

Public Safety Committee Meeting December 18, 2012

The **Public Safety Committee** met Tuesday, December 18, 2012, at 12:00 pm in the City Hall Conference Room. Present were Committee Chairperson John Uden and Committee Members Sue Galbraith, Duane Andrews and Mark Ahner. Also present were Police Chief Doug Colombik, Grant Administrator Dawn Colton, Public Utilities Director Al Kelm and Committee Recorder Connie Watts.

REVIEW ORDINANCE PROHIBITING “JAKE BRAKES” IN CITY LIMITS

Chairperson Uden informed the Committee that an ordinance specifically addressing “jake brakes” does not currently exist for the City. They are, however, addressed in City Code under Sec. 22-59 *“Mufflers; prevention of excessive noise, fumes and smoke.”* So instead of discussing an ordinance, Chairperson Uden felt a resolution should be discussed which would place warning signs at various entrances to town advising that “jake brakes” are prohibited, and possibly the penalty. All city traffic ordinances are misdemeanors. These signs would be placed at Highway 59 North, Highway 59 South, Business 94 East, Business 94 West, and the west end of Pacific Avenue.

Grant Administrator Colton noted that our ordinance does not address “exhaust brakes,” which are different from “jake brakes”, or “engine brakes.” She said they are not quite as noisy as engine brakes, but felt they should be addressed in our ordinance.

****** *Councilperson Ahner moved to recommend amending Section 22-59 of the Miles City Code of Ordinances to add “exhaust brakes” as a violation of the Code. The motion was seconded by Chairperson Uden and, on roll call vote, passed unanimously.*

Signage for the entrances to the City were then discussed. As the City has no jurisdiction on the Interstate, Public Works Director Kelm suggested a letter could be written to the Montana Department of Transportation informing them of the City’s action and requesting appropriate signs be posted on the off ramps.

****** *Chairperson Uden moved to recommend that a resolution be adopted to place signs at entrances to the City notifying vehicles that “jake brakes,” “exhaust brakes” and “engine brakes” are prohibited in the City of Miles City at Highway 59 North, Highway 59 South, Business 94 East, Business 94 North, and Pacific Avenue, as well as any other locations deemed appropriate by the Chief of Police. The motion was seconded by Committee Member Galbraith and, on roll call vote, passed unanimously.*

MAKE RECOMMENDATION ON CODE ENFORCEMENT OFFICER FOR THE CITY OF MILES CITY

Chairperson Uden noted that, by law, the City must designate a code enforcement officer who would be responsible for enforcing, among others, public nuisance codes.

*** Chairperson Uden moved to recommend designating the Chief of Police as Code Enforcement Officer. The motion was seconded by Committee Member Andrews and, on roll call vote, passed unanimously.*

ADDRESS CITIZEN'S CONCERNS ON UNCONTROLLED INTERSECTION OF SOUTH CENTER STREET AND ATLANTIC STREET (TRUCK ROUTE)

Chairperson Uden said a citizen had asked the Mayor if a stop sign could be placed on the truck route at its intersection with South Center. After discussion, where it was noted that a yield sign is currently in place at South Center before that intersection, Chairperson Uden asked for a motion to place a stop sign on Bridge Street at its intersection with South Center. No motion was received.

COMMITTEE MEMBER COMMENTS

Committee Member Ahner said that when he was at Spotted Eagle one afternoon he noticed three young men who were hunting geese. He called Fish & Game, talked to the warden, and told him we have an ordinance prohibiting the discharge of firearms in the City limits. The warden came out and checked the hunters' licenses, etc., and found nothing wrong. The game warden told Mr. Ahner that these individuals had also talked to the Sheriff and dispatch and the Mayor to obtain permission to shoot at Spotted Eagle.

Mr. Ahner later checked the existing ordinance and found it did not specifically say "property owned" by the City, but only specified property "within the City limits." He visited with City Attorney Huss, who wrote a draft to amend Ordinance 1236. The amendment specifies "...or located upon real property owned or leased by the City of Miles City within three (3) miles of the city limits of the City of Miles City..."

Mr. Ahner still needs to go to the title company to get a copy of the original patent transferring the land at Spotted Eagle from the United States to the City of Miles City.

Committee Member Andrews said he felt some goose hunting at the Airport is actually a good idea, as the geese can be a nuisance in that area, and hunting can help keep the geese thinned out.

Public Works Director Kelm said there is also some duck hunting allowed out at the Waste Water Treatment Plant, providing they call and notify the employees at the Plant ahead of time.

Chief Colombik felt that, because Spotted Eagle is a public recreation area, it is not the place to allow hunting. He said he looks at it as criminal endangerment. One of his concerns was also the confusion on County vs. City responsibility at Spotted Eagle. The Sheriff's Office does not feel it has any responsibility there, whereas the City's attorney feels they have quite a bit of responsibility.

Others on the Committee also expressed concern about hunting at the Spotted Eagle and Water Plant areas, but felt that it actually benefits the Wastewater Plant and Airport facilities.

Director Kelm suggested placing "no hunting" signs at Spotted Eagle and at the Water Plant.

As this issue was not on the agenda, no action could be taken at this meeting.


CITIZEN REQUESTS

None

ADJOURNMENT

*** Having no more business before the Committee, Committee Member Ahner moved to adjourn, seconded by Committee Member Andrews and passed unanimously. The meeting was adjourned at 1:00 p.m.*

Respectfully Submitted:



Connie L. Watts, Recorder

Public Safety Committee Chairperson:



Chairperson John Uden

**PUBLIC SAFETY COMMITTEE
AGENDA**

DATE: Tuesday, December 18, 2012

TIME: 12:00 Noon

PLACE: City Hall Conference Room

AGENDA:

- 1) Roll Call**
- 2) Review ordinance prohibiting “Jake Brakes” in City Limits.**
- 3) Make recommendation on Code Enforcement Officer for the City of Miles City.**
- 4) Address citizen’s concerns on uncontrolled intersection of South Center Street and Atlantic Street (truck route).**
- 5) Committee members comments.**
- 6) Citizen Request.**
- 7) Adjournment.**

Public comment on any public matter that is not on the agenda of this meeting can be presented under “Request of Citizens” provided it is within the jurisdiction of the City to address. :Public comment will be entered into the minutes of this meeting. The City Council cannot take any action on the matter unless notice of the matter has been made on an agenda and an opportunity for public comment has been allowed on the matter. Public matter does not include contested cases and other adjudicative proceedings.

(Article III)
Vehicle Equipment

(b) Every motorcycle shall be equipped with at least one and not more than two headlamps. (Code 1981, § 10.24.020)

State law reference—Headlamps on motor vehicles, MCA 61-9-203.

Sec. 22-59. Mufflers; prevention of excessive noise, fumes and smoke.

(a) Every motor vehicle shall, at all times, be equipped with a muffler in good working condition and in constant operation to prevent excessive or unusual noise or annoying smoke.

(b) No person shall operate any motor vehicle upon any street within the municipality which is equipped with an open exhaust pipe (commonly referred to as a "straight pipe") or any similar device.

(c) No person shall use a muffler cutout, bypass, modified header, modified expansion chamber, or any other similar device, the purpose of which is to bypass the vehicle's muffler, upon a motor vehicle upon a street within the municipality.

(d) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted to prevent the escape of excessive fumes or smoke.

(e) It shall be unlawful for any person or entity to operate any motor vehicle with a dynamic braking device engaged within the city.

* "Dynamic braking device" is defined as a mechanical device installed primarily on trucks and commercial vehicles, which enables the driver to use the vehicle's engine as an air compressor for the purposes of braking. A dynamic braking device is also commonly referred to as a "Jake Brake", Jacobs brake, engine brake or compression brake.

(Code 1981, § 10.24.030; Ord. No. 1119, § 1, 10-24-00; Ord. No. 1126, §§ 1, 2, 5-22-01)

State law reference—Mufflers, prevention of noise, MCA 61-9-403.

Sec. 22-60. Tires.

(a) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.

(b) No person shall operate or move on any street any motor vehicle, trailer or semitrailer having any metal tire in contact with the roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the street. It is also permissible to use tire chains of reasonable proportions, or pneumatic tires with traction surfaces into which have been embedded materials such as wood, wire, plastic or metal, which shall in no instance protrude more than 1/16 inch beyond the tire tread, upon any vehicle, when required for safety because of snow, ice or other conditions tending to cause a vehicle to skid. The use of pneumatic tires with materials embedded as provided in this section shall be permitted only between October 1 and May 31 of each year, except that one such tire may be used for a spare in case of tire failure. School buses equipped with such pneumatic tires may operate from August 15 through the following June 15.

(d) The municipality may, in its discretion, issue special permits authorizing the operation upon a street of farm tractors or other farm machinery, or of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks, the operation of which upon the street would otherwise be prohibited.

(Code 1981, § 10.24.040)

State law reference—Restrictions as to tire equipment, MCA 61-9-406.

Sec. 22-61. Windshield and windshield wipers.

(a) No person shall drive any motor vehicle with any sign, poster or transparent material on the front windshield, side wings or side or rear windows of such vehicle which obstructs the driver's clear view of the highway or any intersecting highway.

ENGINE BRAKING ORDINANCE

July 06, 2006

City of Grandview

ORDINANCE NO. 2006-1764

ENGINE BRAKING ORDINANCE

AN ORDINANCE OF THE CITY OF GRANDVIEW, TEXAS, PROHIBITING ENGINE BRAKING AND PROVIDING FOR FINDINGS OF FACT, ENACTMENT PROVISIONS, REPEALER, SEVERABILITY, PUBLICATION, EFFECTIVE DATE, PUBLIC NOTICE & MEETING, ENACTMENT, DEFINITIONS, PROHIBITION, AND ENFORCEMENT, INCLUDING CRIMINAL FINES NOT TO EXCEED \$500 PER OFFENSE

WHEREAS, the City Council of the City of Grandview ("City Council") seeks to protect the public safety, preserve the quality of life, and prevent nuisances in the City; and

WHEREAS, the City Council finds that the practice of engine braking by diesel trucks (sometimes referred to in common nomenclature as "*jake braking*," but which must not to be confused with the registered trademark "Jake Brake" belonging to the Jacobs Vehicle Systems, Inc.) creates disturbing, excessive and offensive noise when it occurs within the city limits; and

WHEREAS, pursuant to Texas Local Government Code Chapter 51 the City Council has the general authority to adopt and publish an ordinance or police regulation that is for the good government, peace or order of the municipality and is necessary or proper for the carrying out a power granted by law to the municipality; and

WHEREAS, the City Council finds this Ordinance to be reasonable and necessary.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Grandview, Texas, that:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. ENACTMENT

The laws of the City of Grandview shall hereby read in accordance with *Exhibit A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

3. REPEALER

All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this

Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. PUBLICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in and among the records of the City.

6. EFFECTIVE DATE

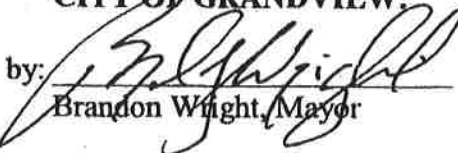
This Ordinance shall be effective immediately upon passage and publication.

7. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED & APPROVED, this, the 6th day of July 2006, by a vote of 3 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of the City of Grandview, Texas.

CITY OF GRANDVIEW:

by: 
Brandon Wright, Mayor

ATTEST:


Sherry Bagwell, Administrative Assistant

APPROVED AS TO FORM:

Alan J. Bojorquez, City Attorney

ENGINE BRAKING ORDINANCE

SECTION 1. ENACTMENT

1.1. Popular Name

This Chapter shall be commonly cited as the "Engine Braking Ordinance."

1.2. Scope

This Chapter applies to all property within the incorporated municipal boundaries (i.e., "city limits").

SECTION 2. DEFINITIONS

2.1. General

Words and phrases used in this Chapter shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinance shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include the singular number (and vice versa); and words in the masculine gender shall include the feminine gender (and vice versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

2.2. Specific

City: the City of Grandview, an incorporated municipality located in Johnson County, Texas.

Engine Braking: any method of slowing diesel trucks in a manner that produces a loud noise, particularly by venting the cylinder of the diesel engine midway through its cycle causing the engine, instead of producing power, to absorb power, thereby slowing the truck down dramatically. It shall also include 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 exhaust pipes with no mufflers.

Person: any human individual, corporation, company, sole proprietorship, partnership, association, organization, or agency.

SECTION 3. PROHIBITION

- 3.1. It shall be unlawful for any person to engine brake within the city limits.
- 3.2. No person shall engine brake within the city limits.

SECTION 4. ENFORCEMENT

4.1. Civil & Criminal Penalties

The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

4.2. Criminal Prosecution

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00). Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

4.3. Civil Remedies

Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

- (a) injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
- (b) a civil penalty up to one hundred dollars (\$100.00) a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and other available relief.

ORDINANCE NO. 20235-06-2012

AN ORDINANCE AMENDING CHAPTER 22 OF THE CODE OF THE CITY OF FORT WORTH, AS AMENDED, BY ADDING SECTION 22-324 PROHIBITING ENGINE BRAKING IN THE CITY LIMITS; PROVIDING A PENALTY FOR VIOLATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER OF THE CITY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Fort Worth ("City Council") seeks to protect the public safety, preserve the quality of life, and prevent nuisances in the City; and

WHEREAS, the City Council finds that the practice of engine braking by diesel trucks (sometimes referred to in common nomenclature as "*jake braking*" but which must not be confused with the registered trademark "Jake Brake" belonging to the Jacobs Vehicle Systems, Inc.) creates disturbing, unreasonable and offensive noise when it occurs within the city limits; and

WHEREAS, pursuant to Texas Local Government Code Chapter 51, the City Council has the general authority to adopt and publish an ordinance or police regulation that is for the good government, peace or order of the municipality and is necessary or proper for the carrying out of a power granted by law to the municipality; and

WHEREAS, it is advisable to amend Chapter 22 of the Fort Worth Code of Ordinances to add new regulations regarding engine braking; and

WHEREAS, the City Council finds this Ordinance to be reasonable and necessary.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TARRANT COUNTY, TEXAS:

SECTION 1.

That Chapter 22 of the Code of the City of Fort Worth is hereby amended herein by adding Section 22-324 "Engine Braking" to Article X, Equipment, to read as follows:

Sec. 22-324. - Engine Braking.

- (a) Engine-exhaust braking prohibited. No person may use an engine-exhaust braking system while operating a motor vehicle within the corporate limits of the City of Fort Worth. For the purpose of this section, the term engine-exhaust braking system means an engine-exhaust braking system device which converts diesel-engine power into an air

compressor and when engaged operates to slow the vehicle, creating an unreasonable noise.

(b) Offense. It shall be unlawful and an offense for any person to violate or fail to comply with any provisions hereof. Any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00). Each day that a provision of this ordinance is violated shall constitute a separate offense. An offense under this ordinance is a misdemeanor.

SECTION 2.

That Chapter 22 of the Code of the City of Fort Worth, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 3.

That it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

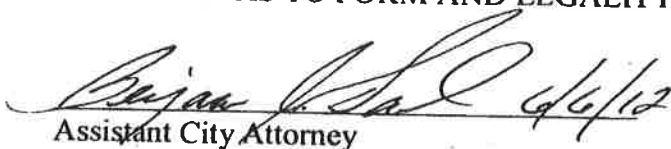
SECTION 4.

That the City Secretary of the City of Fort Worth, Texas, is hereby directed to publish the caption and penalty provision, found in Sec. 1 [Sec. 22-324(b)], of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by City Charter and Section 52.013, Texas Local Government Code.

SECTION 5.

That this ordinance shall take effect after its passage and publication as required by law, and it is accordingly so ordained.

APPROVED AS TO FORM AND LEGALITY:


Assistant City Attorney

ADOPTED: June 5, 2012

EFFECTIVE: June 11, 2012

City of Fort Worth, Texas
Mayor and Council Communication

COUNCIL ACTION: Approved on 6/5/2012 - Ordinance No. 20235-06-2012

DATE: Tuesday, June 05, 2012

REFERENCE NO.: G-17604

LOG NAME: 20ENGINE BRAKING ORDINANCE

SUBJECT:

Adopt Ordinance Amending Chapter 22 of the Code of the City of Fort Worth, as Amended, by Adding Section 22-324 Prohibiting Engine Braking In the City Limits (ALL COUNCIL DISTRICTS)

RECOMMENDATION:

It is recommended that the City Council adopt the attached ordinance amending Chapter 22 of the Code of the City of Fort Worth, as amended, by adding Section 22-324 prohibiting engine braking in the City limits.

DISCUSSION:

In recent years, semi-truck engine braking has become an increasing problem for residents of the City of Fort Worth. The noise produced by these diesel engines has become a nuisance to the City's residents, and inevitably it has affected the peace and quiet enjoyment of their homes. Generally, engine braking, means an engine exhaust braking system device which converts diesel engine power into an air compressor and when engaged operates to slow the vehicle, creating an unreasonable noise. By way of comparison, it sounds similar to a jackhammer, however the loudness is between 10 and 20 times the sound pressure level of a jackhammer.

Many cities in Texas have banned engine braking through city ordinance. These cities include Austin, Dallas, Roanoke, Aurora, Boyd, Decatur, Alvord, Alvarado, Keene, Cleburne, Burleson, Grandview, Haslet, Lakeside, Marble Falls, Burnett, Elgin, Redwater, Littlefield, Lake Jacksonville and West Columbia.

Staff discussed the proposed ordinance with several industry leading trucking firms. They include Old Dominion Freight, First Choice Transport, Coffman Tank Trucks Inc., YRC (Yellow Freight and Roadway) and Empire Disposal. The only opposition came from Empire Disposal. They stated the engine brake on their new trucks does not make the noise of other trucks.

If the ordinance is adopted, all police officers will be able to write citations for engine braking. Under the noise ordinance, it was recommended that only certified commercial vehicle officers issue citations for engine braking because they are qualified to explain to a court the technology.

The Texas Department of Transportation has agreed to post signs prohibiting engine braking. Locations are still to be determined.

Adoption of this ordinance will prohibit engine braking within the corporate limits of the City of Fort Worth, by making such conduct unlawful. The violation will be a misdemeanor, and upon conviction a fine of up to \$500.00 will be assessed. Signs notifying motorists of this violation will be posted in problem areas throughout the City, as well as along portions of the interstate.

FISCAL INFORMATION / CERTIFICATION:

The Financial Management Services Director certifies that this action will have no material effect on City funds.

FUND CENTERS:

TO Fund/Account/Centers

FROM Fund/Account/Centers

CERTIFICATIONS:

Submitted for City Manager's Office by:

Fernando Costa (6122)

Originating Department Head:

Douglas W. Wiersig (7801)

Additional Information Contact:

Randy Burkett (8712)

Reducing Road Noise

Union Township Environmental Commission
Road Noise Subcommittee

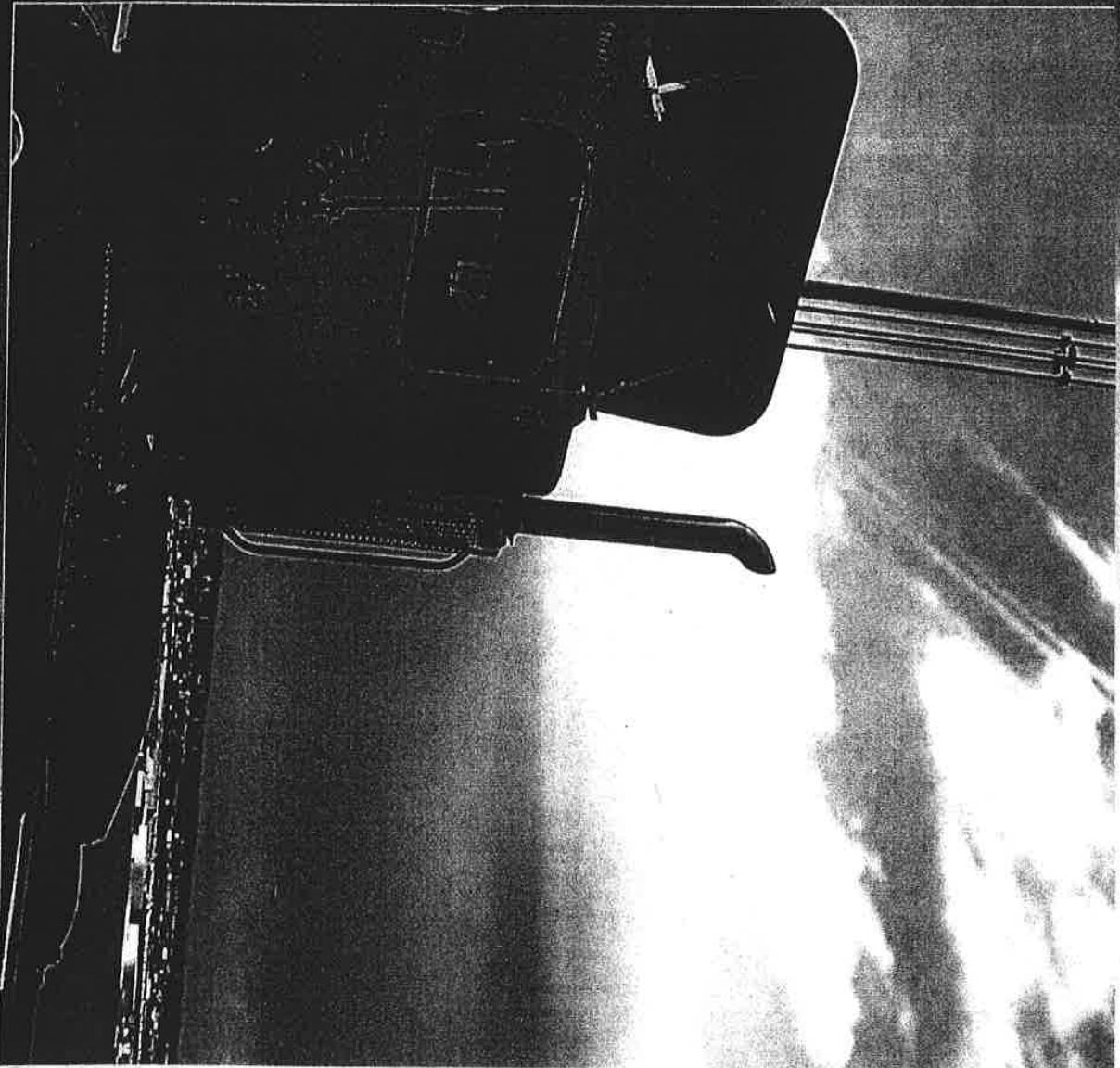
What is engine braking?

- » Also known as "Jake Braking" (brand name)
- » Almost all trucks now have engine brakes
- » Helps trucks to stop and reduces brake wear
- » The driver engages the engine brake by flipping a switch located on the gearshift.
- » This activates a separate cam that allows the energy (and noise) from compressed engine gases to be exhausted directly to the exhaust pipe. This energy is thus dumped to the exhaust system rather than recovered on what would normally be the power stroke.
- » For trucks with poor mufflers, this results in a loud explosive-like noise similar to a jackhammer but 10-20 times louder.

Many trucks have ineffective or NO mufflers

- » Why? They like the noise...?
- » One study showed 5.3% of trucks had ineffective mufflers and 2% had NO mufflers (straight pipe exhausts)
- » At 300 trucks per hour, that's 16 trucks with ineffective mufflers every hour that create excessive noise!!

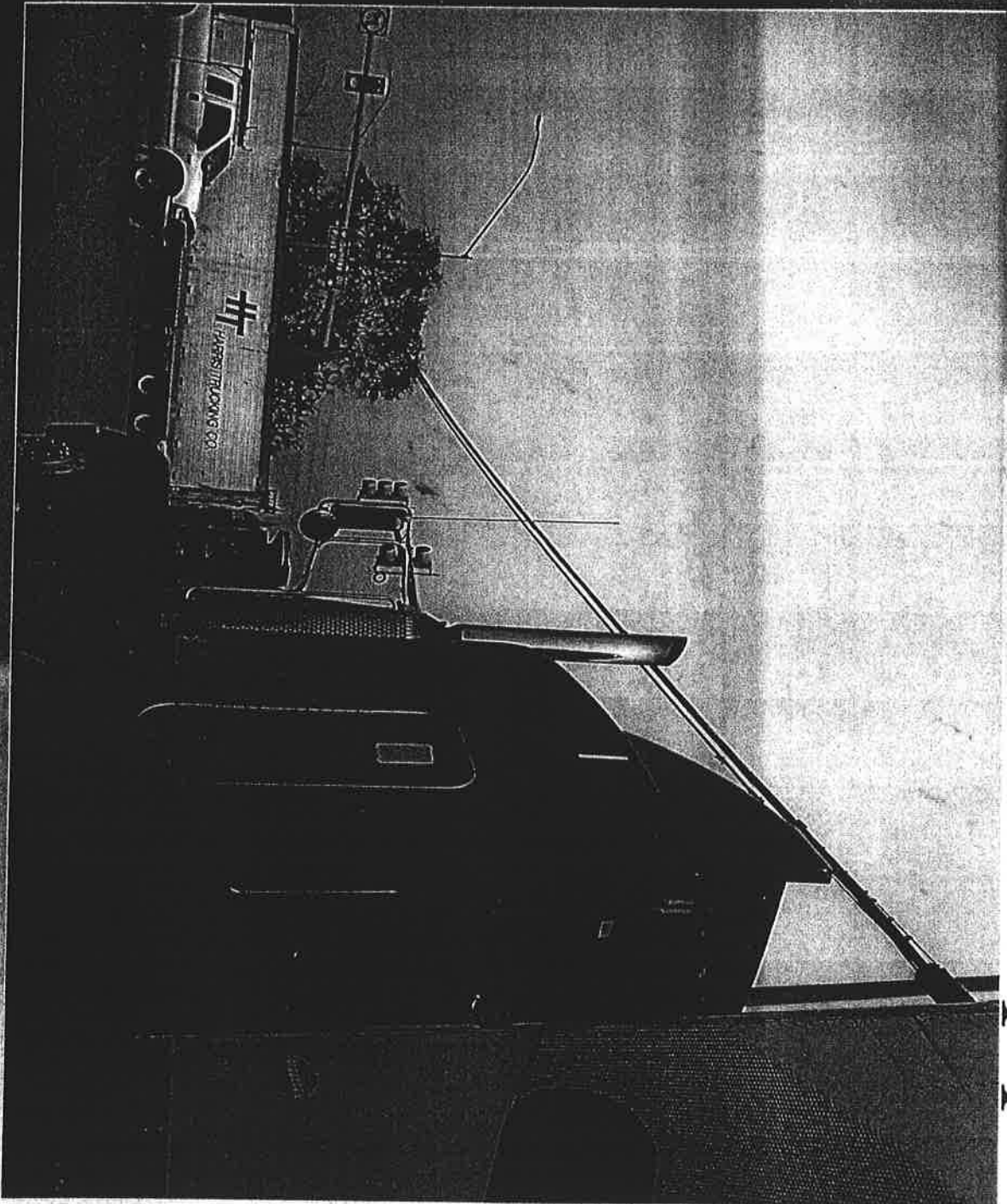
Normal Muffler



Heat shield +
Muffler +
Exhaust and tailpipe are same
diameter

(Or, could this be one of those
"fake mufflers", with a
straight pipe inside???)

Oversized tail pipe



Oversized tail pipe welded to
muffler outlet

Creates a deeper sound that
truckers like

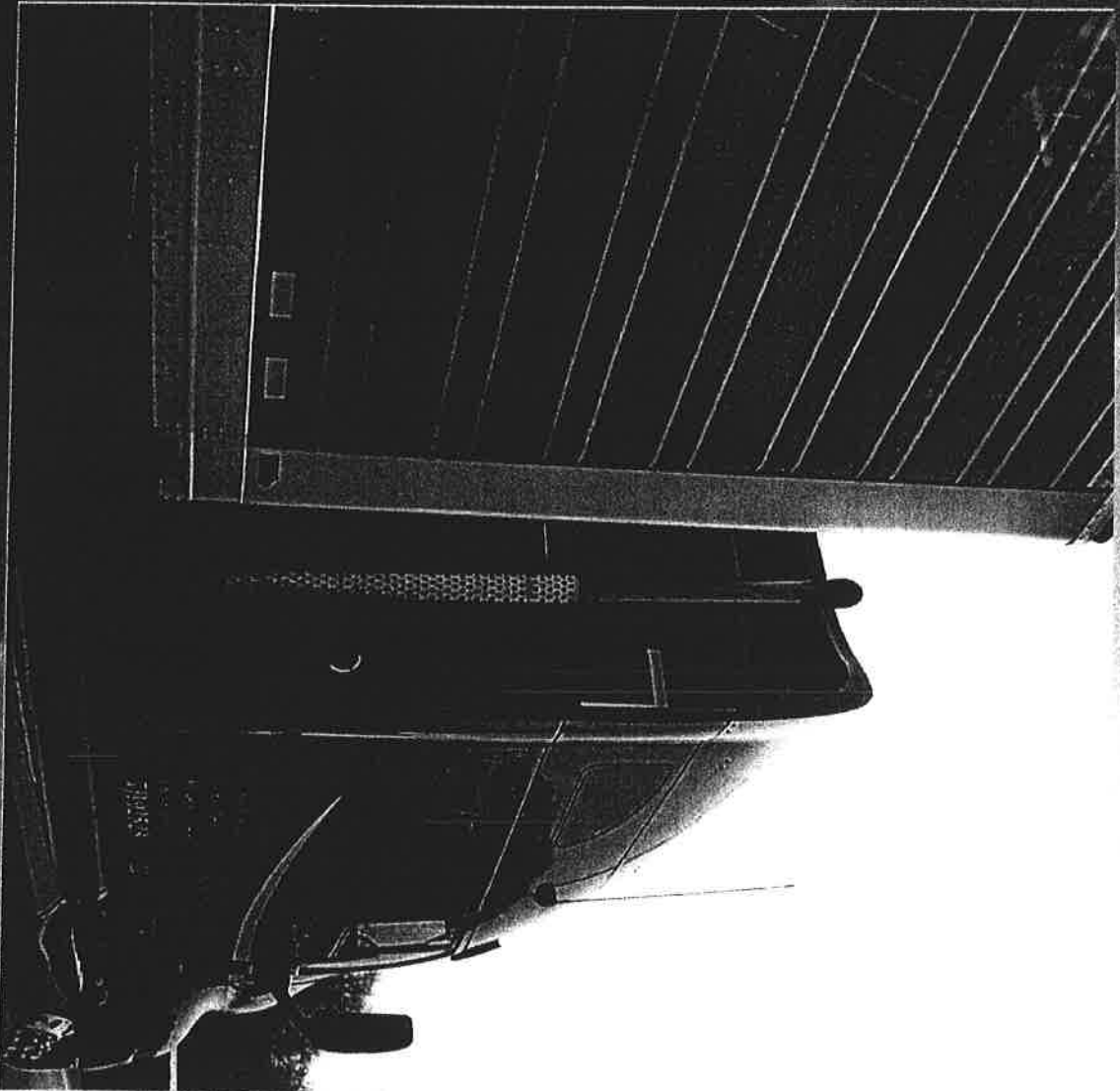
Legal or not??

NO MUFFLER (STRAIGHT STACK)

Only a heat shield, no muffler

When his engine brakes were on,
we could
hear this truck from far away!!

He turned off the brakes when he
saw our camera.



Brown and Huss, P.C.

Attorneys at Law

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FAX 406-234-5864
Email: bhpc@midrivers.com
I.D. NO. 81-0497324

Bruce M. Brown (1922-2000)

George W. Huss

Erica D. Griffith

December 12, 2012

Mark Ahner
13 S. Stacy
Miles City, Montana 59301

Re: Discharge of firearms at Spotted Eagle

Dear Mark,

Pursuant to your request at last evening's Council meeting, I am enclosing a proposed draft ordinance amending Section 16-43 of the City Code to prohibit the discharge of firearms upon City owned or leased lands within 3 miles of the City limits.

I am also enclosing a 1987 Montana Attorney General's opinion which holds that a city can control the discharge of firearms within 3 miles of its city limits pursuant to the extended jurisdiction provisions of 7-32-4301 MCA and the inclusion of the discharge of firearms as "disorderly conduct" under 45-8-101 MCA. I have enclosed copies of the applicable statutes.

One concern is that the Montana Cadastral mapping programs shows Spotted Eagle as owned by Montana Fish, Wildlife and Parks. I was under the understanding that the City owned Spotted Eagle. Perhaps it just leases the property from FWP. The status of this property should be verified before the amendment is made to the Code.

Yours sincerely,

BROWN and HUSS, P.C.

By: 
George W. Huss

GWH:tot

Enclosures per above

45-8-351. Restriction on local government regulation of firearms. (1) Except as provided in subsection (2), a county, city, town, consolidated local government, or other local government unit may not prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained in this section allows any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others or to prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

(c) A local ordinance enacted pursuant to this section may not prohibit a legislative security officer who has been issued a concealed weapon permit from carrying a concealed weapon in the state capitol as provided in 45-8-317.

History: En. Sec. 1, Ch. 589, L. 1985; amd. Sec. 11, Ch. 759, L. 1991; amd. Sec. 3, Ch. 384, L. 2011.

45-8-101. Disorderly conduct. (1) A person commits the offense of disorderly conduct if the person knowingly disturbs the peace by:

- (a) quarreling, challenging to fight, or fighting;
- (b) making loud or unusual noises;
- (c) using threatening, profane, or abusive language;
- (d) discharging firearms, except at a shooting range during established hours of operation;
- (e) rendering vehicular or pedestrian traffic impassable;
- (f) rendering the free ingress or egress to public or private places impassable;
- (g) disturbing or disrupting any lawful assembly or public meeting;
- (h) transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence would endanger human life;
- (i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or
- (j) transmitting a false report or warning of an impending explosion in a place where its occurrence would endanger human life.

(2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall be fined not to exceed \$100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

(3) A person convicted of a violation of subsection (1)(j) shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

History: En. 94-8-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-101; amd. Sec. 1, Ch. 508, L. 1989; amd. Sec. 8, Ch. 415, L. 1991; amd. Sec. 1693, Ch. 56, L. 2009.

7-32-4302. Control of disturbances of the peace. Within the city or town and within 3 miles of the limits thereof, the city or town council has power to prevent and punish intoxication (subject to the limits established in 53-24-106), fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace or which are offensive to public morals.

History: En. Subd. 25, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.24, R.C.M. 1935; amd. Sec. 16, Ch. 302, L. 1974; amd. Sec. 1, Ch. 403, L. 1975; R.C.M. 1947, 11-927.

42 Mont. Op. Atty. Gen. 22 (Mont.A.G.), 42 Mont. Op. Atty. Gen. No. 8, 1987 WL 339892

Office of the Attorney General

State of Montana

Opinion No. 8

February 27, 1987

*1 CITIES AND TOWNS—Extraterritorial authority to regulate discharge of firearms;

HEALTH—Authority of city to enact ordinance regulating discharge of firearms as a health ordinance;

LOCAL GOVERNMENT—Extraterritorial authority of city to regulate discharge of firearms;

MUNICIPAL CORPORATIONS—Mayor's extraterritorial power to enforce firearm discharge ordinance as health ordinance;

MONTANA CODE ANNOTATED—Sections 7-1-4123, 7-4-4306, 7-32-4302, 45-8-101(1)(d), 45-8-343, 45-8-351, 50-2-116;

MONTANA CONSTITUTION—Article XI, section 4(2).

HELD: 1. A city ordinance regulating the discharge of firearms outside the city limits may not be enacted as a health ordinance and enforced pursuant to the extraterritorial powers granted to the mayor by section 7-4-4306, MCA.

2. A city may adopt an ordinance prohibiting disorderly conduct resulting from the discharge of firearms and enforce the ordinance within three miles of the city limits pursuant to section 7-32-4302, MCA.

Jim Nugent
Missoula City Attorney
201 West Spruce
Missoula MT 59802-4297

Dear Mr. Nugent:

You have requested my opinion concerning whether a city ordinance regulating the discharge of firearms outside the city limits may be enacted as a health ordinance and enforced pursuant to the extraterritorial powers granted to the mayor by section 7-4-4306, MCA. That section provides:

Extraterritorial powers. The mayor has power to exercise such power as may be vested in the mayor by ordinance of the city or town, in and over all places within 5 miles of the boundaries of the city or town for the purpose of enforcing the health and quarantine ordinances and regulations thereof.

The Missoula City Council has adopted an ordinance prohibiting, with certain exceptions, the discharge of firearms within designated areas which lie outside the city limits but within five miles of the boundaries of the city. The ordinance was enacted in response to concern that hunting and shooting with firearms in developed residential and commercial areas outside the city can endanger persons who reside or recreate within or near those developed areas. The ordinance provides that the city council may designate an area to be included within the geographic scope of the ordinance upon written request of the county commissioners. Your letter states that three areas adjacent to the city have thus far been designated by the council as areas within which the discharge restriction applies.

The City of Missoula is a municipality with general powers and therefore has the legislative power, subject to the provisions of state law, to adopt ordinances required to preserve peace and order and secure freedom from dangerous activities, secure and promote the general public health and welfare, and exercise any power granted by state law. § 7-1-4123, MCA. Powers of incorporated cities such as Missoula are to be liberally construed. Mont. Const., art. XI, § 4(2); *Stevens v. City of Missoula*, 40 St.Rptr. 1267, 667 P.2d 440 (1983). However, since Missoula has chosen to retain general governmental powers rather than to adopt a self-government charter, the city has only those powers expressly given to it by the Legislature. See *D & F Sanitation Service v. City of Billings*, 43 St.Rptr. 74, 713 P.2d 977 (1986).

*2 In 1985 the Legislature enacted section 45-8-351, MCA, which provides as follows:

Restriction on local government regulation of firearms. (1) Except as provided in subsection (2), no county, city, town, consolidated local government, or other local government unit may prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any rifle, shotgun, or handgun.

(2)(a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed weapons, the carrying of weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained herein shall allow any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others, nor shall anything contained herein prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

Subsection (2)(a) of this statute grants the city the express power to regulate the discharge of firearms for public safety purposes. The city's authority to prevent and punish the discharge of firearms is also found in section 45-8-343, MCA, which permits the city to impose a fine in excess of \$25 or a term of imprisonment upon any person who "willfully shoots or fires off a gun, pistol, or any other firearm" within its limits. In addition, the city has the power to adopt an ordinance prohibiting disorderly conduct, which by statutory definition includes disturbing the peace by discharging firearms. §§ 45-8-101(1)(d), 7-32-4302, MCA; see *City of Billings v. Batten*, 42 St.Rptr. 1398, 705 P.2d 1120 (1985); *City of Whitefish v. O'Shaughnessy*, 42 St.Rptr. 928, 704 P.2d 1021 (1985).

I conclude from a reading of these statutes that the Legislature has granted the City of Missoula the authority to adopt ordinances regulating the discharge of firearms. However, as discussed below, I also conclude that an ordinance prohibiting the discharge of firearms may not be adopted as a health ordinance and enforced pursuant to the extraterritorial powers of the mayor as provided in section 7-4-4306, MCA.

There is no doubt that section 7-4-4306, MCA, allows the city to extend its police power five miles beyond the city limits in matters relating to health and quarantine. While the police power jurisdiction of a municipal corporation is generally limited by the territorial boundaries of the municipality, the Legislature may confer on a municipal corporation the right to exercise police power beyond and within a prescribed distance of the municipal limits. However, statutes authorizing the exercise of municipal power beyond the municipal boundaries are strictly construed. See 62 C.J.S. Municipal Corporations § 141; 56 Am.Jur.2d Municipal Corporations § 436.

*3 Since the Missoula ordinance is obviously not a quarantine ordinance, the question is whether it may be viewed as a health ordinance. While the ordinance does not refer to its purpose, your letter indicates that the city council members have determined that the discharge of firearms is both a public health and a public safety matter and want the ordinance enforced as a health ordinance pursuant to the mayor's extraterritorial powers provided in section 7-4-4306, MCA.

It is well settled that under the guise of police power the state and its municipal subdivisions have the power and duty to do all things necessary to fully protect the public in the preservation of its health and well-being. *Ruona v. City of Billings*, 136 Mont. 554, 323 P.2d 29 (1958). However, neither the Legislature nor the Montana Supreme Court has addressed the definition and scope of the term "health" as it concerns the ordinance authority of a municipality.

While it is true that to the victim of a gunshot wound the discharge of the offending firearm is a "health" matter of utmost concern, I am not persuaded that regulation of the discharge of firearms should be viewed as within the scope of the health ordinance authority of the city. By enacting section 45-8-351(2)(a), MCA, the Legislature has indicated that such regulation is authorized for the purpose of promoting public safety. Municipal power relative to the public safety has been distinguished from municipal power relative to the public health. In general the distinction is between control of causes of personal injury and property damage and control of the causes of disease. Power as to public health will not justify measures as to public safety. See *McQuillin, Municipal Corporations* § 24.220 (3d ed. 1981); *Vincon v. Howe Builders Association of Atlanta*, 213 S.E.2d 890 (Ga.1975).

The terms "health" and "safety" are often used together in statutes and judicial decisions. See, e.g., § 82-4-203(14), MCA; Mont. Const., art. II, § 3; *Ruona v. City of Billings*, supra. However, the terms should be construed as coordinate words when determining either a power of government or a reservation of power. *State v. Clausen*, 148 P. 28, 33 (Wash.1915). The terms are not interchangeable even though they may refer to similar concerns for the public well-being. The provisions of section 50-2-116, MCA, which set forth the powers and duties of local boards of health, further support the view that the term "public health" relates to matters such as sanitation and the control of communicable diseases rather than the prevention of traumatic personal injury resulting from the discharge of firearms. Because the mayor's extraterritorial power under section 7-4-4306, MCA, does not extend to matters of safety as distinguished from health, I conclude that the ordinance in question may not be enforced as a health ordinance beyond the city limits.

This opinion should not be read to mean that the city is without authority to regulate the discharge of firearms outside the city limits. Section 7-32-4302, MCA, gives the city council the express power to prevent and punish disorderly conduct within three miles of the city limits. As mentioned above, discharging a firearm is one of the statutorily enumerated acts which may disturb the peace and constitute the offense of disorderly conduct. § 45-8-101(1)(d), MCA. Although the extraterritorial reach of the city's police power under section 7-32-4302, MCA, is not as extensive as its five-mile jurisdiction under section 7-4-4306, MCA, the Legislature has clearly granted the city the authority to prevent disturbances of the peace which result from the discharge of firearms in developed areas within three miles of the city limits.

***4 THEREFORE, IT IS MY OPINION:**

1. A city ordinance regulating the discharge of firearms outside the city limits may not be enacted as a health ordinance and enforced pursuant to the extraterritorial powers granted to the mayor by section 7-4-4306, MCA.
2. A city may adopt an ordinance prohibiting disorderly conduct resulting from the discharge of firearms and enforce the ordinance within three miles of the city limits pursuant to section 7-32-4302, MCA.

Very truly yours,

Mike Greely
Attorney General

42 Mont. Op. Atty. Gen. 22 (Mont.A.G.), 42 Mont. Op. Atty. Gen. No. 8, 1987 WL 339892

ORDINANCE NO. 1236

AN ORDINANCE AMENDING SECTION 16-43 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA SO AS TO PROHIBIT THE DISCHARGE OF FIREARMS UPON CITY OWNED OR LEASED PROPERTY WITHIN THREE MILES OF THE CITY LIMITS OF THE CITY OF MILES CITY.

BE IT ORDAINED by the City Council of the City of Miles City, Montana as follows:

Section 1. Section 16-43 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 16-43. - Discharge of firearms.

(a) It shall be unlawful for any person to willfully shoot or fire off a gun, pistol or any other firearm within the limits of the city, *or upon any real property owned or leased by the City of Miles City within three (3) miles of the city limits of the City of Miles City.*

(b) Any person who violates this section shall be punishable by a fine not exceeding \$500.00 or by imprisonment in the county jail for a period not exceeding 6 months, or both.

(c) Firearms may be discharged in an indoor or outdoor rifle, pistol, or shotgun shooting range located within the city limits, *or located upon real property owned or leased by the City of Miles City within three (3) miles of the city limits of the City of Miles City,* if the shooting range is approved by the City Council.

(d) Subsection (a) does not apply if the discharge of a firearm is justifiable under Title 45, chapter 3, part 1, MCA.”

Section 2. This Ordinance shall become effective thirty (30) days after its final passage.

Said Ordinance read and put on its passage this 8th day of January, 2013.

C.A. Grenz, Mayor

ATTEST:

Rebecca Stanton, City Clerk

FINALLY PASSED AND ADOPTED this 22nd day of January, 2013.

C.A. Grenz, Mayor

ATTEST:

Rebecca Stanton, City Clerk

Form 1860-9
(January 1988)

The United States of America

To all to whom these presents shall come, Greeting:

MTM 57774

WHEREAS,

the City of Miles City

is entitled to a Land Patent pursuant to Public Law 97-401 dated December 3, 1982, "An Act to authorize the Secretary of the Interior to convey certain lands near Miles City, Montana, and to remove certain reservations from prior conveyances," for the following described lands:

Principal Meridian, Montana

T. 7 N., R. 47 E.,
sec. 4, Tract S; and
sec. 5, Tract Q.

T. 8 N., R. 47 E.,
sec. 32, lots 9, 17, 21,
28, 31 and 32; and
sec. 33, Tract S.

Containing 216.36 acres.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES unto the City of Miles City the land above described; TO HAVE AND TO HOLD the said land with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said City of Miles City, its successors and assignees, forever;

EXCEPTING AND RESERVING TO THE UNITED STATES:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945);
2. All oil, gas, coal and other minerals on the land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law; and
3. The right of prior permittees or lessees to use so much of the surface of said land as is required for mining operations without compensation to the patentee for damages resulting from proper mining operations for the duration of oil and gas lease M 43267, and any authorized extension of that lease (Section 29 of the Act of February 25, 1920, 41 Stat. 449; 30 U.S.C. 186, and the Act of March 4, 1933, 47 Stat. 1570; 30 U.S.C. 124).

SUBJECT TO:

1. A gas pipeline right-of-way granted to Montana Dakota Utilities Company approved March 25, 1955, pursuant to the Act of February 25, 1920, as amended (41 Stat. 449; 678), over and across a portion of Tract Q in section 5, T. 7 N., R. 47 E., and Lots 21, 28, and 31, section 32,

2. A water pipeline right-of-way under the jurisdiction of the United States Fish and Wildlife Service (FWS) for the Miles City National Fish Hatchery. Jurisdiction of the pipeline, which crosses Tract "S" in sec. 4, T. 7 N., R. 47 E., P.M.M., was transferred to FWS on June 3, 1957; and

Patent Number

25-93-0280

Date

11-11-82

Bureau of Land Management, Billings, Montana

I hereby certify this to be a true copy.