



BY-LAW 2003-137

Being a By-law To Regulate Noise and to Repeal By-law 218-89

WHEREAS section 128 of the *Municipal Act, 2001*, S.O. 2001, c. 25 authorizes a local municipality to prohibit and regulate matters that, in the opinion of Council, are or could become public nuisances;

AND WHEREAS section 129 of the *Municipal Act, 2001*, authorizes municipalities to pass by-laws to prohibit and regulate noise;

AND WHEREAS section 391 of the *Municipal Act, 2001* authorizes Council to pass by-laws imposing fees and charges on any class of persons for services or activities provided or done by or on behalf of it;

AND WHEREAS excessive sound vibration and inadequately controlled noise may impair public health, safety and welfare and may become a nuisance;

AND WHEREAS the people of the Town of Markham expect, and have a right to an environment free from unusual, unnecessary, or excessive sound or vibration or which may degrade the quality and tranquillity of their life or cause nuisance;

AND WHEREAS a recognized body of scientific and technological knowledge exists by which sound and vibration may be substantially reduced;

NOW THEREFORE the Council of The Corporation of the Town of Markham enacts as follows:

Definitions

1. In this By-Law,

"Applicable Publication" means any publication referred to in the provisions of this By-Law including a schedule hereto;

"Applicant" includes any person who applies in writing to Council for a permit for an exemption from the provisions and requirements of this By-law;

"Authorized Emergency Vehicle" includes any ambulance or hearse, any vehicle of the fire department, or of the local, provincial or federal police, any vehicle operated by or for the Town, the Bell Telephone Company of Canada, Canada Post, armoured cars carrying cash, and public utility company while actively engaged in the construction, maintenance or repair of any highway, or any equipment or facilities thereon, or a snow plough or other maintenance vehicle operated by or for the Ministry of Transportation;

"Certificate" means a current certificate of competency in environmental acoustics technology of a specified class issued by an accredited program of an Ontario community college or other approved agency;

"Clerk" means the Clerk of The Corporation of the Town of Markham 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 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 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;

"Construction Site" means the area or portion of land used for construction or any other area used for any purpose related to the construction or for any related purpose;

"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 Town of Markham;

"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;

"Minister" means the Minister of the Environment;

"Ministry" means the Ministry of the Environment;

"Motor Vehicle" means any motorized conveyance and includes any 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 vehicle 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*, R.S.O. 1990, c.H.8, as amended;

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

"Municipality" means the land within the geographic limit of the Town of Markham;

"Noise" means any unwanted sound;

"Officer" means a person commissioned or authorized to fill a public situation or to perform any public duty, appointed for the purpose of enforcing bylaws of the municipality, and includes any municipal law enforcement officer appointed by the Town and any police constable who is a member of the York Regional Police Service;

"Permit" means any permit issued by Council for an exemption from the terms and conditions of this By-law, and includes any conditions imposed by Council on the holding of such a permit;

"Person" includes a corporation, organization, association and partnership;

"Point of Reception" means any point on a premises of a person where sound or vibration originating from other than those premises is received;

"Publication" means a specified publication of the Noise Pollution Control Section of the Pollution Control Branch of the Ministry of the Environment named in Schedule 4 to this By-Law;

"Quiet Zone" means an area of the municipality so designated by the Town of Markham Zoning By-Laws;

"Residential Area" means an area of the municipality designated as residential area in the Town of Markham Zoning By-Laws;

"Residential Renovations" means construction that does not require any building permits and renovations that are constructed without the operation of heavy 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;

"Sound" is an oscillation in pressure, stress, particle displacement or particle velocity, in a medium with internal forces (e.g. elastic, viscous), or the superposition of such propagated oscillations, which may cause an auditory sensation;

"Stationary Source" means a source of sound, which does not normally move from place to place and includes the premises of a person as one stationary source unless the dominant source on the premises is construction equipment or a conveyance;

"Town" means The Corporation of the Town of Markham.

Technical Terms

2. In this By-Law all words and definitions that are of technical nature and are related to sound and vibration shall have the meanings specified for them in Schedule 4 - Publication NPC-101.

Prohibitions

3. No person shall emit or cause to permit the emission of sound resulting from:
 - (1) an act listed in Schedule 1 - General Prohibitions, and which sound is clearly audible at a point of reception;
 - (2) any act listed in Schedule 2 - Prohibitions by Time and Place, if clearly audible at a point of reception;
 - (3) a stationary source such that the level of resultant sound at a point of reception located in a residential area, or quiet zone exceeds the applicable sound level limit prescribed in Schedule 4, Publication NPC-205.

Limitations on Sound Levels

4. No person shall emit or cause or permit the emission of sound resulting from:
 - (1) any piece of construction equipment of a type referred to in Schedule 4, Publication NPC-115 at a work site, any part of which is located within 600 m of a residential area, unless;
 - a) the equipment was put into use prior to January 1, 1979; or

- b) the equipment bears a label affixed by the manufacturer or distributor, which states:
 - (i) the year of manufacture; and
 - (ii) that the equipment complies with the residential sound emission standards set out in Schedule 4 - Publication NPC-115, as applicable to that type of equipment and date of manufacture; or
 - c) the owner, operator, manufacturer or distributor provides proof that the item of equipment complies with the residential sound emission standard set out in Schedule 4 - Publication NPC-115, as applicable to that type of equipment and date of manufacture.
- (2) any piece of construction equipment of a type referred to in Schedule 4 - Publication NPC-115, at a work site, any part of which is located in a Quiet Zone, unless,
- (a) the piece of construction equipment bears a label affixed by the manufacturer or distributor, which states:
 - (i) the year of manufacture; and
 - (ii) that the equipment complies with the Quiet Zone sound emission standard set out in Schedule 4 - Publication NPC-115, as applicable to that type of equipment and date of manufacture; or,
- (3) from any air conditioning device of a type referred to in Schedule 4 - Publication NPC-216 unless the device:
- (a) was put into use prior to January 1, 1979; or
 - (b) bears a label affixed by the manufacturer or distributor, which states:
 - (i) the year of manufacture; and
 - (ii) that the device complies with the sound emission standard set out in Schedule 4 - Publication NPC-216 as applicable to that type of device and date of manufacture; or
 - c) the owner, operator, manufacturer or distributor provides proof that the device complies with the sound emission standard set out in Schedule 4 - Publication NPC-216, as applicable to that type of device and date of manufacture;
- (4) any motorized conveyance of a type referred to in Schedule 4 - Publication NPC-118, unless the motorized conveyance complies with the sound emission standard set out in Schedule 4 - Publication NPC-118, as applicable to that type of motorized conveyance and date of manufacture.

Pre-emption

5. Where subsections 3(2) or (3) applies to a source of sound, the less restrictive provision shall prevail.

Permits and Exemptions

6. Notwithstanding any other provision of this By-law, the provisions and requirements of this By-law shall not apply to any person who emits or causes or permits the emission of sound or vibration:
 - (1) in connection with any activities listed in Schedule 3; or
 - (2) to impulsive sound or blasting; or
 - (3) for which a permit has been issued under the authority of this By-law.
7. Council may, by resolution and upon written application by any person, issue a permit to exempt an applicant from any such provisions and requirements of this By-law as Council deems advisable.
8. A permit issued in accordance with section 7 may specify terms and conditions as Council deems advisable with which the permit is issued and such terms and conditions may include, but are not limited to, the type and volume of sounds that may be made, the times during which sounds may be made, and the time period during which the sound may be made.
9. An application for exemption shall be made to the Clerk in writing and shall contain:
 - (1) the name and address of the applicant;
 - (2) a description of the source of sound or vibration in respect of which exemption is sought;
 - (3) a statement of the particular provision of the By-Law from which exemption is sought;
 - (4) the reasons for which, in the applicant's opinion, the exemption should be granted;
 - (5) a statement of the actions, steps or other such measures, if any, planned or presently being taken, by the applicant, intended to bring about compliance with the By-Law;
 - (6) the permit fee;
 - (7) proof of publication for two consecutive days within the preceding ten (10) days in a newspaper of general circulation within the Town, of a notice of intention to apply for an exemption to this By-law, containing the information required by this section and stating the date upon which the application to Council is intended to be made;
 - (8) any further and other information as may be necessary to consider an application made under section 7.
10. A report shall be taken to Council, which report shall attach the completed application and a recommendation as to terms and conditions, if any.
11. In deciding whether to grant the exemption, Council shall consider the application, the report of any By-law Enforcement Officer or professional staff and any written submission then received by Council and shall give the applicant and any person interested in the application an opportunity to be heard and may consider such other matters as it sees fit.
12. Where an application is not approved or approved upon terms and conditions or approval to a lesser extent than the exemption applied for, Council shall set out in writing the reasons therefore and shall serve a copy of the decision upon the applicant.
13. The decision of Council to issue a permit, to refuse to issue a permit or to set terms and conditions for holding a permit is final.

14. A breach 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.

Exemption of Traditional, Festival or Religious Activities

15. Notwithstanding any other provision of this By-law, this Bylaw does not apply to the any sound or vibration made or caused to be made by any of the traditional, festive, religious and other activities listed herein:
 - (1) any Markham Fair activity authorized by Council;
 - (2) any Markham Heritage Days activity authorized by Council;
 - (3) any Thornhill Village Festival activity authorized by Council;
 - (4) any Unionville Village Festival activity authorized by Council;
 - (5) any Victoria Day activity authorized by Council; or
 - (6) any Canada Day activity authorized by Council.
16. For greater certainty, the exemptions contained in section 12 of this By-law only apply to the organizers and performers associated with the activities listed therein and do not apply to those persons who attend the activities.

Severability

17. If a court of competent jurisdiction declares any section or part of this By-law invalid or unenforceable, it is the intention of Council that the remainder of the By-law shall continue to be in force.

Enforcement and Administration

18. The Clerk shall administer and enforce this By-Law.
19. Council may appoint such officers as are necessary for the purpose of enforcing this By-law.
20. Such officers as are necessary for the purpose of enforcing this By-law who do not possess a Certificate shall only enforce the portions of this By-law where sound level measurements are not required.

Penalties

21. Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction, is liable to the penalty specified by the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.

Interpretation

22. Any use of a singular term includes its plural, any use of a masculine term includes the feminine term and any use of the present tense includes the past tense, where applicable, in this By-law.

Enactment

23. This By-Law comes into force and effect on the date of its passing and enactment.
24. By-law 218-89, a By-law to Control Noise, is hereby repealed.

Title

24. This By-law shall be referred to as the "Noise Control By-Law".

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS
27TH DAY OF MAY, 2003.

SHEILA BIRRELL, TOWN CLERK

DON COUSENS, MAYOR

Schedule 1

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 without an effective exhaust-muffling device in good working order and in constant operation.
4. The 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;
5. The operation of an engine or motor in, or on, any motor vehicle or item of attached auxiliary equipment for a continuous period exceeding five minutes, while such vehicle is stationary in a Residential Area or, unless,
 - (1) The vehicle is in an enclosed structure constructed so as to effectively prevent excessive noise emission; or,
 - (2) 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;
 - (3) 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 or refuse compactors and heat exchange systems; or,
 - (4) 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 preservation of perishable cargo; or,
 - (5) Prevailing low temperatures make longer idling periods necessary, immediately after starting the motor or engine; or,
 - (6) The idling is for the purpose of cleaning and flushing the radiator and associated circulation system for seasonal change or antifreeze, cleaning of the fuel system, carburetor or the like, when such work is performed other than for profit.
6. The operation of a motor vehicle horn or other warning device except where required or authorized by law in accordance with good safety practices.
7. The operation of any item of construction equipment without effective muffling devices in good working order and in constant operation.

Schedule 2

PROHIBITIONS BY TIME AND PLACE

| | | <u>Prohibited Period of Time</u> | |
|---|--|----------------------------------|------------------|
| | | Quiet Zone | Residential Area |
| 1. | The detonation of fireworks or explosive devices not used in construction. | At all times | At all times |
| 2. | The discharge of firearms. | At all times | At all times |
| 3. | The operation of a combustion engine which, (i) is, or (ii) is used in, or (iii) is intended for use in a toy or a model or replica device, which model or replica has no function other than amusement and which is not a conveyance. | At all times | At all times |
| 4. | The operation of any electronic device or group of connected electronic devices incorporating one or more loudspeakers or other electro-mechanical transducers, and intended for the production, reproduction or amplification of sound. | At all times | C |
| 5. | The operation of any auditory signaling device, including but not limited to the ringing bells or gongs and the blowing of horns or sirens or whistles, or the production, reproduction or amplification of any similar sounds by electronic means except where required or authorized by law or in accordance with good safety practices. | At all times | D & E |
| 6. | The operation of any powered rail car including but not limited to refrigeration cars, locomotives or self-propelled passenger cars, while stationary on property not owned or controlled by a railway governed by the Canada Railway Act. | At all times | B |
| 7. | The operation of any motorized conveyance other than on a highway or other place intended for its operation.* | At all times | At all times |
| <p>*Note: For the purpose of this Schedule, “ motorized conveyance” includes, but is not limited to;</p> <ul style="list-style-type: none"> a) Snowmobile; b) Moped; c) Go-cart; d) Track bike; e) Trail bike | | | |
| 8. | The venting, release or pressure relief of air, steam or other gaseous material, product or compound from any autoclave, boiler pressure vessel, pipe, valve, machine, device or system. | At all times | A |

| | | | |
|-----|--|--------------|--------------|
| 9. | Persistent barking, calling or whining or other similar persistent noise making by any domestic pet or any other animal kept or used for any purpose other than agriculture. | At all times | At all times |
| 10. | The operation of a commercial car wash with air drying equipment. | At all times | D & E |
| 11. | Yelling, shouting, hooting, whistling or singing. | At all times | A |
| 12. | The operation of a power assisted hang glider or parafoil. | At all times | D & E |
| 13. | The operation of any item of snow making equipment. | At all times | E |
| 14. | All selling or advertising by shouting or outcry or amplified sound. | At all times | D & E |
| 15. | Loading, unloading, delivering, packing, unpacking, or otherwise handling any containers, products, materials, or refuse, whatsoever, unless necessary for the maintenance of essential services or the moving of private household effects. | D & E | D & E |
| 16. | The operation of any equipment in connection with construction. | D & E | D & E |
| 17. | The operation or use of any tool for domestic purposes other than snow removal. | C | B |
| 18. | The operation of solid waste bulk lift or refuse compacting equipment. | C | B |
| 19. | The operation of a commercial car wash of a type other than mentioned in item 10. | C | A |
| 20. | The use of wind chimes | E | E |

Prohibited Periods of Time

- A. 23 00 one day to 07 00 next day (09 00 Sundays)
- B. 19 00 one day to 07 00 next day (09 00 Sundays)
- C. 17 00 one day to 07 00 next day (09 00 Sundays)
- D. All day Sundays and Statutory Holidays
- E. 19 00 one day to 07 00 next day.

Schedule 3

1. Operation of authorized emergency vehicles.
2. Operation of bells utilized as traffic control devices including the following:
 - (1) Bells and other devices at traffic signal locations;
 - (2) Bells at railway crossings.
3. Operation of Town machines and equipment including the following:
 - (1) Crosswalk painting machines;
 - (2) Catch basin cleaners;
 - (3) Tree and shrub pruning and mulching equipment;
 - (4) Town owned or contracted street cleaners and flushers;
 - (5) Operation of construction equipment and machinery, including snow removal equipment, by or on behalf of the Town carrying on or engaged in the performance of public works for emergency and safety purposes.

Schedule 4

Index of Publications

| | |
|---------------------|------------------------------|
| Publication NPC 101 | Technical Definitions |
| Publication NPC 102 | Instrumentation |
| Publication NPC 103 | Procedures |
| Publication NPC 104 | Sound Level Adjustments |
| Publication NPC 115 | Construction Equipment |
| Publication NPC 117 | Domestic Outdoor Power Tools |
| Publication NPC 118 | Motorized Conveyances |
| Publication NPC 119 | Blasting |
| Publication NPC 205 | Stationary Source |
| Publication NPC 206 | Road Traffic |
| Publication NPC 216 | Residential Air Conditioners |