



Corporation of the Town of Newmarket

By-law Number 2017 -76

A By-law to Prohibit or regulate unusual **Noises** or **Noises** likely to disturb the **Inhabitants** of the Town of Newmarket.

Whereas section 129 of the Municipal Act, 2001 authorizes municipalities to pass by-laws to prohibit and regulate **Noise** or **Sounds**;

And whereas section 128 of the Municipal Act, 2001 authorizes a local municipality to prohibit and regulate matters that, in the opinion of **Council**, are or could be become public nuisance;

And whereas section 391 of the Municipal Act, 2001 authorizes **Council** to pass by-laws imposing **Fees and Charges** on any class of person for services provided or done by or on behalf of it; and

And whereas section 398 (1) of the Municipal Act, 2001 states that **Fees and Charges** imposed by a municipality on a **Person** constitutes a debt of the **Person** to the Town of Newmarket; and;

And whereas section 429 (1) of the Municipal Act, 2001 provides that a municipality may establish a system of fines for an offence under a by-law passed under the Act.

Therefore be it enacted by the **Council** of the Corporation of the Town of Newmarket as follows:

1.0 Definitions

“**Applicant**” means a **Person** applying for a **Noise**-permit under this by-law;

“**Appeals Committee**” means the **Appeals Committee** established by the **Town**;

“**Council**” means the Council of the Corporation of the Town of Newmarket;

“**Construction**” includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing, earth moving, grading,

excavation, blasting and detonation of explosive devices other than fireworks, 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 associated or related work;

“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, trucks, ditchers, compactors and rollers, pumps, concrete mixers, graders or other material handling equipment;

“Conveyance” includes a vehicle and any other device employed to transport a **Person** or **Persons** or goods from place to place but does not include any such device or vehicle if operated only with the **Premises** of a **Person**.

“Dwelling” means a house, apartment, or other place of **Residence**;

“Director” means the Director of Legislative Services and his or her designate or successor;

“Emergency” means a situation or an impending situation, often dangerous, caused by the forces of nature, an accident, an intentional act or otherwise, which arises suddenly and calls for prompt action;

“Emergency Vehicle” includes a land ambulance, an air ambulance, a fire department vehicle, a police vehicle, and a **Motor Vehicle** being used to respond to an emergency;

“Event” an event open to the public, including a public fair, public exhibition, public celebration, public sporting event, public concert; or a school board event; or an event not open to the public or an event held at a private **Residence**;

“Fees and Charges” means the General Fees and Charges By-law, as amended for the Legislative Services Department;

“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

"Infill Housing" means a development that occurs on a single lot, or a consolidated number of small lots or sites that are vacant or underdeveloped;

"Inhabitants" means one or more **Persons** who reside in the **Town**;

"Motor Vehicle" includes 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 road-building machine;

"Motorized Conveyance" includes a vehicle and any other device employed to transport a **Person** or **Persons** or goods from place to place, but does not include any such device or vehicle if operated only within the **Premises** of a **Person** or if propelled or driven only by muscular, gravitational or wind power;

"Noise" means **Sound** that is of such a volume or nature that it is likely to disturb the **Inhabitants** of the **Town**;

"Officer" means a Police Officer as defined under the Police Services Act, R.S.O. 1990, c. P15, as amended, an individual appointed by the **Town** as a Municipal Law Enforcement Officer pursuant to section 15 of the Police Services Act, as amended, or any other individual designated by the **Town** to enforce this By-law;

"Outdoor Servicing Area" means any area on private property which is licensed to serve alcohol and is used by a business for the serving or consumption of food, beverages or refreshments which is not enclosed within a building structure or is exposed to the outdoors;

"Owner" means the Property Owner, authorized agent, lessee, or occupier of the **Premises** upon which the **Noise** or **Sound** is being located;

"Patio" means an outdoor area that adjoins a **Dwelling** or business that is used for recreational use

"Person" includes a corporation, organization, association, partnership and shall include the **Owner** of a property;

"Premises" means a piece of land and any buildings and structures on it, and includes a place of business, a public **Highway**, private road, lane, pathway and

sidewalk, and any other location or place; and shall include dwelling in a multi-residential building.

“Point of Reception” means any point on the **Premises** where **Sound** originating from other than those **Premises** is received;

“Quiet Zone” means area within 100 m used as a hospital, retirement home, nursing home, senior citizens **Residence**, or other similar use and the distance will be measured from the point of origin.

“Residence” means any property within the municipality which is zoned for residential uses by an applicable **Zoning By-Law** or which is used in whole or in part for human habitation.

“Sound” the sensation produced by stimulation of the organs of hearing by vibrations transmitted through the air or other medium

“Statutory Holiday” includes Boxing Day and any day within the definition of "holiday" in the Retail Business Holidays Act R.S.O. 1990, Ch. R.30, as amended, or any successor thereof;

“Town” means the Corporation of the Town of Newmarket.

“Zone” means the area of a defined land use in the **Town Zoning By-law** passed under the Planning Act, as amended, from time to time;

“Zoning By-law” means a by-law passed under section 34 of the Planning Act that restricts the use of land.

2.0 Administration

2.1 Interpretation:

- (a) A word interpreted in the singular number has a corresponding meaning when used in the plural.
- (b) The imperial measurements found in this By-law in brackets are provided for information only and are intended to be an approximate conversion of the metric measurements. The metric or Standard International measurements shall be deemed to be the

standards established by this By-law and, wherever there is a variance between the metric or SI measurements and the imperial measurements, the metric or SI measurements shall apply.

2.2 This By-law shall be administered by the **Director** of Legislative Services.

3.0 General Prohibitions

3.1 No **Person** shall make, cause or permit the emission of **Noise or Sound**, which **Noise or Sound** is audible at **Point Of Reception** which is likely to disturb the quiet, peace, rest, enjoyment, comfort or convenience of the **Inhabitants** of the **Town**.

3.2 For the purposes of this By-law and without limiting the generality of the foregoing, the following **Noises or Sounds** shall be deemed to be **Noises or Sounds** likely to disturb any **Person** in the **Town**:

- (a) the operation of a **Motor Vehicle** in such a way that tires squeal;
- (b) the operation of any combustion engine or pneumatic device without an effective exhaust or intake muffling device in constant operation;
- (c) the operation of a motor vehicle or a motor vehicle with a trailer resulting in banging, clanking, squealing or other like **Noises or Sounds**;
- (d) 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;
- (e) the operation of an air conditioner, pool pump or filter, heat pump or the like that is not in proper working order;
- (f) the **Noise or Sound** caused by a burglar alarm or similar security device which is permitted to continue for more than ten (10) minutes where there is not an **Emergency**, breach of the peace or similar incident;
- (g) the operation of roof top units that are not in proper working order.

4.0 Hours of Operation By Time and Area

4.1 No **Person** shall make or permit the emission of **Noise** or **Sound** resulting from any act listed in the Schedule A if clearly audible at a **Point Of Reception** located in a prescribed area of the municipality within a prohibited time shown for such an area.

5.0 Exemptions

5.1 This By-law does not apply to **Noise** or **Sound** emitted or caused or permitted in connection with:

- (a) a matter of public necessity or public **Emergency**;
- (b) Measures undertaken by the **Town**, its servants, employees, contractors or agents to carrying out **Town** operations or to operate, maintain or install municipally-owned infrastructure, facilities or the like, or to deliver municipal services;
- (c) a vehicle of the York Region Police Service, provincial or federal police, Central York Fire Services, or York Region Paramedics Services, while in performance of their duty;
- (d) the operation of machines and equipment by or on behalf of the **Town**, including but not limited to snow removal equipment, road cleaning equipment, grass cutting or field maintenance equipment, tree and shrub pruning and mulching equipment, painting machines for crosswalks and **Highways**;
- (e) the collection or disposal of garbage, waste or recyclable material by or on behalf of the **Town**;
- (f) signalling devices utilized as traffic and pedestrian control devices at intersections and crosswalks;
- (g) the operation of equipment in conjunction with **Town Construction** projects, **Town** general maintenance projects, and **Town Emergency** maintenance projects;

- (h) necessary municipal work and **Emergency** work that cannot be performed during regular business hours;
- (i) the discharge of consumer fireworks, display fireworks or pyrotechnic special effects fireworks if such discharge complies with the **Town's** Fireworks By-law;
- (j) bells, chimes, carillons or clocks associated with religious or public buildings uses including schools;
- (k) activities from industrial uses located in lands zoned for industrial use if **Noise** or **Sound** is in accordance with the terms and conditions of a valid Certificate of Approval, provisional Certificate of Approval or other approval issued under the Environmental Protection Act, R.S.O. 1990, c. E.19, where such approval addresses **Noise** or **Sound** as a source of contamination;
- (l) operation of machinery by or on behalf of a public utility where work needs to be done to minimize service interruptions;
- (m) a military or other band in a parade if the parade is operating under written permission of the **Town**;
- (n) the use in a reasonable manner of **Motor Vehicles** and when utilized for the clearing and the removal of snow from roadway on private property; or
- (o) **Construction** or an **Event** for which a valid temporary **Noise** permit has been issued, but only if the terms and conditions of the temporary **Noise** permit are complied with.

5.2 Despite any provision of this By-law, this By-law shall not apply where:

- (a) a **Noise** or **Sound** is from a facility that has been designed, developed, built, operated and maintained in accordance with the terms and conditions of a valid Certificate of Approval, provisional Certificate of Approval or other approval issued under the Environmental Protection Act, R.S.O. 1990, c. E.19, where such approval addresses **Noise** or **Sound** as a source of contamination; or

- (b) an order or permit has been issued under the Environmental Protection Act that addresses the **Noise** or **Sound** as a source of contamination

6.0 Grant of Exemption

6.1 Any **Person** may apply for temporary **Noise** permit for **Construction** or for an **Event** from the provisions of this by-law.

6.2 An application for temporary **Noise** permit shall be made on the form prescribed by the **Town** and shall be accompanied by the non-refundable application fee in the **Fees and Charges** By-law.

6.3 The following power and authority is delegated to the **Director** with respect to **Construction** or an **Event**:

- (a) to issue a temporary **Noise** permit;
- (b) to issue a temporary **Noise** permit with imposed conditions; or
- (c) to refuse to issue, cancel, revoke or suspend a temporary **Noise** permit,

6.4 In making his or her determination under section 6.3, the **Director** shall:

- (a) determine whether the event falls within the definition of **Construction** or **Event**;
- (b) consider any negative effects the issuance of the temporary **Noise** permit may have on neighbouring properties or on the **Town**;
- (c) consider any benefits the issuance of the temporary **Noise** permit may have for neighbouring properties or for the **Town**;
- (d) consider any previous violations of this By-law or temporary **Noise** permit conditions by the **Applicant**; and
- (e) consider anything reasonably and relevant.

- 6.5 The **Director**, may impose conditions on a temporary **Noise** permit, including but not limited to:
- (a) The type of volume of **Noise** or **Sounds** that may be made
 - (b) The times during which **Noise** or **Sounds** may be made
 - (c) The date of expiry of the temporary **Noise** permit(not excess of six months)
 - (d) Notification be prepared to advise the community of the **Noise** or **Sound** that will be occurring.
- 6.6 The **Director** shall circulate the application to the Mayor, Deputy Mayor & Regional Councillor, and Ward Councillors where the **Event** or activity is to be held on a boundary street between Wards.
- 6.7 Any of the above mentioned Councillors may request that the application be “bumped up” to a full Committee of the Whole for consideration.
- 6.8 The **Director** shall issue a permit if all of the following conditions have been met:
- (a) Notification under section 6.6 has either
 - i. Not responded within the date determined by the **Director** of the notice; or
 - ii. Responded indicating that they have no objection to the application being approved.
 - (b) The **Applicant** has complied with all terms and conditions of approval of the last permit issued to them under this section, if any.
 - (c) The **Applicant** has provided the following:
 - i. the name and address of the **Applicant**;
 - ii. the date, time(not in excess of six months) and location of the **Event** or activity for which the temporary **Noise** permit is

- sought and, where applicable the number of people expected to attend;
- iii. the purpose of which the permit is required;
 - iv. a description of any **Noise** or **Sound** or **Construction Equipment** to be used;
 - v. the name, address and telephone number of at least one contact **Person** who will supervise the **Event** or activity;
 - vi. 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 the terms and conditions of the permit;
 - vii. a statement of the steps, if any, planned or presently being taken to minimize the **Noise** or **Sound**;
 - viii. a non-refundable application fee as set out in the **Fees and Charges** by-law; and
 - ix. a temporary **Noise** permit fee set out in the **Fees and Charges** by-law, refundable if the application is not approved.
- (d) A **Noise** permit issued under section 6.2 shall be subject to the following terms and conditions:
- i. No **Noise** or **Sound** or **Construction Equipment** other than the equipment approved under the permit shall be used by the **Applicant**;
 - ii. The **Event** or activity shall be restricted to the approved location; and
 - iii. The permission granted is for the date and times for the **Event** or activity as set out in the permit.

- 6.9 Upon issuance of a temporary **Noise** permit the **Director** shall undertake to notify the York Regional Police Service of the permit and its conditions, if any. Furthermore, notice of all temporary **Noise** permits shall be public posted on the Town of Newmarket website listing:
- (a) the name of the **Applicant**;
 - (b) the location of the **Event** or **Construction**;
 - (c) the date(s) of the **Event** or **Construction**; and
 - (d) conditions imposed, if any.
- 6.10 Where the **Director** has made a decision under Section 6.3 (c) notice in writing shall be given of that decision to the **Applicant** by regular mail to the last known address of that **Person**. The written notice shall:
- (a) set out the grounds for the decision;
 - (b) give reasonable particulars of the grounds;
 - (c) be signed by the **Director**; and
 - (d) an **Applicant** may request a review of the **Noise** permit decision of the **Director** within fourteen (14) calendar days of the decision to the **Appeals Committee**.
- 6.11 The request for review is made by filing a written request for review, on a form approved by the **Director**, to the **Appeals Committee**. The **Appeals Committee** may authorize the **Noise** permit from the provisions of this By-law, provided that in the opinion of the **Appeals Committee** it is established that the requirements in section 6.4 are met.
- 6.12 A decision of the **Appeals Committee** is final and binding.
- 6.13 An application for a **Noise** permit that exceeds 6 months shall be forwarded to **Council**, along with a report by the **Director**, for approval.
- 6.14 A decision of **Council** is final and binding.

7.0 Order

7.1 If an **Officer** is satisfied that this by-law has been contravened, the **Officer** may make an order, known as an Order to Discontinue Activity, 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 discontinue the contravention.

7.2 An Order to Discontinue Activity shall set out:

- (a) the municipal address of the property on which the contravention occurred;
- (b) the date of the contravention;
- (c) the reasonable particulars of the contravention of the by-law; and
- (d) the date by which there must be compliance with the order.

7.3 No **Person** shall contravene an Order to Discontinue Activity.

8.0 Service of Order

8.1 The Order to Discontinue Activity may be served personally on the **Person** to whom it is directed or by registered mail to the last known address of that **Person**, in which case it shall be deemed to have been served on the fifth day after it is mailed.

9.0 Power of Entry

9.1 The **Town** 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) the provisions of this By-law;
- (b) an Order issued under this By-law; or
- (c) an Order made under Section 431 of the Act.

- 9.2 Where an inspection is conducted by the **Town**, the **Person** conducting the inspection may:
- (a) require the production of documents or relevant items for inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies and extracts;
 - (c) require information from any **Person** concerning a matter related to the inspection including their name, address, phone number and identification; and
 - (d) alone or in conjunction with a **Person** possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of inspection.
- 9.3 The **Town** may undertake an inspection pursuant to an Order issued under Section 438 of the Act.
- 9.4 The **Town's** power of entry may be exercised by an employee, inspector or agent of the **Town** or by a member of a police force with jurisdiction, as well by any **Person** under his or her direction.
- 9.5 No **Person** shall hinder or obstruct, or attempt to hinder or obstruct, a Municipal Law Enforcement Officer, or a Police Officer from carrying out inspections of land to ensure compliance with this By-law.
- 9.6 The fees imposed constitute a debt of the **Person** to the **Town**. The **Town** Treasurer may add fees to the tax roll and collect them in the same manner as municipal taxes on any property for which all the **Owners** are responsible for paying the fees.
- 9.7 No **Person** shall hinder or obstruct, or attempt to hinder or obstruct, any **Person** who is exercising a power or performing a duty under this By-law, including carrying out an inspection.

10.0 Rebuttal Presumption

10.1 An **Owner** where the **Noise or Sound** is being emitted from shall be presumed to have permitted, or caused to be permitted, the **Noise or Sound** under this By-law, as the case may be, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.

11.0 Penalties

11.1 Every **Person** who contravenes any provision of this By-law, including an order issued under this By-law, is guilty of an offence.

11.2 Any **Person** who is in contravention of any provision of this By-law, or who fails to comply with an order issued under this By-law shall be deemed to be committing a continuing offence for each day or part of a day that the contravention remains uncorrected

11.3 If an Order has been issued under this By-law, and the order has not been complied with, the contravention of the order shall be deemed to be a continuing offence for each day or part of a day that the order is not complied with.

11.4 Any **Person** who is guilty of an offence under this bylaw shall be subject to the following penalties:

- (a) upon a first conviction, to a fine of not less than three hundred and fifty dollars (\$350.00) and not more than one hundred thousand dollars (\$100,000.00);
- (b) upon a second or subsequent conviction for the same offence, to a fine of not less than five hundred dollars (\$500.00) and not more than one hundred thousand dollars (\$100,000.00);
- (c) upon conviction for a continuing offence, to a fine of not less than five hundred dollars (\$500.00) and not more than ten thousand dollars (\$10,000.00) for each day or part of a day that the offence continues. The total of the daily fines is not limited to one hundred thousand dollars (\$100,000.00);
- (d) upon conviction of a multiple offence, for each offence included in the multiple offence, to a fine of not less than five hundred dollars (\$500.00) and not more than ten thousand dollars (\$10,000.00).

The total of all fines for each included offence is not limited to one hundred thousand dollars (\$100,000.00).

- 11.5 For the purposes of this bylaw, “multiple offence” means an offence in respect of two (2) or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this bylaw.
- 11.6 For the purposes of this bylaw, an offence is a second or subsequent offence if the act giving rise to the offence occurred after a conviction had been entered at an earlier date for the same offence.
- 11.7 Where a **Person** is convicted of an offence under this by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the **Person** convicted.

12.0 Severability

- 12.1 If any sections, section or part of a section of this By-law are found by any Court to be illegal or beyond the power of **Council** to enact, such sections or section or part of a section shall be deemed to be severable and all other sections or parts of sections of this By-law shall be deemed to separate and independent and shall continue in full force and effect.

13.0 Transition

- 13.1 After the date of passing of this by-law, By-law 2004-94, as amended, applies only to properties in respect of which an Order, and then only to such properties until such time as the work required by such Order has been completed or any enforcement proceedings in respect of such Order, has been concluded.
- 13.2 After and including the date this by-law is passed, any noise exemptions that have been granted under By-law 2004-94, as amended, shall remain in effect.

14.0 Repeal

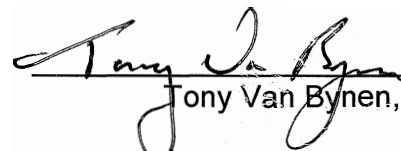
- 14.1 By-law 2004-94 and 2005-158 is hereby repealed.

15.0 Short Title


15.1 This By-law may be referred to as the “**Noise By-law**”.

16.0 Effective Date of By-law

Enacted this 4th Day of December, 2017.



Tony Van Bynen, Mayor



Lisa Lyons, Town Clerk

Schedule A
Prohibitions By Time and Place

Noise Source	Prohibited Times	Prohibited Times Quiet Zones
1. The operation of a car wash	11:00 p.m. to 7:00 a.m. 9:00 a.m. on Saturdays, Sundays and Statutory Holidays	At all times
2. The operation of a waste collection vehicle, waste collection machinery or refuse compacting equipment	9:00 p.m. to 6:00 a.m. 9:00 a.m. on Saturdays, Sundays and Statutory Holidays	7:00 p.m. to 7:00 a.m. 9:00 a.m. on Saturdays, Sundays and Statutory Holidays
3. Loading, unloading, packing, delivering or otherwise handling any container, product or material unless necessary for the maintenance of essential services	9:00 p.m. to 7:00 a.m. 9:00 a.m. on Saturdays, Sundays and Statutory Holidays	7:00 p.m. to 7:00 a.m. 9:00 a.m. Saturdays, Sundays and Statutory Holidays
4. The operation of any powered device used in the servicing, maintenance or repair of property except devices driven by muscular power	9:00 p.m. to 7:00 a.m. 9:00 a.m. Saturday, Sundays and Statutory Holidays	7:00 p.m. to 9:00 a.m. 9:00 a.m. Saturday, Sundays and Statutory Holidays
5. The operation of a lawn mower or other equipment or machinery used for yard maintenance purposes which is run by electricity or gasoline, including without limitation, whipper snippers, leaf vacuums, chain saws, hedge trimmers and the like	9:00 p.m. to 7:00 a.m. 9:00 a.m. Saturday, Sundays and Statutory Holidays	7:00 p.m. to 7:00 a.m. to 9:00 a.m. Saturday Sundays and Statutory Holidays
6. The operation of any snow blower and or powered device used in snow removal.	9:00 p.m. to 6:00 a.m.	9:00 p.m. to 7:00 a.m.

7. The operation of any Construction Equipment or the conduct of any alteration or repair of any building	8:00 pm to 7:00 am 9:00 am Saturday and after 5 pm on Saturday Sundays and Statutory Holidays	7:00 pm to 7:00 am 9:00 am Saturday and after 5 pm on Saturday, Sundays and Statutory Holidays
8. The operation of a dirt bike, all-terrain cycle, snowmobile, go-cart, dune buggy or like Conveyance	7:00 p.m. to 7:00 a.m. 9:00 a.m. Saturdays, Sundays and Statutory Holidays	At all Times
9. Yelling, shouting, hooting, whistling, singing	11:00 pm to 7:00 am 9:00 am Sundays	At all Times
10. The operation of any construction vehicle or Construction Equipment in connection with Infill Housing .	8:00 pm to 7:00 am 9:00 am Saturday and after 5 pm on Saturday, Sundays & Statutory Holidays	7:00 pm to 7:00 am 9:00 am Saturday and after 5 pm on Saturday, Sundays and Statutory Holidays
11. The venting or release of steam, the operation of a generator or air filtrations system, Noise or Sound from grinding, milling, the operation of machinery, or the like	9:00 p.m. to 7:00 a.m. 9:00 a.m. on Saturdays, Sundays and Statutory Holidays	7:00 p.m. to 7:00 a.m. to 9:00 a.m. on Saturdays, Sundays and Statutory Holidays
12. The operation of any Motor Vehicle engaged in the plowing of or removal of snow, unless otherwise permitted under this By-law	12:00 midnight to 6:00 a.m.	12:00 midnight to 7:00 a.m.