

THE CORPORATION OF THE TOWNSHIP OF WAINFLEET

BY-LAW NO. 028-2022

Being a By-law to regulate and control noise in the Township of Wainfleet

WHEREAS section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (“*Municipal Act, 2001*” or “the statute”) provides that the powers of a municipality under the statute or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality’s ability to respond to municipal issues;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the statute or any other Act;

AND WHEREAS section 11 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons and the protection of persons and property and further authorizes it to pass by-laws respecting animals;

AND WHEREAS section 129 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws to prohibit and regulate with respect to noise;

AND WHEREAS section 425 of the *Municipal Act, 2001* authorizes a municipality to create offences for the contravention of its by-laws;

AND WHEREAS section 429 of the *Municipal Act, 2001* authorizes a municipality to establish a system of fines for offences under its by-laws;

AND WHEREAS section 434.1 of the *Municipal Act, 2001* authorizes a municipality to establish a system of administrative monetary penalties to assist the municipality in promoting compliance with its by-laws;

AND WHEREAS the Council of the Township of Wainfleet deems it necessary and desirable in the public interest to regulate noise in the municipality and to enact this By-law for that purpose;

NOW THEREFORE the Council of the Township of Wainfleet enacts as follows:

1. SHORT TITLE

1.1. This By-law shall be known as the “Noise Control By-law”.

2. DEFINITIONS

2.1. In this By-law:

“**Administrative Monetary Penalty**” means a monetary penalty administered pursuant to Township By-law No. 027-2019, as amended from time to time.

“**Agricultural Operation**” has the same meaning as in the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c. 1 (“*Farming and Food Production Protection Act, 1998*”).

“**Animal**” means any member of the animal kingdom other than a human.

“**Clearly Audible**” means that the sound or noise in question is easily perceptible, without undue effort, to a disinterested person with no hearing disability.

“**Community Event**” means an event that is open to the public including but not limited to a fair, exhibition, celebration, sporting event, concert, festival, parade, or other similar event, which may be presented or hosted by the Township or by another Person or organization.

“**Construction**” means erection, alteration, repair, dismantling, demolition, structural maintenance, excavating, laying pipe or conduit, street and highway building, equipment installation and alteration and the structural installation of construction components and materials in any form, and includes any work in connection therewith, but does not include Domestic Construction.

“**Construction Equipment**” means any equipment or device used or intended for use in Construction, 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, haulers or trucks, ditchers, compactors and rollers, pumps, concrete mixers, graders or other material handling equipment.

“**Conveyance**” means a vehicle or any other device used to transport a Person or Persons or goods from place to place.

“**Council**” means the Council of The Corporation of the Township of Wainfleet.

“**Domestic Construction**” means erection, alteration, repair, dismantling, demolition, structural maintenance, excavating, laying pipe or conduit and installation of equipment or construction components or materials at a Property in a Residential Area that is carried on by the Owner of the Property.

“**Domestic Construction Equipment**” means any equipment or device used or intended for use in Domestic Construction, including but not limited to air compressors, pneumatic or hydraulic tools, hand tools, tractors, excavators, loaders, backhoes, generators, concrete mixers or other such equipment.

“**Exemption Authority**” means the Township Clerk or their designate and any other Person appointed by the Township to authorize exemptions from this By-law.

“**Highway**” has the same meaning as in the *Highway Traffic Act*, R.S.O. 1990, c. H.8 (“*Highway Traffic Act*”) and, for greater certainty, includes all municipal, regional and provincial highways within the boundaries of the Township of Wainfleet.

“**Holiday**” means New Year’s Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Christmas Day, Boxing Day and any day set out in a Township By-law to be a Holiday.

“**Inhabitants**” means one or more Persons who reside in the Township, temporarily or permanently, and may include visitors to the Township.

“**Motor Vehicle**” has the same meaning as in the *Highway Traffic Act*.

“**Normal Farm Practice**” has the same meaning as in the *Farming and Food Production Protection Act, 1998*.

“**Officer**” means any by-law enforcement officer appointed by Council for the purpose of enforcing the by-laws of the Township or any provincial offences officer, member of the Niagara Regional Police Service and/or member of the Ontario Provincial Police.

“**Order**” means an order issued under this By-law.

“**Owner**” means any Person that is a registered owner of a Property.

“**Persistent**” means continuously for a period of ten (10) minutes or longer or intermittently for an aggregate period of ten (10) minutes or longer in any sixty (60) minute period.

“**Person**” means an individual, corporation, partnership or association.

“**Point of Reception**” means any location on a Property where noise originating from other than that Property is received.

“**Property**” means any land or premises within the Township.

“**Residential Area**” means those areas in the Township where residential use is permitted under the zoning by-laws of the Township, as enacted and amended by the Township from time to time, or where human habitation is a legal non-conforming use.

“**Township**” means The Corporation of the Township of Wainfleet.

“**Township Clerk**” means the Clerk of the Township.

3. GENERAL PROHIBITION

3.1. No Person shall at any time make, cause or permit an unreasonable noise or a noise that is likely to disturb Inhabitants.

4. DEEMED PROHIBITIONS AT ANY TIME AND PLACE

4.1. Without limiting the generality of section 3.1, noise resulting from any of the following acts is deemed to be unreasonable noise or noise that is likely to disturb Inhabitants:

- (a) the operation of a Motor Vehicle in an unauthorized race;
- (b) the operation of a Motor Vehicle in a manner that causes the tires of the vehicle to squeal;
- (c) the operation of a Motor Vehicle or trailer in a manner that results in rattling, banging, clanking, grinding, squealing or other like sound or noise due to disrepair or inadequate maintenance or due to an improperly secured load;
- (d) the operation of a Motor Vehicle without an effective exhaust muffling device that is in proper working order and in constant operation;
- (e) the operation of Construction Equipment without an effective exhaust muffling device that is in proper working order and in constant operation;
- (f) the operation of a bell, horn, siren or other warning device on a Motor Vehicle, bicycle or other vehicle except as authorized by law or in accordance with good

- safety practices;
- (g) the operation of a bell, horn, siren or other warning device on a Motor Vehicle, bicycle or other vehicle for an unnecessary or unreasonable period of time;
 - (h) the operation of a radio, amplifier, speaker or other similar device on or in a Motor Vehicle, trailer or vehicle in a manner or with such volume that is Clearly Audible at least 8 metres from the vehicle;
 - (i) the operation of any instrument, radio, television, record or tape player, digital music source, amplifier, loudspeaker, electronic sound system or other similar sound-producing device for the purpose of advertising a good or service in a manner that projects sound or noise into any public street or other public place;
 - (j) the operation of any instrument, radio, television, record or tape player, digital music source, amplifier, loudspeaker, electronic sound system or other similar sound-producing device in a manner or with such volume that it is Clearly Audible in a residential dwelling or commercial unit with the doors and windows closed at a Property other than the Property from which the sound originates;
 - (k) the Persistent shouting, yelling, hooting, whistling or singing or other like sounds of any Person; and
 - (l) the Persistent barking, howling, whining or other like sounds of any Animal kept or used for any purpose other than a Normal Farm Practice carried on by an Agricultural Operation.

5. DEEMED PROHIBITIONS BY TIME AND PLACE

- 5.1. Without limiting the generality of section 3.1, noise resulting from any of the following acts is deemed to be unreasonable noise or noise that is likely to disturb Inhabitants where it is Clearly Audible at a Point of Reception:
- (a) the operation of a combustion engine used or intended for use in a toy, model or replica of any device, which has no function other than amusement and which is not a Conveyance, between the hours of 8:00 p.m. of one day and 8:00 a.m. of the following day;
 - (b) the operation of any motorized Conveyance other than on a Highway between the hours of 8:00 p.m. of one day and 8:00 a.m. of the following day other than on Sundays and Holidays;
 - (c) on Sundays and Holidays, the operation of any motorized Conveyance other than on a Highway prior to 11:00 a.m.;
 - (d) the racing of any motorized Conveyance when regulated by law between the hours of 9:00 p.m. of one day and 9:00 a.m. of the following day other than on Sundays and Holidays;
 - (e) on Sundays and Holidays, the racing of any motorized Conveyance when regulated by law prior to 10:00 a.m.;
 - (f) the operation or use of any tool for lawn, yard or garden maintenance between the hours of 9:00 p.m. of one day and 7:00 a.m. of the following day other than on Sundays and Holidays;
 - (g) on Sundays and Holidays, the operation or use of any tool for lawn, yard or garden maintenance prior to 10:00 a.m.;

- (h) the operation or use of Construction Equipment between the hours of 8:00 p.m. of one day and 7:00 a.m. of the following day other than on Sundays and Holidays;
- (i) on Sundays and Holidays, the operation or use of Construction Equipment at any time;
- (j) the operation or use of Domestic Construction Equipment between 8:00 p.m. of one day and 7:00 a.m. of the following day other than on Sundays and Holidays;
- (k) on Sundays and Holidays, the operation or use of Domestic Construction Equipment prior to 10:00 a.m.;
- (l) the shouting, yelling, hooting, whistling or singing or other like sounds of any Person between the hours of 10:00 p.m. of one day and 8:00 a.m. of the following day, other than on Sundays and Holidays; and
- (m) on Sundays and Holidays, the shouting, yelling, hooting, whistling or singing or other like sounds of any Person prior to 11:00 a.m.

6. APPLICATION OF STRICTEST STANDARD

- 6.1. Where a source of noise is subject to more than one provision of this By-law, the most restrictive provision shall apply.

7. GENERAL EXEMPTIONS

- 7.1. This By-law shall not apply to noise resulting from:
- (a) emergency measures undertaken for the immediate health, safety or welfare of any Person or Persons in the Township or for the preservation or restoration of property;
 - (b) emergency measures undertaken by or on behalf of the Township;
 - (c) the operation of any emergency service vehicle carrying out its lawful duties;
 - (d) the operation of any railway or airport under Parliament's legislative authority;
 - (e) the operation of equipment by or on behalf of the Township for Construction projects, general maintenance projects and emergency projects of the Town;
 - (f) the operation of equipment by or on behalf of the Township for maintenance operations including but not limited to snow removal, street cleaning, grass cutting, planting and pruning of trees and shrubs, and Property maintenance;
 - (g) the collection or disposal of garbage, waste or recyclable material by or on behalf of the Township or the Regional Municipality of Niagara;
 - (h) the reasonable use of equipment for snow removal at any Property;
 - (i) Community Events presented or hosted by the Township;
 - (j) Community Events presented or hosted by any other Person that have been authorized or approved by the Township, provided that the event is carried on in accordance with all terms and conditions of the authorization or approval;
 - (k) sports and recreational activities held on Property owned by the Township that have been authorized or approved by the Township, provided that the sport or recreational activity is carried on in accordance with all terms and conditions of

the authorization or approval;

- (l) the operation of bells or chimes in relation to any religious or military ceremony or service or by or on behalf of the Township;
- (m) a Normal Farm Practice carried on by an Agricultural Operation;
- (n) the normal operation of wind turbines; and
- (o) activities carried out in compliance with a permission granted under federal or provincial legislation, including but not limited to an environmental compliance approval.

8. TEMPORARY EXEMPTIONS

- 8.1. Any Person may apply to the Township for a temporary exemption from this By-law or any provision of it with respect to any source of noise to allow such Person to make, cause or permit such noise for the period of time set out in the application.
- 8.2. An application under section 8.1 shall be made in writing to the Exemption Authority, in the form determined by the Exemption Authority from time to time, and shall be submitted not less than fifteen (15) days prior to the commencement of the activity for which the temporary exemption is sought.
- 8.3. An application under section 8.1 shall contain the following:
 - (a) the name and contact information of the Person making the application;
 - (b) the municipal address of the Property where the activity for which a temporary exemption is sought will be held;
 - (c) where the Person making the application does not own the Property where the activity will be held:
 - i. the name and contact information of the Owner(s) of the Property; and
 - ii. written approval of the application by the Owner(s) of the Property;
 - (d) a description of the activity for which the temporary exemption is sought;
 - (e) the days and hours for which the temporary exemption is sought;
 - (f) a description of the source and level of the noise for which the temporary exemption is sought;
 - (g) a statement of the steps, if any, planned or being taken to minimize the noise;
 - (h) a statement of the provision or provisions of this By-law from which the temporary exemption is sought;
 - (i) the rationale for the temporary exemption request and the reason(s) it should be granted; and
 - (j) the name and contact information of the Person responsible for supervising the activity for which the temporary exemption is sought and will be available during the activity to address concerns raised by Persons in any area where the noise is Clearly Audible.
- 8.4. Upon receipt of an application that contains all information required under section 8.3, the Exemption Authority shall review and determine the application.

- 8.5. The Exemption Authority may grant or refuse an application and may impose such terms and conditions on a temporary exemption as are considered appropriate.
- 8.6. Where the Exemption Authority grants a temporary exemption, any breach of the terms or conditions of the exemption by any Person shall render it null and void.

9. ENFORCEMENT

- 9.1. This By-law shall be enforced by an Officer.
- 9.2. For the purposes of enforcing this By-law, an Officer may exercise any power, authority or remedy granted to the Township pursuant to the *Municipal Act, 2001* and the *Provincial Offences Act, R.S.O. 1990, c. P. 33* ("*Provincial Offences Act*").
- 9.3. No Person shall hinder or obstruct an Officer from exercising a power or performing a duty under this By-law.
- 9.4. Where an Officer is satisfied that a Person has contravened any provision of this By-law, the Officer may make an Order requiring the Person who contravened the By-law and/or the Owner of the Property where the contravention occurred to discontinue the contravention.
- 9.5. The Order shall include the municipal address of the Property where the contravention occurred, reasonable particulars of the contravention and the time for compliance with the Order.
- 9.6. The Order may be posted at the Property, delivered to the Person and/or the Owner or served by registered mail to the last known address of the Person and/or the Owner. An Order served by registered mail shall be deemed served after five (5) business days.
- 9.7. No Person shall contravene an Order issued under this By-law.

10. OFFENCES AND PENALTIES

- 10.1. Every Person who contravenes any provision of this By-law or an Order issued under this By-law is guilty of an offence and upon conviction is liable to such penalties as are provided for in the *Municipal Act, 2001* and the *Provincial Offences Act*.
- 10.2. Where an Officer is satisfied that a Person has failed to comply with any provision of this By-law, the Officer may issue a penalty notice imposing an Administrative Monetary Penalty. The Administrative Monetary Penalties for failures to comply with this By-law are set out in Schedule "A", which is attached hereto and forms part of this By-law.

11. GENERAL

- 11.1. If any or part of a provision of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the By-law, or its application in other circumstances, shall not be affected and shall remain in full force and effect.
- 11.2. If there is a conflict between a provision of this By-law and a provision of any other by-law of the Township, the provision establishing the higher standard shall prevail.

11.3. Any reference to legislation in this By-law includes the legislation referred to and any amendments, replacement, subsequent enactment or consolidation of such legislation.

11.4. This By-law shall come into full force and effect on the date on which it is passed.


12. BY-LAWS REPEALED

12.1. By-law No. 042-2018, as amended by By-law No. 047-2019 and By-law No. 023-2022, being a by-law to regulate noise in the Township of Wainfleet, is hereby repealed and replaced.

13. ENACTMENT

13.1. This By-law shall come into force on the date that it is passed.

BY-LAW READ AND PASSED THIS 7TH DAY OF JUNE, 2022


K. Gibson, MAYOR


M. Ciuffetelli, DEPUTY CLERK

SCHEDULE "A" TO BY-LAW NO. 028-2022

Short Form Wording and Administrative Penalties

Section	Short Form Wording	Penalty
3.1	Make, cause or permit unreasonable noise or noise that is likely to disturb Inhabitants	
	First failure to comply	\$500.00
	Each subsequent failure to comply within twelve (12) months of first failure to comply	\$1,000.00
4.1 (a)	Operation of a Motor Vehicle in an unauthorized race	\$1,000.00
4.1 (b)	Operation of a Motor Vehicle in a manner that causes its tires to squeal	\$75.00
4.1 (c)	Operation of a Motor Vehicle or trailer in manner that results in noise due to disrepair or unsecured load	\$75.00
4.1 (d)	Operation of a Motor Vehicle without effective exhaust muffling device	\$75.00
4.1 (e)	Operation of Construction Equipment without effective exhaust muffling device	\$75.00
4.1 (f)	Operation of bell, horn, siren or other warning device on a Motor Vehicle, bicycle or vehicle not authorized by law or within good safety practices	\$75.00
4.1 (g)	Operation of bell, horn, siren or other similar device on a Motor Vehicle, bicycle or vehicle unnecessarily or for unreasonable period of time	\$75.00
4.1 (h)	Operation of radio, amplifier, speaker or similar device on or in a Motor Vehicle, trailer or vehicle in a manner that is Clearly Audible 8 metres from the vehicle	\$75.00
4.1 (i)	Operation of sound-producing device for purpose of advertising that projects sound into any public street or public place	\$75.00
4.1 (j)	Operation of sound-producing device at a Property in a manner that is Clearly Audible in another dwelling or commercial unit with its doors and windows closed	\$1,000.00
4.1 (k)	Persistent shouting, yelling, hooting, whistling, singing or other like sounds of any Person	\$75.00
4.1 (l)	Persistent barking, howling, whining or other like sounds of any Animal	\$75.00
5.1 (a)	Operation of a combustion engine used or intended for use in a toy, model or replica that is used only for amusement between 8:00 p.m. one day and 8:00 a.m. the following day	\$75.00
5.1 (b)	Operation of any motorized Conveyance other than on a Highway between 8:00 p.m. one day and 8:00 a.m. the following day, other than on Sundays or Holidays	\$75.00

5.1 (c)	On Sundays and Holidays, operation of a motorized Conveyance other than on a Highway before 11:00 a.m.	\$75.00
5.1 (d)	Racing of any motorized Conveyance when regulated by law from 9:00 p.m. one day and 9:00 a.m. the following day, other than on Sundays and Holidays	\$75.00
5.1 (e)	On Sundays and Holidays, racing of any motorized Conveyance when regulated by law before 10:00 a.m.	\$75.00
5.1 (f)	Operation of any tool for lawn, yard or garden maintenance between 9:00 p.m. one day and 7:00 a.m. the following day, other than on Sundays and Holidays	\$75.00
5.1 (g)	On Sundays and Holidays, operation of any tool for lawn, yard or garden maintenance before 10:00 a.m.	\$75.00
5.1 (h)	Operation of Construction Equipment, between 8:00 p.m. one day and 7:00 a.m. the following day, other than on Sundays and Holidays	\$75.00
5.1 (i)	On Sundays and Holidays, operation of Construction Equipment before 10:00 a.m.	\$75.00
5.1 (j)	Operation of Domestic Construction Equipment between 8:00 p.m. one day and 7:00 a.m. the following day, other than on Sundays and Holidays	\$75.00
5.1 (k)	On Sundays and Holidays, operation of Domestic Construction Equipment before 10:00 a.m.	\$75.00
5.1 (l)	Shouting, yelling, hooting, whistling, singing or other like sounds of any Person between 10:00 p.m. one day and 8:00 a.m. the following day, other than on Sundays or Holidays	\$1,000.00
5.1 (m)	On Sundays and Holidays, shouting, yelling, hooting, whistling, singing or other like sounds of any Person before 11:00 a.m.	\$1,000.00
9.3	Hinder or obstruct Officer from performing duties	\$250.00
9.7	Contravention of an issued Order	\$1,000.00