

CITY OF ST. THOMAS BY-LAW 160 - 2020

A by-law to control Noise within the City of St. Thomas.

WHEREAS Section 128 of The Municipal Act 2001, S.O. 2001, c. 25, as amended, provides authority for municipalities to prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances;

AND WHEREAS Section 129 of The Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides authority for municipalities to prohibit and regulate noise;

AND WHEREAS Section 391 of The Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides authority for municipalities to pass by-laws imposing fees and charges on any class of persons for services or activities provided or done by or on behalf of it;

AND WHEREAS Subsection 10(1) and 10 (2) 5,6,7,8 and 9 of The Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides authority to single-tier municipalities to pass by-laws respecting these matters;

AND WHEREAS Section 447.8(1) of The Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides authority that by by-law municipalities may adopt by reference, in whole or in part, any standard or regulation as it stands at the time of adoption or as amended from time to time;

AND WHEREAS the people have a right to and should be assured an environment free from unusual, unnecessary, or excessive noise which may degrade the quality and tranquillity of their life or cause nuisance;

AND WHEREAS Council deems it necessary and expedient to regulate or prohibit noise within the municipality which is likely to disturb the inhabitants and become a public nuisance;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF ST. THOMAS ENACTS AS FOLLOWS:

PART 1 DEFINITIONS

1.1 In this By-law:

- .1 "Business Area" means those areas within the municipality which are not Residential Areas or Open Space Areas as defined in this By-law;
- .2 "City" means the Corporation of the City of St. Thomas;
- .3 "Clerk" means the City Clerk appointed by Council pursuant to Section 228 of the Municipal Act, 2001, S.O.2001, c.25, as amended;
- .4 "Construction" means erection, construction, 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, 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;
- .5 "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, pneumatics or hydraulic tools, power and hand tools, bulldozers, tractors, excavators, trenchers, cranes, derricks, loaders, scrapers, pavers, generators, off-highway haulers or trucks, ditchers, compactors and roller pumps, concrete mixers, graders, or other material handling equipment;
- .6 "Council" means the Council of the Corporation of the City of St. Thomas;
- .7 "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;

- .8 "Inhabitants" means one or more Persons who reside in the Municipality and also includes a Person who is in the Municipality for any reason;
 - .9 "Motor Vehicle" includes an automobile, motorcycle, and any other vehicle or conveyance propelled or driven otherwise than by muscular power, but does not include trains, locomotives or the cars of electric railways, or other motor vehicles running only upon rails, or a motorized snow vehicle, traction engine, farm tractor, self-propelled implement of husbandry or road building machine, all within the meaning described in the Highway Traffic Act;
 - .10 "Municipality" means any area within the geographic boundaries of the City;
 - .11 "Noise" means unwanted sound;
 - .12 "Noise Control Officer" means:
 - i) Any police officer having jurisdiction, or
 - ii) A Noise Control Officer appointed by by-law by Council;
 - .13 "Open Space Area" means those zones within the municipality specified as hazard land, natural heritage or open space in the City's Zoning By-law as amended;
 - .14 "Person" means an individual and also a corporation incorporated under the laws of Canada or of any province of Canada;
 - .15 "Point of Reception" means any point on the premises occupied by a person where sound originating from other than those premises is received;
 - .16 "Premise" means a house, a building or part thereof and a unit within same, with grounds and appurtenances where applicable;
 - .17 "Residential Area" means those zones within the Municipality specified as residential in the City's Zoning By-law as amended, including non-residential uses within a residential zone; and
 - .18 "Special Event" means any event authorized by Council upon recommendation of the Special Events Committee.
- 1.2 Publications referred to in this by-law with the preface "NPC" are specific numerically identified publications issued by the Ontario Ministry of the Environment, Conservation and Parks as amended by said Ministry from time to time.

PART 2 PROHIBITIONS

- 2.1 No Person shall emit Noise, or cause or permit the emission of Noise that is likely to disturb the inhabitants.
- 2.2 Without limiting the generality of Section 2.1, no Person shall emit or permit the emission of Noise, which is clearly audible at a Point of Reception, resulting from the following which shall be deemed to be unreasonable Noise, or Noise that is likely to disturb the Inhabitants:
 - .1 the racing of any Motor Vehicle other than in a racing event regulated by rules set out by a regulatory organization and staged in compliance with applicable laws;
 - .2 the operation of a Motor Vehicle in such a way that the tires squeal;
 - .3 the operation of a Motor Vehicle, an engine, a motor or Construction Equipment without an effective exhaust or intake sound-muffling device, or other sound attenuation device, which is in good working order, in constant operation and of a type specified by the manufacturer;
 - .4 the operation of a Motor Vehicle or Motor Vehicle with a trailer resulting in banging, clanking, squealing, or other like sounds due to improperly secured load or equipment or inadequate maintenance;
 - .5 the operation of an engine or motor in, or on, any Motor Vehicle or item of auxiliary equipment attached to a Motor Vehicle for a continuous period exceeding five (5)

- minutes while such vehicle is stationary in a Residential Area except as permitted in Section 4.6;
- .6 the operation of a Motor Vehicle horn or other warning device except where required or authorized by law or in accordance with good safety practices; or
 - .7 the operation of any item of Construction Equipment in a Residential Area without effective sound-muffling devices in good working order and in constant operation.

PART 3

QUANTITATIVE LIMITATIONS

- 3.1 No Person shall cause or permit the emission of Noise from a stationary source such that the level of sound from that source at a Point of Reception located in a Residential Area exceeds the applicable sound level limit prescribed in Publication NPC-300 "Environmental Noise Guideline," as amended.
- 3.2 No Person shall cause or permit the emission of Noise from the operation of a residential air-conditioning device of a type referred to in Publication NPC-216 "Residential Air Conditioning Devices," as amended, resulting in a sound level at a Point of Reception located in a Residential Area in excess of the applicable sound level limit set out in Publication NPC-216 unless the device is properly maintained and one of the following applies:
 - .1 the device was manufactured prior to January 1, 1979;
 - .2 the device bears a label affixed by the manufacturer or distributor which states the year of manufacture and that the device when new complied with the sound emission standard set out in Publication NPC-216 - "Residential Air Conditioning Devices," as applicable to that type of device and date of manufacture; or
 - .3 the owner, operator, manufacturer or distributor provides proof that the device when new complied with the sound emission standard set out in Publication NPC-216 - "Residential Air Conditioning Devices," as applicable to that type of air conditioner and date of manufacture.
- 3.3 No Person shall emit or permit the emission of Noise resulting from an act listed in Schedule "A" to this By-law if clearly audible at a Point of Reception located in any area of the Municipality within a time period when that Noise is prohibited in the area where the Point of Reception is located, as set out in Schedule "A" to this By-law.

PART 4

EXEMPTIONS

- 4.1 Notwithstanding any provisions of this By-law, it shall be lawful to emit Noise or cause or permit the emission of Noise in connection with emergency measures undertaken:
 - .1 for the immediate health, safety or welfare of the Inhabitants;
 - .2 for the preservation or restoration of property, unless such Noise is clearly of a longer duration or nature more disturbing than is reasonably necessary for the accomplishment of such emergency purpose;
 - .3 for the immediate health, safety or welfare of the Inhabitants under emergency circumstances; or
 - .4 for any emergency requiring immediate action for the Construction, preservation, restoration or demolition of any public highway.
- 4.2 Notwithstanding any provisions of this By-law, it shall be lawful to emit or cause or permit the emission of Noise in connection with;
 - .1 the operation of any agricultural equipment being operated as part of a normal farm practice and carried on as part of an agricultural operation;
 - .2 the operation of machinery or tools by or on behalf of a public utility where work needs to be done to minimize service interruptions;
 - .3 the operation of a facility, industry or other source developed, operated, maintained or permitted in accordance with a Certificate of Approval, permit or order issued under the Environmental Protections Act, R.S.O. c. E.19 that addresses the sound as a source of contamination;
 - .4 the operation of Construction Equipment for Construction, re-construction or repairs of a City infrastructure;
 - .5 activities that are integral to the operation of a railway operating within the legislative

authority of parliament.

- 4.3 Excepting those Noises specifically described in Section 2.2 of this By-law, any level of sound at a Point of Reception which is below the limit set out in a Technical Noise Control Publication published by the Ministry of the Environment, Conservation and Parks shall be deemed not to be noise for the purpose of this By-law.
- 4.4 Notwithstanding any provisions of this By-law, it shall be lawful to emit or cause or permit the emission of Noise in connection with the normal operation of educational institutions during regular business hours and/or during school authorized activities.
- 4.5 Notwithstanding any provisions of this By-law, it shall be lawful to emit or cause or permit the emission of Noise in connection with a Special Event.
- 4.6 Notwithstanding Subsection 2.2.5, such continuous operation of an engine or motor in, on or attached to a Motor Vehicle may be permitted for a period exceeding five (5) minutes where:
 - .1 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;
 - .2 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 and refuse compactors;
 - .3 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;
 - .4 prevailing low temperatures make a longer idling period necessary immediately after starting the motor or engine; or
 - .5 the idling is for the purpose of cleaning and flushing the radiator and associated circulation system for seasonal change of antifreeze, cleaning of the fuel system, carburetor or the like when such work is performed other than for profit.
- 4.7 Notwithstanding any provisions of this By-law, any Person may make an application to Council to request an exemption from any of the provisions of this By-law with respect to any source of Noise for which they might be prosecuted.
 - .1 The application shall be made in writing to the City Clerk, at least ninety (90) days prior to the proposed date of the event or of the commencement of the proposed activity and shall include:
 - .1 a complete application form as set out by the Chief Building Official from time to time;
 - .2 any other information, drawing, specification, or document as the Chief Building Official deems necessary to ensure a complete application;
 - .3 if applicable, a complete authorized agent form as set out by the Chief Building Official from time to time; and
 - .4 such fees as are fixed by by-law from time to time as set out in the Fees By-law of the City.
 - .2 The applicant shall be invoiced, and shall pay for, for the cost of mailing and notices incurred as a result of an application under Subsection 4.7.1.
 - .3 Council, by resolution, may grant, modify or refuse to grant any exemption applied for under Subsection 4.7.1, or grant any exemption of lesser effect, having had regard for the report of the Noise Control Officer and any delegation represented at the public meeting. Any exemption granted:
 - .1 shall specify the time period during which it is effective; and
 - .2 may contain such terms and conditions as Council sees fit.
 - .4 No applicant who has been granted such an exemption shall fail to comply with any of the terms or conditions of the exemption. Breach by the applicant of any of the terms or conditions of the exemption granted under Section 4.7 shall also render the exemption null and void.
 - .5 Every exemption granted by Council shall be conditional upon continual compliance with the terms and conditions specified in the grant of exemption. Notwithstanding any other provision of this By-law the Council may revoke an exemption or suspend

an exemption granted under Section 4.7 where Council, in its discretion determines that specified terms of conditions of the exemption have not been complied with.

PART 5

ENFORCEMENT AND ADMINISTRATION

- 5.1 Every person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for in the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended. A director or officer of a corporation who knowingly concurs in the contravention of this by-law is guilty of an offence.
- 5.2 Pursuant to the Provincial Offences Act, R.S.O.1990, c. P.33:
- .1 any Person upon summary conviction shall be liable to set fines for offences listed in Schedule "B" to this By-law, or
 - .2 if otherwise convicted is liable:
 - .1 upon a first conviction, to a minimum fine of \$175.00 and a maximum fine of not more than \$5,000.00, and
 - .2 upon any subsequent conviction, to a minimum fine of \$500.00 and a maximum fine of not more than \$10,000.00.
- 5.3 Notwithstanding Section 5.2, where the Person convicted is a corporation, the corporation is liable:
- .1 upon a first conviction, to a minimum fine of \$175.00 and a maximum fine of not more than \$10,000.00, and
 - .2 upon any subsequent conviction, to a minimum fine of \$1,000.00 and a maximum fine of not more than \$25,000.00.
- 5.4 If this By-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by this 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.
- 5.5 The provisions of this By-law shall be enforced by a Noise Control Officer. 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.
- 5.6 In addition to issuing a notice of offence or any other applicable enforcement measures, if a Noise Control Officer is satisfied that this By-law has been contravened, the Noise Control Officer may make 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.
- .1 An Order to Discontinue Activity shall set out:
 - .1 the municipal address of the property on which the contravention occurred;
 - .2 the date of the contravention
 - .3 the reasonable particulars of the contravention of this By-law; and
 - .4 the date by which there must be compliance with the Order.
 - .2 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.
 - .3 No Person shall contravene an Order to Discontinue Activity.
- 5.7 Each clause of this By-law is an independent clause and the holding of any clause or part of any clause to be void or ineffective for any cause shall not be deemed to affect the validity of any other clause or parts of any clause.
- 5.8 If a court of competent jurisdiction should declare any section or part of a section of this By-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of the By-law and it is hereby declared that the remainder of this By-law shall be valid and shall remain in force.

**PART 6
TRANSITION**

- 6.1 By-law 68-2003 and By-law 67-2003 of the Corporation of the City of St. Thomas and all of their amendments are hereby repealed upon the date this By-law comes into force.
- 6.2 This By-law may be cited as the "Noise By-law."
- 6.3 This By-law shall come into full force and effect on the day of passing of the enabling by-law, being the last date listed below.

Read a first and second time this 14th day of December, 2020.

Read a third time and finally passed this 14th day of December, 2020.

Original signed by "Joe Preston"
Mayor

Original signed by "Maria Konefal"
City Clerk

SCHEDULE A

Table for when listed activities are not permitted to produce noise

ITEM		RESIDENTIAL AREA	BUSINESS AREA	OPEN SPACE AREA
1	The operation of a combustion engine or a battery operated engine which: (i) is, (ii) is used, or (iii) is intended for use in a toy or model or replica and has no function other than amusement and which is not a conveyance.	At all times	At all times	9 pm – 9 am
2	The operation of any electronic device or group of connected electronic devices incorporating one or more loudspeakers or other electromechanical transducers and intended for the production, reproduction, or amplification of sound.	At all times	11 pm – 7 am	11 pm – 7 am
3	The operation of any motorized conveyance other than on a highway or other place intended for its operation.	At all times	At all times	N/A
4	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.	At all times	9 pm – 7 am	9 pm – 7 am
5	Persistent barking, calling, or whining or other similar persistent noise making by any domestic pet or any other animal kept or used for any purpose other than agriculture.	At all times	At all times	At all times
6	The operation of a commercial car wash with or without air drying equipment.	At all times	N/A	N/A
7	Yelling, shouting, hooting, whistling, or singing.	At all times	11 pm – 7 am	11 pm – 7 am
8	Loading, unloading, delivering, packing, unpacking, or otherwise handling any containers, products, materials, or refuse, whatsoever, unless necessary for the maintenance of essential services.	11 pm – 7 am	N/A	N/A
9	The operation of any equipment in connection with construction.	Mon thru Fri	9 pm – 7 am	9 pm – 7 am
		9 pm – 7 am		
		Saturday		
		9 pm – 8 am		
		Sun & Stats		
10	The operation or use of any tool for purposes other than snow removal.	8 pm – 9 am	N/A	N/A
		Mon thru Fri		
		9 pm – 7 am		
		Saturday		
		9 pm – 8 am		
11	The operation of solid waste bulk lift or refuse compacting equipment.	Sun & Stats	N/A	N/A
		8 pm – 9 am		

SCHEDULE B

IT IS ORDERED pursuant to the provisions of the Provincial Offences Act and the rules for the Ontario Court (Provincial Division), that the amount set opposite each of the offences in the schedule of offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. ____-2020 as amended, of the Corporation of the City of St. Thomas, attached hereto is the set fine including costs, for those offences. This Order is to take effect

Dated at _____ this _____.

Judge

<u>ITEM</u>	<u>COLUMN 1</u> Description of Offence	<u>COLUMN 2</u> Provision Creating or Defining Offence	<u>COLUMN 3</u> Set Fine	<u>COLUMN 4</u> Total Fine*
1	Emitting unreasonable noise that is likely to disturb.	Section 2.1	\$ 150.00	\$ 180.00
2	Racing of a Motor Vehicle other than in a racing event.	Subsection 2.2.1	\$ 100.00	\$ 125.00
3	Operating a Motor Vehicle such that the tires squeal.	Subsection 2.2.2	\$ 100.00	\$ 125.00
4	Operating a Motor Vehicle without effective sound-muffling device.	Subsection 2.2.3	\$ 100.00	\$ 125.00
5	Operating a Motor Vehicle with a trailer emitting noise due to improperly secured load.	Subsection 2.2.4	\$ 100.00	\$ 125.00
6	Operating a stationary Motor Vehicle in a Residential Area.	Subsection 2.2.5	\$ 100.00	\$ 125.00
7	Operating a horn not in accordance with good safety practices.	Subsection 2.2.6	\$ 100.00	\$ 125.00
8	Operating Construction Equipment without effective sound-muffling device.	Subsection 2.2.7	\$ 100.00	\$ 125.00
9	Emitting a regulated noise during a restricted time period.	Section 3.3	\$ 200.00	\$ 240.00
* Total Fine includes the Set Fine, Victim Surcharge and Court Charge				

THE PENALTY PROVISION(S) FOR THE OFFENCE(S) INDICATED ABOVE IS SECTION 5.1 OF BY-LAW __-2020.
A CERTIFIED COPY OF WHICH HAS BEEN FILED.