

December 2, 2021

TO: City Council Member Lee Ann Bissmeyer, Chair  
Law and Safety Committee of City Council

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

SUBJECT: Law and Safety Committee Meeting of Monday, December 6, 2021

As a reminder, the Law and Safety Committee is scheduled to meet on Monday, December 6, 2021 at 3:30 p.m. Those agenda items to be discussed include:

1. No Engine Brake Discussion—Please see attached correspondence from Brian Riblet and Gary Heitkamp regarding the consideration of “No Engine Brake” signs on Ronald Reagan Cross County Highway. Staff would like the opportunity to discuss this and obtain feedback from 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 August 2, 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



**LAW & SAFETY COMMITTEE OF CITY COUNCIL**

10101 Montgomery Road • Montgomery, Ohio 45242

(513) 891-2424 • Fax (513) 891-2498

**AGENDA**

**December 6, 2021**

**3:30 P.M.**

**City Hall**

1. Call to Order
2. Guests and Residents
3. Communications
4. New Business
  - a. No Engine Brake Discussion
5. Old Business
6. Executive Session
7. Approval of Minutes: August 2, 2021
8. Other Business
9. Adjournment

December 1, 2021

TO: Law and Safety Committee of Council

FROM: Brian K. Riblet, City Manager  
Gary Heitkamp, Public Works Director

SUBJECT: Consideration of “No Engine Brake” on Ronald Reagan Cross County Highway within City Limits

**Background**

On June 21, 2020, Gary Heitkamp, Public Works Director, 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.

Upon receiving this email, Staff performed some 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. (The email is attached for your information.)

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. (Mr. Suder's letter is attached for your information.)

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 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. (The results of the count are attached.)

In addition, Gary Heitkamp, Public Works Director, 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. (The email is attached for your information.)

### Recommendation

With the information we have 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.

Staff would recommend we continue to monitor the truck traffic and resultant noise to determine if further action is warranted in the future.

Attachments:

May 15, 2021 email from Mr. Burress

Section 201-7 of the TEM

September 9, 2021 letter from Mr. Suder

October 6, 2021 truck traffic count

October 21, 2021 email from Mr. Arnold

## Gary Heitkamp

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**From:** Gary Heitkamp  
**Sent:** Wednesday, December 1, 2021 7:54 AM  
**To:** Gary Heitkamp  
**Subject:** FW: New submission from Report Issue: Contact a Councilmember

**Gary Heitkamp, P.E.**  
Public Works Director  
City of Montgomery

**From:** [notify@proudcity.com](mailto:notify@proudcity.com) <[notify@proudcity.com](mailto:notify@proudcity.com)>  
**Sent:** Saturday, May 15, 2021 10:34 AM  
**To:** Connie Gaylor <[cgaylor@montgomeryohio.org](mailto:cgaylor@montgomeryohio.org)>; Matthew Vanderhorst <[mvanderhorst@montgomeryohio.org](mailto:mvanderhorst@montgomeryohio.org)>  
**Subject:** New submission from Report Issue: Contact a Councilmember

### Name

Brian Burress

### Email

[brian.burress@usa.net](mailto:brian.burress@usa.net)

### Phone

(513) 703-4490

### Select a Councilmember

All Councilmembers

### Description

I am writing to ask that you please consider an ordinance to ban trucks from using engine brakes/aka "jake" brakes within city limits. While we have heard them since we moved into Montgomery in 1994, they have become increasingly noticeable lately. We aren't sure if it has something to do with the round about construction or ? but we are noticing them in use early in the morning (even at 7:30am Saturday) and throughout the day into the evening. Even with our windows shut, they are a very loud disruption and "sound off" multiple times per hour.

These jake brakes are really meant for use during periods where excessive braking is needed, such as on a steep hill, to avoid the standard brakes from overheating as well as in "emergency" situations. There is no reason/excuse to be using them on a level highway exit ramp, especially in a residential area.

Assuming an ordinance is passed, I also request that you work with ODOT to have "No engine brake" signs placed on Ronald Reagan/Cross County highway to alert truckers of the ordinance. While I realize the signage will not guarantee it stop, it is a first step to reducing/eliminating this excess noise. I have reviewed the internet and many areas in Ohio as well as other states have worked to reduce such noise by similar ordinance. My understanding is that Ohio law allows for such an ordinance and given that Ronald Reagan/Cross County highway is a state maintained highway that such a rule is permitted.

Thank you,  
Brian Burress  
7550 Kennedy Lane

Check Ticket: [https://www.montgomeryohio.org/wp-admin/admin.php?page=gf\\_entries&id=18](https://www.montgomeryohio.org/wp-admin/admin.php?page=gf_entries&id=18)

8. An intersection is near a highway-rail grade crossing.
9. Other hazards or conflicts.

The **District** or maintaining agency should document reasons where turns against a steady red signal are prohibited.

#### **201-5 Safety Belt Signing (R16-H1)**

Safety belt signing is intended to remind motorists of the mandatory safety belt law, and to encourage safety belt use. The R16-H1 sign is used for this purpose (see **OMUTCD Section 2B.66** and **Figure 2B-32**).

A sign should be used in rest areas at a point where traffic leaves the rest area to re-enter the highway. For freeway rest areas, the suggested location is at the first part of the freeway entrance ramp in a conspicuous location that does not interfere with other signs. For rest areas on other routes, the sign should be located in a conspicuous location that does not obstruct sight distance.

A sign should be erected near the State Line for traffic entering **Ohio**. It should be erected on all **ODOT**-maintained highways, unless a suitable location cannot be found, or the route is minor in nature with insignificant traffic volumes. Where the State Line location falls within a municipality, arrangements should be made with the municipality for erection of a sign.

A sign should also be erected on selected highways outside municipalities for traffic leaving the municipality. To limit the number of signs to a reasonable amount, consideration should be given to traffic volumes, the distance between municipalities, and the number of signs on a particular route.

The red, white and blue N-84 information sign, and black on white R16-H2 word message regulatory sign, are no longer used. Existing installations of these signs may remain in place until they have reached the end of their service life, at which time they should be replaced with an R16-H1 sign.

#### **201-6 Speed Limit Signs**

Standards for the design and use of Speed Limit signs are addressed in **OMUTCD Chapter 2B**. As noted in **OMUTCD Section 2B.13**, **ORC Section 4511.21** establishes the statutory speed limits in Ohio, and "prescribes how those speed limits may be altered."

**TEM Chapter 1203** describes the processes by which altered speed limits, including those in temporary traffic control zones, are established and the forms that are used.

School Speed Limit signs, School Speed Limit Signs with Beacons, and school zones are discussed in **OMUTCD Section 7B.10** and **TEM Chapters 702 and 705**.

**ODOT** guidelines for reducing the speed limit in certain types of temporary traffic control zones are described in **Subsection 640-18.2**, and Work Zone Speed Limit signs are further addressed in **Subsection 605-3.4**.

Refer to **Section 202-11** for information regarding the use of the Reduced Speed Limit Ahead (W3-5, W3-5a) signs.

#### **201-7 Signing for Engine Brake Restrictions (R20-H1, R20-H2, R10-H20bP, R10-H20cP)**

An engine brake is a device used on vehicles, principally large trucks, that changes the timing of the exhaust valves to slow the vehicle. The engine brake is used instead of, or in addition to, the

friction brakes and produces an audible "popping" noise that is sometimes perceived as objectionable.

The slang term "Jake Brake" is sometimes used to refer to engine brakes in general. However, this term is a registered trademark of **Jacobs Vehicle Systems**, a major manufacturer of engine brakes. Since this term actually refers to all of **Jacobs Vehicle Systems** retarding products and is brand specific, it should not be construed as being equivalent to "engine brake," and should not be used on highway signing.

The **Ohio Office of the Attorney General** has determined that, pursuant to **ORC Sections 505.17(A) and 4513.221(E)(4)**, a **Board of County Commissioners** or **Township Trustees** may enact a regulation prohibiting the use of engine brakes on vehicles within the unincorporated area of the **County** or **Township**. This includes **ODOT**-maintained highways within the boundary of the **County** or **Township**, as well as **County** and **Township** Roads.

**Section 4917 of the United States Code** is part of the **Noise Control Act of 1972**, and sets maximum noise emissions for motor carriers engaged in interstate commerce. According to an opinion issued by the **Ohio Office of the Attorney General**, local regulations restricting the use of engine brakes to control noise for motor carriers engaged in interstate commerce "may be inconsistent with federal law, and thus preempted and unenforceable." For this reason **ODOT** will not install **NO ENGINE BRAKE** signs on the mainline and ramps of Interstate Routes.

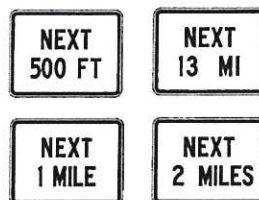
The **NO ENGINE BRAKE** sign (R20-H1) shall be used where the use of engine brakes has been restricted by the proper resolution per the **ORC**. The R10-H20bP and R10-H20cP auxiliary plaques may be used to indicate specifics regarding when or where the restriction applies, and may be combined with the R20-H1 sign on a single panel. Sample legends for these plates are "6 PM - 6 AM" for the R10-H20bP and "NEXT ½ MILE" or "NEXT 500 FT" for the R20-H20cP. The **END ENGINE BRAKE RESTRICTION** sign (R20-H2) may be used to indicate the terminus of the restriction.

For a **Township** restriction, typically only one **NO ENGINE BRAKE** sign (R20-H1) in each direction of travel within the **Township** should be installed on a state highway. More than one sign in each direction of travel may be needed for a countywide restriction, based on the length of the route within the **County**. The signs should be placed at strategic locations where the use of engine brakes has been a problem, such as at the beginning of a downgrade or an approach to an intersection. Alternatively, signs may be placed near where the state highway enters the **County** or **Township** or where a state highway begins within a **County** or **Township**. Overuse of signing should be avoided.

When a **County** or **Township** has passed a resolution restricting the use of engine brakes pursuant to **ORC Sections 505.17(A) and 4513.221(E)(4)**, **ODOT** will install signs on the rural state highway system indicating such a restriction. The **County** or **Township** is responsible for furnishing all signs to **ODOT**. The signs shall be fabricated in accordance with **ODOT** design standards and material specifications. **ODOT** will supply the sign supports and necessary hardware.



R10-H20bP



R10-H20cP



R20-H1



R20-H2



Code No.	Route Type	Size in inches (width x height)
R20-H1, R20-H2	Conventional	24 x 30
R10-H20bP		24 x 8
R10-H20cP		24 x 18
R20-H1, R20-H2	Expressway	36 x 48
R10-H20bP		36 x 12
R10-H20cP		36 x 24
R20-H1, R20-H2	Freeway	48 x 60
R10-H20bP		48 x 16)
R10-H20cP		48 x 30

### 201-8 Move Over Signs (R25-H1)

R25-H1 signs were installed at 75 locations on ODOT-maintained highways in 2000 at the request of the **Ohio State Highway Patrol (OSHP)** to publicize the provisions in **ORC Section 4511.213**. The sign legend was revised to reflect changes to **ORC Section 4511.213** which became effective on April 1, 2009. In December 2013, this provision was revised to also address construction, maintenance and public utilities commission vehicles, and the sign legend was subsequently revised.

The **OSHP** provided funding for initial sign fabrication, and the **Districts** provided the materials and labor for installation. However, no funding has been provided by **OSHP** to cover fabrication costs of signs needed for maintenance replacements. The **Districts** should order and install replacement signs as needed using established procedures.



R25-H1  
120" x 60"

### 201-9 Truck Restrictions

A municipal corporation may restrict truck traffic on State or U.S. Routes through the municipal corporation only by regulating weight limits on the route, and only with the approval of the **Director of Transportation**.

A municipal corporation can regulate the use of its streets and can restrict the type of vehicles that travel over those streets pursuant to **ORC Section 4511.07**. However, **ORC Sections 4511.06 and 4513.33** restrict the use of that power for trucks traversing designated State or U.S. Routes. Thus, a municipal corporation may establish its own truck weight limits for streets and highways within its jurisdiction that differ from those established in **ORC Chapter 5577** and must post signs notifying the traveling public. However, when such weight limits involve State or U.S. Routes, **ORC 4513.33** requires the approval of the **Director** to alter them. Otherwise, the ordinance may conflict with **ORC Sections 4511.06 and 4513.33** and be found ineffective.

Weight Limit signs are discussed in **OMUTCD Section 2B.59**, and the **ODOT Bridge Design Manual (BDM)** also addresses this signing in **BDM Section 919.3.2 and Figure 905**.

# Suder llc

Counsel for the  
Built Environment

**Sean S. Suder, Esq.**  
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Cincinnati, Ohio 45226  
513.694.7501 (d)  
513.235.3470 (c)  
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September 9, 2021

**VIA EMAIL DELIVERY ([tmd@donnellonlaw.com](mailto:tmd@donnellonlaw.com))**

Terrence M. Donnellon, Esq.  
Counsel for the City of Montgomery  
9079 Montgomery Road  
Cincinnati, OH 45242

Dear Terry,

I hope this letter finds you well. On behalf of my client Brian Burress, please accept this formal request for the Montgomery City Council to enact an ordinance prohibiting the use of engine brakes in and around the new roundabout where Cross County Highway meets Montgomery Road. Since the roundabout's construction, there has been a marked increase in the use of engine brakes and resulting loud, harmful noise that disturbs the peace of the nearby residential areas, including my client's residence on Kennedy Lane. Prohibiting engine braking would be a simple fix to address this issue.

The procedure for accomplishing this is straightforward, as explained in the Ohio Department of Transportation's Traffic Engineering Manual.<sup>1</sup> City Council would first enact an ordinance prohibiting the use of engine braking on the roadways leading into the downtown roundabout. Specifically, my client proposes that this prohibition should apply beginning at mile marker 33 and extending east on Cross County Highway and within 500 feet of the roundabout on Montgomery Road. ODOT would then install the proper "NO ENGINE BRAKING" signs on the City's behalf at appropriate locations on the roadways specified in the ordinance.<sup>2</sup>

It is my understanding that some members of Council are unsure of whether the City could lawfully enact and enforce such a prohibition. I have investigated the issue of whether the City would have the legal authority to regulate the use of engine brakes on state highways within its

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<sup>1</sup> *Traffic Engineering Manual*, OHIO DEPARTMENT OF TRANSPORTATION (2018), <https://perma.cc/9DMP-D35T>, at § 201-7.

<sup>2</sup> *Id.*



Sean Suder

jurisdiction. In short, the City has that power under Ohio law. Further, because the highways leading into the roundabout are state highways, federal law would not preempt such a prohibition.

I. Prohibiting the use of engine brakes on state highways within the City's jurisdiction would be a reasonable exercise of the City's police power.

The City has authority under its police power to regulate the use of engine brakes. The Ohio Constitution authorizes municipalities to “exercise all powers of local self-government and to adopt and enforce within their limits such police, sanitary and other similar regulations, as are not in conflict with general laws.”<sup>3</sup> Under this “home rule” system, municipalities may enact police regulations—laws that have a real and substantial relation to the public health, safety, morals, or general welfare and are neither unreasonable nor arbitrary—in areas where the State of Ohio has not retained exclusive power.<sup>4</sup>

Ohio courts routinely hold that prevention of harmful noise is a legitimate goal of municipal police regulations.<sup>5</sup> Further, the Ohio Revised Code expressly allows for municipalities to “prevent . . . noise and disturbance . . . and . . . preserve the peace and good order” of the municipality.<sup>6</sup> Thus, municipal regulations aimed at noise prevention are legitimate uses of the police power that do not conflict with state law. For this reason, a municipality could pass an ordinance aimed at restricting the use of engine brakes to prevent the resulting noise, as long as the ordinance is reasonable and not arbitrary.

There is already strong evidence that a complete ban on the use of engine brakes would be reasonable and not arbitrary: such regulation is already lawful for townships and counties. The Ohio Revised Code grants boards of township trustees and boards of county commissioners the power to regulate motor vehicle noise on streets and highways under their jurisdiction.<sup>7</sup> The Ohio Attorney General has explained that this authority extends to prohibiting the use of engine brakes.<sup>8</sup> According to ODOT, such a prohibition would be proper on any county or township road as well as on any ODOT-maintained highway within the jurisdiction of the county or township.<sup>9</sup>

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<sup>3</sup> Ohio Const. art. XVIII, § 3.

<sup>4</sup> *Am. Fin. Servs. Ass'n v. City of Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 22, 26; *West Jefferson v. Robinson*, 1 Ohio St.2d 113, 120, 205 N.E.2d 382 (1965); *Downing v. Cook*, 69 Ohio St.2d 149, 151, 431 N.E.2d 995 (1982).

<sup>5</sup> *State v. Dorso*, 4 Ohio St.3d 60, 64, 446 N.E.2d 449 (1983) (“Such regulation [of noise] by necessity involves the reasonable circumscription of the rights of individuals for the greater benefit of the commonwealth.”); *City of Tiffin v. McEwen*, 130 Ohio App.3d 527, 531, 720 N.E.2d 587 (3d. Dist 1998) (“[I]t is beyond question that Ohio municipalities are permitted to regulate noise.”); *Franchise Operations, Inc. v. North Olmsted*, 35 Ohio App.3d 125, 128, 520 N.E.2d 17 (8th Dist. 1987) (finding a noise control ordinance “a valid exercise of a municipal police power”); *State v. Boggs*, 1st Dist. Hamilton No. C-980640, 1999 Ohio App. LEXIS 2871, \*10 (Jun. 25, 1999) (finding that the City of Cincinnati’s prohibition of unreasonable noise from a motor vehicle was “on its face . . . a constitutional exercise of the city’s police power”).

<sup>6</sup> Ohio Revised Code § 715.49.

<sup>7</sup> R.C. 505.17; R.C. 4513.221.

<sup>8</sup> 1999 Op. Att’y Gen. No. 99-051 at 2-310.

<sup>9</sup> *Traffic Engineering Manual*, supra note 1 at § 201-7.

As an Ohio municipality, the City may enact police regulations that do not conflict with state law and are reasonable. Prevention of noise is a valid use of the municipal police power that is expressly permitted by state law, and the fact that townships and counties can enact total bans on the use of engine brakes suggests that it would be reasonable and not arbitrary for a municipality to do the same. Thus, the City has authority to ban the use of engine brakes on roadways within the City's jurisdiction.

## II. The Noise Control Act of 1972 would not preempt a prohibition on engine braking.

Although the Manual contains cautionary language regarding the possible preemption of prohibitions of engine braking on interstate highways, the City has nothing to fear for two reasons.

First, the Manual does not say that any and all municipal regulation of engine braking would be preempted by federal law. Instead, the Manual's position is that prohibitions on interstate highways may be preempted, and "[f]or this reason ODOT will not install [such] signs on Interstate Routes."<sup>10</sup> Research did not reveal any legal basis for this distinction. Regardless, neither Montgomery Road nor Cross County Highway are interstate highways; they are both state highways managed by ODOT, so the Manual's exception does not apply on its own terms. Second, federal law would not preempt a municipal prohibition on engine braking.

The specific federal law referenced in the ODOT Manual is Section 4917 of the Noise Control Act of 1972. That section authorizes the promulgation of "noise emission regulations for motor carriers engaged in interstate commerce," with the Environmental Protection Agency ("EPA") setting limits on noise emissions<sup>11</sup> and the Department of Transportation ("DOT") enforcing those limits.<sup>12</sup> Those agencies have promulgated regulations with respect to three discrete aspects of motor carriers: decibel limits,<sup>13</sup> exhaust systems,<sup>14</sup> and tires.<sup>15</sup>

The Act contains language that expressly preempts certain local regulations.<sup>16</sup> However, federal courts have interpreted that language narrowly, holding that the Act only displaces local regulations in the specific instances where the EPA and DOT have already regulated.<sup>17</sup> Because a prohibition on engine braking does not speak to a vehicle's decibel level, exhaust system, or tires, the Act would not expressly preempt such a prohibition. Further, the Act would not impliedly

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<sup>10</sup> *Traffic Engineering Manual*, supra note 1 at § 201-7.

<sup>11</sup> 42 U.S.C. § 4917(a)(1).

<sup>12</sup> *Id.* at § 4917(b).

<sup>13</sup> 40 CFR § 202.20; 49 CFR § 325.7.

<sup>14</sup> 40 CFR § 202.22.

<sup>15</sup> 40 CFR § 202.23.

<sup>16</sup> 42 U.S.C. §§ 4916(c)(1), 4917(c)(1).

<sup>17</sup> *Baltimore & Ohio R.R. Co. v. Oberly*, 837 F.2d 108, 114 (3d Cir. 1988) (finding that the Noise Control Act's preemption language "simply is not a global preemption provision"); *New Hampshire Motor Transp. Ass'n. v. Town of Plaistow*, 67 F.3d 326, 332 (1st Cir. 1995) ("The Noise Control Act was not designed to remove all state and local control over noise.").

preempt such a prohibition because there would be no actual conflict with federal law, and courts have held that the Act does not evince a congressional intent to occupy the entire fields of noise control or trucking.<sup>18</sup>

For these reasons, it would be entirely lawful and appropriate for the City Council to pass a resolution prohibiting the use of engine brakes on city and state roadways within the City limits. Based on this information, my client respectfully asks that the Mayor propose an ordinance to Council to prohibit engine braking beginning at mile marker 33 and extending east on Cross County Highway and within 500 feet of the roundabout on Montgomery Road. We appreciate your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Suder', with a long horizontal line extending to the right.

Sean S. Suder  
Counsel for Brian Burress

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<sup>18</sup> *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (“In the absence of an express congressional command, state law is pre-empted if that law actually conflicts with federal law . . . or if federal law so thoroughly occupies a legislative field ‘as to make reasonable the inference that Congress left no room for the States to supplement it.’”) (internal citations omitted); *Baltimore & Ohio R.R.*, 837 F.3d at 113 (holding that the Act does not demonstrate federal occupation of any regulatory field); *N.E. Material Group Amended A250 Permit*, 2016 Vt. Super. LEXIS 120, \*44 (Vt. Sup. Ct. Env. Div. 2016) (“federal regulation does not preempt the entire field of trucking”).

**City of Montgomery, OH**  
 Ronald Reagan Highway Truck / "Jake Brake" Count  
 October 6, 2021

Time	Single Unit Truck	Tractor-Trailer Truck	"Jake Brake" Applied
6:00 AM	9	4	5
7:00 AM	9	0	2
8:00 AM	22	3	11
9:00 AM	13	4	0
10:00 AM	14	3	1
11:00 AM	23	4	1
12:00 PM	20	3	7
1:00 PM	15	1	1
2:00 PM	8	3	2
3:00 PM	20	0	1
4:00 PM	14	0	1
5:00 PM	6	0	0
<b>12 Hr Total</b>	<b>173</b>	<b>25</b>	<b>32</b>

**Total Trucks**                      **198**

**Total Jake Brakes**              **32**

**Jake Brake %**                      **16.16%**



## Gary Heitkamp

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**From:** Tom.Arnold@dot.ohio.gov  
**Sent:** Thursday, October 21, 2021 4:09 PM  
**To:** Gary Heitkamp  
**Subject:** RE: Engine Brake

Good Afternoon Gary:

Thanks for your email. I would be reluctant to pass an engine brake restriction for SR-126 since it is a freeway or the end of a freeway. [Section 201-7 of the ODOT Traffic Engineering Manual](#) summarizes the process for engine brake requests. Here is the language that applies:

### **201-7 Signing for Engine Brake Restrictions (R20-H1, R20-H2, R10-H20bP, R10-H20cP)**

An engine brake is a device used on vehicles, principally large trucks, that changes the timing of the exhaust valves to slow the vehicle. The engine brake is used instead of, or in addition to, the friction brakes and produces an audible "popping" noise that is sometimes perceived as objectionable.

The slang term "Jake Brake" is sometimes used to refer to engine brakes in general. However, this term is a registered trademark of Jacobs Vehicle Systems, a major manufacturer of engine brakes. Since this term actually refers to all of Jacobs Vehicle Systems retarding products and is brand specific, it should not be construed as being equivalent to "engine brake," and should not be used on highway signing.

The Ohio Office of the Attorney General has determined that, pursuant to ORC Sections 505.17(A) and 4513.221(E)(4), a Board of County Commissioners or Township Trustees may enact a regulation prohibiting the use of engine brakes on vehicles within the unincorporated area of the County or Township. This includes ODOT-maintained highways within the boundary of the County or Township, as well as County and Township Roads.

Section 4917 of the United States Code is part of the Noise Control Act of 1972, and sets maximum noise emissions for motor carriers engaged in interstate commerce. According to an opinion issued by the Ohio Office of the Attorney General, local regulations restricting the use of engine brakes to control noise for motor carriers engaged in interstate commerce "may be inconsistent with federal law, and thus preempted and unenforceable." For this reason ODOT will not install NO ENGINE BRAKE signs on the mainline and ramps of Interstate Routes.

The NO ENGINE BRAKE sign (R20-H1) shall be used where the use of engine brakes has been restricted by the proper resolution per the ORC. The R10-H20bP and R10-H20cP auxiliary plaques may be used to indicate specifics regarding when or where the restriction applies, and may be combined with the R20-H1 sign on a single panel. Sample legends for these plates are "6 PM - 6 AM" for the R10-H20bP and "NEXT ½ MILE" or "NEXT 500 FT" for the R20-H20cP. The END ENGINE BRAKE RESTRICTION sign (R20-H2) may be used to indicate the terminus of the restriction.

For a Township restriction, typically only one NO ENGINE BRAKE sign (R20-H1) in each direction of travel within the Township should be installed on a state highway. More than one sign in each direction of travel may be needed for a countywide restriction, based on the length of the route within the County. The signs should be placed at strategic locations where the use of engine brakes has been a problem, such as at the beginning of a downgrade or an approach to an intersection. Alternatively, signs may be placed near where the state highway enters the County or Township or where a state highway begins within a County or Township. Overuse of signing should be avoided.

When a County or Township has passed a resolution restricting the use of engine brakes pursuant to ORC Sections 505.17(A) and 4513.221(E)(4), ODOT will install signs on the rural state highway system indicating such a restriction. The County or Township is responsible for furnishing all signs to ODOT. The signs shall be fabricated in accordance with ODOT design standards and material specifications. ODOT will supply the sign supports and necessary hardware.



R10-H20bP



R10-H20cP



R20-H1



R20-H2

Code No.	Route Type	Size in inches (width x height)
R20-H1, R20-H2	Conventional	24 x 30
R10-H20bP		24 x 8
R10-H20cP		24 x 18
R20-H1, R20-H2	Expressway	36 x 48
R10-H20bP		36 x 12
R10-H20cP		36 x 24
R20-H1, R20-H2	Freeway	48 x 60
R10-H20bP		48 x 16
R10-H20cP		48 x 30

If you would like to discuss further, please let me know.  
 Respectfully,  
 Tommy Arnold

**E. Thomas Arnold, Jr., P.E.**

*District Planning Engineer / Safe Routes to School Coordinator*  
 ODOT District 8  
 505 South State Route 741, Lebanon, OH 45036  
 (p) 513.933.6588  
[transportation.ohio.gov](http://transportation.ohio.gov)




**From:** Gary Heitkamp <gheitkamp@montgomeryohio.org>  
**Sent:** Wednesday, October 20, 2021 10:42 AM  
**To:** Arnold, E. <Tom.Arnold@dot.ohio.gov>  
**Subject:** Engine Brake

Good morning Tom,  
 Not sure who to reach out to at ODOT regarding this, but if you could direct me in the right direction that would be greatly appreciated.  
 We had residents requesting that the City of Montgomery enact a local ordinance restricting Engine Brakes on Cross County highway between I-71 and Montgomery Road (US22).  
 Do you know who at ODOT would be best to discuss this with? We are just looking to see if ODOT has any info related to the topic, even though we are aware that ODOT does not implement these restrictions.  
 Thank you,


**Gary Heitkamp, P.E.**  
 Public Works Director



City of Montgomery  
7315 Cornell Rd.  
Montgomery, OH 45242  
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Cell: 513-289-0463  
Fax: 513-469-1525  
Email: [gheitkamp@montgomeryohio.org](mailto:gheitkamp@montgomeryohio.org)  
Web: [www.montgomeryohio.gov](http://www.montgomeryohio.gov)



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A CHARMING PAST. A SLOWING FUTURE.



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*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  
August 2, 2021

**Present**

Brian Riblet, City Manager  
John Crowell, Chief of Police  
Paul Wright, Fire Chief  
Connie Gaylor, Clerk of Council  
Officer Nick Nimeskern

**Committee Members Present**

Lee Ann Bissmeyer, Chair  
Ron Messer  
Ken Suer

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The Law and Safety Committee of Council convened its meeting for August 2, 2021 at 3:30 p.m. with Mrs. Bissmeyer presiding.

**Update and Status of a Law Enforcement Assignment**

Mr. Messer made a motion to adjourn into Executive Session for matters required to be kept confidential by Federal law or regulations or State statutes. Mr. Suer seconded. The Committee unanimously agreed. The Committee adjourned into Executive Session at 3:34 p.m.

The Committee came back into Public Session at 4:28 p.m.

**Minutes**

Mr. Suer made a motion to approve the minutes of the May 4, 2020 meeting. Mr. Messer seconded. The Committee unanimously approved the minutes.

**Other Business**

There was no other business to discuss.

**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 4:31 p.m.

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Chair of Law and Safety Committee of City Council