

THE CORPORATION OF THE CITY OF PORT COLBORNE

BY-LAW NO. 4588/119/04

BEING A BY-LAW TO REGULATE NOISE

WHEREAS the Municipal Act, R.S.O. 2001, Section 129. (1) Paragraphs 1,2 and 3 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 tranquility of their life or cause nuisance; and

WHEREAS it is the policy of the Council of The Corporation of City of Port Colborne to regulate such sound or vibration, or nuisance;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF PORT COLBORNE ENACTS AS FOLLOWS:

Title

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

Technical Terms

2. In this By-Law all words and definitions that are of technical nature and are related to sound and vibration shall have the meanings specified for them in Schedule 4 - Publication NPC-101.

Definitions

3. In this By-Law,

"Applicable Publication" means any Publication referred to in the Provisions of this By-Law including a Schedule hereto;

"Applicant" includes any person or persons seeking in writing from the Clerk or Council, an exemption of either a temporary or permanent nature from the provisions and requirements of this By-law;

"Authorized Emergency Vehicle" includes any ambulance or hearse, any vehicle of the fire department, or of the local, provincial or federal police, any vehicle operated by or for City of Port Colborne, the Bell Telephone Company of Canada, the Post Office, armoured cars carrying cash, and public utility company while actively engaged in the Construction, maintenance or repair of any highway, or any equipment or facilities thereon, or a snow plough or other maintenance vehicle operated by or for the Ministry of Transportation;

"Certificate" means a certificate of Competency in Environmental Acoustics, Technology of a specified class issued by an accredited program of an Ontario Community College or other approved agency;

"City Clerk" means the Clerk of the Corporation of City of Port Colborne or his or her designate;

"City" means The Corporation of City of Port Colborne;

"Construction" includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing, earth moving, grading,

excavating, the laying of pipe and conduit whether above or below ground level, street and highway building, concreting, 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, 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;

"Conveyance" includes a vehicle and any other device used to transport a person or persons or goods from place to place but does not include any vehicle or device operated only within the premises of a person;

"Council" means the council of City of Port Colborne;

"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 vehicles;

"Minister" means the Minister of the Environment;

"Ministry" means the Ministry of the Environment;

"Motor Vehicle" means any motorized conveyance and includes any automobile, motorcycle and any other vehicle propelled or driven otherwise than by muscular power, but does not include the cars of electric or steam railways, or other motor vehicle running only upon rails, or a motorized snow vehicle, traction engine, farm tractor, self-propelled implement of husbandry or road building machine;

"Motorized Conveyance" means a conveyance propelled or driven otherwise than by muscular, gravitational or wind power;

"Municipality" means the land within the geographic limit of City of Port Colborne;

"Noise" means unwanted sound;

"Officer" means a person commissioned or authorized to fill a public situation or to perform any public duty; appointed for the purpose of enforcing bylaws of the municipality, and includes any municipal law enforcement officer appointed by City of Port Colborne and any police constable who is a member of the Niagara Regional Police Service or the Ontario Provincial Police Service;

"Permit" means and includes any permit or written authorization of a temporary or permanent nature, issued by either the Clerk or Council of City of Port Colborne, which provides an exemption(s) to the terms and conditions of this by-law;

"Point of Reception" means any point on a premises of a person where sound or vibration originating from other than those premises are received;

"Publication" means a specified publication of the Noise Pollution Control Section of the Pollution Control Branch of the Ministry of the Environment named in Schedule 4 of this By-law;

"Residential Area" means land zoned to permit residential use in City of Port Colborne Zoning By-laws;

"Residential Renovations" means construction that does not require any building permits and such renovations are constructed without the operation of any heavy equipment;

"Source" or **"Source of Sound or Vibration"** 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;

"Stationary Source" means a source of sound, which does not normally move from place to place and includes the premises of a person as one stationary source unless the dominant source on the premises is construction equipment or a conveyance;

Prohibitions

4. No person shall emit or cause to permit the emission of sound resulting:
 - (1) From a stationary source such that the level of resultant sound at a point of reception located in a residential area, or Schedule 2 which exceeds the applicable sound level limit prescribed in Schedule 4, Publication NPC-205 - Stationary Sources;
 - (2) From an act listed in Schedule 1 - General Prohibitions, and which sound is clearly audible at a point of reception;
 - (3) From any act listed in Schedule 2 - Prohibitions by Time and Place, if clearly audible at a point of reception;

Limitations on Sound Levels

5. No person shall emit or cause or permit the emission of sound resulting:
 - (1) From any piece of construction equipment of a type referred to in Schedule 4, Publication NPC-115 - Construction Equipment, at a work site, any part of which is located within 600 m of a Residential Area, unless;
 - a) The piece of construction equipment was put into use prior to January 1, 1979; or
 - b) The piece of construction equipment bears a label affixed by the manufacturer or distributor, which states;
 - (i) The year of manufacture, and
 - (ii) That the item of equipment complies with the residential sound emission standards set out in Schedule 4 - Publication NPC-115 - Construction Equipment, as applicable to that type of equipment and date of manufacture; or
 - c) The owner, operator, manufacturer or distributor provides

proof that the item of equipment complies with the residential sound emission standard set out in Schedule 4 - Publication NPC-115, as applicable to that type of equipment and date of manufacture.

- (2) From any piece of construction equipment of a type referred to in Schedule 4, Publication NPC-115 - Construction Equipment, at a work site, any part of which is located in a Schedule 2, unless,
- (3) The piece of construction equipment bears a label affixed by the manufacturer or distributor, which states,
 - (a) The year of manufacture, and
 - (b) That the item of equipment complies with the Schedule 2 sound emission standard set out in Schedule 4 - Publication NPC-115 - Construction Equipment as applicable to that type of equipment and date of manufacture; or,
- (4) From any air conditioning device of a type referred to in Schedule 4, Publication NPC-216 - Residential Air Conditioners, unless,
 - (a) The device was put into use prior to January 1, 1979; or
 - (b) The device bears a label affixed by the manufacturer or distributor, which states,
 - (i) The year of manufacture, and
 - (ii) That the device complies with the sound emission standard set out in Schedule 4 - Publication NPC-216 - Residential Air Conditioners, as applicable to that type of device and date of manufacture; or
 - (iii) The owner, operator, manufacturer or distributor provides proof that the device complies with the sound emission standard set out in Schedule 4 - Publication NPC-216 - Residential Air Conditioners, as applicable to that type of device and date of manufacture;
- (5) From any motorized conveyance of a type referred to in Schedule 4, Publication NPC-118 - Motorized Conveyances, unless the motorized conveyance complies with the sound emission standard set out in Schedule 4 - Publication NPC-118- Motorized Conveyances, as applicable to that type of motorized conveyance and date of manufacture.

Pre-emption

6. Where section 4 (1) or (2) applies to a source of sound, the less restrictive provision shall prevail.

Permits and Exemptions

7. Notwithstanding any other provision of this By-law, the provisions and requirements of this By-law shall not apply to any person who emits or causes or permits the emission of sound or vibration in connection with any activities listed in Schedule 3, or to impulsive sound, or to blasting, or to any person or activity for which a "permit" has been issued under the authority of the by-law.

8.
 - (1) The Clerk may, upon written application by any person, issue a “permit” of a temporary nature to exempt the applicant from any such provisions and requirements of this by-law as the Clerk deems appropriate.
 - (2) The Council may, upon written application by any person, issue a “permit” of a permanent nature to exempt the applicant from any such provisions and requirements of this by-law, as the Council deems appropriate.
 - (3) Any “permit” issued in accordance with the provisions of Section 8. (1) or Section 8. (2) of this by-law, by the Clerk or Council, shall specify the terms and conditions under which the permit is issued.
9. Every application for exemption shall be made to the Clerk in writing and shall contain:
 - (1) The name and address of the applicant;
 - (2) A description of the source of sound or vibration in respect of which an exemption is sought;
 - (3) A statement of the particular provision or provisions of the By-Law from which exemption is sought;
 - (4) The reasons for which, in the applicant’s opinion, the exemption should be granted;
 - (5) 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
 - (6) City of Port Colborne Clerk or Council may require an applicant to provide such further and other information as may be necessary to consider an application made under Section 7.
10. No application shall be deemed complete until the applicant has provided any and all information as required by the Clerk or Council.
11. Where an application is not approved or approved upon terms and conditions or approval to a lesser extent than the exemption applied for, the Clerk or Council, shall, set out in writing the reasons therefore and shall serve a copy of the decision upon the applicant.
12. Notwithstanding any other provision of this By-law, it shall be lawful during an emergency to emit or cause or permit the emission of sound or vibration in connection with emergency measures undertaken,
 - (1) For the immediate health, safety or welfare of the inhabitants or any of them, or
 - (2) 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.

Severability

14. 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.

15. No part of this By-law not declared by a court of competent jurisdiction to be invalid shall be affected by the provision saveable from the By-law.

Enforcement and Administration

16. The Clerk shall administer and enforce this By-Law and;
17. Council may appoint such “officers” as are necessary for the purpose of enforcing this By-law and;
18. Such “Officers” necessary for the purpose of enforcing this By-law who do not possess a “certificate” shall only enforce the portions of this By-law where sound level measurements are not required.

Penalties

19. Any person contravenes any provision of this By-law is guilty of an offence and upon conviction, is liable to the penalty specified by the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.

By-laws Repealed

20. That By-law 2898/77/93, Being a By-law Respecting Noise and For Prohibiting Public Nuisances, and amendments thereto, be hereby rescinded.

Enactment

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

ENACTED AND PASSED this 12th day of October, 2004

MAYOR: Ron Bodner (sgd.)

CLERK: Janet Beckett (sgd.)

Schedule 1

General Prohibitions

1. Racing of any motorized conveyance other than in a racing event regulated by law.
2. The operation of a motor vehicle in such a way that the tires squeal.
3. The operation of any combustion engine without an effective exhaust-muffling device in good working order and in constant operation.
4. The operation of a vehicle or a vehicle with a trailer resulting in banging, clanking, squealing or other like sounds due to improperly secured load or equipment.
5. The operation of an engine or motor in, or on, any motor vehicle or item of attached auxiliary equipment for a continuous period exceeding five minutes, while such vehicle is stationary in a Residential Area or, unless,
 - (a) The vehicle is in an enclosed structure constructed so as to effectively prevent excessive noise emission; or,
 - (b) The original equipment manufacturer specifically recommends a longer idling period for normal and efficient operation of the motor vehicle in which case such recommended period shall not be exceeded;
 - (c) 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 mixed concrete trucks, lift platforms or refuse compactors and heat exchange systems; or,
 - (d) Weather conditions justify the use of heating or refrigerating systems powered by the motor or engine for the safety and welfare of the operator, passengers or animals, or preservation of perishable cargo; or,
 - (e) Prevailing low temperatures make longer idling periods necessary, immediately after starting the motor or engine; or,
 - (f) The idling is for the purpose of cleaning and flushing the radiator and associated circulation system for seasonal change or antifreeze, cleaning of the fuel system, carburetor or the like, when such work is performed other than for profit.
6. The operation of a motor vehicle horn or other warning device except where required or authorized by law in accordance with good safety practices.
7. The operation of any item of construction equipment without effective muffling devices in good working order and in constant operation.

Schedule 2

Time and Place

Prohibited Periods

1. The 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 By-Law or in accordance with good safety practices in a residential area from 19:00 hrs. (7:00 p.m.) of one day to 07:00 hrs. (7:00 a.m.) next day or 09:00 hrs. (9:00 a.m.) Sundays and all day Sundays and Statutory Holidays.
2. The 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 in a residential area at any time.

3. Loading, unloading, delivering, packing, unpacking, or otherwise handling any containers, produce, materials, or refuse whatsoever, unless necessary for the maintenance of essential services in a residential area from 19:00 hrs. (7:00 p.m.) of one day to 07:00 hrs. (7:00 a.m.) next day or 09:00 hrs. (9:00 a.m.) Sundays and all day Sundays and Statutory Holidays.
4. The operation of any construction equipment in connection with construction in a residential area from 19:00 hrs. (7:00 p.m.) of one day to 07:00 hrs. (7:00 a.m.) next day and all day Sundays and Statutory Holidays.
5. The detonation of fireworks or explosive devices in a residential area from 21:00 hrs. (9:00 p.m.) of one day to 07:00 hrs. (7:00 a.m.) next day and all day Sundays and Statutory Holidays.
6. The operation of a combustion engine which,
 - (i) is, or
 - (ii) is used in, or
 - (iii) 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 conveyance in a residential area from 19:00 hrs. (7:00 p.m.) of one day to 07:00 hrs. (7:00 a.m.) next day or 09:00 hrs. (9:00 a.m.) Sundays.

7. The operation of any powered rail car including but not limited to refrigeration cars, locomotives or self-propelled passenger cars, while stationary on property not owned or controlled by a railway governed by The Canada Railway Act in a residential area from 21:00 hrs. (9:00 p.m.) of one day to 07:00 hrs. (7:00 a.m.) next day and all day Sundays and Statutory Holidays.
8. The operation of any motorized conveyance other than on a highway or other place intended for its operation in a residential area from 19:00 hrs. (7:00 p.m.) of one day to 07:00 hrs. (7:00 a.m.) next day or 09:00 hrs. (9:00 a.m.) Sundays.
9. The venting, release or pressure relief of air, steam or other gaseous material, product or compound from any autoclave, boiler, pressure vessel, pipe, valve, machine, device or system in a residential area from 21:00 hrs. (9:00 p.m.) of one day to 07:00 hrs. (7:00 a.m.) next day and all day Sundays and Statutory Holidays.
10. Persistent barking, calling or whining or other similar persistent noise making by any animal in a residential area at any time.
11. The operation of any powered or non-powered tool for domestic purposes other than snow removal in a residential area from 21:00 hrs. (9:00 p.m.) of one day to 07:00 hrs. (7:00 a.m.) next day or 09:00 hrs. (9:00 a.m.) Sundays.
12. The operation of solid waste bulk lift or refuse compacting equipment in a residential area from 19:00 hrs. (7:00 p.m.) of one day to 07:00 hrs. (7:00 a.m.) next day or 09:00 hrs. (9:00 a.m.) Sundays and all day Sundays and Statutory Holidays.
13. The operation of commercial car wash with air-drying equipment in a residential area from 19:00 hrs. (7:00 p.m.) of one day to 07:00 hrs. (7:00 a.m.) next day or 09:00 hrs. (9:00 a.m.) Sundays and all day Sundays and Statutory Holidays.
14. The operation of a power assisted hang glider or Para foil in a residential area from 19:00 hrs. (7:00 p.m.) of one day to 07:00 hrs. (7:00 a.m.) next day or 09:00

hrs. (9:00 a.m.) Sundays and all day Sundays and Statutory Holidays.

15. The operation of any item of snow making equipment in a residential area from 19:00 hrs. (7:00 p.m.) of one day to 07:00 hrs. (7:00 a.m.) next day or 09:00 hrs. (9:00 a.m.) Sundays and all day Sundays and Statutory Holidays.
16. The operation of a sound emitting pest control device in a residential area from 19:00 hrs. (7:00 p.m.) of one day to 07:00 hrs. (7:00 a.m.) next day or 09:00 hrs. (9:00 a.m.) Sundays and all day Sundays and Statutory Holidays.
17. The discharge of firearms in accordance with the City of Port Colborne's By-law 2499/115/90 as amended Prohibiting and Regulating the Discharge of Guns and Other Weapons.

Note: For the purpose of this Schedule, "motorized conveyance" includes, but is not limited to;

- (a) Snowmobiles;
- (b) Mopeds;
- (c) Go-carts;
- (d) Track bikes;
- (e) Trail bikes

Schedule 3

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1. Operation of authorized emergency vehicles.
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 City of Port Colborne machines and equipment including the following for emergency purposes:
 1. Crosswalk painting machines;
 2. Catch basin cleaners;
 3. Tree and shrub pruning and mulching equipment
 4. City of Port Colborne owned or contracted street cleaners and flushers
4. Operation of construction equipment and machinery by or on behalf of City of Port Colborne carrying on or engaged in the performance of public works.

Schedule 4

Standards and Procedures

Limits and Guidelines

Schedule 4

Index of Publications

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Publication NPC -103	Procedures
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Publication NPC -206	Road Traffic
Publication NPC -115	Construction Equipment
Publication NPC -216	Residential Air Conditioners
Publication NPC -117	Domestic Outdoor Power Tools
Publication NPC -118	Motorized Conveyances
Publication NPC -119	Blasting



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