

# The Corporation of the Municipality of Leamington

## By-law 51-18

Being a by-law to regulate noise

**Whereas** section 129 of the Municipal Act, 2001, S.O. 2001, c. 25 (the “Act”), authorizes the councils of municipalities to enact by-laws regulate noise;

**And Whereas** Council enacted, on July 7, 2003 By-law 431-03, being a by-law to regulate noise within the Municipality of Leamington, subject to the following amendments being By-law 597-05 enacted on May 9, 2005, By-law 674-06 enacted on February 27, 2006 and By-law 695-06 enacted on May 15, 2006;

**And Whereas** the Council of The Corporation of the Municipality of Leamington deems it advisable to repeal By-law 431-03 and the amendments thereto and to enact a new by-law to regulate noise.

**Now Therefore**, the Council of The Corporation of the Municipality of Leamington hereby enacts as follows:

### Definitions

1. In this by-law,
  - a) “Appeal Committee” shall mean the committee established by Council to hear appeals from decisions of administrative officials made pursuant to a delegated power or duty;
  - b) “Clerk” means the Clerk for the Corporation or his or her designate;
  - c) “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 or for any purpose and includes any work in connection therewith;
  - d) “Construction Equipment” means any equipment or devise 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 material handling equipment;
- e) “Continuous Duration” means a period of time exceeding five (5) minutes;
  - f) “Corporation” means The Corporation of the Municipality of Leamington;
  - g) “Council” means the Council of The Corporation of the Municipality of Leamington;
  - h) “Holidays” means any day declared to be a holiday by virtue of the laws of the Province of Ontario;
  - i) “Industrial Area” means those areas of the Municipality designated as Industrial in the Comprehensive Zoning By-law 890-09 as may be amended from time to time or designated as Industrial pursuant to any other zoning by-law enacted pursuant to Section 34 of the Planning Act, R.S.O. 1990, c. P-13, as amended;
  - j) “Loud Volume” means a volume of sound in excess of that of an ordinary speaking voice;
  - k) “Municipality” means the land within the geographic limit of the Municipality of Leamington;
  - l) “Noise Control Officer” means a police officer of the Ontario Provincial Police or any person designated by Council as responsible for the enforcement of the By-laws of the Corporation;
  - m) “Persistent” means of a continuous duration of not less than ninety (90) seconds per occurrence and occurring more than three times within a period of thirty (30) minutes;
  - n) “Person” shall mean an individual, a partnership, or a corporation and the heirs, executors, administrators or other legal representatives of the Person, as the case may be;
  - o) “Residential Area” means those areas of the Municipality designated as Residential in the Comprehensive Zoning By-law 890-09 as may be amended from time to time or designated as Residential pursuant to any other zoning by-law enacted pursuant to Section 34 of the Planning Act, R.S.O. 1990, c. P-13, as amended; and
  - p) “Unnecessary Noise” means sound that is of such loud volume which is persistent or of a continuous duration and that may reasonably be found to be likely to disturb the quiet peace, rest, comfort or convenience of an

inhabitant of the Municipality given the characteristics of the vicinity surrounding the source of the noise.

### **General Prohibitions**

2. No person shall create or permit unnecessary noise.
3. Without limiting the generality of Section 2, no person within the Municipality shall commit any of the following acts, which shall be deemed to be creating unnecessary noise:
  - a) Permit the persistent barking of a dog of which the person is the owner or has care and control; or
  - b) Operate a lawn mower, chain saw or similar device in a Residential Area between the hours of 9:00 p.m. and 7:00 a.m.

### **Exemptions for Certain Activities**

4. Section 2 of this By-law does not apply to these noise creating activities:
  - a) Construction or the operation of Construction Equipment between the hours of 7:00 a.m. and 9:00 p.m. every day except Sunday and Holidays, and between the hours of 11:00 a.m. and 4:00 p.m. on Sundays and Holidays;
  - b) Operation of vehicles related to emergency first responders and law enforcement;
  - c) Any normal farm practice as determined pursuant to the Farming and Food Production Act, 1998 S.O. 1998, c. 1;
  - d) Any industrial process in an Industrial Area which is essential to the industrial use established on the property from which the sound originated; and
  - e) The sounding of bells or chimes or the use of an apparatus or mechanism for the amplification of the human voice for the purpose of a call to prayer on a property operated as a church or a place of worship.

### **Exemptions for Certain Entities**

5. Section 2 of this By-law does not apply to these entities:
  - a) The Government of Canada;
  - b) The Government of the Province of Ontario; and

- c) The Corporation of the Municipality of Leamington;

### **Exemptions for Certain Locations**

- 6. Section 2 of this By-law does not apply to these locations, if the unnecessary noise is as a result of the normal and usual activities carried on at the location having regard to the nature of the facilities being utilized:
  - a) Leamington Amphitheatre at Seacliff Park;
  - b) Leamington Soccer Fields, Mersea Road 2;
  - c) Kinsmen Recreation Complex, 249 Sherk Street;
  - d) Kinsmen Baseball Diamonds, Seacliff Drive East;
  - e) Mersea Park Baseball Diamonds, Point Pelee Drive; or
  - f) Leamington Agricultural Society, 194 Erie Street North.

### **Grant of Exemption**

- 7. Notwithstanding the provisions of this By-law, the Clerk may grant an exemption from the provisions of section 2 of this By-law.
- 8. An application for a grant of exemption shall be submitted to the Clerk.
- 9. The applicant shall serve notice of the application for a grant of exemption on such persons who may be adversely effected by the granting of the exemption. The notice shall set out the following:
  - a) the purpose for the exemption sought including the date and duration; and
  - b) that the recipient of the notice may object to the granting of an exemption by submitting an objection to the Clerk within seven (7) days of receipt of the notice.

The applicant shall provide to the Clerk with proof of service of the notice.

- 10. The Clerk may grant an exemption on temporary basis, or may grant an exemption subject to terms and conditions as he or she deems reasonably necessary in the public interest.
- 11. Where the Clerk refuses to grant an exemption or imposes a condition on such grant, upon payment of the applicable fee, an applicant may appeal the decision of the Clerk to the Appeal Committee.

12. The Clerk shall provide notice, in writing, to the applicant of a decision to grant an exemption on a temporary basis or with conditions, or to refuse to grant an exemption. The notice shall:
  - a) set out the grounds upon which grant of exemption is provided on a temporary basis or with conditions, or is refused; and
  - b) state that the applicant may appeal the decision by requesting a hearing before the Appeal Committee within fourteen (14) days of receipt of the decision; and set out the process that the applicant must follow in order to request such hearing as set out in the Rules of Procedure of the Appeal Committee.
13. Despite the delegation of authority to the Clerk to grant and exemption from the provisions of section 2 of this By-law, such power shall also remain with Council.

#### **Breach of Condition of Grant of Exemption**

14. Breach of any of any conditions of any grant of exemption shall render the exemption null and void, and shall be a contravention of this By-law punishable under its terms.

#### **Evidence of Contravention**

15. In any prosecution or proceeding under this By-law pursuant to section 447.6(4.1) of the Act a Noise Control Officer is a prescribed person.
16. In any prosecution or proceeding under this By-law, the statement signed by a Noise Control Officer, without proof of the office or signature of the Noise Control Officer, is receivable in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the statement for all purposes in the prosecution or proceeding.
17. In any prosecution or proceeding under this By-law, the statement signed by the Clerk of the Corporation and under seal of the Corporation, without proof of the seal or of the signature of the Clerk, that the accused has not been granted an exemption pursuant to section 7 of this By-law, is receivable in evidence, as proof of the absence of an exemption, unless the court or tribunal otherwise directs.

#### **Severability**

18. 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 the By-law shall be valid and shall remain in force.

**Penalty**

19. Every person who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction is subject to a fine pursuant to the Provincial Offences Act, R.S.O., c. 33, as amended.

**Repeal**

20. By-law 431-03, and all amendments thereto, be and are hereby repealed.

**Effective Date**

21. This By-law will take effect and come into force upon its enactment.

Read a first, second and third time and finally enacted this 10<sup>th</sup> day of September, 2018.

*Signature on file*

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John Paterson, Mayor

*Signature on file*

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Brenda Percy, Clerk