

THE CORPORATION OF THE TOWN OF LINCOLN
BY-LAW NO. 2019-44

A BY-LAW TO PROHIBIT AND REGULATE NOISES
LIKELY TO DISTURB THE INHABITANTS OF THE
TOWN OF LINCOLN, AND TO REPEAL BY-LAW 08-48

WHEREAS Section 129 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (the "*Municipal Act, 2001*") as amended, authorizes municipalities to pass By-laws to prohibit and regulate noise in the municipality;

AND WHEREAS it is in the public interest to reduce the level of noise in the Town of Lincoln so as to preserve, protect and promote the public health, safety, welfare and the peace and quiet of the inhabitants of the Town;

AND WHEREAS pursuant to section 425 of the *Municipal Act, 2001*, a municipality may pass By-laws providing that a person who contravenes a By-law of the municipality passed under that Act is guilty of an offence.

NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF LINCOLN HEREBY ENACTS AS FOLLOWS:

1. SHORT TITLE

1.1. This By-law may be referred to as the "Noise Control By-law".

2. INTERPRETATION

2.1. For the purposes of this By-law, the following terms shall have the corresponding meanings:

- (a) "Construction" means the erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing, earth moving, grading, excavating, laying of pipe or conduit, street and highway building, equipment installation or the alteration and structural installation of components and materials in any form;
- (b) "Construction Equipment" means any equipment or device used or intended for use in construction including, but not limited to, air compressors, pile drivers, pneumatic or hydraulic tools, bulldozers, excavators, trenchers, cranes, loaders, scrapers, pavers, compactors, rollers, graders, concrete mixers and the like.
- (c) "Construction Site" means an area or portion of land that is used for or that is under Construction;
- (d) "Council" means the Council of the Town.
- (e) "Exemption Issuer" means the Director of Planning and Development, or any other person appointed by the Director to review and issue noise exemptions for the Town;
- (f) "Hearing Committee" means a committee appointed by Council;
- (g) "Holiday" means any holiday set out as a holiday in the *Retail Business Holidays Act*, R.S.O. 1990, c. R.30, as amended, or any successor thereof;
- (h) "Inhabitants" means one or more persons who whether permanently or temporarily reside in the Town or may include a visitor(s) to the Town;
- (i) "Noise" means any sound or vibration that is of such a volume or nature that it is likely to disturb the Inhabitants of the municipality;

- (j) "Officer" means a Municipal Law Enforcement Officer appointed by Town By-law, a Police Officer, or other person appointed by the Town to enforce this By-law;
- (k) "Person" includes a corporation, organization, association, partnership and the like;
- (l) "Point of Reception" means any place on a property where a sound is heard, the source of which does not originate from the property;
- (m) "Special Event" means a gathering or function as further defined in By-law No. 2018-17, *A By-law to Regulate and Govern the Holding of Special Events in the Town of Lincoln, and to Establish a Permit System for Special Events*;
- (i) "Town" means the Corporation of the Town of Lincoln;
- (j) "Unauthorized" means contrary to prevailing Federal, Provincial or Municipal law or regulations;
- (k) "Weekday" means any Monday, Tuesday, Wednesday, Thursday or Friday, other than a statutory holiday.

2.2. For the purposes of this By-law, unless the context otherwise requires, words imparting the singular shall include the plural and words imparting the masculine gender shall include the feminine and vice versa.

2.3. Where a form of words or expression is prescribed in this By-law, deviations therefrom not affecting the substance or calculated to mislead do not vitiate them.

2.4. Should any section, clause or provision of this By-law be held by a court of competent jurisdiction to be invalid, the validity of the remainder of this By-law shall not be affected.

2.5. References in this By-law to any statute or statutory provision include references to that statute or statutory provision as it may from time to time be amended, extended or re-enacted.

3. GENERAL EXEMPTIONS

3.1. This By-law shall not apply to a person who emits or causes or permits the emission of sound or vibration in connection with:

- (a) Special Events as defined in By-law 2018-17, for which a permit has been issued and which is compliant with the conditions of that permit;
- (b) An event held by the Town;
- (c) Measures undertaken for the immediate health, safety or welfare of the Inhabitants under emergency circumstances or in circumstances of public necessity;
- (d) The operation of a bell, horn, siren or other signaling device required by law, or associated with any emergency or law enforcement vehicle, or associated with the operation of a traffic control device at any intersection including any railway crossing;
- (e) Measures undertaken by the Town, the Regional Municipality of Niagara, the Province of Ontario or the Government of Canada or any of their servants, employees, contractors or agents in carrying out any operations including the operation, maintenance or installation government-owned infrastructure, facilities or the like, or to deliver government services;

- (f) Any activity that is integral to the operation of any railway or airport within the legislative authority of the federal or provincial government;
- (g) The discharge of consumer fireworks, display fireworks or pyrotechnic special effects fireworks if such discharge complies with the Town of Lincoln's By-law No. 07-77: *A By-law to Prohibit and Regulate the Sale and Use of Fireworks and Pyrotechnic Special Effects Within the Town of Lincoln*, as amended;
- (h) The sounding of bells or chimes as part of a religious ceremony or by the Salvation Army, sounds related to a military service, or the use of an apparatus or mechanism for the amplification of the human voice or of music for the purpose of a call to prayer;
- (i) The sounding of bells, chimes or music by a mobile vendor operating in conformity with all prevailing Federal, Provincial or Municipal law or regulations providing that such mobile vendor does not emit, cause or permit such ringing or sounding of bells or chimes at any one location for a period of more than thirty (30) seconds;
- (j) Agricultural operations carried on as normal farm practices in accordance with the Farming and Food Production Protection Act, 1998, S.O. 1998, c.1, as amended;

4. EXEMPTIONS BY EXEMPTION ISSUER

4.1. Any Person may apply for a temporary noise exemption permit from this By-law or any provision of it.

4.2. An applicant for a temporary noise exemption under subsection 4.1 shall submit to the Exemption Issuer, not less than 45 days prior to the commencement of the activity for which the temporary noise exemption is sought:

- (a) an application in writing, in the form determined by the Exemption Issuer from time to time and including:
 - (i) the name and contact information of the applicant;
 - (ii) a description of the source of the sound and resulting noise in respect of which the temporary noise exemption is sought;
 - (iii) the location of the Event or Construction activity for which the temporary noise exemption is sought;
 - (iv) the provision or provisions of this By-law for which the temporary noise exemption is sought, and the terms being requested;
 - (v) the rationale for the temporary noise exemption;
 - (vi) the days and hours for which the exemption is sought; and
 - (vii) the name and contact information of the contact Person or Persons who will be supervising the activities for which the temporary noise exemption is sought and who will be available to address concerns raised by Persons with in the area where the noise is heard;
- (b) other information or documentation requested by the Exemption Issuer to assist him or her to assess the application; and
- (c) any application fee established in accordance with the Town of Lincoln Fees and Charges By-law.

4.3. The application fee shall be non-refundable.

4.4. The Exemption Issuer may circulate the application to other Town departments, Ward Councillors, the Niagara Regional Police Service and any other source which is deemed to be relevant for input.

5. Refusal of Exemption

5.1. The Exemption Issuer may refuse to issue the temporary noise exemption if:

- (a) the application was not submitted in the time frame provide for in Section 4.2;
- (b) the application is not complete;
- (c) after due consideration of the factors in paragraph 6.1(b), it is the opinion of the Exemption Issuer that it is not appropriate to issue a temporary noise exemption.

5.2. Following the completed review of an application, the Exemption Issuer shall notify the applicant of:

- (a) the decision and particulars of the reason for the refusal to issue or renew the temporary noise exemption within 10 business days.

6. Issuance of Exemption

6.1. The Exemption Issuer may issue a temporary noise exemption:

- (a) if there are no grounds to refuse the application pursuant to paragraphs 5.1(a), (b) or (c);
- (b) in the opinion of the Exemption Issuer it is appropriate to issue the temporary noise exemption after a due consideration of:
 - (i) any negative effects the issuance of the temporary noise exemption may have on neighbouring properties or on the Town;
 - (ii) any benefits the issuance of the temporary noise exemption may have for neighbouring properties or for the Town;
 - (iii) any previous violations of this By-law;
 - (iv) any previous violations by the applicant of conditions of a temporary noise exemption;
 - (v) any input received pursuant to subsection 4.4; and
 - (vi) any other matter the Exemption Issuer reasonably considers relevant;

6.2. In issuing a temporary noise exemption, the Exemption Issuer:

- (a) shall identify:
 - (i) the location and type of activity authorized;
 - (ii) the type of sounds that are authorized;
 - (iii) the days and times during which the temporarily exempted sound is authorized; and
- (b) may impose conditions suitable to the circumstances, but shall include the following:
 - (i) any noise does not exceed:
 - a. 90 dBA as measured 10 m from its source; or,

- b. 60 dBA as measure at the Point of Reception, provided an accurate reading can take place
 - c. The threshold which is first to occur will apply as the maximum level of noise.
- (ii) Notice of the Noise Exemption permit with the dates, times and address of each event circulated by letter no later than 10 days prior to the event to any property within:
 - a. 60 m in an Urban Area
 - b. 250 m outside of an Urban Area
 - (iii) That the applicant or person(s) appointed on their behalf, measure active dBA at a minimum once per hour during the identified event times. Documentation to be available to an Officer upon request.
 - (iv) That any noise be adjusted to acceptable levels, if directed by an Officer; and,
 - (v) That a permit may be revoked if any condition is not being met

7. Exemption

- 7.1. A temporary noise exemption is issued by the Exemption Issuer signing and dating the temporary noise exemption.
- 7.2. The Exemption Issuer shall provide the temporary noise exemption to the applicant.
- 7.3. A temporary noise exemption issued under this By-law, if not earlier revoked, shall expire on the date set out in the temporary noise exemption.
- 7.4. The noise exemption shall be posted in a conspicuous place at the event or construction area.

8. Appeal to Hearing Committee

- 8.1. The applicant for a temporary noise exemption under this By-law may appeal to the Hearing Committee:
 - (a) a refusal to issue a temporary noise exemption where such refusal is based on the exercise of the Exemption Issuer's discretion under paragraph 5.1(c); or
 - (b) any condition imposed by the Exemption Issuer as a condition of the temporary noise exemption, except a condition required by paragraph 6.2(b).
- 8.2. An applicant entitled to request a hearing before the Hearing Committee pursuant to subsection 8.1, may apply in writing to the Exemption Issuer for a hearing and shall submit with such application, an administrative fee in an amount determined in accordance with the Town Fees and Charges By-law, as amended.
- 8.3. On receipt of a request for a hearing, the Exemption Issuer shall review the request to determine if the request is based on grounds provided for in this By-law and that the administrative fee in an amount determined in accordance with the Towns Fees and Charges By-law, as amended, has been paid and if same is in order, shall request the Secretary Treasurer to set a date, time and place for the hearing.
- 8.4. When asked to do so by the Exemption Issuer, the Secretary Treasurer shall set a date, time and place for a hearing of the appeal before the Hearing Committee and give notice of the date, time and place of the hearing to the applicant.

8.5. On the date and time scheduled for the hearing, or such later date as may be set or consented to by the Hearing Committee, the Hearing Committee may hear and view any evidence provided by the Exemption Issuer and by the applicant for the hearing and may:

- (a) uphold the decision to refuse to issue the temporary noise exemption, based on any grounds open to the Exemption Issuer;
- (b) may authorize the issuance of the temporary noise permit and set any conditions for the issuance of the temporary noise exemption in accordance with subsection 6.2; or
- (c) uphold, remove, alter or add any condition of the temporary noise exemption based on any grounds open to the Exemption Issuer.

8.6. Upon the Hearing Committee reaching a decision, the Secretary Treasurer shall give notice of the decision in writing to the applicant for the hearing, and the Exemption Issuer shall, where appropriate, issue the temporary noise exemption as directed by the Hearing Committee or issue an amended temporary noise exemption reflecting the conditions imposed by the Hearing Committee.

8.7. Any conditions of a temporary noise exemption issued by the Exemption Issuer remain in effect unless and until altered or removed by the Hearing Committee.

8.8. The onus is on the applicant for a temporary noise exemption to provide evidence to the satisfaction of the Hearing Committee that the applicant is entitled to the issuance of the temporary noise exemption or to have any condition of the temporary noise exemption altered or removed.

9. Revocation of an Exemption

9.1. The Exemption Issuer and/or Officer may revoke a temporary noise exemption issued under this By-law if, in the opinion of the Exemption Issuer and/or Officer, there is a failure to comply with the terms and conditions of the temporary noise exemption. Notice of the revocation may be given in writing or may be given orally and followed by notice in writing. Written notice may be addressed to the applicant at the address in the application for the exemption. Notice is deemed effective immediately, if given orally and deemed effective the fifth day after mailing, if the notice is given only by mail, whether or not the notice is actually received. If a revocation of a noise exemption has occurred, penalties as noted in section 13 of this By-law may also apply based on the discretion of the Exemption Issuer and/or Officer if it has been determined that a contravention of any other provision of this By-law has occurred.

10. Offence

10.1. No Person to whom a temporary noise exemption has been issued, shall make, cause or permit the making of sound or the continuation of any sound contrary to the terms and conditions of the temporary noise exemption issued to that Person.

11. GENERAL NOISE PROHIBITIONS

11.1. No person shall at any time within the limits of the Town, cause or permit to be caused:

- (a) An unreasonable noise; or,
- (b) A noise that is likely to disturb the Inhabitants of the Town.

11.2 Noise from the sources listed in paragraphs 11.2(a) to 11.2(k) is deemed to be an unreasonable noise or a noise that is likely to disturb the inhabitants of the Town:

- (a) The operation of a motor vehicle in an Unauthorized race or other competition;
- (b) The operation of a motor vehicle in such a way that the tires of the vehicle squeal;
- (c) The operation of a vehicle or resulting in banging, clanking, squealing or other noise due to an improperly secured load or equipment, or inadequate maintenance.
- (d) A radio, amplifier, speaker or other similar device on or in a vehicle that is clearly audible at least 8 m from the vehicle;
- (e) The operation of a combustion engine or pneumatic device without an effective exhaust muffling device that is in proper working order and in constant operation;
- (f) The operation of any item of Construction Equipment without an effective exhaust muffling device that is in proper working order and in constant operation;
- (g) The discharge, venting, release or pressure relief of air, steam, or other gaseous material, product or compound from any autoclave, boiler, compressor, pressure vessel, pipe, valve, machine, device or system;
- (h) The sounding or use of any bell, chimes, gong, horn, siren, whistle, alarm or the like, except where authorized by law, or as an auditory safety alert, or as a warning device in accordance with good safety practices;
- (i) The operation of any mechanical equipment that is not operating or being maintained in accordance with the manufacturer's specifications including any air conditioner, heat pump, hot tub, pool or spa pump or filter or the like that is not in proper working order from the point of reception;
- (j) The persistent barking, calling, whining or sound from any domestic pet or any animal that is audible at the point of reception; or
- (k) The indoor and outdoor operation of any radio, television, stereo or other electronic device including any amplification device, public address system, loudspeaker system or any musical or other sound producing instrument that is clearly audible at the point of reception;

12. NOISE PROHIBITIONS BY TIME OF DAY AND AREA

12.1. No person shall cause or permit to be caused at any time on any Sunday or Statutory Holiday, or between the hour of 6:00 p.m. of any day and 7:00 a.m. of the following Weekday or 9:00 a.m. of the following Saturday, any Noise created by the operation of Construction Equipment on a Construction Site within the limits of the Town.

12.2. No person shall cause or permit to be caused between the hour of 10:00 p.m. of any day and 7:00 a.m. of the following Weekday; or 8:00 a.m. of the following Saturday or 9:00 a.m. of the following Sunday or Statutory Holiday, any Noise that is clearly audible at a Point of Reception in any Residential Zone as defined by the Town Zoning By-law, as amended, that is created by:

- (a) shouting, yelling, whistling or singing;
- (b) the operation of any combustion engine which is used or intended for use in a toy, model, or replica of a larger device which has no function other than amusement and which is not a conveyance;

- (c) the operation of any combustion engine which is used or intended for use in any lawn, yard or garden maintenance equipment;
- (d) the operation of any dirt bike, all-terrain vehicle, snowmobile, go-cart, dune buggy or like conveyance that is Unauthorized to be operated on a public highway; or
- (e) the operation of any domestic tool including a hammer, saw, nail gun, staple gun, drill, chain saw, grass and hedge trimmers or the like.

13. ENFORCEMENT AND ADMINISTRATION:

- 13.1. The enforcement and administration of this By-law shall be conducted by an Officer.
- 13.2. An Officer may issue a direction or order requiring that a Person comply with the provisions of this By-law.
- 13.3. An Officer may enter upon land at any reasonable time for the purpose of carrying out an inspection to determine whether or not:
 - (a) The provisions of this By-law are being complied with; or
 - (b) A direction or order under this By-law is being complied with.
- 13.4. No Person shall hinder or obstruct any Officer, or any Person lawfully acting in aid of such Officer, in the execution of their duties under this By-law.
- 13.5. References in this By-law to any legislation (including but not limited to regulations and By-laws) or any provision thereof include such legislation or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor legislation thereto.

14. PENALTY

- 14.1. Every person who contravenes any provision of this By-law is guilty of an offence and is liable upon conviction to a fine recoverable pursuant to the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended, or any successor thereof.

15. REPEAL AND ENACTMENT

- 15.1. By-law No. 08-48, as amended and any other By-law of the Town of Lincoln inconsistent with this By-law is hereby repealed.

16. EFFECTIVE DATE OF BY-LAW

- 16.1. This By-law shall come into force and take effect upon the date of passage.

By-law read a first time this 21st day of May, 2019.
By-law read a second time this 21st day of May, 2019.
By-law read a third time and finally passed this 21st day of May, 2019.


MAYOR: SANDRA EASTON


CLERK: JULIE KIRKELOS