

**THE CORPORATION
OF THE
TOWN OF NIAGARA-ON-THE-LAKE
BY-LAW NO. 4588-12**

**A BY-LAW TO PROHIBIT AND REGULATE NOISE
IN THE TOWN OF NIAGARA-ON-THE-LAKE**

WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended, provided that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act;

AND WHEREAS section 10(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended, authorizes a Council to pass a By-Law respecting the health, safety and well-being of persons, and the economic, social and environmental well-being of the municipality;

AND WHEREAS section 128 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances;

AND WHEREAS section 129 of the *Municipal Act, 2001*, S.O. 2001, c. 25 authorizes municipalities to pass By-Laws to prohibit and regulate noise;

AND WHEREAS a recognized body of scientific and technological knowledge exists by which Sound and Vibration may be substantially reduced;

AND WHEREAS the people expect, and have a right to an environment free from unusual, unnecessary, or excessive Sound or Vibration or which may degrade the quality and tranquillity of their life or cause nuisance;

AND WHEREAS it is in the public interest to reduce the noise level in the Town of Niagara-on-the-Lake (the "Town"), so as to preserve, protect, and promote public health, safety, welfare, and the peace and quiet of the Inhabitants of the Town;

AND WHEREAS it is the policy of the Council of the Corporation of the Town of Niagara-on-the-Lake to regulate such sound or vibration, or nuisance.

NOW THEREFORE the Council of the Corporation of the Town of Niagara-on-the-Lake enacts as follows:

Part 1

Title

1. This By-Law shall be referred to as "The Noise Control By-Law".

Definitions

2. In this By-Law

"Applicant" means any person or persons seeking an Exemption from Council, of either a temporary or permanent nature, from the provisions and requirements of this By-Law;

"Authorized Emergency Vehicle" means an ambulance, hearse, and any vehicle operated by or for the fire department, the coroner's office, the local, provincial or federal police, the Town, the Bell Telephone Company of Canada, the Post Office, snow ploughs and

other maintenance vehicle operated by or for the Ministry of Transportation and any other vehicle actively engaged in the Construction, maintenance or repair of any Highway, or any equipment or facilities thereon;

"Construction" includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, land clearing, earth moving, grading, excavating, the laying of pipe and conduit whether above or below ground level, street and Highway building, application of concrete, equipment installation and alteration and the structural installation of Construction components and materials in any form or for any purpose, and includes any work in connection therewith;

"Construction Equipment" means any equipment or device designed and intended for use in Construction, or material handling, including but not limited to, hand tools, power tools, air compressors, pile drivers, pneumatic or hydraulic tools, bulldozers, tractors, excavators, trenchers, cranes, derricks, loaders, scrapers, pavers, generators, off Highway haulers or trucks, ditchers, compactors and rollers, pumps, concrete mixers, graders, or other material handling equipment;

"Construction Site" means the area or portion of land used for Construction or any other area used for any purpose related to the Construction or for any related purpose;

"Council" means the Council of the Corporation of the Town of Niagara-on-the-Lake;

"Effective Muffler" means a muffler or silencer designed to reduce the amount of Sound emitted by the exhaust of an internal combustion engine that is in good working order and in constant operation to prevent excessive or unusual Sound or excessive smoke but it does not include a cut-out muffler, straight exhaust gutter muffler, Hollywood muffler, by-pass or similar device;

"Exemption" means written permission of a temporary or permanent nature, issued by Council, which provides an absolution from or dispensation of specified terms and conditions of this By-Law;

"Highway" includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle designed and intended for, or used by, the general public for the passage of Motor Vehicles;

"Inhabitants" means one or more persons who reside in the Town.

"Motor Vehicle" means a vehicle that uses a motor as a source of power, including, but not limited to, an automobile, motorcycle, motorized snow vehicle, moped, go-cart, track bike, trail bike, boat, but not including an airplane, rail cars or other vehicles running only upon rails, traction engine, farm tractor, or self-propelled implement of husbandry or road building machine;

"Municipality" means the land within the geographic limit of the Town of Niagara-on-the-Lake;

"Officer" means a police officer, and any person appointed for the purpose of enforcing By-Laws of the Town

"Point of Reception" means any point on a Property within the Municipality where Sound and Vibration originating from other than the Property is heard, felt or otherwise received;

"Property" means vacant land, a building or structure or part of a building or structure, and includes the lands appurtenant thereto and all mobile homes, mobile buildings or mobile structures.

"Residential Area" means an area of the Municipality designated as residential area in the Town's Zoning By-Laws;

"Source" means an activity, matter, thing, or tangible personal property or real property, from which Sound or Vibration is emitted;

"Sound" is an oscillation in pressure, stress, particle displacement or particle velocity, in a medium with internal forces (e.g. elastic, viscous), or the superposition of such propagated oscillations, which may cause an auditory sensation;

"Town Clerk" means the Clerk of the Corporation of the Town of Niagara-on-the-Lake or his or her designate;

"Town" means The Corporation of the Town of Niagara-on-the-Lake;

"Vibration" means a temporal and special oscillation of displacement, velocity or acceleration in a solid medium.

General Prohibition

3. No person shall make, cause or permit Sound or Vibration at any time, which is likely to disturb the quiet, peace, rest, enjoyment, comfort or convenience of the Inhabitants of the Town.

Specific Prohibitions

4. No person shall emit, cause or permit the emission of Sound resulting from an act listed in Schedule B – Specific Prohibitions, and which Sound is audible at a Point of Reception.

Limitations by Time and Place

5. No person shall emit, cause or permit the emission of a Sound resulting from any act listed in Schedule C – Prohibitions by Time and Place, if audible at a Point of Reception within the prohibited time shown.

Exemptions

6. Notwithstanding any other provision of this By-Law, the provisions and requirements of this By-Law shall not apply to any person who emits, causes, or permits the emission of Sound or Vibration in connection with any activities listed in Schedule A or to any person or activity for which an Exemption has been issued under the authority of this By-Law.

Grant of Exemption

7. Notwithstanding anything contained in this By-Law, any person may make application to Council to be granted an Exemption from any of the provisions of this By-Law with respect to any source of Sound or Vibration, and Council, by resolution, may refuse to grant any Exemption or may grant the exemption applied for or any exemption of lesser effect and any exemption granted shall specify the time period, not in excess of six (6) months, during which it is effective and may contain such terms and conditions as Council sees fit.

8. Every application for an Exemption shall be submitted to the Clerk in writing, in duplicate, and shall contain:
 - a. the name and address of the Applicant;
 - b. a description of the source of the Sound or Vibration in respect of which the Exemption is sought;
 - c. a statement of the particular provision or provisions of this By-Law from which the Exemption is sought;
 - d. a period of time, of a duration not in excess of six (6) months, for which the Exemption is sought;
 - e. the reasons why, in the Applicant's opinion, the Exemption should be granted;
 - f. a statement of the actions, steps or other such measures, if any, planned or presently being taken, by the Applicant, intended to bring about compliance with the By-Law.
9. Council may require an Applicant to provide such further and other information, and take such others steps as may be necessary to consider an application.
10. No application shall be deemed complete until the Applicant has provided any and all information as required by the Clerk or Council.
11. In deciding whether to grant the Exemption, Council shall give the Applicant and any person opposed to the application an opportunity to be heard and may consider such other matters as it sees fit.
12. Breach by the Applicant of any of the terms or conditions of any Exemption granted by Council shall render the Exemption null and void.
13. The Clerk or Council shall set out in writing the reasons for Council's decision and shall serve a copy of the decision upon the Applicant and any person who opposed the Application.

Grant of Exemption – Residential Special Events

14. Notwithstanding anything contained in this By-Law, any person who owns a residential use property may make application to the Manager of Enforcement, or designate, to be granted an Exemption from any of the provisions of this By-Law with respect to any source of Sound or Vibration. The Manager of Enforcement, or designate, may refuse to grant any Exemption or may grant the exemption applied for or any exemption of lesser effect and any exemption granted shall specify the time period, not in excess of two (2) days, during which it is effective and may contain such terms and conditions as the Manager of Enforcement, or designate, sees fit.
15. Every application for an Exemption shall be submitted to the Manager of Enforcement, or designate, in writing, and shall contain:
 - a. the name and address of the Applicant;
 - b. a description of the source of the Sound or Vibration in respect of which the Exemption is sought;
 - c. a statement of the particular provision or provisions of this By-Law from which the Exemption is sought;

- d. a period of time, of a duration not in excess of two (2) days, for which the Exemption is sought;
 - e. the reasons why, in the Applicant's opinion, the Exemption should be granted;
 - f. a statement of the actions, steps or other such measures, if any, planned or presently being taken, by the Applicant, intended to bring about compliance with the By-Law.
16. The Manager of Enforcement, or designate, may require an Applicant to provide such further and other information, and take such others steps as may be necessary to consider an application.
17. No application shall be deemed complete until the Applicant has provided any and all information as required by the Manager of Enforcement, or designate.
18. In deciding whether to grant the Exemption, the Manager of Enforcement, or designate, shall obtain written approval for the Exemption from the neighbours that may be affected by the Exemption.
19. Breach by the Applicant of any of the terms or conditions of any Exemption granted by the Manager of Enforcement, or designate, shall render the Exemption null and void.
20. The Manager of Enforcement, or designate, shall set out in writing the reasons for their decision and shall serve a copy of the decision upon the Applicant and any person who opposed the Application
21. A maximum of one (1) event per year may be approved per property.

Emergencies

22. Notwithstanding any other provision of this By-Law, it shall be lawful during an emergency to emit, cause, or permit the emission of Sound or Vibration in connection with emergency measures undertaken,
- a. for the immediate health, safety or welfare of the Inhabitants or any of them, or
 - b. for the preservation or restoration of Property,

unless such Sound or Vibration is clearly audible for a longer duration or of a nature more disturbing than is reasonably necessary for the accomplishment of such emergency purpose.

Serviceability

23. Where a court of competent jurisdiction declares any provision of this By-Law invalid, the provision shall be deemed conclusively to be severed from the By-Law.
24. No part of this By-Law not declared by a court of competent jurisdiction to be invalid shall be affected by the provision severed from the By-Law.

Enforcement and Administration

25. Council may appoint such Officers as are necessary for the purpose of enforcing this By-Law.
26. Unless otherwise provided for herein, all provisions of this By-Law shall be enforced by an Officer as defined in this By-Law.

27. An Officer may issue a direction or order requiring that a Person comply with the provisions of this By-Law.

28. 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.

Offences and Penalties

29. Every person who contravenes any provision of this By-Law is guilty of an offence and on conviction, is liable to a fine of not less than \$350.00.

Enactment

30. By-Law No. 2353-91, as amended, is hereby repealed.

31. This By-Law comes into force and effect on the date of its passing and enactment.

READ A FIRST, SECOND AND THIRD TIME AND PASSED, THIS 9TH DAY OF OCTOBER 2012



LORD MAYOR DAVE EKE



TOWN CLERK HOLLY DOWD

**Schedule A
Permitted Sound**

1. Operation of an Authorized Emergency Vehicle.
2. Operation of bells utilized as traffic control devices including the following:
 1. Bells and other devices at traffic signal locations;
 2. Bells at railway crossings.
3. Operation of Town machines and equipment including the following:
 1. Crosswalk painting machines;
 2. Catch basin cleaners;
 3. Tree and shrub pruning and mulching equipment
 4. Town owned or contracted street cleaners, flushers and sewer flushers
4. Operation of Construction Equipment and machinery by or on behalf of the Town carrying on or engaged in the performance of public works for emergency and safety purposes.
5. Operation of any machine or equipment that falls within the classification of a "Normal Farm Practice" as described under provincial legislation and that is in conjunction with a lawful agricultural operation. The Ontario Ministry of Agriculture, Food and Rural Affairs administers the Farming and Food Production Protection Act (FFPPA) – and has established processes to deal with complaints and determine what are and what are not "normal farm practices": the Normal Farm Practices Protection Board.
6. Any emission of Sound specifically permitted under municipal, provincial or federal legislation.

Schedule B
General Prohibitions

1. All selling or advertising by shouting or outcry of amplified Sound;
2. Persistent barking, whining or other similar persistent Sound made by any animal;
3. The operation of an engine or motor in, or on, any Motor Vehicle or item of attached auxiliary equipment for a continue period exceeding five (5) minutes, while such Motor Vehicle is stationary in a Residential Area, unless:
 - a. the Motor Vehicle is an armoured vehicle, where a person remains inside the Motor Vehicle while guarding the contents of the Motor Vehicle or while the Motor Vehicle is being loaded or unloaded;
 - b. the Motor Vehicle is in an enclosed structure constructed so as to effectively prevent excessive Sound emission;
 - c. the original equipment manufacturer specifically recommends a longer period for normal and efficient operation of the Motor Vehicle, in which case such recommended period shall not be exceeded;
 - d. operation of such engine or motor is essential to a basic function of the vehicle or equipment, including, but not limited to, operation of ready mix concrete trucks, irrigation pumps, lift platforms, or refuse compactors and heat exchange systems;
 - e. the ambient outside temperature is more than 27 degrees Celsius (27°C) or less than 5 degrees Celsius (5°C);
 - f. the use of heating or refrigeration systems powered by the motor or engine are required for the safety and welfare of the operator, passengers, animals or the preservation of perishable cargo;
 - g. the Motor Vehicle is transporting a person where a medical doctor certifies in writing that for medical reasons, the person requires the temperature or humidity be maintained within a certain range;
 - h. the Motor Vehicle is assisting in an emergency;
 - i. the Motor Vehicle remains motionless because of an emergency over which the driver has no control, or because of mechanical difficulties over which the driver has no control;
 - j. the Motor Vehicle is engaged in a parade, race, or such other event authorized by Council;
 - k. the Motor Vehicle is halting temporarily in compliance with the directions of a police officer;
 - l. the Motor Vehicle is halting temporarily to obey a traffic control signal;
 - m. the Motor Vehicle is idling to comply with the requirements of the *Highway Traffic Act* for windows to be in a condition to afford the driver a clear view;and
 - n. the idling is required as part of a repair process or to prepare a Motor Vehicle for servicing;

Schedule C
Prohibitions by Time and Place

ACT	TIME PROHIBITION
1. Operation of any auditory signalling device, including but not limited to the ringing of bells or gongs and the blowing of horns or sirens or whistles, or the production, reproduction or amplification of any similar Sounds.	11:00pm - 7:00am next day 11:00pm - 9:00am Sundays / Statutory Holidays
2. Operation of any electronic device or group of connected electronic devices incorporating one or more loudspeakers or other electro mechanical transducers, and intended for the production, reproduction or amplification of Sound, including but not limited to a radio, television, amplifier, loud speaker, public address system, and other Sound equipment.	11:00pm - 7:00am next day 11:00pm - 9:00am Sundays / Statutory Holidays
3. Loading, unloading, delivering, packing, unpacking or otherwise handling of any containers, products, materials or refuse, whatsoever, unless necessary for the maintenance of an essential services as designated by the Provincial or Federal Government.	11:00pm – 7:00am next day 11:00pm – 9:00am Sundays / Statutory Holidays
4. Operation of any Construction Equipment in connection with Construction.	7:00pm – 7:00am next day ALL DAY Sundays
5. Detonation of fireworks or explosive devices.	11:00pm – 7:00am next day 11:00pm – 9:00am Sundays
6. Operation of a combustion engine which is, or is used in, or is intended for use in, a toy or a model or replica of a larger device, which model or replica has no function other than amusement and which is not a Motor Vehicle.	11:00pm – 7:00am next day 11:00pm – 9:00am Sundays / Statutory Holidays
7. The operation of any powered or non-powered tool for domestic purposes other than snow removal with a shovel.	11:00pm – 7:00am next day 11:00pm – 9:00am Sundays / Statutory Holidays
8. The operation of a solid waste bulk lift or refuse compacting equipment.	7:00pm – 7:00am next day 7:00pm – 9:00am Sundays
9. The playing of any musical instrument outdoors.	11:00pm – 7:00am next day 11:00pm – 9:00am Sundays / Statutory Holidays
10. Yelling, shouting, hooting, whistling or singing	11:00pm – 7:00am next day 11:00pm – 9:00am Sundays / Statutory Holidays

PART I Provincial Offences Act

TOWN OF NIAGARA-ON-THE-LAKE BY- LAW NO.4588-12 SHORT TITLE: Noise Bylaw

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Offence Creating Provision or Defining Offence	COLUMN 3 Set Fine
1.	Emit / Cause / Permit selling / advertising by shouting / outcry / amplified sound.	s. 4 Schedule B. (1)	350.00
2.	Cause / Permit persistent barking / whining sound by animal.	s. 4 Schedule B. (2)	350.00
3.	Operation of engine / motor in/on motor vehicle / auxiliary equipment exceeding 5 minutes.	s. 4 Schedule B. (3)	350.00
4.	Emit / Cause / Permit noise from any auditory signalling device during prohibited time.	s. 5 Schedule C (1)	350.00
5.	Emit / Cause / Permit noise from operation of any electronic device during prohibited time.	s. 5 Schedule C (2)	500.00
6.	Noise from Loading / Unloading containers / products / materials / refuse during prohibited time.	s. 5 Schedule C (3)	350.00
7.	Noise from construction equipment during prohibited time.	s. 5 Schedule C (4)	350.00
8.	Noise from fireworks or explosive devices when prohibited.	s. 5 Schedule C (5)	500.00
9.	Emit / Cause / Permit noise from operation of combustion engine when prohibited.	s. 5 Schedule C (6)	350.00
10.	Noise from powered / non-powered tool when prohibited.	s. 5 Schedule C (7)	350.00
11.	Emit / Cause / Permit noise from solid waste bulk lift / refuse compacting equipment when prohibited.	s. 5 Schedule C (8)	350.00
12.	Play musical instrument outdoors during prohibited time.	s. 5 Schedule C (9)	350.00
13.	Yelling / Shouting / Hooting / Whistling / Singing when prohibited.	s. 5 Schedule C (10)	350.00

Note: The general penalty provision for the offences listed above is Section 61 of the Provincial Offences Act, R.S.O., 1990, c. P. 33

*n/A
Dec 11/12.*