

The Corporation of the Town of Pelham

By-law No. 4454(2022)

Being a By-law to regulate and control noise in the Town of Pelham and to repeal By-law No. 3130(2010) as amended by By-law No. 3324 (2012) and By-law No. 3808(2016)

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* provides that a lower-tier municipality has the authority 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 by-laws respecting animals;

AND WHEREAS section 129 of the *Municipal Act, 2001* provides that a local municipality may prohibit and regulate with respect to noise;

AND WHEREAS section 425 of the *Municipal Act, 2001* provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under the statute is guilty of an offence;

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 there exists a recognized body of scientific and technical knowledge by which noise may be reasonably and accurately measured and substantially reduced;

AND WHEREAS the Council of the Town of Pelham 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 Corporation of the Town of Pelham enacts as follows:

1. Purpose

- 1.1. The purpose of this By-law is to regulate and control noise in the Town of Pelham so as to promote the well-being of the municipality and its inhabitants.

2. Definitions

- 2.1. In this By-law:

"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.

"By-law Enforcement Officer" means a By-law Enforcement Officer of the Town.

"Clearly Audible" means that the sound or noise in question is easily perceptible, without undue effort, to a disinterested person with no hearing disability. For greater certainty, sound or noise that can be shown by valid measurement or acoustical analysis to be at or above 80 dBA when measured at a Point of Reception shall be deemed to be Clearly Audible.

"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 Town or by another Person or organization.

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

"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, off-highway 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 Town of Pelham.

"dBA" means the sound level in decibels obtained using a sound level meter or other similar device.

"Exemption Authority" means the Town Clerk or their designate, the Director of By-law Services or their designate, and any other Person appointed by the Town 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*").

"Holiday" means New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day, Boxing Day and any day set out in a Town By-law to be a Holiday.

"Inhabitants" means one or more Persons who reside in the Town, temporarily or permanently, and may include visitors to the Town.

"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.

"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 the premises of a Person where noise originating from other than those premises is received.

"Residential Area" means those areas in the Town where residential use is permitted under the Town of Pelham Zoning By-law No. 1136(1987), as enacted and amended by the Town from time to time, or where human habitation is a legal non-conforming use.

"Rooster" means an Animal that is a male domestic chicken or similar bird including but not limited to game birds and domestic fowl.

"Town" means The Corporation of the Town of Pelham.

"Town Clerk" means the Clerk of the Town.

3. General Prohibition

3.1. No Person shall 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, combustion engine or pneumatic device without an effective exhaust muffling device that is in proper working order and in constant operation;
- (e) the idling of a commercial Motor Vehicle for a period of more than thirty (30) minutes;

- (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 operation of a bell, horn, siren or other warning device on any Motor Vehicle, bicycle or other vehicle except as required or authorized by law or in accordance with good safety practices;
- (h) the operation of a bell, horn, siren or other warning device on any Motor Vehicle, bicycle or other vehicle for an unnecessary or unreasonable period of time;
- (i) the operation of a radio, amplifier, speaker or other similar device on or in a Motor Vehicle, trailer or vehicle that is Clearly Audible at least 8 metres from the vehicle;
- (j) the operation of any instrument, radio, television, amplification device, 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;
- (k) the operation of any instrument, radio, television, amplification device, loudspeaker, electronic sound system or other similar sound-producing device in such a manner or with such volume so as to disturb any Person in a dwelling unit or other type of residence or business office;
- (l) the crowing, calling or other like sounds made by any Rooster kept or used for any purpose other than a Normal Farm Practice carried on by an Agricultural Operation; and
- (m) the Persistent barking, howling, whining, squawking or other like sounds made by 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 that is 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 10:00 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 10:00 p.m. of one day and 8:00 a.m. of the following day;
 - (c) 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 between the hours of 10:00 p.m. of one day and 8:00 a.m. of the following day;
 - (d) the Persistent shouting, yelling, whistling or singing of any Person between the hours of 10:00 p.m. of one day and 8:00 p.m. of the following day;

- (e) the operation of a commercial car wash between the hours of 11:00 p.m. of one day and 7:00 a.m. of the following day other than on Sundays and Holidays;
- (f) on Sundays and Holidays, the operation of a commercial car wash prior to 9:00 a.m. or after 11:00 p.m.;
- (g) the operation 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;
- (h) on Sundays and Holidays, the operation of Construction Equipment prior to 9:00 a.m. or after 4:00 p.m.;
- (i) for a Point of Reception in a Residential Area, the loading, unloading, delivering, packing, unpacking or other handling of containers, products or materials or refuse between the hours of 10:00 p.m. of one day and 7:00 a.m. of the following day, unless necessary for the moving of private household effects;
- (j) the operation or use of any tool for property maintenance, other than snow removal, 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;
- (k) on Sundays and Holidays, the operation or use of any tool for property maintenance, other than snow removal, prior to 9:00 a.m. or after 10:00 p.m.;
- (l) for a Point of Reception in a Residential Area, the operation of solid waste bulk lift or refuse compacting equipment at all times;
- (m) for a Point of Reception in any other area, the operation of solid waste bulk lift or refuse compacting equipment from 7:00 p.m. of one day to 7:00 a.m. of the following day, other than on Sundays and Holidays;
- (n) on Sundays and Holidays, the operation of solid waste bulk lift or refuse compacting equipment prior to 9:00 a.m. or after 7:00 p.m.;
- (o) for a Point of Reception in a Residential Area, the operation of animal scaring devices, other than as part of a Normal Farm Practice, at all times; and
- (p) for a Point of Reception in any other area, the operation of animal scaring devices, other than as part of a Normal Farm Practice, from 10:00 p.m. of one day to 8:00 a.m. of the following day.

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 Town;
 - (b) emergency measures undertaken for the preservation or restoration of property;
 - (c) emergency measures undertaken by or on behalf of the Town;

- (d) the operation of any emergency service vehicle while carrying out its lawful duties;
- (e) signalling devices used for traffic and pedestrian control at intersections, crosswalks and other transportation control locations;
- (f) the operation of any railway or airport within the legislative authority of Parliament;
- (g) the operation of equipment by or on behalf of the Town for Construction projects, general maintenance projects and emergency projects of the Town;
- (h) the operation of equipment by or on behalf of the Town for Town maintenance operations including but not limited to snow removal, street cleaning, grass cutting, planting and pruning of trees and shrubs, and property maintenance;
- (i) the collection or disposal of garbage, waste or recyclable material by or on behalf of the Town or the Regional Municipality of Niagara;
- (j) the use of equipment for snow removal on private property when used in a reasonable manner;
- (k) Community Events presented or hosted by the Town;
- (l) Community Events presented or hosted by any other Person or organization that have been authorized or approved by the Town, provided that the event is carried on in accordance with all terms and conditions of the authorization or approval;
- (m) sports or recreational activities or events in public parks that have been authorized or approved by the Town, provided that the activity or event is carried on in accordance with all terms and conditions of the authorization or approval;
- (n) firework displays that have been authorized or approved by the Town, provided that the display is carried on in accordance with all terms and conditions of the authorization or approval;
- (o) the operation of bells or chimes in relation to any religious or military ceremony or service or by or on behalf of the Town;
- (p) activities that are a Normal Farm Practice carried on by an Agricultural Operation; and
- (q) 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 by Exemption Authority

- 8.1. Any Person may apply to the Town 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 thirty (30) 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, address, telephone number and email address of the Person making the application;
 - (b) the location of the event or activity for which the temporary exemption is sought, including the municipal address of the property where the event or activity will be held;
 - (c) where the Person making the application does not own the property where the event or activity will be held:
 - i. the name, address, telephone number and email address of the registered owner or owners of the property; and
 - ii. written approval of the application by the registered owner or owners of the property;
 - (d) a description of the event or 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 or reasons that it should be granted; and
 - (j) the name and contact information of the Person responsible for supervising the event or activity for which the temporary exemption is sought and who will be available during the event or 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 subsection 8.3, the Exemption Authority shall review and determine the application.
- 8.5. The Exemption Authority may grant or refuse an application for a temporary exemption and may impose such terms and conditions on a temporary exemption as the Exemption Authority considers appropriate.
- 8.6. Where the Exemption Authority authorizes a temporary exemption, any breach of the terms or conditions of the exemption by any Person shall render the exemption null and void.

9. Enforcement

- 9.1. This By-law shall be administered and enforced by the Town, a By-law Enforcement Officer and/or any Person appointed or otherwise delegated the authority of administration and enforcement.
- 9.2. A By-law Enforcement Officer and any Person appointed or otherwise delegated the authority to administer and enforce this By-law may, for the purpose of enforcing this By-law, exercise any power, authority or remedy granted to the Town pursuant to the *Municipal Act, 2001*.

- 9.3. No Person shall obstruct or hinder, or attempt to obstruct or hinder, any By-law Enforcement Officer or Person appointed or otherwise delegated the authority to administer and enforce this By-law in the exercise of a power or the performance of a duty under this By-law.

10. Penalty

- 10.1. Every Person who contravenes any provision of 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*, R.S.O. 1990, c. P. 33.
- 10.2. Administrative Penalty System By-law No. 4352(2022), applies to each administrative penalty issued pursuant to this By-law.
- 10.3. Every person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty System By-law No. 4352(2022), be liable to pay to the Town an administrative penalty in the amount of \$250.00 for each day on which the contravention occurs or continues.

11. General

- 11.1. The short title of this By-law is the "Noise Control By-law".
- 11.2. In the event of a conflict between this By-law and the provisions of another Town by-law, the provisions of this By-law shall prevail.
- 11.3. If any section or part of this By-law is found by any court of competent jurisdiction to be illegal or beyond the power of Council to enact, such sections or parts shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent therefrom and to be enacted as such.
- 11.4. This By-law shall be read with all changes in number or gender as are required by context.
- 11.5. Any reference to legislation in this By-law includes the legislation and any amendment, replacement, subsequent enactment or consolidation of such legislation.
- 11.6. The Town Clerk is hereby authorized to effect any minor modifications or corrections solely of an administrative, clerical, numerical, grammatical, semantical or descriptive nature or kind to this By-law as are determined to be necessary.

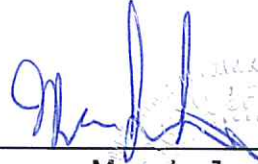
12. Repeal and Enactment

- 12.1. By-law No. 3130(2010), as amended by By-law No. 3324(2012) and By-law No. 3808(2016), being a by-law to regulate and control noise in the Town of Pelham, is hereby repealed and replaced.

13. Effective Date

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

Read, Enacted, Signed and Sealed this
16th Day of May, 2022.



Marvin Junkin, Mayor



Holly Willford, Town Clerk