

**THE CORPORATION OF THE TOWN OF TILLSONBURG
BY-LAW NUMBER 4255**

A BY-LAW to control noise in the Town of Tillsonburg, and to repeal by-law 3002.

WHEREAS Section 5(3) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 10(2) of the Municipal Act, 2001 authorizes the municipality to pass by-laws respecting certain matters, in particular subsections 5,6,8, and 9 authorize by-laws respecting the economic, social and environmental well-being of the municipality; the health, safety and well-being of persons; the protection of persons and property; and animals.

AND WHEREAS section 128 of the Municipal Act, 2001 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 a public nuisances;

AND WHEREAS in the opinion of Council for the Town of Tillsonburg, certain kinds of noise are or could become a public nuisance.

NOW THEREFORE the Council of The Town of Tillsonburg hereby enacts the following:

**SECTION 1
SCOPE OF BY-LAW**

1.1. SHORT TITLE

This By-law and any amendments thereto shall be known as the “Noise By-Law.”

1.2. INTENT AND SCOPE

The purpose of this By-law is to control and regulate noise within the corporate limits of the Town of Tillsonburg.

1.3. CONTENT OF BY-LAW

All references in the By-law to sections, regulations, exceptions, tables, figures, schedules and maps, refer to those in this By-law unless otherwise indicated.

**SECTION 2
DEFINITIONS AND INTERPRETATION**

2.1. DEFINITIONS

The terms set out below shall have the following meanings in this By-law:

“ANIMAL CONTROL OFFICER” means any person designated or contracted as an *Animal Control Officer* by the Town of Tillsonburg.

“AUTHORIZED EMERGENCY VEHICLE” means an ambulance, fire department vehicle, police vehicle, a snow plow, or any other vehicle operated by or for the Town of Tillsonburg or Oxford County.

“BUILDING” means any permanent structure used or intended to be used for the shelter, accommodation or enclosure of *persons*, animals, or goods.

“CHIEF BUILDING OFFICIAL” means the *Chief Building Official* of The Corporation of the Town of Tillsonburg.

“CONSTRUCT” means to build and/or to permit to build or erect, alter, relocate or provide any material alteration and without limiting the generality of the foregoing shall be taken to include any work in preparation to *construct*, and constructed has a corresponding meaning and this excludes any “*domestic works*” as defined.

“CONSTRUCTION EQUIPMENT” means any equipment or device designed and intended for use in construction, or material handling, including but not limited to, hammers, saws, drills, augers, air compressors, pile drivers, pneumatic or by hydraulic tools, bulldozers, tractors, excavators, trenchers, cranes, derricks, loaders, scrapers, generators, pavers, off highway haulers or trucks, ditchers, compactors and rollers, pumps, concrete mixers, graders, or other material handling equipment.

“CONVEYANCE” means a vehicle and any other device employed to transport a person or persons or goods from place to place and includes any vehicle or device if operated only within a specific premise.

“COUNCIL” means the Municipal Council of the Corporation of the Town of Tillsonburg.

“DOMESTIC WORKS” means any construction, maintenance, renovation or repairs being completed an *owner* to their own property.

“HIGHWAY” includes a common or 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.

“LAW ENFORCEMENT OFFICER” means a Police Officer, a Provincial Offences Officer and Municipal Law Enforcement Officer.

“MOTOR VEHICLE” means an automobile, a motorcycle, a motor assisted bicycle or 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 vehicles running upon only rails, or a motorized snow vehicle, traction engine, farm tractor, self-propelled implement of husbandry or road building machine within the meaning of the Ontario Highway Traffic Act.

“NOISE” means any sound or vibration that is of such volume, level or nature that it is likely to disturb the inhabitants of the Town of Tillsonburg.

“OWNER” means a registered *owner* of land, or any *person* in control of land, including a leasee or an occupant thereof.

“PERSON” means an individual, firm, proprietorship, partnership, association, syndicate, trust, corporation, department, bureau, and agency; and includes an *owner*.

“POINT OF RECEPTION” means any point on the *premises* of a *person*, where *noise* or vibration is originating from other than those *premises* is received.

“PREMISES” means land includes the buildings and/or structures thereon.

“PUBLIC HOLIDAY” means New Year’s Day, Family Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day and Boxing Day.

“TOWN” means the Corporation of the Town of Tillsonburg.

SECTION 3 GENERAL PROHIBITIONS

- 3.1. No *person* shall make, cause, or permit to be caused *noise* likely to disturb any *person* which is clearly audible at a *point of reception*.
- 3.2. No *person* shall make, cause or permit to be caused *noise* that contravenes:
 - a) An applicable Noise Pollution Control Publication of Ontario’s Ministry of the Environment, Conservation and Parks.
 - b) A permission, such as a certificate of approval, under federal or provincial legislation.
- 3.3. For the purposes of this By-law and without limiting the generality of the forgoing, the following *noises* shall be deemed to be *noises* likely to disturb any *person* if clearly audible at a *point of reception* in the Town of Tillsonburg:
 - a) The operation of a *motor vehicle* in such a way that tires squeal;
 - b) The operation of any combustion engine or pneumatic device without an effective exhaust or intake muffling device in constant operation;
 - c) The operation of an engine or motor in, or on, any vehicle or item of attached auxiliary equipment for a continuous period of more than five minutes while such vehicle is stationary unless:
 - i) the continuous operation of the engine or motor is essential to the basic function of the vehicle or equipment;
 - ii) 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 the preservation of perishable cargo, and the vehicle is stationary for the purposes of delivery or loading;
- d) The operation of an air conditioner, pool pump or filter, car wash air drying equipment, heat pump or the like that is not in proper working order;
 - e) The use of a horn, whistle, alarm, bell, gong or the like, except for an auditory safety or warning device.
 - f) The detonation of fireworks or any similar explosive device at any time other than that is specified as per the Town of Tillsonburg Fireworks By-law, as amended.
 - g) The discharge of any firearms.
 - h) Persistent yelling, shouting, hooting, whistling, singing or the like.
 - i) Persistent barking, calling, whining or other similar persistent *noise* making by any domestic animal.
 - j) Sound emanating from a radio, television, stereo, or other electronic device including any amplification device, or any musical or other sound producing instrument.
 - k) The operation of a dirt-bike, all-terrain cycle, snowmobile, go-cart, dune buggy or like conveyance.

SECTION 4
REGULATIONS BY TIME

- 4.1. No *person* shall make, cause or permit the emission of *noise* resulting from an act listed herein, which *noise* is clearly audible at a *point of reception* during a restricted time period.
- 4.2. Notwithstanding any other provision of this By-law, the following *noises* shall be deemed to be *noises* which are likely to disturb any *person* in the *Town* if they are clearly audible at a *point of reception* with the time period as shown:

Description of Sound	Time Restrictions
1. Persistent yelling, shouting, hooting, whistling, singing or the like.	At all times
2. The discharge of firearms (except by police).	At all times
3. Persistent barking, calling, whining or other similar persistent <i>noise</i> making by any domestic animal.	At all times
4. The operation of any equipment in connection with construction.	7:00 p.m. to 7:00 a.m. Sundays and all <i>Public Holidays</i> - 7:00 p.m. to 9:00 a.m.
5. The operation of any gas, battery, or electrical powered tool including a hammer, saw, nail gun, staple gun, drill, air compressor, generator, lawnmower, hedge trimmer, chainsaw, trimmer, leaf blower or the like for <i>domestic works</i> other than for snow removal.	9:00 p.m. to 7:00 a.m. Sundays and all <i>Public Holidays</i> - 7:00 p.m. to 9:00 a.m.
6. The operation of waste collection machinery or refuse compacting equipment.	9:00 p.m. to 7:00 a.m. Sundays and all <i>Public Holidays</i> - 7:00 p.m. to 9:00 a.m.
7. The operation of any powered rail car including but not limited to refrigeration cars, locomotives or self-propelled passenger cars, while stationary on a property not owned or controlled by a railway governed by the Canada Railway Act.	9:00 p.m. to 7:00 a.m.
8. Loading, unloading, delivering, packing, unpacking, or otherwise handling any equipment, containers, products, materials, or refuse whatsoever unless necessary for the maintenance of essential services or the moving of private household effects.	9:00 p.m. to 7:00 a.m.

SECTION 5
GENERAL EXEMPTIONS

This By-law does not apply to sound emitted, caused or permitted in connection with:

- a) Measures undertaken in the event of an emergency for the immediate health, safety, security or welfare of *persons* and animals within the *Town*;
- b) Measures undertaken in an emergency for the preservation or restoration of property;
- c) The operation of authorized emergency vehicles.
- d) The activities of snow plowing and/or removal.
- e) Measures undertaken by the *Town* or Oxford County where its employees, contractors, or agents are carrying out *Town* or Oxford County operations or operating, maintaining or installing municipally owned infrastructure and facilities.
- f) Sport, recreational events, parades, festivals, circuses, fairs, or entertainment activities approved by the *Town*.
- g) The lawful use and detonation of fireworks or similar explosive devices as per the Town of Tillsonburg Fireworks By-law, as amended.
- h) Non-emergency construction, reconstruction or repair of any county, provincial or federal public works including the construction, reconstruction or repair of a public *highway* provided the *Town* is given advanced written notice of the hours to be worked if outside the permitted construction hours.
- i) Operation of machinery by or on behalf of a public utility where work needs to be done on week-ends or overnight to minimize service interruptions.
- j) *Law Enforcement Officer* and *Animal Control Officers* while engaged in the course of their duties.

SECTION 6 TEMPORARY NOISE PERMIT EXEMPTIONS

6.1. **Application to Chief Building Official**

Notwithstanding anything contained in this By-law, any *person* may make application to the *Chief Building Official* or their designate for exemptions that do not exceed thirty days in length, to be granted an exemption from any of the provisions of this By-law with respect to any source of *noise* for which they might be prosecuted and the *Chief Building Official* or their 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 during which it is effective and may contain such terms and conditions as the *Chief Building Official* or their designate see fit. The application for a temporary *noise* exemption is to be submitted a minimum of twenty-one days before the requested start date.

6.2. **Application to Council**

Notwithstanding anything contained in this By-law, any *person* may make application to *Council* for exemptions exceeding thirty days in length, to be granted an exemption from any of the provisions of this By-law with respect to any source of *noise* for which they might be prosecuted and the *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 during which it is effective and may contain such terms and conditions as the *Council* see fit. The application for a temporary noise exemption is to be submitted a minimum of twenty-one days before the requested start date.

6.3. **Application for Exemption**

The application mentioned in Sections 6.1 and 6.2 shall be made in writing and shall contain all of the following:

- a) The name and address of the applicant;
- b) The name and information of a contact *person*, if other than applicant;
- c) The location of the event or activity for which the Temporary Noise Permit is sought;
- d) A description of the source of *noise* in respect of which the exemption is sought;
- e) A statement of the particular provision or provisions from which the exemption is sought;

- f) The times of day, and period of time and duration for which the exemption is sought;
- g) The reasons why the exemption is necessary;
- h) A statement of the steps, if any, planned or presently being taken to minimize the *noise*;
- i) Written confirmation that all property *owners* within a five hundred metre radius of the point from which the *noise* will be emitted have been notified along with a copy of the public notice;
- j) A non-refundable application fee for exemption as set out in the *Town's* current Rates and Fees By-law; and
- k) Any other item as requested by the *Chief Building Official*, their designate or *Council* which shall be deemed necessary in providing relevant information related to the temporary noise permit.

6.4. Decision for Exemption

In deciding whether to grant the exemption, the *Chief Building Official* or designate or *Council* shall:

- (a) Consider any negative effects the issuance of the temporary noise permit may have on *persons* residing on neighbouring properties or on the *Town*;
- (b) Consider any benefits the issuance of the temporary noise permit may have for *persons* residing on neighbouring properties or for the *Town*;
- (c) Consider any previous violations of this By-law or predecessor by the *owner* or temporary noise permit conditions by the applicant; and
- (d) Consider anything that is reasonably relevant.

6.5. Conditions of Temporary Noise Permit

The *Chief Building Official* or their designate or *Council* may impose conditions on a temporary noise permit, including but not limited to:

- (a) The type and volume of sounds that may be made;
- (b) The times during which sounds may be made and;
- (c) The date of expiry of the temporary noise permit.

6.6. Violation of Temporary Noise Permit Conditions

Violation by the applicant or by any *person* under the applicant's direction of any of the terms or conditions of the exemption granted by the *Chief Building Official* or their designate or *Council* shall render the temporary noise permit null and void.

SECTION 7 ADMINISTRATION

7.1. Enforcement Authorization

This by-law shall be enforced by *Law Enforcement Officers*.

For the purpose of ensuring compliance with this By-law, *Law Enforcement Officers* may at all reasonable times enter upon and inspect any land to determine whether the following is being complied with:

- (a) The provisions of this by-law
- (b) An *Order* made under this by-law

7.2. Enforcement and Inspection

A *Law Enforcement Officer* may, for the purpose of inspection:

- (a) Require the production for inspection of documents or things relevant to the inspection
- (b) Inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts
- (c) Require information from any *person* concerning a matter related to the inspection
- (d) Alone or in conjunction with a *person* possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection
 - i) Any cost incurred from this will be at the *owner's* expense.
 - ii) No person shall hinder or obstruct, or attempt to hinder or obstruct, any *Law Enforcement Officer* exercising a power or performing a duty under this by-law.

7.3. Order

A *Law Enforcement Officer* may by written Order, sent by regular mail to the last known address (last revised tax assessment roll), posted on site or personally delivered to *owner* or owners of property, within the time specified in the Order to:

- (a) Discontinue the contravening activity, and/or
- (b) Do work to correct the contravention

7.4. Contents of the Order

The *Order* will state:

- (a) the section that is in contravention of the by-law
- (b) the location/address of the contravention
- (c) reasonable particulars of the contravention
- (d) the work to be completed
- (e) the date by which the work must be completed

7.5. Failure to Comply with an Order

Where an *owner* fails to comply with an *Order*, the *Law Enforcement Officer* may without any further notice, cause the work to correct the contravention be done at the *owner's* expense. Without limitation, the *Law Enforcement Officer* may retain such *persons* to assist in completing the work as the *Law Enforcement Officer* determines appropriate.

All costs incurred by the *Town* in relation to such work may be recovered by the *Town* by being added to the tax roll and collected in the same manner as property taxes. An administrative fee will also be added as per the Annual Rates and Fees By-law.

If this by-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered and any court competent jurisdiction thereafter may make an *Order*,

- (a) prohibiting the continuation or repetition of the offence by the *person* convicted; and
- (b) requiring the *person* convicted to correct the contravention in the manner and within the period that the court considers appropriate

**SECTION 8
PENALTIES**

8.1. Contraventions

The following applies to any *person* deemed to have contravened any provision of this by-law:

- (a) Every *person* who contravenes a provision of this By-law, including an order issued under this By-law, is guilty of an offence.
- (b) If an order has been issued under this By-law, and the order has not been complied with, the contravention of the order shall be deemed to be a continuing offence for each day or part of a day that the order is not complied with.
- (c) Every *person* who is guilty of an offence under this By-law shall be subject to the following penalties:
 - i) upon a first conviction, shall be liable to a fine of not more than \$50,000;
 - ii) upon second or subsequent conviction for the same offence, to a fine of not more than \$100,000;
 - iii) upon conviction for a continuing offence, to a fine of not more than \$10,000 for each day or part of a day that the offence continues. The total of the daily fines may exceed \$100,000;
 - iv) upon conviction of a multiple offence, for each offence included in the multiple offence, to a fine of more than \$10,000. The total of all fines for each included offence is not limited to \$100,000.
- (d) For the purposes of this By-law, “multiple offence” means an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this By-law.
- (e) For the purposes of this By-law, an offence is a second or subsequent offence if the act giving rise to the offence occurred after a conviction had been entered at an earlier date for the same offence.

**SECTION 9
SEVERABILITY**

Where a court of competent jurisdiction declares any section or part of a section of this by-law invalid, the remainder of this by-law shall continue in force unless the Court makes an *Order* to the contrary.

**SECTION 10
REPEAL**

THAT By-Law No. 3002 is hereby repealed in its entirety.

SECTION 11
EFFECTIVE DATE

THAT this By-Law shall become effective upon the passing thereof and upon the approval of the set fines by the Regional Senior Justice of the Ontario Court of Justice.

READ A FIST AND SECOND TIME this 8th day of April, 2019.

READ A THIRD AND FINAL TIME AND PASSED this 8th day of April, 2019

Mayor – Stephen Molnar

Town Clerk – Donna Wilson