

Upon motion by Richard Figaski, seconded by John Groh, the following Ordinance was duly enacted, 3 voting in favor of enactment, 0 voting against enactment.

ORDINANCE NO. 2014-5

An Ordinance of the Township of Millcreek, Erie County, Pennsylvania to establish and impose restrictions prohibiting use of brake retarders on vehicles operated upon designated streets of the Township; prohibiting use and/or operation of brake retarders on West 38th Street (S.R. 4016) between Zuck Road and Asbury Road; providing for the erection of official signs to provide notice and warning as to the traveling public of said regulation; establishing fines and penalties for violations; and including severability and repealor clauses.

WHEREAS, the Pennsylvania Department of Transportation (“PennDOT”) defines a brake retarder as a mechanical device which is designed to supplement a vehicle’s service brakes by producing a retarding torque about one of the rotating components in a vehicle, converting kinetic energy to heat and thereby retarding the forward motion of a vehicle (see 67 Pa. Code Sec. 179.1); and

WHEREAS, PennDOT has established regulations requiring use of brake retarders in certain situations, said regulation providing that a municipality may not prohibit use of brake retarders unless PennDOT gives its prior approval to such prohibition; and

WHEREAS, with increased traffic volume along West 38th Street (S.R. 4016), use of brake retarders has created loud noises adversely affecting many nearby residential uses between Asbury Road and Zuck Road in Millcreek Township; and

WHEREAS, after receipt of complaints and its own investigation, the Township, as required by 67 Pa. Code Section 179.10, asked PennDOT to allow Millcreek Township to prohibit use of brake retarders by operators of vehicles on West 38th Street (S.R. 4016) between Asbury Road and Zuck Road; and

WHEREAS, PennDOT by letter dated April 2, 2014 advised that the subject section of West 38th Street meets the Department’s criteria for a brake retarder prohibition and approved prohibition of the use on this section of West 38th Street, subject to certain requirements; and

WHEREAS, the Board of Supervisors finds that it is in the best interest of the public safety and general welfare that use of brake retarders on vehicles traveling along West 38th Street be prohibited between Asbury Road and Zuck Road and that in effectuating this regulation, the Board adopts general regulations that shall apply as applicable to future prohibitions of use of brake retarders.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of Millcreek Township, Erie County, Pennsylvania and it is hereby enacted and ordained as follows:

1.01. No person shall use or operate a brake retarder on any vehicle traveling on West 38th Street (S.R. 4016) between Asbury Road and Zuck Road. This prohibition shall become effective upon completion of posting of signage required by this Ordinance.

1.02. It shall be unlawful to use or allow the operation of a brake retarder on a motor vehicle on that section of West 38th Street set forth above in Section 1.01.

1.03. Official signs giving notice of the prohibition and of a vehicle's leaving the area of prohibition shall be erected and maintained on West 38th Street, generally as set forth on the drawing attached hereto as Appendix 1. As required by PennDOT, such signage shall include at a minimum:

1.03.1 A 30" x 36" sign conforming to PennDOT Sign R14-9, located akin to Location A on Appendix 1 as vehicles enter or approach the prohibition area, reading:

BRAKE
RETARDERS
PROHIBITED
NEXT
3 MILES

and

1.03.2 A 30" x 36" sign conforming to PennDOT Sign R14-9A, located as vehicles leave the prohibition area (Location B), generally as shown on Appendix 1, reading:

END BRAKE
RETARDER
PROHIBITION

1.04. The Township shall be responsible for obtaining, erecting, maintaining and, as needed, replacing signs.

1.05. Exemption. Emergency vehicles required or authorized to have brake retarders are exempted from regulations of this Ordinance.

1.06. Each violation of this Ordinance shall constitute a separate offense.

1.07. Any person(s) or entity(ies) who or which violate any of the provisions of this Ordinance, upon a summary conviction, shall be sentenced to pay a fine of not less than \$100.00 and not more than \$300.00, as well as costs of prosecution. To the extent permitted by State law, such fine shall be paid over to the Millcreek Township Treasurer. In accordance with the provisions of Ordinances Nos. 96-8 and 96-9, as the same may be amended, a person found to have violated this Ordinance shall also be obligated to pay all attorneys' fees incurred by Millcreek Township in such proceeding.

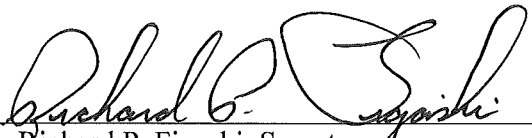
1.08. This Ordinance shall be enforced by the Millcreek Township Police Department.

1.09. In accordance with the requirements of 67 Pa. Code 179.10, prohibition of use of brake retarders shall not be effected without prior written approval of PennDOT.

1.10. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by any court, such holding(s) shall not be construed to affect the validity of any of the remaining provisions of this Ordinance. It is hereby declared the legislative intent that this Ordinance would have been adopted had such invalid or unconstitutional provision or its application not been included herein.

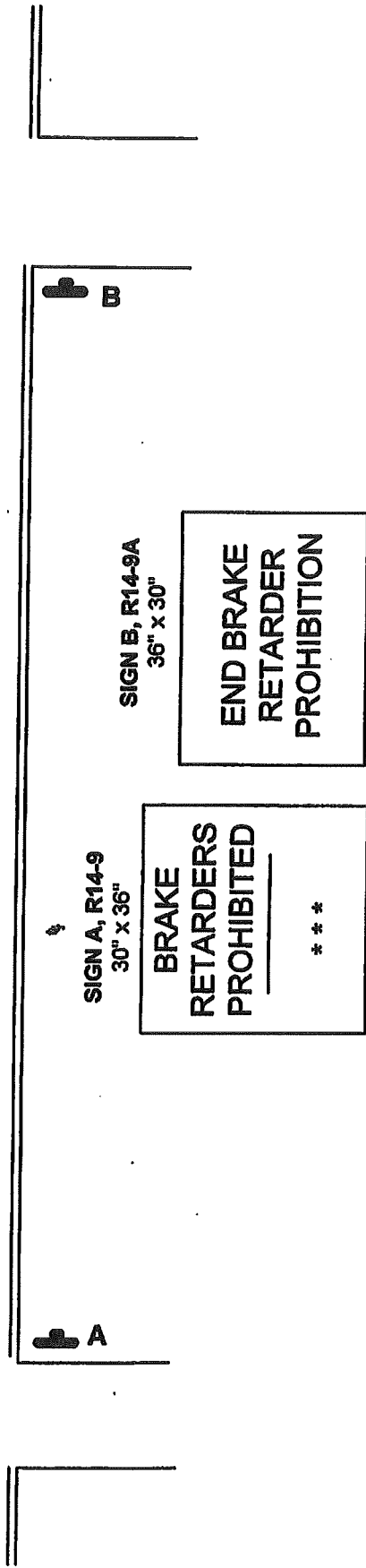
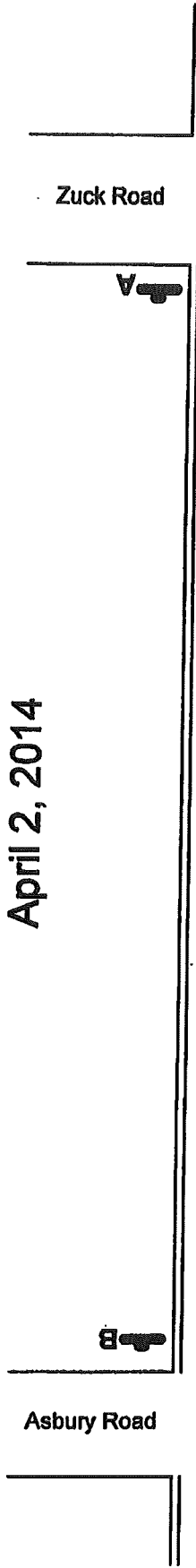
1.11. All Ordinances or parts of any Ordinance inconsistent herewith are hereby repealed.

BE IT ENACTED this 22nd day of April, 2014.



Richard P. Figaski, Secretary

Erie County, Millcreek Township
State Route 4016
Engine Brake Retarder
April 2, 2014



*** Refer to detail for options