

The Corporation of the City of Owen Sound

By-law No. 2024-XXX

A By-law to prohibit and regulate noise within the City

WHEREAS subsection 5(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 (the "Municipal Act") requires that the powers of a municipality be exercised by its Council and subsection 5(3) requires that such powers be exercised by by-law including a capacity, right, power and privilege under section 9 unless specifically authorized to do otherwise; and

WHEREAS section 11(2) of the Municipal Act provides that a municipality may pass by-laws respecting the health, safety and well-being of persons; and

WHEREAS section 129 of the Municipal Act, 2001, provides that, without limiting sections 9 and 11, a local municipality may prohibit and regulate with respect to noise and may prohibit noise unless a permit is obtained from the municipality and may impose conditions for obtaining, continuing to hold and renewing the permit; and

WHEREAS section 425 of the *Municipal Act, 2001* provides that any person who contravenes any by-law of the municipality is guilty of an offence; and

WHEREAS section 444 of the *Municipal Act, 2001* provides that a municipality may make an order requiring a person who contravened a 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 contravening activity; and

WHEREAS on XXX, the Council of The Corporation of the City of Owen Sound (the "City") passed a resolution directing staff to bring forward the subject by-law for approval and to repeal By-law No. 2001-034, in consideration of staff report CR-24-008 presented to the Corporate Services Committee on February 8, 2024;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF OWEN SOUND HEREBY ENACTS AS FOLLOWS:

Part I. Part I. Short Title, Purpose and Scope

Short Title

1. The by-law may be referred to as the "Noise By-law" and when so referenced includes all future amendments, unless otherwise specified.

Purpose

2. This by-law has been enacted to:
 - a. safeguard the quality of City communities and neighbourhoods;
 - b. protect the health and well-being of the public; and
 - c. ensure the continued enjoyment of the City by residents and visitors.

Scope

3. This by-law applies to all residents and visitors to the City but does not apply to:
 - a. the City, including any City events, operations, services or activities;
 - b. the County of Grey

- c. the Provincial of Ontario;
 - d. the Dominion of Canada; or
 - e. a public utility.
4. This by-law applies to all noise except noise related to:
- a. a public emergency involving the health, safety or welfare of the public;
 - b. sport, entertainment or recreational events authorized by the City;
 - c. snow-removal equipment or activities while in the process of removing snow;
 - d. "normal farm practice" as defined in the *Farming and Food Production Protection Act*, 1998, S.O. 1998, c. 1;
 - e. the operation of excavation equipment when used in a cemetery in conjunction with interment services;
 - f. noise between the hours of 7:00 a.m. and 7:00 p.m. resulting from any permitted uses within a Commercial Zone, as defined by the City's Zoning Bylaw, and is not otherwise regulated within this or any other City by-law or agreement; and
 - g. any activity for which a noise permit under this bylaw has been issued.

Part II. Interpretation

Headings

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

Gender and Number

6. In this by-law, unless the contrary intention is indicated, words used in the singular include the plural and words imparting a gender include all genders, where applicable.

References to Applicable Law

7. All references to applicable law are ambulatory and apply as amended, extended or re-enacted from time to time.

Severability

8. In the event any provisions of this by-law are deemed invalid or void, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

Definitions

9. For the purposes of this by-law:
- "Active Development" means where construction is ongoing on a property in relation to an application for a Plan of Subdivision or a Site Plan application that has been approved by the City;
- "Cemetery" means lands set aside and approved by the Bereavement Authority of Ontario for the interment of human remains;

"City" means The Corporation of the City of Owen Sound or the geographical location as the context requires;

"Construction" means the 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 installing of construction components and materials in any form or for any purpose, includes any work in connection therewith and this definition excludes any "Domestic Works" as defined within this by-law;

"Construction Equipment" means any equipment or device designed and intended for use in Construction or material handling, including but not limited to, air compressors, power saws, belt sanders, powered drills, jackhammers, 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 and any other similar equipment;

"Domestic Works" means any Construction, renovation or repair being completed by an Owner to their own property;

"Holiday" means any holiday set out as a holiday in the *Retail Business Holidays Act*, R.S.O. 1990, c. R.30 or any successor legislation;

"Officer" means person appointed by Council as a Municipal Law Enforcement Officer, or a Police Officer, or other individual duly appointed to enforce this by-law;

"Persistent" means, in reference to barking, howling, calling, whining, squawking or other sound-making by an animal or bird, continuously or intermittently for an aggregate period of at least ten (10) minutes out of any sixty (60) minute period;

"Person" means an individual, corporation, partnership, association or other legal entity, and the related heirs, executors, assignees and administrators;

"Property Maintenance Tools" means specialized tools for mowing, trimming or landscaping and includes but is not limited to powered or non-powered tools, lawnmowers, hedge trimmers, whipper-snippers, leaf blowers, chain saws, power washers, power assisted sweepers and vacuums, but does not include snow-removal equipment;

"Site Alteration" means activities such as removal of topsoil from land, the placement or dumping of fill on land, the alteration of the grade of land or excavation by any means including the removal of vegetative cover, the compaction of soil or the creation of impervious surfaces, or any combination of these activities that would change the landforms and natural vegetative characteristics of land;

Part III. Prohibitions and Permits

Prohibitions

10. Subject to section 11, no person may create, cause or permit any noise likely to disturb the inhabitants of the City.

11. No person may emit, cause or permit noise created by an activity set out in Column 1 of Schedule 'A' to this By-law except during the periods of time set out in Column 2 of Schedule 'A'.
12. No person may, at any time, emit, cause or permit noise created by:
 - a. the squealing of tires;
 - b. the use of a horn, whistle, alarm, bell, gong or the like, except for an auditory safety or warning device or chimes used in association with a religious establishment;
 - c. the detonation of explosives;
 - d. the operation of equipment that is not in proper working order, including but not limited to an air conditioner, pool pump or filter, or heat pump;
 - e. the operation of a combustion engine without an effective exhaust muffling device in proper working order;
 - f. the operation of a vehicle radio, stereo or similar device at an excessive volume, in the opinion of the Officer; or
 - g. the persistent barking, howling, calling, whining, squawking or other similar persistent noise-making by any domestic pet or any other animal(s) or bird(s) kept or used for any purpose other than agriculture, provided that the agricultural use is permitted under the City's Zoning By-law.
13. Notwithstanding subsection 12(g) above, if at the time of sound by an animal(s) or bird(s) a person or other animal or bird is trespassing or threatening to trespass upon the private property on which the animal is situated, the sound-making is deemed not to be an infringement of this by-law;

Permits

14. Notwithstanding any other section of this by-law, any person may apply to the City Clerk, in writing, for a permit to engage in activity that would otherwise be prohibited by this by-law.
15. The City Clerk may consider a permit application or forward the application to Council to make the final decision on whether to grant or refuse the application and any conditions that may accompany the permit.
16. A permit application must be provided to the City Clerk at least forty-five (45) days prior to the date that the activity will begin, and the application must include:
 - a. the name and address of the applicant;
 - b. a description of the proposed noise;
 - c. the location at which the proposed noise will take place;
 - d. the period of time for which a permit is sought;
 - e. reason(s) why the permit should be granted; and
 - f. the applicable fee, pursuant to the City's Fees and Charges By-law.
17. Upon receiving a permit application, the City Clerk will notify neighbours within a 60 m area of:
 - a. the proposed noise;

- b. the ability to provide comments on whether a permit should be granted; and
 - c. the date that comments are due to the City.
18. In considering an application for a permit, the City Clerk or Council will have regard to the following:
- a. the description of the proposed noise;
 - b. public comments relating to the proposed noise;
 - c. the location of where the proposed noise will take place;
 - d. the period of time for which the permit is being sought;
 - e. the reasons why the applicant thinks the permit should be granted; and
 - f. any applicable City by-laws or policies.
19. After considering the merits of a permit application, the City Clerk or Council may:
- a. issue a permit;
 - b. issue a permit, subject to certain terms or conditions; or
 - c. refuse to issue a permit.
20. Where a permit is issued, the permit will specify any terms or conditions of the permit and the period of time during which the permit is effective.
21. A permit may be immediately revoked by the City Clerk if an applicant, or any person acting on the applicant's behalf:
- a. provided false or misleading information on the permit application submitted to the City;
 - b. violates this by-law;
 - c. violates any other City by-law or policy; or
 - d. violates any of the terms or conditions of a permit.

Part IV. Investigations

Inspection

22. The City may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- a. this by-law; or
 - b. an order made under section 431 of the Municipal Act.
23. For the purposes of conducting an inspection pursuant to section 22 of this by-law, the City may, in accordance with the provisions of section 436 of the Municipal Act:
- 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; and

- d. along or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.
24. Every person who is required by an Officer to provide identification must identify themselves to the Officer by giving their full and correct name, date of birth and address.
25. No person shall obstruct, hinder or otherwise interfere with an Officer while performing their duty pursuant to this by-law.

Order to discontinue activity

26. Where an Officer has reasonable grounds to believe that a contravention of this by-law has occurred, the Officer may make an order requiring the person who contravened this 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 contravening activity.
27. An order under section 26 of this by-law must set out:
- a. reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
 - b. the date by which there must be compliance with the order.
28. any person who contravenes an order under section 26 of this by-law is guilty of an offence.

Work Order

29. Where an Officer has reasonable grounds to believe that a contravention of this by-law has occurred, the Officer may make an order requiring the person who contravened this by-law, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to do work to correct the contravention.
30. An order under section 29 of this by-law must set out:
- a. reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred;
 - b. the work to be done; and
 - c. the date by which the work must be done.
31. An order under section 29 of this by-law may require work to be done even though the facts which constitute the contravention of this by-law were present before this by-law came into force.
32. Any person who contravenes an order under section 29 of this by-law is guilty of an offence.

Notice

33. Any order issued pursuant to this by-law may be given in writing in any of the following ways and is effective:
- a. on the date on which a copy is delivered to the person to whom it is addressed;
 - b. on the fifth day after a copy is sent by mail to the person's last known address;

- c. upon the sending of a copy by e-mail transmission to the person's last known email address; or
 - d. posting on the premises, on the date of posting.
34. For the purpose of section 30, a person's last known address and last known email address are deemed to include information on the last revised assessment roll and on a permit application submitted pursuant to this by-law.

Remedial action

35. If a person fails to do a matter or thing, including comply with an order under by-law, as directed or required by this by-law, the City may, in default of it being done by the person directed or required to do it, do the matter or thing at the person's expense. The City may recover the costs of doing a matter or thing from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as municipal taxes.
36. The costs outlined in section 35 of this by-law shall include interest calculated at a rate of 15 per cent (15%) per annum, calculated for the period commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.
37. The amount of the costs, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien. The lien is in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date the payment is made. Upon receiving payment, the City will register a discharge of the lien in the proper registry office.

Part V. Offence and Penalty

38. Every person who contravenes the provisions of this by-law is guilty of an offence and, upon conviction, is liable to a fine or penalty as provided for in the Provincial Offences Act.

Part VI. Repeal and Effective Date

Repeal

39. By-law Nos. 1959-2322, 1977-064 and 2001-034 are repealed.

Effective Date

40. The by-law shall come into full force and effect on the date that it is passed as which time all by-laws, policies, and resolutions that are inconsistent with the provisions of this by-law are hereby repealed, revoked or rescinded, as the case may be, insofar as it is necessary to give effect to the provisions of this by-law.

FINALLY PASSED AND ENACTED this XX day of XXX 2024.

Mayor Ian C. Boddy

Briana M. Bloomfield, City Clerk

Schedule 'A' – Permitted Noise by Time

	Column 1	Column 2
Item	Activity	Permitted Periods of Time
1.	The operation of a radio, television, stereo or other electronic device including any amplification device, or any musical or other sound producing instrument.	7:00 a.m. – 11:00 p.m. weekdays 8:00 a.m. – 11:00 p.m. weekends
2.	Yelling, shouting or similar activities.	7:00 a.m. – 11:00 p.m. weekdays 8:00 a.m. – 11:00 p.m. weekends
3.	The venting or release of steam, the operation of a generator or air filtration system, noise from grinding, milling, the operation of machinery, or similar activities.	7:00 a.m. – 11:00 p.m. weekdays 8:00 a.m. – 11:00 p.m. weekends and holidays
4.	The operation of waste collection machinery or refuse compacting equipment.	7:00 a.m. – 9:00 p.m.
5.	Usage of Property Maintenance Tools	7:00 a.m. – 9:00 p.m.
6.	The operation or use of any Construction Equipment for Domestic Works, other than snow removal	7:00 a.m. – 9:00 p.m. weekdays 8:00 a.m. – 9:00 p.m. weekends and holidays
7.	The operation or use of any Construction Equipment in connection with Construction activities or with Site Alteration within an Active Development.	7:00 a.m. – 7:00 p.m. weekdays 8:00 a.m. – 7:00 p.m. Saturdays Prohibited Sundays and holidays