

Memorandum



DATE August 6, 2010

TO Members of the Transportation and Environment Committee:
Linda L. Koop (Chair), Sheffie Kadane, (Vice Chair), Jerry Allen, Tennell Atkins,
Carolyn R. Davis, Delia Jasso, Pauling Medrano, Ron Natinsky, Vonciel Jones Hill

SUBJECT Unnumbered draft agenda item for the August 25, 2010 City Council Agenda

SUBJECT

An ordinance adding Section 30-3.2 and amending Section 30-5 of CHAPTER 30, "NOISE," of the Dallas City Code to prohibit the use of engine compression brakes in the city -- Financing: No cost consideration to the City

BACKGROUND

The common terminology is "Jake braking or engine braking." This method of reducing vehicle speed is often used by diesel truck drivers to slow down the truck. Any method of slowing diesel trucks down in this manner produces a loud noise, particularly by venting the cylinder of the diesel engine midway through its cycle, which causes the engine to absorb power instead of produce power, thereby slowing down the truck dramatically. Additionally, this braking method causes the production of excessive noise produced by engine retarders due to a truck operating with improperly maintained, defective, or modified muffler systems or the use of straight pipes with no mufflers. Ultimately, the act of engine braking creates a very disturbing noise.


The ordinance will take effect immediately after passage and publication in accordance with the Charter of the City of Dallas.

PRIOR ACTION / REVIEW (COUNCIL, BOARDS, COMMISSIONS)

Briefed to the Transportation and Environment Committee on August 10, 2010.

FISCAL INFORMATION

No cost consideration to the City.


Jill A. Jordan, P.E. Assistant City Manager
Assistant City Manager

c: The Honorable Mayor and Members of the City Council
Mary K. Suhm, City Manager
Thomas P. Perkins, Jr. City Attorney
Deborah Watkins, City Secretary
Craig Kinton, City Auditor
Judge C. Victor Lander, Administrative Judge
Ryan S. Evans, First Assistant City Manager
Jill A. Jordan, P.E., Assistant City Manager
A.C. Gonzalez, Assistant City Manager
Forest Turner, Assistant City Manager
Jeanne Chipperfield, Chief Financial Officer
Edward Scott, Director, Controller's Office
Frank Libro, Public Information Office
Rick Galceran, P.E., Director, Public Works and Transportation
Theresa O'Donnell, Director, Sustainable Development and Construction
Helena Stevens-Thompson, Assistant to the City Manager – Council Office



Texas Department of Transportation

P.O. BOX 133067 • DALLAS, TEXAS 75313-3067 • (214) 320-6100

May 26, 2010

Ms. Jill A. Jordan, P.E.
Assistant City Manager
City of Dallas
1500 Marilla Street
Dallas, Texas 75201

Dear Ms. Jordan:

Pursuant to your request that the Texas Department of Transportation (TxDOT) install signage on state facilities, this is to advise that the language referenced by Dallas City Code, Sec. 30-2, regarding car noise, is not sufficient for TxDOT to manufacture and install "No Engine Brakes" signs at the Dallas City limits.

The "No Engine Brakes" ordinance needs to be specific and provide law enforcement officers with language that makes it illegal to use engine brakes. Neither the Texas Transportation Code nor federal requirements make it illegal to use engine brakes. If state or local law enforcement officers hear the use of the brakes on highways, they do nothing as there is no law to disallow them.

I have attached a sample ordinance from the City of Justin on this matter. Note that it provides the law and the penalty for violating the law.

Please call if you have any questions.

Sincerely;

William L. Hale, P.E.
Dallas District Engineer

Attachments: 1. City of Dallas Request from Jill Jordan (received May 24, 2010)
2. Sample Ordinance

cc: David Neumann, Council Member for District 3
Pauline Medrano, Council Member for District 2
Linda Koop, Council Member for District 11
Thomas P. Perkins, Jr., City Attorney

ORDINANCE NO. _____

An ordinance adding Section 30-3.2 to and amending Section 30-5 of CHAPTER 30, "NOISE," of the Dallas City Code, as amended; prohibiting the use of engine compression brakes in the city; providing a defense; providing the culpable mental state required for the commission of an offense; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That CHAPTER 30, "NOISE," of the Dallas City Code, as amended, is amended by adding Section 30-3.2, "Use of Engine Compression Brakes Prohibited," to read as follows:

"SEC. 30-3.2. USE OF ENGINE COMPRESSION BRAKES PROHIBITED.

(a) Definitions. For the purpose of this section, ENGINE COMPRESSION BRAKE means a vehicle retarding device that converts a power producing engine into a power absorbing air compressor in order to reduce motor vehicle speed without the use of the vehicle's foundation brakes.

(b) A person commits an offense if he uses an engine compression brake to slow or stop a motor vehicle in the city.

(c) It is a defense to prosecution under this section that the motor vehicle was a fire apparatus owned or operated by a governmental entity.

(d) Presumption. Whenever a violation of this section occurs, it is presumed that the registered owner of the vehicle for which the citation was issued is the person who committed the violation, either personally or through an agent or employee. Proof of ownership may be made by a computer-generated record of the registration of the vehicle with the Texas Department of Transportation (or the vehicle registration agency of any other state in which the vehicle is currently registered) showing the name of the person to whom state license plates were issued. This proof is prima facie evidence of the ownership of the vehicle by the person to whom the certificate of registration was issued."

SECTION 2. That Subsection (a) of Section 30-5, "Penalties," of CHAPTER 30, "NOISE," of the Dallas City Code, as amended, is amended to read as follows:

"(a) Criminal penalties. Unless specifically provided otherwise in this chapter, an ~~[An]~~ offense under this chapter is punishable by a criminal fine not to exceed \$2,000. A person commits a separate offense each day or portion of a day during which a violation is committed, permitted, or continued. The [A] culpable mental state [is not] required for the commission of an offense under this chapter is governed by Section 1-5.1 of this code."

SECTION 3. That CHAPTER 30 of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance. Any proceeding, civil or criminal, based upon events that occurred prior to the effective date of this ordinance are saved, and the former law is continued in effect for that purpose.

SECTION 4. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 5. That this ordinance will take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By _____
Assistant City Attorney

Passed _____

RM/DCC/000029