimously agreed.

The Law and Safety Committee meeting adjourned at 4:36 p.m.

Chair of Law and Safety Committee of City Council