



THE CORPORATION OF THE TOWNSHIP OF
ASHFIELD-COLBORNE-WAWANOSH

BY-LAW NUMBER 21-2020

BEING A BY-LAW to provide for the Regulation and Prohibition of Noise and Sound for the Township of Ashfield-Colborne-Wawanosh

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

AND WHEREAS subsection 10(1) of the Municipal Act, 2001 provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the Municipal Act, 2001 provides that a municipality may pass by-laws respecting the health, safety and well-being of persons;

AND WHEREAS section 129 of the Municipal Act, 2001 provides that, without limiting sections 9 and 10 of the Act, a municipality may: (a) prohibit and regulate with respect to noise;

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 public nuisances;

AND WHEREAS in the opinion of Council for the Township of Ashfield-Colborne-Wawanosh, certain kinds of noise are or could become a public nuisance;

AND WHEREAS subsection 391(1) of the Municipal Act, 2001 provides that a municipality may impose fees and charges on persons, for services or activities provided or done by or on behalf of it; for costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and, or the use of its property including property under its control;

AND WHEREAS section 23.2 of the Municipal Act, 2001 permits a municipality to delegate certain legislative and quasi-judicial powers;

AND WHEREAS section 444 of the Municipal Act, 2001 provides that the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity, and any person who contravenes such an order is guilty of an offence;

AND WHEREAS section 447.8 of the Municipal Act, 2001 provides that a by-law of a municipality made under this or any other Act may, adopt by reference, in whole or in part, with such changes as the council considers appropriate, any code, standard, procedure or regulation as it stands at a specific date, as it stands at the time of adoption or as amended from time to time; and require compliance with any code, standard, procedure or regulation so adopted;

THEREFORE, the Council of The Corporation of the Township of Ashfield-Colborne-Wawanosh enacts as follows:

PART 1 – DEFINITIONS

1.1 For the purpose of this by-law:

“Agricultural Operation” has the same meaning as contained in the Farming and Food Production Protection Act, 1998, S.O. 1998, C. 1, as amended, or any successor legislation;

“Amplified Live Speech” means live speech amplified by any means that is clearly audible at a Point of Reception, but does not include live speech that is incidental to a commercial, industrial, or institutional premise, and does not include live speech amplified by an assistive device used by a person due to a disability;

“Community Event” means an event open to the public, including a public fair, public exhibition, public celebration, public sporting event, public concert; or a school board event;

“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 for any purpose, and includes any work in connection therewith;

“Conveyance” includes a vehicle and any other device employed to transport a person or persons or goods from place to place but does not include any such device or vehicle if operated only within the premises of a person;

“Council” means the Council for the Municipality;

“Municipality” means The Corporation of the Township of Ashfield-Colborne-Wawanosh;

“Normal Farm Practice” has the same meaning as contained in the Farming and Food Production Protection Act, 1998, S.O. 1998, C. 1, as amended, or any successor legislation;

“Point of Reception” means any point on the premises where sound originating from other than those premises is received;

“Settlement Area” means any area of the Municipality as designated Settlement Area by the Official Plan of the Municipality;

1.2 Any word or term not defined in this By-law, that is defined in the Ontario Ministry of the Environment Publication Noise Pollution Control NPC-101, 102, 103, 104, 115, 205, 206, 215 or 232 (as set out in Part 3 of this By-law) shall have the meaning ascribed to it in such NPC Publication.

PART 2 - QUALITATIVE NOISE PROHIBITIONS

General Prohibition

2.1 No person shall make, cause or permit an unreasonable noise, or a noise that is likely to disturb the inhabitants within a Settlement Area of the Municipality.

Prohibitions - Deemed

2.2 Without limiting the generality of section 2.1 of this By-law, the provisions of sections 2.3 through 2.4 shall be deemed to be unreasonable noise, or noise that is likely to disturb the inhabitants.

Prohibitions - Deemed

2.3 At any time or location in the Settlement Area of the Municipality:

Vehicle – Warning Device

(a) the sounding of any bell, horn, siren or other warning device on any motor vehicle or vehicle for an unnecessary or unreasonable period of time, except when permitted by law;

Vehicle – Excessive Noise

- (b) the sound created by the operation of any motor vehicle that is used in such a manner as to create unreasonable noise for an unreasonable period of time or is noise that is likely to disturb the inhabitants.

Vehicle - Disrepair

- (c) the grating, grinding or rattling sound caused by the condition of disrepair or maladjustment of any motor vehicle or vehicle or part or accessory thereof;

Vehicle – Improperly Secured Load

- (d) the sound created by the operation of any motor vehicle, trailer or other vehicle bearing material, articles or things that are loaded upon such vehicle in such manner as to create excessive noise;

Vehicle - Exhaust

- (e) the sound from the discharge into the open air of the exhaust of any steam engine, internal combustion engine (including the engine of any motor vehicle), or pneumatic device without an effective exhaust or intake muffling device in good working order and in constant operation that prevents excessive noises that are loud or explosive;

Vehicle - Speakers

- (f) the sound from or created by any radio, amplifier, loud speaker, public address system, or equipment, device or instrument that emits sound when the same is used or operated from any motor vehicle, trailer or vehicle that is clearly audible at least 8 metres (25 feet) from the vehicle;

Attracting Attention - Advertising

- (g) the sound from or created by any instrument, radio, amplification device, loud speaker, public address system, equipment or device that emits sound when the same is used or operated for the purpose of advertising or for attracting attention to any performance or sale, show or display of goods or services and projects such sound into any street or other public place;

Alarm – Warning Device

- (h) the sounding of any alarm, bell, horn, siren or other warning device for an unnecessary or unreasonable period of time;

Amplified Sound

- (i) the sound created by any electronic device or group of connected electronic devices incorporating one or more loudspeakers or other electro-mechanical transducers intended for the production, reproduction or amplification of sound, including but not limited to a radio, television, amplifier, loud speaker, public address system, sound equipment, that is clearly audible at a Point of Reception in a Settlement Area at any time;

Shouting, Yelling, Hooting, Whistling, Singing

- (j) any shouting, yelling, loud hooting, loud whistling or loud singing that is clearly audible at a Point of Reception in a Settlement Area at any time;

Construction – Excavation – 9 p.m. to 7 a.m.

- (k) the noise arising from Construction that is clearly audible at a Point of Reception in a Settlement Area between 9:00 p.m. and 7:00 a.m. of the following day (or 9:00 a.m. if the following day is Sunday);

Firearms – Discharge – 11 p.m. to 7 a.m.

- (l) the sound caused by the discharge of any gun or other firearm, air gun, spring-gun of any class or type that is clearly audible at a Point of Reception in a Settlement Area between 11:00 p.m. and 7:00 a.m. of the following day (or 9:00 a.m. if the following day is Sunday), except if lawfully discharged by a peace officer in the performance of their duties;

Power Equipment – 11 p.m. to 7 a.m.

- (m) the sound caused by the use or operation of a lawnmower, chain-saw, leaf- blower, or any other such noise-generating tool or device that is clearly audible at a Point of Reception in a Settlement Area between 11:00 p.m. of any day and 7:00 a.m. of the next following day (or 9:00 a.m. if the following day is Sunday).

PART 5 - ENFORCEMENT

Order to Discontinue Activity

5.1 If a municipal law enforcement officer or a police officer is satisfied that this by-law has been contravened, the officer may make an order, known as an Order to Discontinue Activity, requiring the person who contravened the by-law, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravention.

Order to Discontinue Activity - Particulars

5.2 An Order to Discontinue Activity shall set out:

- (a) the municipal address of the property on which the contravention occurred;
- (b) the date of the contravention;
- (c) the reasonable particulars of the contravention of the by-law; and
- (d) the date by which there must be compliance with the order.

Order to Discontinue Activity - Service

5.3 The Order to Discontinue Activity may be served personally on the person to whom it is directed or by regular mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed. Service on a corporation can be effected by registered mail to the corporate mailing address.

Contravention of Order

5.4 No person shall contravene an Order to Discontinue Activity.

Inspection Fee

5.5 (a) Where the municipal law enforcement officer determines that an activity producing noise or sound is not in compliance with this by-law or with an Order to Discontinue Activity, the fee or charge set out in the applicable Fees and Charges By-law for inspection may be imposed on the owner, or the person responsible for the noise or sound.

- (b) The fees imposed constitute a debt of the person to the Municipality. The Municipality may add fees to the tax roll and collect them in the same manner as municipal taxes on any property for which all the owners are responsible for paying the fees.

Hinder or Obstruct

5.6 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this By-law, including carrying out an inspection.

By-law Enforcement

5.7 This by-law may be enforced by a Municipality municipal law enforcement officer or a police officer.

PART 6 – EXEMPTIONS

6.1 Despite any provision of this By-law, this By-law shall not apply to the following sounds arising from:

Police – Fire Services - Ambulance

- (a) a vehicle of the provincial or federal police, fire department, or ambulance, while in performance of their duty;

Railway - Airport

- (b) any activity that is integral to the operation of any railway or airport within the legislative authority of Parliament;

Public Necessity - Emergency

- (c) a matter of public necessity or public emergency;

Municipal Equipment

- (d) the operation of machines and equipment by or on behalf of the Municipality, including but not limited to snow removal equipment, road cleaning equipment, grass cutting or field maintenance equipment, tree and shrub pruning and mulching equipment, painting machines for crosswalks and highways;

Garbage & Recycling Collection / Disposal

- (e) the collection or disposal of garbage, waste or recyclable material by or on behalf of the Municipality;

Municipal Construction Projects

- (g) the operation of equipment in conjunction with Municipal Construction projects, Municipal general maintenance projects, and Municipal emergency maintenance projects;

Fireworks - Pyrotechnics

- (h) the discharge of consumer fireworks, display fireworks or pyrotechnic special effects fireworks on Statutory Holidays;

Industrial Use in Industrial Zone

- (i) activities from industrial uses located in lands zoned for industrial use if sound is in accordance with the terms and conditions of a valid Certificate of Approval, provisional Certificate of Approval or other approval issued under the Environmental Protection Act, R.S.O. 1990, c. E.19, where such approval addresses sound as a source of contamination;

Normal Farm Practice

- (j) activities as part of a Normal Farm Practice and carried on as part of an Agricultural Operation;

Public Utilities

- (k) operation of machinery by or on behalf of a public utility where work needs to be done to minimize service interruptions;

Public Election - Gathering

- (l) the use in a reasonable manner of any apparatus or mechanism for the amplification of the human voice or of music in a public park or any other commodious space in connection with any public election meeting or other lawful gathering between 9:00 a.m. and 6:00 p.m.;

Community Event

- (m) activities and noise as part of a Community Event if the Event is operating under written permission of the Municipality;

Parade – Band

- (n) a military or other band in a parade if the parade is operating under written permission of the Municipality;

Snow Removal

- (n) the use in a reasonable manner of vehicles and equipment when utilized for the clearing and the removal of snow from private property;

6.2 Despite any provision of this By-law, this By-law shall not apply where:

- (a) a sound is from a facility that has been designed, developed, built, operated and maintained in accordance with the terms and conditions of a valid Certificate of Approval, provisional Certificate of Approval or other approval issued under the Environmental Protection Act, R.S.O. 1990, c. E.19, where such approval addresses sound as a source of contamination; or

(b) an order or permit has been issued under the Environmental Protection Act.

PART 7 - PENALTY

Guilty of Offence

7.1 (a) Any person who contravenes any provision of this By-law is guilty of an offence.

(b) A director or officer of a corporation who knowingly concurs in the contravention of this By-law is guilty of an offence.

Liability

7.2 Any person convicted under this By-law is liable:

(a) upon a first conviction, to a minimum fine of \$175.00 and a maximum fine of \$5,000.00;

(b) upon a subsequent conviction, to a minimum fine of \$500.00 and a maximum fine of \$10,000.00.

Liability - Corporation

7.3 Despite section 7.2, where the person convicted is a corporation, the corporation is liable,

(a) upon a first conviction, to a minimum fine of \$175.00 and a maximum fine of not more than Ten Thousand Dollars (\$10,000.00); and

(b) upon any subsequent conviction, to a minimum fine \$1000.00 and a maximum fine of not more than Twenty-Five Thousand Dollars (\$25,000.00).

7.4 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 of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted.

PART 8 - MISCELLANEOUS

8.1 This by-law may be referred to as the "Noise and Sound By-law".

8.2 This by-law shall come into force and effect on the final passage thereof.

Read a FIRST and SECOND time this 3rd day of March, 2020.

Read a THIRD TIME and FINALLY PASSED this 3rd day of March, 2020.



Glen McNeil, Mayor



Mark Becker, CAO/ Clerk-Treasurer