

**ORDINANCE No. 767**

**AN ORDINANCE OF THE CITY OF GOTHENBURG, NEBRASKA TO AMEND THE CODE OF THE CITY OF GOTHENBURG BY ADDING A NEW SECTION, NUMBERED 6-319, ENTITLED "ENGINE BRAKES, DEFINITIONS AND PROHIBITIONS" TO ARTICLE 3 "MUNICIPAL OFFENSES" OF CHAPTER 6, "POLICE REGULATIONS" OF THE CODE; TO DEFINE AND PROHIBIT THE USE OF ENGINE BRAKES; TO PROVIDE FOR AFFIRMATIVE DEFENSES; TO PROVIDE A PENALTY; TO REPEAL ALL ORDINANCES AND RESOLUTIONS OR PARTS THEREOF IN CONFLICT HERewith; TO PROVIDE THAT THIS ORDINANCE SHALL BE MADE A PART OF THE CODE OF THE CITY OF GOTHENBURG; AND TO PROVIDE FOR AN EFFECTIVE DATE OF THIS ORDINANCE.**

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GOTHENBURG, NEBRASKA:**

**Section 1.** The Code of the City of Gothenburg, Nebraska, is hereby amended by adding a new Section, 6-319, entitled "Engine Brakes; Definitions, Prohibited, Affirmative Defense, and Penalty" to Article 3 "Miscellaneous Offenses" of Chapter 6 "Police Regulations" of the Code of the City of Gothenburg which reads as follows:

**§6-319        ENGINE BRAKES; DEFINITIONS; PROHIBITED;  
AFFIRMATIVE DEFENSE; AND PENALTY.**

(1) **Definition.** For the purposes of this Article, the term "engine brake" is hereby defined as a specific braking mechanism which utilizes the release of compressed air as part of an engine retarder or engine brake on any motor vehicle as a means of slowing or stopping said vehicle.

(2) **Prohibition of Engine Brakes.** It shall be unlawful for anyone to operate a motor vehicle and use engine retarders or engine brakes as a means of slowing or stopping said vehicle within the city limits.

(3) **Affirmative Defense.** The use of an engine retarder or brake in an emergency situation to avoid an imminent accident which would otherwise result in damage or injury to person(s) or property, or the fact that the motor vehicle is equipped with a proper muffler system which eliminates noise emitted or caused by the use of an engine retarder or brake system shall constitute affirmative defenses to the application of the application of the provisions of this Section.

(4) **Penalty.** Any person violating any of the provisions of this Section shall be deemed guilty of an infraction and, upon conviction thereof, shall be fined in accordance with the provisions of Section 6-401. Each day any such violation shall occur or continue shall constitute and be deemed a separate offense.

**Section 2.**     It is the intention of the City Council, and it is hereby ordained, that the

provisions of this Ordinance shall become and be made part of the Code of the City of Gothenburg, Nebraska, and the sections of this Ordinance may be renumbered to accomplish such intention.

**Section 3.** That all ordinances and resolutions or parts of ordinances and resolutions in conflict herewith are hereby repealed.

**Section 4.** Provisions of this ordinance are separable, and any invalidity of any phrase, clause, or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

**Section 5.** This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law and shall be published in pamphlet form by the authority of the City Council.

PASSED AND APPROVED THIS 8<sup>th</sup> DAY OF January 2002.

ATTEST:

Larry Franzen  
Larry Franzen, Mayor

Connie Stull  
Connie Stull, City Clerk

Approved as to form:

Alvin P. [Signature]  
City Attorney