

## **MEMORANDUM OF LAW**

**DATE:** November 7, 2001

**TO:** Allen Holden, Jr., Deputy Director, Transportation Department

**FROM:** City Attorney

**SUBJECT:** Prohibiting Overweight Vehicles on Black Mountain Road Between Camino Ruiz and Carmel Mountain Road

### **INTRODUCTION**

You asked whether heavy trucks might be prohibited from using a certain section of Black Mountain Road, which traverses the community of Rancho Penasquitos, north of Carmel Mountain Road. Black Mountain Road is a major thoroughfare running roughly north-south in this area, until it veers west just north of Emden Road. After that point, the road is alternatively called Carmel Valley Road or Black Mountain Road.

Your inquiry was prompted by community complaints regarding increased heavy truck traffic, primarily construction-related vehicles, from the many new developments in the surrounding area. Specifically, you asked the three questions set forth below. For purposes of clarity in addressing those questions, we have divided the roadway into three sections defined as follows: (1) "Carmel Valley Road" refers to the section west of Camino Ruiz; (2) "Black Mountain Road" refers to the section between Carmel Mountain Road and the northern corner where the road veers west; and (3) "Loop Road" refers to the section between that corner and Camino Ruiz. (See Exhibit 1 for reference).

### **QUESTIONS PRESENTED**

1. May the City of San Diego prohibit trucks exceeding a maximum gross weight from using Black Mountain Road and the Loop Road?
2. Would trucks, exceeding that maximum gross weight, which are traveling to/from various parcels under development along Carmel Valley Road or the Loop Road be exempt from the weight restrictions?

3. If a vehicle weight restriction is permissible, may the prohibition be limited to certain hours, e.g., school hours?

### **SHORT ANSWERS**

1. With the exception of passenger buses, certain public utility vehicles, and certain refuse trucks, the City may prohibit any commercial vehicle or any vehicle exceeding a maximum gross weight from using Black Mountain Road and the Loop Road.
2. Commercial vehicles exceeding that maximum gross weight which are traveling to/from developments along Carmel Valley Road would not, in all likelihood, be exempt from the weight restrictions. However, commercial vehicles exceeding that maximum gross weight which are traveling to/from developments along the Loop Road would be exempt.
3. The prohibition can be limited to certain hours, e.g., school hours.

### **BACKGROUND**

Significant development is underway in the area of Carmel Valley Road and the Loop Road. The Loop Road is relatively new, having first opened for public use in Fall 2000. Since then, the ongoing development in the area appears to be generating a significant increase in truck traffic along Black Mountain Road between Camino Ruiz to the north and Carmel Mountain Road to the south.

Black Mountain Road is a four-lane road with a bicycle lane in both directions. It is entirely within the City of San Diego and is open to the public for vehicular travel. The area is completely developed and is primarily residential, although few houses actually front the street, with an increase in light commercial uses as one gets closer to Carmel Mountain Road. The 2001 Thomas Brothers Guide shows three public elementary schools and three public high schools in this vicinity. This portion of Black Mountain Road has one school zone, with a posted speed limit of 25 mph in that zone.

Rancho Penasquitos community members have raised concerns about the truck traffic along this stretch of Black Mountain Road. Specifically, they claim that: (1) numerous trucks haul heavy equipment and other construction material up and down this road day and night; (2) the truck drivers often speed and sometimes run stop signs/lights on Black Mountain Road; (3) the truck drivers are jeopardizing the safety of the many children who cross Black Mountain Road on their way to and from school; and (4) the trucks are very noisy at night.

Community members believe many trucks travel this stretch of Black Mountain Road in order to access Interstate Highway 15 [I-15] or Interstate Highway 5 [I-5]. It is believed that prior to the opening of the Loop Road, much of this truck traffic accessed one or both of these highways via Carmel Valley Road west to State Route 56 and west to I-5. This route remains open for public use. At present, the route has no schools and has only minimal, if any, occupied housing. In this area, Carmel Valley Road is a fairly narrow, paved, two-lane road which has not been well-maintained. It has some gentle curves, only a slight grade, and minimal visual obstructions.

We understand that Black Mountain Road and the Loop Road are not part of the “National System of Interstate and Defense Highways” referenced in California Vehicle Code section 35701(c) and neither is a “state highway” as that phrase is used in California Vehicle Code section 35702. Further, we understand that this road is a city street for which “State Highway Account” funds, described in California Vehicle Code section 35705, will be or have been used for construction and/or maintenance.

## **DISCUSSION**

### **I. State Preemption of Traffic Control**

We begin our analysis by noting a manifest public policy of this State, namely that “the streets of a city belong to the people of the state, and every citizen of the state has a right to the use thereof, subject to legislative control . . . .” *Rumford v. City of Berkeley*, 31 Cal. 3d 545, 549 (1982) (citations omitted). The state legislature has sought to regulate the field of traffic control in its entirety. That intent is expressed in California Vehicle Code section 21 which states: “Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the State and in all counties and municipalities therein, and no local authority shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized herein.” Cal. Veh. Code 21; *Rumford*, 31 Cal. 3d at 550.

Consequently, “unless express authority is granted, a local government has no authority to regulate or control any matter covered by the Vehicle Code.” *Biber Electric Co. v. City of San Carlos*, 181 Cal. App. 2d 342, 344 (1960); see also, *Atlas Mixed Mortar Co. v. City of Burbank*, 202 Cal. 660 (1927). Moreover, any express delegation of authority is to be strictly construed. *Rumford*, 31 Cal. 3d at 550.

Accordingly, we turn to the Vehicle Code to determine the existence of, and limitations upon, any express authorization to prohibit vehicles exceeding a maximum gross weight from using certain City streets. Four sections of the Code are relevant to the above inquiries.

### **II. City Authority to Prohibit Vehicles Exceeding Maximum Gross Weight**

First, Vehicle Code section 35701 provides in pertinent part:

35701. Decreases by cities or counties; exceptions

(a) Any city . . . may, by ordinance, prohibit the use of a street by any commercial vehicle or by any vehicle exceeding a maximum gross weight limit, except with respect to any vehicle which is subject to Sections 1031 to 1036, inclusive, of the Public Utilities Code, and except with respect to vehicles used for the collection and transportation of garbage, rubbish, or refuse using traditionally used routes in San Diego County when the solid waste management plan prepared under Section 66780.1 of the Government Code is amended to designate each traditionally used route used for the purpose of transporting garbage, rubbish, or refuse which intersects with a local or regional arterial circulation route contained within a city or county’s traffic circulation element and which provides access to a solid waste disposal site.

(b) The ordinance shall not be effective until appropriate signs are erected indicating either the streets affected by the ordinance or the streets not affected, as the local authority determines will best serve to give notice of the ordinance.<sup>1</sup>

Cal. Veh. Code 35701. “Street” and “highway” are identically defined as: “a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel.” Cal. Veh. Code 360, 590.

Second, section 35702 provides in pertinent part:

35702. Approval of ordinance

No ordinance proposed under Section 35701 is effective with respect to any highway which is not under the *exclusive jurisdiction* of the local authority enacting the ordinance or, in the case of any state highway, until the ordinance has been submitted by the governing body of the local authority to, and approved in writing by, the Department of Transportation.

Cal. Veh. Code 35702 [emphasis added].

Third, section 35703 provides:

35703. Commercial vehicles

No ordinance adopted pursuant to Section 35701 shall prohibit any *commercial vehicles* coming from an unrestricted street having ingress and egress by direct route to and from a restricted street when necessary for the purpose of making pickups or deliveries of goods, wares, and merchandise from or to any building or structure located on the restricted street or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling, or construction of any building or structure upon the restricted street for which a building permit has previously been obtained.

Cal. Veh. Code 35703 [emphasis added]. “Commercial vehicle” means: “[A] motor vehicle of a type required to be registered under this code used or maintained for the transportation of persons for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property.” Cal. Veh. Code 260.

Fourth, Vehicle Code section 35704 provides: “No ordinance adopted pursuant to section 35701 to decrease weight limits shall apply to any vehicle owned by a public utility or a licensed contractor while necessarily in use in the construction, installation, or repair of any public utility.” Cal. Veh. Code 35704.

Extensive research has revealed only a handful of cases interpreting Vehicle Code sections 35701-35703. Only one of those directly addresses the exemption codified in section 35703. None addresses whether vehicle weight restrictions may be limited to certain hours of the day.

Nevertheless, despite the paucity of cases, some fairly clear guidance emerges from them. To begin with, Vehicle Code section 35701 clearly grants cities the authority to prohibit the use of a City street by vehicles exceeding a maximum gross weight.<sup>2</sup> *Pacific Ready-Mix, Inc. v. City of Palo Alto*, 263 Cal. App. 2d 357, 361 (1968); *Ratkovich v. City of San Bruno*, 245 Cal. App. 2d 870, 877 (1966); *Neary v. Town of Los Altos Hills*, 172 Cal. App. 2d 721, 723 (1959); *McCammon v. City of Redwood*, 149 Cal. App. 2d 421, 424 (1957). That authority applies to streets within the City's "exclusive jurisdiction," which has been interpreted to mean that portion of a street within City boundaries, regardless of whether the street originates outside City limits. *Pacific Ready-Mix, Inc.*, 263 Cal. App. 2d at 361; *Skyline Materials, Inc. v. City of Belmont*, 198 Cal. App. 2d 449, 458 (1961); *McCammon*, 149 Cal. App. 2d at 424. Black Mountain Road and the Loop Road are completely within City limits. Thus, the City has jurisdiction to restrict their use by commercial vehicles or vehicles exceeding a maximum gross weight.

The weight limit must be imposed by ordinance. Cal. Veh. Code 35701. Courts have traditionally upheld vehicle weight limit ordinances where the reasonableness of the ordinance is at least a "debatable question." *Ratkovich*, 245 Cal. App. 2d at 879, 882-83; *Skyline*, 198 Cal. App. 2d at 455. A "debatable question" is one about which reasonable minds could differ. *Id.* Stated slightly differently, the ordinance need not reflect the best solution to a particular problem, or even the alternative a court would choose, as long as it is reasonably and substantially related to the problem the city is attempting to remedy. *Ratkovich*, 245 Cal. App. 2d at 878-79; *Skyline*, 198 Cal. App. 2d at 454-55. Conversely, an ordinance which is manifestly unreasonable, arbitrary, or capricious and bears no substantial relation to the public health, safety, morals, or general welfare will not withstand judicial scrutiny. *Ratkovich*, 245 Cal. App. 2d at 879; *Skyline*, 198 Cal. App. 2d at 454-55.

Moreover, courts have acknowledged that, in the enforcement of nearly all regulatory provisions, added burdens, inconveniences, and expenses may be incurred by those subject to the ordinance. However, when these burdens are "not so unreasonable as to be unnecessarily burdensome, all citizens must yield for the general or common good." *McCammon*, 149 Cal. App. at 427. Hence, incidental expenses, burdens, or inconveniences resulting from enforcement of an ordinance do not of themselves make an ordinance unreasonable. *McCammon*, 149 Cal. App. at 427 (fact that alternate route was longer and steeper making it more expensive to use did not invalidate ordinance); *Skyline*, 198 Cal. App. 2d at 457-58 (ordinance not invalid merely because alternate route steeper, longer, more narrow, and more curvy). On the other hand, an ordinance which is wholly confiscatory as to any particular individual or entity may be invalid as to that individual or entity. *Neary*, 172 Cal. App. 721, 729-30 (ordinance which effectively landlocked quarry in existence for decades before ordinance enacted was deemed invalid); *San Leandro Rock Co. v. City of San Leandro*, 136 Cal. App. 3d 25, 35, 37 (1982) (ordinance invalid where enforcement would force closure of quarry because no *feasible* alternative route existed).

In determining whether an ordinance meets the debatable question test, the courts have reviewed the facts upon which the legislative body based its decision. *Ratkovich*, 245 Cal. App. 2d at 880-83; *Skyline*, 198 Cal. App. 2d at 456; *McCammon*, 149 Cal. App. at 427; *San Leandro Rock Co.*, 136 Cal. App. 3d at 36. Those ordinances which have been upheld in the face of a judicial challenge were supported by evidence demonstrating: (1) the negative effects of overweight vehicles including adverse traffic impacts, public safety hazards, actual or potential road damage,

and general community welfare problems such as noise and pollution; and (2) the existence of a reasonable alternative route for the prohibited vehicles. *Id.*

The existence of a *reasonable* alternative route is a crucial factor in demonstrating the reasonableness of the ordinance. *Id.*; *San Leandro Rock Co.*, 136 Cal. App. 3d at 37; *Neary*, 172 Cal. App. 2d at 729-30. The route need not be better than nor even equal to the restricted route, and it need not be designated in the ordinance. *See San Leandro Rock Co.*, 136 Cal. App. 3d at 37; *Skyline*, 198 Cal. App. 2d at 456-57; *McCammon* 149 Cal. App. 2d at 427. Moreover, it need not be entirely within the city limits, as long as it exists. *Skyline*, 198 Cal. App. 2d at 454; *McCammon*, 149 Cal. App. 2d at 425.

Based on the facts presently known to us, support for a weight restriction ordinance exists. The proposed restriction is along Black Mountain Road and the Loop Road which are primarily residential in nature, with schools in the vicinity of and one school zone actually on Black Mountain Road. According to residents, children cross Black Mountain Road going to and from school. There are bicycle lanes in both directions along Black Mountain Road. Residents claim truck traffic to and from the various developments in the area has increased significantly since the Loop Road opened. They claim trucks speed along the road and sometimes run red lights, endangering pedestrians as well as other traffic. In addition, residents are experiencing increased noise from the trucks during nighttime hours. These negative impacts are all similar to those the courts have relied on in upholding vehicle weight limit ordinances.

It also appears an alternate route exists for commercial or overweight vehicles traveling to/from those developments on Carmel Valley Road west of Camino Ruiz. That route is a paved, two-lane road with gentle curves, only a slight grade, and minimal visual obstructions. At this time, there are no school zones and only minimal, if any, occupied housing along it. It is a more narrow road than Black Mountain Road and requires traffic accessing I-15 to travel a greater distance. Nevertheless, we are told that before the Loop Road opened, area developers used Carmel Valley Road routinely to access I-5 and I-15. Thus, the alternate route appears to provide reasonable access to the above-described developments.

On the other hand, the ordinance may not withstand a legal challenge, if applied to commercial or overweight vehicles traveling to/from developments on the Loop Road itself since it would presumably entirely preclude access for development of those properties. Indeed, commercial vehicles traveling to/from those locations probably would be exempt under California Vehicle Code section 35703.

### **III. Exempt Vehicles**

As mentioned above, whether Vehicle Code section 35703 would exempt overweight commercial vehicles, such as the trucks at issue, is an unsettled question. Research has revealed that only the *Ratkovich* case directly addressed section 35703. That reference was only in dicta, which means it is not binding in future cases. Nevertheless, the opinion is well-reasoned and is consistent with the plain language of the statute. Thus, it provides some guidance.

For purposes of the section 35703 analysis and based on the facts presented, it is assumed that

the trucks at issue constitute commercial vehicles coming from unrestricted streets having direct access to the proposed restricted road and ostensibly using the restricted road for purposes of pickups, deliveries, or construction/repair work. Given these assumptions, the question becomes whether the use is “necessary.” The *Ratkovich* court interpreted “necessary” very strictly. The court noted that both sections 35703 and 35704 used the word “necessary” to limit the exemptions provided in each section. Reviewing those two sections together, the court concluded their purpose was to allow cities to:

[P]rescribe regulations for business and commercial vehicles on city streets in furtherance of the orderly conduct of such traffic, the safety of the residents, the protection and preservation of the streets and the general welfare of the community (*Whyte v. Sacramento*, 65 Cal. App. 534, 548 (1924)), but at the same time to see to it that such vehicles, while subject to restriction, can be used for their proper functions where the vehicles are necessarily in such use. “Necessarily” means “in such a way that it cannot be otherwise: \* \* \* inevitably, unavoidably” (Webster’s Third New International Dictionary).

*Ratkovich*, 245 Cal. App. 2d at 888. The court clearly distinguished “necessary” from merely more convenient in terms of time, distance, expense, or other factors. *Id.* In other words, it narrowly interpreted section 35703 to confer an exemption on commercial vehicles making pickups, deliveries or doing construction/repair work on the restricted street, but not those merely traversing the street on their way to provide those goods or services elsewhere. *Id.* at 888-89.

Consequently, the *Ratkovich* court held that a contractor employed in the repair of a public utility outside city limits was not exempt under section 35704 from a weight restriction ordinance imposed on a city street. A reasonable alternate route existed, and the contractor admittedly used the restricted street merely because it was the shortest and most direct route to the job site. *Id.* at 889. Hence, the court concluded the contractor’s use of the restricted street was not necessary. *Id.*

Similarly, for those trucks accessing developments along Carmel Valley Road, use of the Loop Road and Black Mountain Road is not necessary within the strict meaning of the word. Those trucks would merely be traversing the Loop Road and Black Mountain Road for nearby destinations on an unrestricted street. An alternate access route exists to these developments. In fact, heavy trucks making pickups, deliveries, and/or doing construction/repair work at these properties were routinely using that alternate route before the Loop Road was opened. So, if the *Ratkovich* definition of “necessary” were applied, those overweight trucks would not be exempt from the weight restrictions. On the other hand, overweight commercial vehicles traveling to/from those developments, if any, along the Loop Road for those same purposes would be exempt.

#### **IV. Limiting Access During Certain Hours Only**

Limiting the restriction to certain hours is probably permissible. *Ratkovich* is the only case which

considered a similar issue, namely whether the City could waive a weight limit restriction upon the issuance of a permit and the payment of fees to cover the estimated costs of anticipated road damage. *Id.* at 874-75. The court concluded that since the City had the power to entirely ban trucks exceeding a maximum gross weight from a City street, it had the “included power” to waive the ban upon the issuance of a permit subject to compliance with reasonable conditions. *Id.* at 884. Thus, it appears that a vehicle weight restriction imposed only for a limited time period each day, for example during school hours, would be permissible.

We note this conclusion is not inconsistent with the express language of section 35701, nor does it appear to expand the scope of, or alter, the authority delegated thereunder. Finally, our interpretation does not appear to run afoul of the premise with which we began our analysis, i.e., that all citizens have the right to equal access to the streets for travel by proper means, subject to legislative control.

## **V. Procedural Requirements**

As mentioned above, the vehicle weight restriction must be imposed by ordinance. Cal. Veh. Code 35701. Moreover, because the road here is presumed to be one on which “State Highway Account” funds have been or will be used, the notice and hearing procedures set forth in Vehicle Code section 35705 must be followed. Finally, if approved, the ordinance becomes effective only upon the posting of signs giving notice of the weight restriction.

## **CONCLUSION**

In sum, the City has the authority to establish maximum vehicle weight limits on designated streets within City limits. The weight limit must be imposed by ordinance. The ordinance must be supported by evidence demonstrating it is reasonably and substantially related to the concerns the City is attempting to address and by the existence of a reasonable alternative route. A weight restriction limited to certain hours of the day is probably permissible.

By law, the restriction generally would not apply to passenger buses, public utility vehicles, and refuse trucks. Further, overweight commercial vehicles accessing the new developments on the Loop Road for purposes of pickups or deliveries to such properties or engaged in construction or repair work on those properties would be exempt from any such weight restriction. Thus, these overweight trucks still could lawfully travel on Black Mountain Road. One way to remedy that problem is to exclude the Loop Road from the prohibition and restrict only Black Mountain Road.

Finally, passage of the ordinance must be preceded by compliance with the notice and hearing procedures provided for under California Vehicle Code section 35705. If approved, the ordinance becomes effective upon the posting of signs giving notice of the restriction.

CASEY GWINN, City Attorney

/ S /



By  
Grace C. Lowenberg  
Deputy City Attorney

GCL:km:mb

Attachment

cc: D. Cruz Gonzalez, Transportation Director

Julio C. Fuentes, Senior Traffic Engineer

ML-2001-20