

THE CORPORATION OF THE CITY OF BELLEVILLE

BY-LAW NUMBER 2011-180

A BYLAW TO REGULATE NOISE WITHIN THE CITY OF BELLEVILLE

WHEREAS Section 128 of the *Municipal Act*, 2001, 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, provides that a municipality may pass bylaws to prohibit and regulate with respect to noise;

AND WHEREAS in the opinion of Council for the Corporation of the City of Belleville, excessive sounds and inadequately controlled noise may impair public health, safety and welfare and could become a public nuisance;

AND WHEREAS it is the opinion of Council for the Corporation of the City of Belleville, that for the benefit of individuals and the public at large, there must be regulations and prohibitions to the making of noise;

NOW THEREFORE the Council of the Corporation of the City of Belleville enacts as follows:

This Bylaw may be cited as "The Noise Bylaw".

DEFINITIONS

1. In this Bylaw, unless the context otherwise requires:
 - (a) "agricultural operation" has the same meaning as contained in the Farming and Food Production Protection Act, 1998, S.O. 1998, C.1 as amended, or any successor legislation;
 - (b) "commercial land use" shall include any commercial use as defined in the City of Belleville Zoning By-laws No. 10245, 3014 (formerly Township of Thurlow), 2076-80 (formerly Township of Sidney) as may be amended from time to time;
 - (c) "construction" means the erection, alteration, repair, painting, maintenance, relocation, demolition or removal of a building or other structure and includes all land clearing, landscaping, earth moving, grading, excavating, all public works activities, the erection or laying of lines, cable, pipes and conduit (whether above or below ground level), street building, paving, concreting and similar activities on a site and the installation, alteration or removal of construction equipment, components

and materials in any form or for any purpose, and any work being done in connection therewith;

- (d) "Council" means the Council of the Corporation of the City of Belleville;
- (e) "holiday" and "statutory holiday" means any day set out as a holiday in the Retail Business Holidays Act, R.S.O. 1990, c.R.30, as it may be amended from time to time;
- (f) "industrial land use" shall include any industrial use as defined in the City of Belleville Zoning By-laws No. 10245, 3014 (formerly Township of Thurlow), 2076-80 (formerly Township of Sidney) as may be amended from time to time;
- (g) "motor vehicle" means any motorized conveyance and includes any automobile, motorcycle and any other vehicle propelled or driven otherwise than by muscular power;
- (h) "normal farm practice" has the same meaning as contained in the Farming and Food Production Protection Act, 1998, S.O. 1998, C.1 as amended, or any successor legislation;
- (i) "Officer" means a person appointed by Council as a Municipal By-law Enforcement Officer, a Police Officer, or any other individual duly appointed to enforce this By-law;
- (j) "person" includes a person, firm, association, co-partnership, joint venture, corporation or any entity, public or private in nature;
- (k) "point of reception" means:
 - (i) any premises or location where sound is received, other than the premises from which the sound originates; or
 - (ii) any place on a highway where sound is received;
- (l) "premises" means a parcel of land and includes any buildings and structures on the land,
- (m) "residential area" and "residential land use" shall include any area of the City where residential use is permitted under the provisions of the City of Belleville Zoning By-laws No. 10245, 3014 (formerly Township of Thurlow), 2076-80 (formerly Township of Sidney) and shall include any residential dwelling as defined in the City of Belleville Zoning Bylaws No. 10245, 3014 (formerly Township of Thurlow), 2076-80 (formerly Township of Sidney) as may be amended from time to time;

GENERAL PROHIBITION

2. No person shall at any time, make, cause or permit a noise that is likely to disturb the inhabitants of the City of Belleville.

OPINION OF COUNCIL

3. Without limiting the generality of Section 2 of this By-law, the noises from the sources described in Schedule "A" are noises which in the opinion of Council are unreasonable and are or could become public nuisances.

PROHIBITION OF SOUNDS OF SPECIFIC ORIGIN

4. No person shall, subject to the exceptions under Section 5, make or cause or permit to be made the particular noises which can be heard by a person at a point of reception during prohibited periods of time and place relating to specific operations as set out in Schedule "A" attached which forms a part of this by-law.

EXCEPTIONS

5. The provisions of this Bylaw shall not apply to any sound caused by:
 - (a) the sound of a church bell or chime;
 - (b) the sound of Belleville City Hall carillon;
 - (c) audible traffic signals;
 - (d) the noise caused by the erection, demolition, alteration or repair of a building or by construction or earth-moving equipment working upon a site or highway when such work is undertaken by forces of The Corporation of the City of Belleville, any other public utility, or their agents or servants;
 - (e) Police Officers, fire fighters and operators of emergency vehicles in the conduct of their lawful duty;
 - (f) the operation of power equipment used for lawn, garden, building or property maintenance, but excluding construction, on any day other than a Sunday or holiday between 8:00 a.m. and 8:00 p.m. and between 9:00 a.m. and 8:00 p.m. on a Sunday or holiday;
 - (g) the noise arising from the operation of construction or construction equipment on any day other than a Sunday or holiday between the hours of 7:00 a.m. and 7:00 p.m.. This exemption shall not apply to construction equipment being operated without the originally installed muffling devices or their equivalent in good working order and in constant operation;

- (h) the use of a chain saw, a chipper or a leaf blower between 8:00 a.m. and 5:00 p.m. on any day other than a Sunday or holiday;
- (i) the operation of a street sweeper, snow removal equipment, parks and public works maintenance machines and equipment by or on behalf of the City; or other institutional uses within the City of Belleville limits;
- (j) occasional outdoor gatherings, public dances, shows, and sporting and entertainment events provided said events are conducted pursuant to a permit or licence issued by the City of Belleville relative to the staging of said events;
- (k) agricultural operations carried on in accordance with normal farm practice;
- (l) activities or work specifically exempted from this Bylaw by Council provided such conditions or requirements as may be imposed by Council are observed or met.

TEMPORARY NOISE PERMIT

- 6.1 Any person may make application to Council to be granted an exemption by the issuance of a temporary noise permit from any of the provisions of this By-law. The application for the issuance of a temporary noise permit shall be made in writing at least 45 days prior to the commencement of the requested exemption and shall contain:
- (a) the name and address of the applicant;
 - (b) a description of the source of sound in respect of which exemption is sought;
 - (c) a statement of the particular provision or provisions of the By-law from which exemption is sought;
 - (d) the period of time for which the exemption is sought;
 - (e) the reason why the exemption should be granted;
 - (f) a non-refundable application fee of \$75.00; and
 - (g) a permit fee of \$150.00, refundable if the application is not approved.
- 6.2 Council maintains the discretion to waive the application fees and/or permit fees for a temporary noise permit.

- 6.3 In determining whether to grant an exemption by way of a temporary noise permit and/or to waive any fees, Council shall:
- (a) determine whether the applicant has provided all of the information required by subsection 6.1;
 - (b) determine whether the applicant has complied with all terms and conditions of approval of any previous permit issued to the applicant under this section, if any;
 - (c) consider any negative effects the issuance of the temporary noise permit may have on neighbouring properties or the City; and
 - (d) consider any benefits the issuance of the temporary noise permit may have for neighbouring properties or the City.
- 6.4 Council may impose conditions on temporary noise permits including but not limited to:
- (a) the type and volume of sounds that may be made;
 - (b) the times during which sounds may be made;
 - (c) the date of expiry of the temporary noise permit;
 - (d) requiring the posting of security prior to the activity; and
 - (e) requiring that the applicant, City staff or a professional engineer monitor the sound levels resulting from the event or activity and requiring a report of the findings of the engineer to be filed with the City of Belleville within 30 days of the event or activity, all at the applicant's expense.
- 6.5 Any temporary noise permit issued under this By-law shall expire on the date set out on the temporary noise permit, or if no date is set out on the temporary noise permit, the permit shall expire forty-eight hours after its issuance.
- 6.6 Any breach by the holder of the temporary noise permit of any of its terms or conditions shall render the temporary noise permit null and void.
- 6.7 No holder of a temporary noise permit shall fail to comply with the terms and conditions of the temporary noise permit.

ENFORCEMENT AND RIGHT OF ENTRY

- 7.1 This By-law may be enforced by a Municipal By-law Enforcement Officer, a Belleville Police Service police officer or other individual authorized by Council.

7.2 An Officer may at all reasonable times enter upon any premises other than dwellings in order to ascertain whether the provisions of this By-law are being observed or to enforce this By-law.

PENALTY

8.1 Any person who contravenes any provision of this by-law is guilty of an offence and shall be liable to the following penalties pursuant to the *Municipal Act*, 2001, S.O. 2001, C.25, as amended;

(a) any person, other than a corporation, convicted under this By-law is liable:

(i) upon a first conviction, to a minimum fine of \$100.00 and a maximum fine of \$5,000.00;

(ii) upon a subsequent conviction, to a minimum fine of \$500.00 and a maximum fine of \$10,000.00.

(b) any corporation convicted under this By-law is liable:

(i) upon a first conviction, to a minimum fine of \$100.00 and a maximum fine of not more than \$10,000.00; and

(ii) upon any subsequent conviction, to a minimum fine of \$1,000.00 and a maximum fine of not more than \$25,000.00.

8.2 Where a person contravenes any provision of this Bylaw, each day or part of a day that the contravention continues is a separate offence.

SEVERABILITY

9. If any section, clause or provision of this By-law is for any reason declared by a Court of competent jurisdiction to be invalid, the same shall not affect the validity of the By-law as a whole or any part thereof, other than the section, clause or provision so declared to be invalid and it is hereby declared to be the intention of Council that the remaining sections, clauses or provisions of the by-law shall remain in full force and effect until repealed, notwithstanding that one or more provisions of this by-law shall have been declared to be invalid.

REPEAL

10. By-law Nos. 13269, 13301, 13587 and 13992 and all amendments thereto, are hereby repealed.

SCHEDULE "A"

	Particulars of Noise	Prohibited Period
1	The operation of any construction equipment in connection with construction, unless otherwise exempt under the provisions of this by-law	7:00 p.m. of one day to 7:00 a.m. of the next day, and All day Sundays and Statutory Holidays
2	The operation of any construction equipment without the originally installed muffling devices or their equivalent in good working order and in constant operation	At any time
3	The detonation of fireworks or explosive devices	11:00 p.m. of one day to 7:00 a.m. of the next day (9:00 a.m. Sundays)
4	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 a larger device, which model or replica has no function other than amusement and which is not a conveyance.	7:00 p.m. of one day to 7:00 a.m. of the next day (9:00 a.m. Sundays)
5	The operation of any motorized conveyance other than on a highway or other place intended for its operation.	7:00 p.m. of one day to 7:00 a.m. of the next day (9:00 a.m. Sundays)
6	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.	11:00 p.m. of one day to 7:00 a.m. of the next day (9:00 a.m. Sundays)
7	Persistent barking, calling or whining or other similar persistent noise making by any animal.	At any time
8	The operation of any powered or non-powered tool for domestic purposes other than snow removal.	11:00 p.m. of one day to 7:00 a.m. of the next day (9:00 a.m. Sundays)
9	The operation of solid waste bulk lift or refuse compacting equipment	11:00 p.m. of one day to 7:00 a.m. of the next day (9:00 a.m. Sundays)
10	Yelling, shouting, hooting, whistling or singing or similar sounds	At any time
11	The operation of a sound emitting pest control device	11:00 p.m. of one day to 7:00 a.m. of the next day (9:00 a.m. Sundays)
12	Racing of any motorized conveyance other than in a racing event regulated by law	At any time
13	The operation of a motor vehicle in such a way that the tires squeal	At any time

	Particulars of Noise	Prohibited Period
14	The operation of any combustion engine without an effective exhaust muffling device in good working order and in constant operation	At any time
15	The operation of any auditory signaling device, including but not limited to the ringing of bells or gongs and the blowing of horns or sirens or whistles, or the production, reproduction or amplification of any similar sounds except where required or authorized in accordance with good safety practices or for accessibility purposes.	7:00 p.m. of one day to 7:00 a.m. of the next day, and All day Sundays and Statutory Holidays
16	Loading, unloading, delivering, packing, unpacking, or otherwise handling any containers, produce, materials, or refuse unless necessary for the maintenance of essential services or the preservation of perishable goods	11:00 p.m. of one day to 7:00 a.m. of the next day; On Sundays and Statutory Holidays, from 12:00 midnight to 10:00 a.m. and from 2:00 p.m. to 12:00 midnight; and



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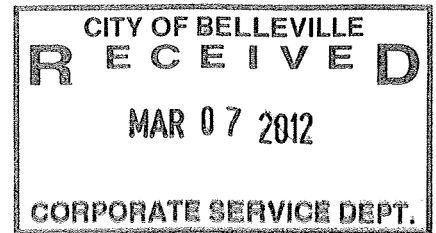
(from the office of Jeffrey D. Paine, BELLEVILLE; e-mail: jpaine@tmlegal.ca)

Hand Delivered

March 7, 2012

The Corporation of the City of Belleville
169 Front Street
Belleville, Ontario K8N 2Y8

Attention: Julie Oram, Director of Corporate Services/Clerk



Dear Ms Oram:

**Re: Set Fine Approvals
Our File No. 06313**

Please find attached Set Fine approvals just received for the following by-laws:

1. By-law No. 2011-206 – Littering
2. By-law No. 2011-180 – Noise

You should retain a copy of this approval and as well forward a copy to the Provincial Offences Office.

You will see that the Regional Senior Justice has exercised her discretion to alter the amount of the Set Fines which were submitted. This is somewhat unusual and is the first time this has happened in any Set Fine situation I have been involved with.

You will note that the Regional Senior Justice failed to include the altered blank Set Fine Schedule for the Littering By-law however her covering letter indicates she has amended Items 1 through 7 down to \$150.00 from \$200.00 and this should provide adequate documentation for the Provincial Offences Office.

If you have any questions or comments, please do not hesitate to contact me.

Yours very truly,
TEMPLEMAN MENNINGA LLP

Handwritten signature of Jeffrey D. Paine in cursive script.

JEFFREY D. PAINE

JDP:pjo

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THE HONOURABLE LISE T. MAISONNEUVE
REGIONAL SENIOR JUSTICE
ONTARIO COURT OF JUSTICE
EAST REGION

161 ELGIN STREET, 6TH FLOOR
OTTAWA, ONTARIO K2P 2L1



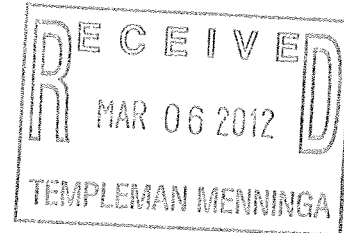
L'HONORABLE LISE T. MAISONNEUVE
JUGE PRINCIPALE RÉGIONALE
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February 23rd, 2012

Templeman Menninga LLP
205 Dundaw Street East
Suite 200
P.O. Box 234
Belleville, Ontario
K8N 5A2



Attention: Mr. Jeffrey D. Paine

Dear Mr. Paine,

Re: *Set Fines – Provincial Offences Act – Part I*
By law No. 2011-180: Noise
Your File No. 06313

Enclosed herewith is a copy of an Order and a copy of the schedule of set fines for By-law No. 2011-180, the by-law indicated in the schedule.

You will note that I have amended Items 1, 3, 4, 5, 6, 10, 12, 13, 15, 16, 18 on the blank Set Fine Schedule.

The setting of the fines does not constitute my approval of the validity of the By-law or of the short form of wording used to describe the offences.

Please ensure that a copy of the said documents is forwarded to the Provincial Offences Office, which has jurisdiction for the City of Belleville.

Yours truly,

A handwritten signature in cursive script, appearing to read "Lise T. Maisonneuve".

Lise T. Maisonneuve
Regional Senior Justice
East Region
/nb

Enclosures

PROVINCIAL OFFENCES ACT

Part I

IT IS ORDERED pursuant to the provisions of the *Provincial Offences Act* and the rules for the Ontario Court of Justice, that the amount set opposite each of the offences in the schedule of offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. 2011-180 of the Corporation of the City of Belleville, attached hereto is the set fine for that offence. This Order is to take effect on February 23, 2012.

Dated at Ottawa this 23rd day of February 2012.



.....
Lise T. Maisonneuve, Regional Senior Justice
Ontario Court of Justice
East Region

SET FINE SCHEDULE
THE CORPORATION OF THE CITY OF BELLEVILLE
PART 1, PROVINCIAL OFFENCES ACT

By-law #2011-180, Being a By-law to regulate noise within the City of Belleville

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision Creating or Defining Offence	COLUMN 3 Set Fine
1	Make, cause, permit noise likely to disturb	S.2	\$ 150.00
2	Fail to comply with temporary noise permit	S.6.7	\$ 200.00
3	Noise, operate construction equipment at prohibited time	S.4 and Sched. A(1)	\$ 125.00
4	Noise, Operate construction equipment without muffler	S.4 and Sched. A(2)	\$ 125.00
5	Noise, Detonate fireworks at prohibited time	S.4 and Sched. A(3)	\$ 150.00
6	Noise, Operate combustion engine in model at prohibited time	S.4 and Sched. A(4)	\$ 150.00
7	Noise, Operate motorized conveyance at prohibited time	S.4 and Sched. A(5)	\$ 200.00
8	Noise, Venting air/steam at prohibited time	S.4 and Sched. A(6)	\$ 200.00
9	Persistent noise making by animal	S.4 and Sched. A(7)	\$ 200.00
10	Noise, Operate tool at prohibited time	S.4 and Sched. A(8)	\$ 150.00
11	Noise, Operate bulk lift at prohibited time	S.4 and Sched. A(9)	\$ 200.00
12	Noise, Yelling, shouting, singing	S.4 and Sched. A(10)	\$ 100.00
13	Noise, Operate pest control device at prohibited time	S.4 and Sched. A(11)	\$ 150.00
14	Noise, Racing motorized conveyance	S.4 and Sched. A(12)	\$ 200.00
15	Noise, Squeal tires	S.4 and Sched. A(13)	\$ 100.00
16	Noise, Operate engine without muffler	S.4 and Sched. A(14)	\$ 100.00
17	Noise, operate signalling device at prohibited time	S.4 and Sched.	\$ 200.00

		A(15)	
18	Noise, Handling containers at prohibited time	S.4 and Sched. A(16)	\$ 150.00

Note: The penalty provision(s) for offences indicated above is contained in Section 8.1 and 8.2 of By-law 2011-180, a certified copy of which has been filed.