

Corporation of the Township of Howick

By-law No. 29-2023

BEING A BY-LAW TO REGULATE AND/OR PROHIBIT WITH RESPECT TO NOISES IN THE TOWNSHIP OF HOWICK

WHEREAS Section 129 (1) of the Municipal Act, 2001, S.O. 2001, c.25, as amended (“the Act”) provides that a local municipality may prohibit and regulate with respect to noises and vibrations;

AND WHEREAS pursuant to the Act, Section 8 (1) and 9 provide that the powers of a municipality under this 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 municipalities ability to respond to municipal issues and 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 the residents of Howick Township have a right to and should be ensured an environment free from unusual, unnecessary or excessive sounds or vibrations, which may degrade the quality and tranquility of their life or cause nuisance;

AND WHEREAS it is deemed expedient and necessary to regulate or prohibit noises and vibrations likely to disturb the inhabitants of the Township of Howick;

NOW THEREFORE the Council of the Corporation of the Township of Howick enacts as follows:

SECTION 1 – INTERPRETATION

Short title

1.1. This by-law may be cited as the “Noise Control By-law”.

Headings

1.2. The division of this by-law into parts and the insertion of headings are for convenient reference only and shall not affect interpretation of this by-law.

Word usage

1.3. Words in the present tense include the future or past, singular words shall be deemed to include plural and words in plural shall be deemed to include singular and shall read with all changes in gender or number as the context may require.

References to applicable law

1.4. All references to applicable law are ambulatory and apply as amended from time to time.

Conflict

1.5. Where there is a conflict between a provision of this By-law and a provision of any other Municipal By-law, it shall be at the discretion of the By-law Enforcement Officer to determine which By-law shall apply.

Definitions

1.6. For the purposes of this By-law all words shall have their normal and customary meaning save and except for those hereinafter defined:

“Construction” includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing, earthmoving, 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 or for any purpose, and includes any work in connection therewith;

“Construction Equipment” means any equipment or device designed and intended for the use in construction work or material handling, including but not limited to a bulldozer, excavator, trencher, jack hammer, crane, loader, scraper, paver, compactor, roller, grader, concrete mixer, off-highway haulers or trucks, tractor, ditchers, air compressor, pile drivers, pneumatic or hydraulic tools, generators, pumps or other material handling equipment.

“Conveyance” includes a vehicle or any other device employed to transport a person or persons or goods from place to place;

“Council” means The Council of the Corporation of the Township of Howick;

“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;

“Holiday” means any holiday as set out as a holiday in the Retail Business Holidays Act, R.S.O. 1990, Chapter R.30 or any successor thereof.

“Motor Vehicle” includes an automobile, motorcycle, and 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 only upon rails, or a motorized snow vehicle, traction engine, farm tractor, self-propelled implement of husbandry or road building machine within the meaning of the Highway Traffic Act;

“Motorized Conveyance” means a conveyance propelled or driven otherwise than by muscular, gravitational or wind power;

“Noise” means sound that is of such a volume or nature that is likely to disturb the inhabitants of the Municipality;

“Officer” means a person appointed as a By-Law Enforcement Officer, a Police Officer or any individual duly appointed to enforce the by-laws of the Township;

“Point of Reception” means any point where noise or vibration originating from a location other than that point is received;

“Township” means the land within the geographic limits of The Corporation of the Township of Howick.

SECTION 2 – GENERAL PROHIBITIONS

- 2.1. Except as provided in section 3, no person shall cause any unusual noise or noises likely to disturb the inhabitants of the Township or allow or permit such noises to be made.
- 2.2. Notwithstanding the generality of section 2.1, the following noises at point of reception are deemed to be noises likely to disturb the inhabitants of the Township:
 - 2.2.1. Racing of any motorized conveyance, other than in a racing event regulated by law;
 - 2.2.2. the squealing of motor vehicle tires while such vehicle is on property other than a highway as set out in the Highway Traffic Act, R.S.O. 1990, Chap. H.8, or any successor thereof;
 - 2.2.3. Operation of a vehicle, or a vehicle with a trailer, resulting in banging, clanking, squealing or other like sounds due to improperly secured load or equipment, or inadequate maintenance;
 - 2.2.4. Operation of any combustion engine or pneumatic equipment without an effective exhaust or intake muffling device in good working order and in constant operation;
 - 2.2.5. The noise caused by construction and use of construction equipment that is clearly audible at the point of reception between 9:00 pm of any day and 7:00 am of the following day (or 9:00 am if the following day is a Sunday or Holiday);
 - 2.2.6. The noise caused by the use or operation of a lawnmower, chainsaw, leaf blower or any other such noise generating tool or device that is clearly audible at a point of reception between 10:00 pm of any day and 7:00 am of the following day (or 9:00 am if the following day is a Sunday or Holiday).
 - 2.2.7. the idling of a vehicle motor in excess of five minutes, while in a residential zone, except where:
 - (a) such operation is essential to the basic function of the vehicle or equipment i.e. a ready-mix concrete truck, refuse compactor;
 - (b) weather conditions dictate the use of heating or refrigeration systems powered by motor/engine for the safety of people, animals, perishable cargo, etc., and the vehicle is delivering or loading;
 - (c) low temperatures make longer idling necessary;
 - (d) idling is for the purpose of cleaning and flushing circulation or fuel systems;
 - 2.2.8. Operation of a motor vehicle horn or other warning device, except where authorized by law or in accordance with good safety practices;
 - 2.2.9. Operation of a vehicle radio, stereo or the like;
 - 2.2.10. Discharging of fireworks, except during specified public holidays;

- 2.2.11. Detonation of explosive devices not used for construction purposes;
- 2.2.12. the operation of any radio, electronic device, musical instrument, public address system, amplified sounds producing device or other sound device which can be heard over 30 meters from the stationary source or other source of the sound.
- 2.2.13. the use of a horn, whistle, alarm, bell, gong or the similar item, except for an auditory safety or warning device or chimes used in association with a religious establishment;
- 2.2.14. yelling, shouting or the like;
- 2.2.15. Persistent barking, calling, whining, or other similar persistent noise made by any domestic pet or animal.

SECTION 3 – EXEMPTIONS

Exempt Activities

- 3.1. This By-law does not apply:
 - 3.1.1. during an emergency involving the health, safety or welfare of the public;
 - 3.1.2. for the sounds associated with any emergency or law enforcement vehicle;
 - 3.1.3. where the Town, its servants, employees, contractors or agents are carrying out town operations or operating, maintaining or installing municipally owned infrastructure, facilities or the like;
 - 3.1.4. to noise created by the activity of snow removal;
 - 3.1.5. to parades, circuses, entertainment activities in public parks or neighbourhood social activities when such events are approved by Council and such activity or event is in compliance with the conditions set by Council in approving such activity or event;
 - 3.1.6. noise from any sporting, recreational, musical, entertainment or other event or performance which has been duly authorized, such noise or vibration as would be reasonably associated with the event and occurring only for the duration of the event, is permissible;
 - 3.1.7. noise from an “agricultural operation” as defined in the *Farming and Food Production Protection Act, 1998, S.O. 1998, c.1*, carrying out a normal farm practice as provided for and defined under that Act;
 - 3.1.8. to the operation of excavation equipment when used in a cemetery in conjunction with interment services;
 - 3.1.9. for the emergency preservation or restoration of property, unless such sound or vibration is clearly of a longer duration or nature than is reasonably necessary for the purpose;
 - 3.1.10. to the use of religious bells or chimes associated with religious activities;
 - 3.1.11. to the detonation of fireworks on these public holidays:

- (a) New Year's Eve;
- (b) New Year's Day;
- (c) Victoria Day;
- (d) Canada Day;
- (e) Civic Day; and
- (f) Labour Day.

Exemptions by Council

- 3.2. Notwithstanding any provision of this by-law, any person may make application to the Council of the Township of Howick to be granted an exemption from any provision of the by-law with respect to any source of sound or vibration for which he/she might be prosecuted.
- 3.3. Council may, by resolution:
 - a) grant the requested exemption;
 - b) grant an exemption of lesser effect; or
 - c) refuse the requested exemption.
- 3.4. Any exemption granted shall specify a time period, not to exceed six months, for which it will be effective, and may contain such terms and conditions as Council deems necessary. Breach of any of the terms and conditions shall render the exemption null and void.
- 3.5. No person shall breach any of the terms or conditions of any exemption granted by Council.

SECTION 4 – ADMINISTRATION AND ENFORCEMENT

- 4.1. This by-law shall be administered and enforced by the Township, an Officer, or any person appointed or otherwise delegated the authority of administration and enforcement.

Obstruction

- 4.2. No person shall hinder or obstruct, or attempt to hinder or obstruct, any officer exercising a power or performing a duty under this by-law.
- 4.3. Where an officer has reasonable grounds to believe that an offence has been committed by a person, the authorized officer may require the name, address and proof of identity of that person, and the person shall supply the required information.

Entry to land

- 4.4. An officer who has reasonable grounds to believe that an offence has been committed under this by-law, may enter on land at any reasonable time without a warrant for the purposes of carrying out an inspection to determine compliance with this by-law.

Owner presumed to permit noise

- 4.5. The owner of a property where prohibited noise is or was originating from shall be presumed to have permitted the noise, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.

SECTION 5 - PENALTY, SEVERABILITY, FORCE AND EFFECT

Offence

- 5.1. Every person who contravenes a provision of this by-law, including an order issued under this by-law, is guilty of an offence.
- 5.2. If a corporation has contravened a provision of this by-law, every director and officer of the corporation who knowingly concurred in such a contravention is guilty of an offence.

Continuing offence

- 5.3. Each day on which a person contravenes any provision of this by-law shall be deemed to constitute a separate offence under this by-law as provided for in section 429(2) of the Municipal Act, S.O. 2001, c. 25.

Multiple offence

- 5.4. For the purposes of this by-law, a “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 a by-law.

Subsequent offence

- 5.5. 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.

Penalty

- 5.6. Every person who contravenes any provision of this by-law is guilty of an offence, and upon conviction is liable to a fine as provided for by the Provincial Offences Act R.S.O. 1990 c.P.33 as amended.
- 5.7. Every person who contravenes any other provision of this by-law is guilty of an offence, and upon conviction pursuant to Part III of the *Provincial Offences Act*, R.S.O. 1990, Chapter P. 33, as amended, is liable to the following penalties:
- (a) upon a first conviction, to a fine of not less than \$300 and not more than \$50,000;
 - (b) upon a second or subsequent conviction, to a fine of not less than \$400 and not more than \$100,000;
 - (c) upon conviction for a continuing offence, to a fine of not less than \$300 and 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;

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(d) upon conviction of a multiple offence, for each offence included in the multiple offence, to a fine of not less than \$300 and not more than \$10,000. The total of all fines for each included offence is not limited to \$100,000.

Severability

5.8. It is hereby declared that notwithstanding that any part of this by-law, or parts thereof, may be found by any Court of law to be invalid or beyond the power of Council to enact such section or sections or parts thereof shall be deemed to be severable and that all other sections or parts of this by-law are separate and independent there from and enacted as such.

Force and effect

5.9. This By-law shall come into force and effect on the date of final passing of this By-law.

5.10. Upon the final passing of this by-law, By-law No. 19-2004 is hereby repealed.

Read a first and second time this 2nd day of May, 2023.

Read a third time and finally passed this 2nd day of May, 2023.

Reeve, Doug Harding

Clerk-Administrator, Caitlin Gillis