

THE CORPORATION OF THE TOWN OF KEARNEY

By-law No. 2017 - 30

Being a By-law to prohibit or regulate noise in the Town of Kearney

WHEREAS Section 9 of the *Ontario Municipal Act*, 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 that or any other Act;

AND WHEREAS Section 10 of the *Ontario Municipal Act*, S.O. 2001, c.25, as amended, provides that municipalities may provide any service or thing that the municipality considers necessary or desirable for the public, and authorizes municipalities to pass By-laws within their respective spheres of jurisdiction;

AND WHEREAS Sections 23.1, 23.2, 23.3, and 23.5 of the *Ontario Municipal Act*, S.O. 2001, c.25, as amended, authorize a municipality to delegate certain powers and duties;

AND WHEREAS Section 128 of the *Ontario Municipal Act*, S.O. 2001, c.25, as amended, authorizes a municipality to prohibit or 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 *Ontario Municipal Act*, S.O. 2001, c.25, as amended, authorizes a local municipality to prohibit or regulate with respect to Noise, vibration, odour, dust and outdoor illumination;

AND WHEREAS Section 425 of the *Ontario Municipal Act*, S.O. 2001, c.25, as amended, authorizes a municipality to pass By-laws creating an offence for a contravention of a by-law;

AND WHEREAS Section 429 of the *Ontario Municipal Act*, S.O. 2001, c.25, as amended, authorizes a municipality to establish a system of fines for offences under a By-law;

AND WHEREAS Section 436 of the *Ontario Municipal Act*, S.O. 2001, c.25, as amended, authorizes a municipality to pass By-laws providing that the municipality may enter on land for the purpose of carrying out inspections, to determine compliance with a By-law, direction, order, or condition of licence;

AND WHEREAS Sections 444 and 445 of the *Ontario Municipal Act*, S.O. 2001, c.25, as amended, provide that, where a municipality is satisfied that a contravention of a By-law has occurred, the municipality may make an order to discontinue or correct the contravention of the By-law;

AND WHEREAS Section 446 of the *Ontario Municipal Act*, S.O. 2001, c.25, as amended, provides that, where a municipality directs or requires by By-law or otherwise that a matter or thing be done, in default of it being done by the person directed or required to do it, such matter or thing may be done at the person's expense, and that the municipality may recover the cost of doing such thing or matter by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;

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

AND WHEREAS it is the policy of the Council to reduce and control such sound or vibration;

NOW, THEREFORE, BE IT RESOLVED THAT THE COUNCIL OF THE CORPORATION OF THE TOWN OF KEARNEY ENACTS AS FOLLOWS:

1.0 SHORT TITLE

1.1 That the short title of this By-law is the "Noise By-law".

2.0 DEFINITIONS

2.1 In this By-law:

Clerk means the Clerk Administrator of the Corporation of the Town of Kearney or his or her designate.

Construction includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing, earth moving, grading, excavating, the laying of pipes 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; but excludes Residential Renovations.

Construction Equipment means any equipment, device or motorized conveyance designed and intended for use in construction or material handling, including but not limited to, hand tools, power tools, 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 material handling equipment.

Conveyance includes a vehicle and any other device used to transport a person or persons or goods from place to place but does not include any vehicle or device operated only within any premises.

Council means the Council of the Corporation of the Town of Kearney.

Heavy Equipment means any equipment or device designed and intended for use in a salvage yard or other recycling establishment including but not limited to forklifts, cranes, bulldozers, loaders, off-highway haulers or vehicles, compactors, graders, or other material handling equipment.

Highway includes a common and public highway, street, avenue, parkway, driveway, square, bridge, viaduct or trestle designed and intended for, or used by, the general public for the passage of vehicles.

Inhabitants means one or more persons who reside in the municipality.

Minister means Minister of the Environment.

Ministry means the Ministry of the Environment.

Motorized Conveyance means a conveyance propelled or driven otherwise than by muscle, gravitational or wind power.

Motor Vehicle includes but is not limited to: an automobile, bus, truck, motorcycle, motor assisted bicycle and any other vehicle propelled or driven other than by muscular power, but does not include a motorized snow vehicle, traction engine, farm tractor, other farm vehicle or roadbuilding machine.

Municipality means the land within the geographic limits of the Town of Kearney.

Noise means sound or vibration that is of such volume or nature that it is likely to disturb the inhabitants of the Town.

Officer means a municipal By-law enforcement officer, police officer, or other person appointed by By-law to enforce the provisions of this By-law.

Owner includes with respect to land or Property, the registered owner, occupant, tenant, or the person for the time being managing or receiving the rent of the property whether on his own account or on account of an agent or trustee of any other person, or any of the aforesaid.

Person includes an individual, an owner, corporation, partnership, company, firm, association, or party and includes the successors, assigns, heirs, executors,

administrators, or other legal representatives of a person to whom the context can apply according to law and the singular shall include the plural.

Point of Reception means any point within the interior or exterior living space on the premises of a Person where sound or vibration originating from other than those premises is received.

Private Property means land or Property that is privately owned and is not Town property or property of a local board or property of any of the Crown in Right of Ontario, the Crown in Right of Canada or any emanations thereof.

Property means a Building or Structure or part of a Building or Structure, and includes the lands and any premises appurtenant thereto and all mobile homes, mobile Buildings, mobile Structures, outbuildings, Fences, and erections thereon and includes Vacant Property.

Public Event is a cultural, recreational or education event including public fairs to which the public is invited and requiring the approval of one or more agency or authority including but not limited to matters respecting health, parking, noise, building, lottery licensing, LCBO, fire, police, and traffic.

Residential Area means those areas zoned Residential (RU) Zone, Multiple Residential (RM) Zone, Waterfront Residential (RWF) Zones, Open Space (OS) Zone in the Corporation of the Town of Kearney Zoning By-law, and any amendments thereto, passed pursuant to Section 34 of the Planning Act, R.S.O. 1990, c.P.13.

Residential Property means any land or Property which is used in whole or in part for human habitation and the plural shall have the corresponding meaning.

Residential Renovation means work, other than work performed by a licensed contractor, consisting of: (i) construction at a residential property by a person residing at the property, with or without the assistance of other persons, that does not require any building permit, or (ii) renovations to a residential property by a person residing at the property, with or without the assistance of other persons, that are constructed without the operation of construction equipment.

Source or Source of Sound or Vibration means an activity, matter, thing, or tangible personal property or real property, from which sound or vibration is emitted.

Town means the Corporation of the Town of Kearney.

3.0 PROHIBITIONS BY TIME AND PLACE

3.1 No person shall make, cause or permit the emission of noise which disturbs or is likely to disturb the quiet, peace, rest, enjoyment, comfort or convenience of the inhabitants of the Town of Kearney.

3.2 No person shall emit or cause to permit, or allow the emission of Noise resulting from any act listed in Schedule "B" – General Prohibitions, and which sound is clearly audible at point of reception and in Schedule "C" – Prohibitions by Time if clearly audible at a Point of Reception located in the Town within a prohibited time shown.

4.0 EXEMPTIONS

4.1 This By-law does not apply:
(a) during an emergency involving the health, safety or welfare of the public;
(b) where the Town, its employees, contractors or agents are carrying out emergency work for the Town or operating, maintaining or installing Municipally owned infrastructure, facilities, or the like, and including but not limited to the removal of waste and snow for the purpose of preserving the health, safety or welfare of the public;

(c) to any activity or events listed in the attached Schedule "A" or any other activity or events approved by Council in compliance with any conditions set by Council or in compliance with any conditions of a permit where a permit has been issued by the Town authorizing such event;

(d) to a normal farm practice as defined by the Farm Practices Protection Act. The Town may, however, request mediation or intervention of the Normal Farm Practices Board as regulated by said Act.

(e) to any Person who is granted an exemption by Council under Section 5 of this By-law provided all terms and conditions set by Council are met for the period of time set out in the exemption granted.

5.0 GRANT OF NOISE EXEMPTION BY COUNCIL

- 5.1 Council may, by resolution, upon receipt of a written application, grant an exemption in connection with an event or activity to any Person, with respect to any source of Noise for which a Person might be prosecuted, for such period of time and subject to such terms and conditions as Council deems advisable and Council may refuse to grant any exemption or may grant an exemption of lesser effect than applied for and any exemptions granted shall specify the time period, not in excess of six (6) months, during which it is effective.
- 5.2 An application for a noise exemption under Section 5.1 shall be filed with the Clerk Administrator and submitted on an application in the form prescribed by the Clerk Administrator and shall provide:
- (a) The applicant's name, address, and telephone number;
 - (b) The date, time, and location of the event or activity for which the exemption is sought and where applicable, the number of people expected to attend;
 - (c) A description of the source of the Noise (sound and/or vibration) in respect of which the exemption is sought;
 - (d) The section of the By-law from which exemption is sought;
 - (e) The period of time, not in excess of six (6) months, for which exemption is sought;
 - (f) The purpose or reasons why the exemption is being sought;
 - (g) (i) The name, address, and telephone number of at least one contact Person who will supervise the event or activity, and
 - (ii) A written undertaking that one or more contact Persons responsible for supervising the event or activity will be on-site during the entire event or activity to ensure compliance with any terms and conditions imposed by Council;
 - (h) (i) Notification to neighbouring properties who may be impacted by the Noise by way of delivery of a written notice.
- 5.3 A copy of the application for exemption shall be delivered to the By-law Enforcement Officer who shall investigate the feasibility of the location with respect to the adjacent neighbouring properties, and prepare a report to Council, which report shall contain the Officer's opinion on the merits of the application and recommendations as to terms and conditions, if any.
- 5.4 In deciding whether to grant the exemption, Council shall consider the application, the report of the By-law Enforcement Officer, and any written submission then received by Council and shall give the applicant and any Person opposed to the application an opportunity to be heard and may consider such other matters as it sees fit.

- 5.5 The decision of Council to grant an exemption, refuse to grant an exemption, or to set terms and conditions for granting an exemption is final.

6.0 BREACH OF NOISE EXEMPTION BY COUNCIL

- 6.1 A breach, as determined by the sole discretion of the By-law Enforcement Officer, by the applicant of any of the terms or conditions imposed by Council in granting an exemption ***shall immediately render the exemption null and void.***

7.0 RIGHT OF ENTRY

- 7.1 An Officer may at any reasonable time, with cause or by complaint, enter onto land to determine whether this By-law is being complied with.
- 7.2 Every owner shall permit the Officer to inspect any land for the purpose of determining compliance with this By-law.
- 7.3 Notwithstanding any provision of this By-law, an Officer shall not enter or remain in any room or place actually being used as a dwelling, unless;
- (a) the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused and, if refused, may only be made under the authority of a warrant issued under the Provincial Offences Act, R.S.O.1990, as amended;
- (b) a warrant issued under the Provincial Offences Act, R.S.O.1990, as amended is obtained.

8.0 OBSTRUCTION

- 8.1 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.
- 8.2 Any person who has been alleged to have contravened any of the provisions of this By-law, shall identify himself or herself to the Officer upon request. Failure to do so shall be deemed to have obstructed or hindered the Officer in the execution of his or her duties.
- 8.3 A refusal of consent to enter or to remain in a room or place actually used as a dwelling does not constitute hindering or obstruction within the meaning of subsection 7.1 unless the municipality is acting under an order under Section 438 of the *Municipal Act*, or a warrant under Section 439 of the *Municipal Act*, or in the circumstances described in Section 437(d) or (e) of the *Municipal Act*.

9.0 PENALTIES AND ENFORCEMENT

- 9.1 Every and any Person who contravenes any of the provisions of this By-law, and every director or officer of a corporation who knowingly concurs in the contravention by the corporation is guilty of an offence and upon conviction is liable to a fine provided for under the *Ontario Provincial Offences Act*, R.S.O.1990, c. P. 33, as amended.
- 9.2 (1) An Officer may enter on land at any reasonable time, with cause or by complaint, for the purpose of carrying out an inspection to determine whether or not the provisions of this By-law are complied with and to enforce and carry out into effect the provisions of this By-law or any direction or order issued pursuant to the *Ontario Municipal Act*, S.O. 2001, c.25, as amended, or this By-law.
- (2) For the purposes of an inspection under subsection (1), the 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;
- 9.3 No person shall hinder or obstruct, or attempt to hinder or obstruct, an Officer who is exercising a power or performing a duty under this By-law.
- 9.4 (1) If an Officer is satisfied that a contravention of this By-law has occurred, the Officer 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:
- (a) discontinue the contravening activity, or
 - (b) do work to correct the contravention.
- (2) Any Person who contravenes an order under subsection (1) is guilty of an offence.
- 9.5 Where the singular is used, it shall also mean or stand for the plural.

10.0 SCHEDULES

10.1 Schedules "A", "B", and "C", attached hereto form part of this By-law.

11.0 SEVERABILITY

11.1 If a court of competent jurisdiction should declare any section or a part of this By-law to be invalid, the remainder of this By-law shall continue in force unless the court makes an order to the contrary.

12.0 REPEAL OF PREVIOUS BY-LAWS

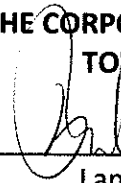
12.1 That By-law No. 2011-57 is hereby repealed and any and all By-laws contrary hereto or inconsistent herewith be and the same are hereby repealed.

13.0 ENACTMENT

13.1 That this Bylaw shall come into full force effect on its date of passing.

READ a FIRST and SECOND time this 2nd day of June, 2017.

**THE CORPORATION OF THE
TOWN OF KEARNEY**



Lance Thrale, Mayor



Brenda J. Fraser, Clerk Administrator

READ a THIRD time and PASSED in OPEN COUNCIL this 2nd day of June, 2017.

**THE CORPORATION OF THE
TOWN OF KEARNEY**



Lance Thrale, Mayor



Brenda J. Fraser, Clerk Administrator

SCHEDULE "A"
to By-law No. 2017 - 30

No.	PUBLIC EVENTS to which Schedule "B" and Schedule "C" regarding Noise do not apply	MONTH	LOCATION
1	Baseball Games	May - October	Baseball Diamond
2	Church Services (9 a.m. – noon)	All Year	
3	Dances	All Year	Kearney Community Centre
4	Hunting Seasons	All Year	Town of Kearney
5	Rabies Clinic	April/May/June	Lions Pavilion
6	Organized Remembrance Day/Veteran's events	November	Town of Kearney
7	Swimming Lessons	July/August	McManus Beach

SCHEDULE "B"
to By-law No. 2017 - 30

GENERAL PROHIBITIONS

1. Racing of any motorized conveyance other than in a racing event regulated by law.
2. The operation of a motor vehicle in such a way that the tires squeal.
3. The operation of any combustion engine or pneumatic device without an effective exhaust or intake muffling device in good working order and in constant operation.
4. 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.
5. The operation of any item of construction equipment without effective muffling devices in good working order and in constant operation.
6. Persistent barking, calling, whining or other similar persistent noise-making by any domestic pet or any other animal kept or used for any purpose other than an animal engaged in agriculture or hunting.
7. The use or operation of any drum, horn, bell , radio, or mechanical loudspeaker or other instrument or device or apparatus for the purpose of advertising or attracting attention to any performance, show, sale of goods, wares or merchandise other than at a children's campground where normal practice may include such noises.
8. The operation of an engine or motor, whether or not such engine or motor is in, or on, any motor vehicle or item of attached auxiliary equipment for a continuous period exceeding ten minutes, while such engine, motor or vehicle is stationary, unless:
 - (a) 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;
 - or
 - (b) 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; or
 - (c) 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 purposes of delivery or loading;
 - or
 - (d) prevailing low temperatures make longer idling periods necessary immediately after starting the motor or engine; or
 - (e) the engine or motor is used to generate electricity during a power outage or the engine or motor used to generate electricity is the sole source of available power.
9. Persistent yelling, shouting, hooting or other similar noise made by a human other than at a children's campground where normal practice may include such noises.
10. The operation of any electronic device or group of connected electronic devices intended for the production, reproduction or amplification of sound which includes but not limited to a radio, phonograph, television, public address system, car stereo, sound equipment, loud speaker, musical or sound producing instrument and all similar devices.

SCHEDULE "C"
to By-law No. 2017 - 30

PROHIBITIONS BY TIME

	ACT	PROHIBITED PERIOD OF TIME
1	The operation, loading, or unloading of any construction equipment at any construction site or in connection with construction other than in connection with Residential Renovations	11:00 p.m. one day to 6:00 a.m. next day
2	The loading, unloading, packing, unpacking, delivering or otherwise handling any containers, products, materials, or refuse whatsoever, unless necessary for essential services for the moving of private household effects.	11:00 p.m. one day to 6:00 a.m. next day
3	The operation of Heavy Equipment from a salvage yard or other recycling operation	11:00 p.m. one day to 6:00 a.m. next day
4	Any blasting or rock drilling operations in connection with the removal, manufacturing or processing of any material within the Township	9:00 p.m. one day to 7:00 a.m. next day
5	The operation of Construction Equipment other than in connection with Residential Renovations	11:00 p.m. one day to 6:00 a.m. next day
6	The operation of a combustion engine which is, or is used in, or is intended for use in a toy, or a model or replica of any device, which model or replica has no function other than amusement and which is not a conveyance	9:00 p.m. one day to 8:00 a.m. next day
7	The detonation of fireworks contrary to the fireworks By-law	on any day

SCHEDULE "D"
to By-law No. 2017-xx
NOISE BY-LAW - SET FINE SCHEDULE

Part I Provincial Offences Act

ITEM	<u>COLUMN 1</u> Short Form Wording	<u>COLUMN 2</u> Provision Creating Or Defining Offence	<u>COLUMN 3</u> Set Fine
1	Permit noise to disturb inhabitants of Town of Kearney	Section 3.1	\$200.00
2	Causing or permitting noise by racing a motor vehicle	Section 3.2 Schedule B (1)	\$200.00
3	Causing or permitting noise from squealing tires	Section 3.2 Schedule B (2)	\$200.00
4	Causing or permitting noise from the operation of an engine or motor without a muffler	Section 3.2 Schedule B (3)	\$200.00
5	Causing or permitting noise from a motor vehicle horn or other warning device	Section 3.2 Schedule B (4)	\$200.00
6	Causing or permitting noise by operating construction equipment without muffler in good working order	Section 3.2 Schedule B (5)	\$200.00
7	Causing or permitting persistent noise by animals kept other than an animal engaged in agriculture or hunting	Section 3.2 Schedule B (6)	\$200.00
8	Causing or permitting noise by selling or advertising by amplified sound	Section 3.2 Schedule B (7)	\$200.00
9	Causing or permitting noise from a stationary source for a continuous period exceeding 10 minutes	Section 3.2 Schedule B (8)	\$200.00
10	Causing or permitting noise by persistent yelling, shouting, hooting or similar noise	Section 3.2 Schedule B (9)	\$200.00
11	Causing or permitting noise from any electronic device or sound producing equipment	Section 3.2 Schedule B (10)	\$200.00
12	Causing or permitting noise by operating construction equipment during prohibited times	Section 3.2 Schedule C (1)	\$200.00
13	Causing or permitting noise by handling materials during prohibited times	Section 3.2 Schedule C (2)	\$200.00
14	Causing or permitting noise from salvage yard during prohibited times	Section 3.2 Schedule C (3)	\$200.00
15	Causing or permitting noise from blasting or rock drilling operations during prohibited times	Section 3.2 Schedule C (4)	\$200.00
16	Causing or permitting noise by the operation of Construction Equipment during prohibited times	Section 3.2 Schedule C (5)	\$200.00
17	Causing or permitting noise by the operation of a toy motor during prohibited times	Section 3.2 Schedule C (6)	\$200.00
18	Detonation of fireworks contrary to the Fireworks By-law	Section 3.2 Schedule C (7)	\$200.00

NOTE: The general penalty provision for the offences indicated above is Section 9 of By-law No. 2017-30, a certified copy of which has been filed