

The Corporation of the Town of Penetanguishene



By-law 2011-66 as amended Town of Penetanguishene Noise Control By-law

OFFICE CONSOLIDATION – WORKING COPY

By-law 2011-66, as amended by By-laws:
2013-49

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THE CORPORATION OF THE TOWN OF PENETANGUISHENE

BY-LAW NUMBER 2011-66

Being a By-law to Regulate and Prohibit Noises within the Town of Penetanguishene and to Repeal By-law No. 1980-34, 1996-10 and 2009-07

WHEREAS pursuant to section 9 of the Municipal Act, 2001 S.O. 2001, chapter 25 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 pursuant to section 8. (1) of the Municipal Act, 2001 S.O. 2001, chapter 25 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 to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS section 128 of the Municipal Act, 2001 S.O. 2001, chapter 25 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 section 129 of the Municipal Act, 2001, S.O. 2001, chapter 25, provides authority for municipalities to prohibit and regulate noises and vibrations;

AND WHEREAS sections 425, 426 and 429 of the Municipal Act, 2001 S.O. 2001, chapter 25, states a municipality may pass By-laws providing that a person who contravenes a By-law of the municipality passed under this Act is guilty of an offence, 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 Act or under a By-law passed under this Act and a municipality may establish a system of fines for offences under a By-law of the municipality passed under this Act;

AND WHEREAS section 436 of the Municipal Act, 2001 S.O. 2001, chapter 25, provides that the municipality has the power to pass By-laws authorizing the power of entry for the purpose of inspecting land to determine compliance with a By-law, direction, order, or condition of license;

AND WHEREAS section 435, 437 and 438 of the Municipal Act, 2001 S.O. 2001, chapter 25, set out additional powers and restrictions in regard to the power of entry;

AND WHEREAS it is deemed expedient that the Council of The Corporation of the Town of Penetanguishene enact a By-law for the Regulation and Prohibition of noises within the Town of Penetanguishene;

NOW THEREFORE the Council of the Town of Penetanguishene hereby enacts as follows:

1. DEFINITIONS

In this By-law:

- 1.1 **“Committee”** means Finance and Corporate Services Section of Council or such other Committee which may be appointed by Council from time to time with delegated authority over this By-law.
- 1.2 **“Construction”** means anything done in the erection, installation, extension or material alteration, demolition or repair of a building and includes the installation of building units fabricated or moved elsewhere and the installation of swimming pools, the laying of pipe and conduit whether above or below ground level, street and highway building, equipment installation and alteration and structural installation of construction components and materials in any form or for any purpose, and includes work in connection therewith.
- 1.3 **“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, 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 materials handling equipment.
- 1.4 **“Council”** means the Council of The Corporation of the Town of Penetanguishene.
- 1.5 **“Highway”** includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.
- 1.6 **“Inhabitants”** mean one or more persons who reside in, own or occupy property in the Town.
- 1.7 **“Motor vehicle”** means an automobile, a motorcycle, a motor-assisted bicycle, a motorized snow vehicle, a traction engine, a farm tractor, a self-

propelled implement of husbandry or a road-building machine unless otherwise indicated in the Highway Traffic Act, as amended, and any other vehicle propelled or driven otherwise than by muscular power, but does not include a street car or other motor vehicle running only upon rails or a power-assisted bicycle.

- 1.8 **“Noise”** means sound that is of such volume or nature at a point of reception that it disturbs or is likely to disturb the inhabitants of the Town and includes excessive yelling, shouting, hooting, whistling or singing.
- 1.9 **“Officer”** means a Municipal Law Enforcement Officer, a Police Officer or any other person designated by Council as responsible for the administration of this By-law from time to time.
- 1.10 **“Owner”** includes an assessed owner, tenant, occupant or any person having an interest, whether equitable or legal, in the land.
- 1.11 **“Person”** means all transients, owners, tenants and occupiers of lands within the Town and shall include any individual, association, firm, partnership, incorporated company, corporation, agent or trustee and the heirs, executors or other legal representatives of a person to who the context can apply according to law.
- 1.12 **“Point of reception”** means any point on the premises of a person where sound or vibration originating from other than those premises is received.
- 1.13 **“Property”** means any land including structures contained within that are located within the Town of Penetanguishene.
- 1.14 **“Shall”** mean imperative or must.
- 1.15 **“Town”** means The Corporation of the Town of Penetanguishene.
- 1.16 **“Vibration”** means to shake, quiver, throb, move back and forth rapidly, usually in an uncontrolled manner.

2. **WORD USAGE**

- 2.1 As used in this By-law, words used in the present tense include the future; words used in the masculine gender include the feminine and neuter; and the singular number includes the plural and the plural the singular.
- 2.2 The headings and subheadings used in this By-law shall not form a part of the By-law, but shall be deemed to be inserted for convenience of reference only.

3. GENERAL PROVISIONS

- 3.1 No person shall at any time emit or cause or permit the emission of noise resulting from any activity listed in Schedule "A" of this By-law that is clearly audible at a point of reception anywhere within the Town.

4. PROHIBITIONS BY TIME AND PLACE

- 4.1 No person shall emit or cause or permit the emission of noise resulting from any activity listed in Column 1 of Schedule "B", attached hereto, and which noise is clearly audible at appoint of reception within a prohibited time shown in Column 2.

5. EXEMPTION FOR PUBLIC SAFETY AND DELIVERY OF ESSENTIAL SERVICES

Notwithstanding any other provision of this By-law, it shall be lawful to emit or cause or permit the emission of noise or vibration in connection with emergency measures undertaken:

- 5.1 For the immediate health, safety or welfare of the inhabitants or any of them.
- 5.2 For the preservation or restoration or property; unless such noise or vibration is clearly of a longer duration or nature more disturbing, than is reasonably necessary for the accomplishment of such emergency purpose.
- 5.3 Delivery of essential services, and incidental noise from all activities of the Town, the County of Simcoe, the Province of Ontario, any utility provider, or their servants or agents associated with the provision of maintenance and essential services is permissible, including but not limited to snow removal operations.

6. GENERAL EXEMPTIONS

This By-law shall not apply to a person who emits or causes or permits the emission of noise in connection with any of the activities listed in Schedule "C" attached hereto this By-law.

7. EXEMPTION REQUESTS

7.1 Application

Notwithstanding anything contained in this By-law, any person may make an application for a temporary Noise Exemption and submit it to the Clerk's Department. Said application must be received by the Town a minimum of thirty (30) days prior to the requested date.

7.2 Decision

In deciding whether to grant the exemption, the Clerk shall consider the nature, location, purpose and duration of the event, the value of the event to the community at large and may consider such other matters as it deems necessary.

7.3 Terms or Conditions

Additional terms or conditions may be imposed prior to rendering an exemption. Terms or conditions may include, but are not limited to notification to neighbouring properties or partial exemptions.

7.4 Breach

Breach by the applicant of any of the terms or conditions of any exemption granted shall render the exemption null and void.

7.5 Appeal

In the event the request is denied or the requester is not satisfied with the terms or conditions imposed, the requester may appeal said decision to the Committee and the decision of the Committee shall be final.

8. POWERS OF ENTRY

8.1 An Officer may enter on a property at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- a) The provisions of this By-law;
- b) A direction or notice issued under this By-law.

8.2 Where an inspection is conducted by the Town, an Officer may:

- 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 including their name, address, phone number and identification.
- 8.3 Every Owner or Person occupying the property shall permit an Officer to conduct an inspection for the purposes as set out in this By-law. An Officer may be accompanied by a person under the Officer's direction.
- 8.4 Power of entry may be exercised by an Officer as defined in this By-law.

9. SEVERABILITY

- 9.1 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 this By-law and it is hereby declared that the remainder of this By-law shall be valid and shall remain in force.
- 9.2 Where the provisions of this By-law conflict with the provisions of any other by-law or Act, the more restrictive provisions shall apply.

10. ENFORCEMENT

- 10.1 An Officer as defined in the By-law is hereby vested with the authority to enforce this By-law.

11. PENALTY PROVISIONS

- 11.1 Every person who contravenes the provisions of this By-law and every Director or Officer of a Corporation, who knowingly concurs in the contraventions by the Corporation, is guilty of an offence and liable on conviction to a penalty that shall not exceed \$100, 000 exclusive of costs under the provisions of the Municipal Act, 2001, S.O. 2001, c.25, as amended.
- 11.2 For the purpose of continuous offences, every person who contravenes any provision of this By-law and every Director or Officer of a Corporation who knowingly concurs in the contravention of a By-law of the Corporation is guilty of an offence and liable on conviction to a penalty not exceeding

\$10, 000, exclusive of costs under the provisions of the Municipal Act, 2001, S.O. 2001, c.25, as amended.

- 11.3 Despite the Section 11.2 and the provisions of the Municipal Act, 2001, S.O. 2001, c.25, as amended, the total of all daily fines for the offence is not limited to \$100, 000.
- 11.4 For the purpose of multiple offences, every person who contravenes any provision of this By-law and every Director or Officer of a Corporation who knowingly concurs in the contravention of a By-law of the Corporation is guilty of an offence and liable on conviction to a penalty not exceeding \$10,000, exclusive of costs under the provisions of the Municipal Act, 2001, S.O. 2001, c.25, as amended.
- 11.5 Despite Section 11.4 and the provisions of the Municipal Act, 2001, S.O. 2001, c.25, as amended, the total of all daily fines for the offence is not limited to \$100, 000.
- 11.6 It shall be an offence for a person to hinder or obstruct, or attempt to hinder or obstruct, an Officer who is exercising a power or performing a duty under the Municipal Act, 2001, as amended, or under a by-law passed under the Municipal Act, 2001, as amended.
- 11.7 Any Person who has been alleged to have contravened any of the provisions of a by-law passed under the Municipal Act, 2001, as amended, shall identify themselves to the Officer upon request. Failure to do so shall be deemed to have obstructed or hindered the Officer in the execution of the Officer's duties.
- 11.8 Every person who contravenes any section of this by-law under a part I or part II ticket, upon conviction shall be liable to a fine as provided for in the Provincial Offences Act R.S.O 1990, Chapter P.33 as amended.
- 11.9 Upon conviction any penalty imposed under this By-law may be collected under the authority of the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.

12. REPEAL

- 12.1 That By-laws 1980-34, 1996-10 and 2009-07 are hereby repealed in their entirety.
- 12.2 That any By-law or By-laws, or parts of any By-law or By-laws that are inconsistent with this By-law are hereby deemed repealed.

13. SHORT FORM TITLE

13.1 That this By-law shall be referred to as the “Noise Control By-law”.

14. EFFECTIVE DATE

14.1 This By-law shall come into full force and effect upon receipt of the approval of the set fine schedules as issued by the Regional Senior Judge of the Ontario Court of Justice, Central East Region.

BY-LAW read a first, second and third time and finally passed by Council on the 14th day of September, 2011.

MAYOR Gerry Marshall

CLERK Holly Bryce

**Schedule “A” to BY-LAW NUMBER 2011-66
Being a By-law to Regulate and Prohibit Noises within the Town of
Penetanguishene and to Repeal By-law No. 1980-34, 1996-10 and 2009-07**

General Prohibitions

The following activities are subject to prosecution pursuant to Section 3 of this By-law, if clearly audible at a point of reception:

1. The operation of any electronic device of group or connected electronic devices incorporating one or more loudspeakers or other electromechanical transducers, and intended for the productions, reproduction or amplification of sound.
2. The operation of a stereo or other electronic device designed to amplify sound in, or on, a motor vehicle in such a way that the sound can easily be heard outside of the motor vehicle.
3. Persistent barking, calling, or whining or other similar persistent noise made by any domestic pet or any other animal kept or used for any purpose other than agriculture.
4. The operation of any construction equipment, combustions engine or pneumatic device without an exhaust or intake muffling device in good working order and in constant operation.
5. Racing of any motor vehicle other than in a lawful racing event.
6. The operation of a motor vehicle in such a way that the tires squeal.
7. The operation of a motor vehicle with a trailer resulting in banging, clanging, squealing or other like sounds due to improperly secured load or equipment, or inadequate maintenance.
8. 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.
9. The operation of an air conditioner, water pump, heat pump or the like that is not in proper working order.
10. Ring bells, blow or sound any horns, yelling, shouting, hooting, whistling or singing.
11. All selling or advertising by shouting or outcry or amplified sound.
12. Any unwanted or meaningless sound that in the opinion of the Officer is likely to disturb the inhabitants of the Town.

Schedule “B” to BY-LAW NUMBER 2011-66

Being a By-law to Regulate and Prohibit Noises within the Town of Penetanguishene and to Repeal By-law No. 1980-34, 1996-10 and 2009-07

Prohibitions by Time

The following activities are subject to prosecution pursuant to Section 4 of this By-law, if clearly audible at a point of reception:

	Column 1	Column 2
Item	Activity	Prohibited Period of Time
1.	Construction or maintenance activities other than snow removal	Monday through Friday 10:00pm to 7:00am Friday 10:00pm to 8:00 am Saturday Saturday 8:00pm to 8:00am Sunday Sunday 8:00pm to 7:00am Monday
2.	The operation of construction equipment	Monday through Friday 10:00pm to 7:00am Friday 10:00pm to 8:00 am Saturday Saturday 8:00pm to 8:00am Sunday Sunday 8:00pm to 7:00am Monday

Schedule “C” to BY-LAW NUMBER 2011-66

Being a By-law to Regulate and Prohibit Noises within the Town of Penetanguishene and to Repeal By-law No. 1980-34, 1996-10 and 2009-07

General Exemptions

The following activities are considered to be exempt from the provisions of this By-law:

1. Parades, activities or special event approved by Council.
2. Ringing of church bells or chimes.
3. Snow removal operations (private).
4. Bona-fide farming operations.
5. School bells or electronic signal at a school.
6. Businesses in Commercial area for the purpose of playing seasonal music, provided that this is done during regular store hours from December 15th to December 24th.
7. Generators operating during a power outage.
8. Discharge from a traditional black powder canon using during the course of an event or demonstration.

THE CORPORATION OF THE TOWN OF PENETANGUISHENE

**Part 1 Provincial Offences Act
BY-LAW NUMBER 2011-66**

**Being a By-law to Regulate and Prohibit Noises within the Town of
Penetanguishene**

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Item	Column 1 Short Form Wording	Column 2 Provision Creating or Defining Offence	Column 3 Set Fine
1.	Emit noise that is clearly audible	3.1	\$125.00
2.	Cause noise that is clearly audible	3.1	\$125.00
3.	Permit noise that is clearly audible	3.1	\$125.00
4.	Emit noise that is clearly audible within a prohibited time	4.1	\$125.00
5.	Cause noise that is clearly audible within a prohibited time	4.1	\$125.00
6.	Permit noise that is clearly audible within a prohibited time	4.1	\$125.00
7.	Obstruct or hinder an officer	11.3	\$250.00

**NOTE: The Penalty Provision for the offences indicated above is Section 11, of
By-law 2011-66.**