

ORDINANCE NO. 51

AN ORDINANCE PROHIBITING NOISE CAUSED BY THE USE OF AN UN-MUFFLED RETARDER OR UN-MUFFLED STRAIGHT PIPES TO SLOW A MOTOR VEHICLE'S RATE OF SPEED; PROVIDING FOR PENALTIES; DESIGNATING THE ROADWAYS TO BE GOVERNED BY THIS ORDINANCE; PROVIDING FOR THE SEVERABILITY OF PARTS HEREOF; REPEALING ORDINANCES IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 4-37-1 NMSA 1978, the Board of County Commissioners of Luna County is empowered to prohibit excessive noise caused by the use of a retarder (Jake Brake) in slowing a motor vehicle; and

WHEREAS, it is in the best interests of the public to prohibit the use of un-muffled retarders or un-muffled straight pipes on certain public right-of-way, which prohibition will serve to promote the prosperity, public health, safety and welfare of the residents of Luna County.

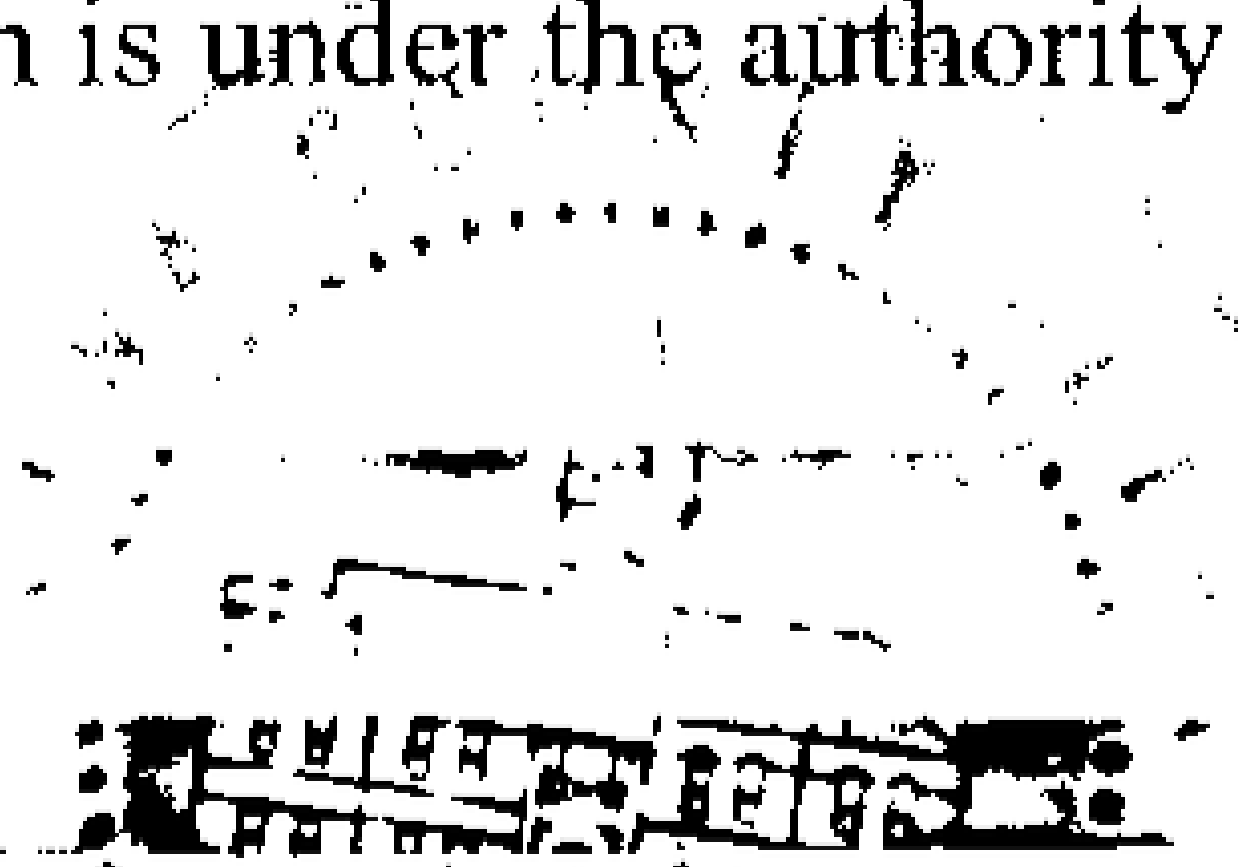
NOW, THEREFORE, IT IS HEREBY ORDAINED AS FOLLOWS:

Section 1. Intent. The intent of this ordinance is to ensure the citizens an environment free from excessive sound caused by the use of an un-muffled retarder device, commonly known as a "jake brake", or un-muffled straight pipes when a driver is attempting to slow a motor vehicle's rate of speed without the use of braking power and instead utilizing any exhaust and/or engine device.

Section 2. Definitions.

The term "retarder" shall mean any exhaust and/or engine device used as braking power, to slow down a truck, automobile, motorcycle, or other motor vehicle's rate of speed.

The term "public right-of-way" shall mean any street, avenue, boulevard, highway, or alley or similar place which is under the authority of Luna County, New Mexico or the State of New Mexico.



STATE OF NEW MEXICO - COUNTY OF LUNA RECEPTION NUMBER 2004-06455
I CERTIFY THAT THIS DOCUMENT WAS FILED FOR RECORD AT 9:06 A.M. ON
November 9th 2004 NATALIE PACHECO, LUNA COUNTY CLERK
BY Cynthia Rodriguez DEPUTY CLERK 4 pgs.

The term "motor vehicle" shall mean any vehicle which is self-propelled.

Section 3. Use of Retarder Devices Prohibited. No person shall operate or cause to be operated any motor vehicle in an attempt to slow the speed of the motor vehicle with the use of an un-muffled retarder device, commonly known as a "jake brake", or un-muffled straight pipes. It shall be an affirmative defense that un-muffled retarder and/or compression brakes were applied in an emergency to protect persons and/or property.

- A. A violation of this Ordinance shall be cause for issue of a citation and a complaint to be filed with the Magistrate Court for the County of Luna; and
- B. Any uniformed Sheriff's Deputy shall have, in addition to any other authority vested in him, the power to stop a motor-vehicle reasonably suspected of violation of this Ordinance.

Section 4. Penalties. Any person violating this Ordinance shall be punished by a fine of not more than three hundred dollars (\$300.00) or by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment.

Section 5. Applicable Rights-of-Way Exception. This Ordinance shall apply to all public rights-of-way (as defined herein) within Luna County outside the boundaries of any municipality. Provided however, that any such right-of-way or portion of right-of-way within Luna County that has been designated by the New Mexico Department of Transportation as a particularly hazardous road upon which the Department has required the use of a "retarder or other exhaust and/or engine device used as braking power", to

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slow down a truck, automobile, motorcycle, or other motor vehicle's rate of speed shall not be subject to the prohibition contained in this Ordinance.

Section 6. Severability. It is hereby declared to be the intention of the Board of County Commissioners that the sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be deemed severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance is declared unconstitutional or otherwise invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections hereof.

Section 7. Conflict. Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 8. Effective Date. This ordinance shall take effect thirty days after recording of this Ordinance in the Public Records of Luna County, New Mexico.

PASSED, APPROVED, AND ADOPTED this 5th day of November, 2004.

**BOARD OF COMMISSIONERS OF
LUNA COUNTY, NEW MEXICO**

By *Armando Armijo*
CHAIRMAN

Jan T. Amigo
MEMBER

Marlene S. [Signature]
MEMBER

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ATTEST:

Natalee Pacheco

COUNTY CLERK



APPROVED AS TO LEGAL SUFFICIENCY:

Kent Cooper

Kent Cooper, Luna County Attorney

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