

The Corporation of the City of Kenora

By-Law Number 122 - 2021

A Bylaw to Regulate Noise in the City of Kenora

Whereas sections 8, 9 and 10 of the *Municipal Act, 2001* authorize The Corporation of the City of Kenora (the “City”) to pass by-laws necessary or desirable for municipal purposes, and, in particular, paragraphs 5, 6, 8 and 9 of subsection 10(2) authorize by-laws respecting the economic, social and environmental well-being of the municipality; the health, safety and well-being of persons; the protection of persons and property; and animals; and

Whereas section 129 of the *Municipal Act, 2001* authorizes the City to prohibit and regulate with respect to the making of noise and, in particular, to prohibit noise unless a permit is obtained from the City and to impose conditions for obtaining, continuing to hold and renewing any such permit; and

Whereas it is in the public interest to reduce noise levels in the City in order to promote and protect the health, safety, welfare and the peace and quiet of persons in the City;

Now Therefore the Council of the City enacts as follows:

1.0 DEFINITIONS

1.1. In this bylaw,

“**City**” means The Corporation of the City of Kenora or, where referring to geographic area, the City of Kenora;

“**City Clerk**” means the clerk of The Corporation of the City of Kenora, or her or his designate;

“**construction**” includes erection, alteration, repair, dismantling, demolition, structural maintenance, land clearing, earth-moving, grading, excavating, the laying of pipe and conduit whether above or below ground level, road building, application of concrete, 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 with these activities;

“**construction equipment**” includes any equipment, machine, device or vehicle designed or intended to be used in construction or material handling including, but not limited to, hand tools, power tools, air compressors, pile drivers, pneumatic or hydraulic tools, bulldozers, tractors, excavators, trenchers, cranes, derricks, loaders, scrapers, pavers, generators, off-highway haulers, trucks, ditching machines, compactors and rollers, pumps, concrete mixers, graders and other material handling equipment;

“**emergency vehicle**” includes an ambulance, fire department vehicle, police services vehicle and any other motor vehicle being used to respond to an emergency;

“event” includes an exhibition, concert, festival, race, parade, circus, sporting event, wedding, social event or other activity held within the City;

“government work” includes construction, rehabilitation or maintenance work conducted by the City, the Province of Ontario or the Government of Canada or by any of their agencies, contractors or agents when actually engaged in the work;

“motor vehicle” includes an automobile, bus, truck, motorcycle, motor assisted bicycle and any other vehicle propelled or driven other than by muscular power;

“municipal service vehicle” means a vehicle operated by or on behalf of the City, or a contractor or agent of the City, while the vehicle is being used for the construction, repair or maintenance of a highway, including the clearing and removal of snow, the construction, maintenance or repair of a municipal utility, the collection or transportation of waste, or any other City purpose;

“noise” means sound, particularly when it is of a volume or nature at a point of reception that it is unwanted, excessive, unusual, unpleasant or loud;

“point of reception” means any premises where sound originating elsewhere is received;

“premises” includes land, whether public or private, and any building or structure or part thereof on it, and, without limitation, includes a place of residence and a place of business;

“unreasonable noise” means noise that, in the circumstances, disturbs or is likely to disturb the quiet, peace, rest, enjoyment, comfort or convenience of a reasonable person in the neighbourhood or in the vicinity;

2.0 PROHIBITED NOISE

- 2.1. No person shall make, cause or permit unreasonable noise in any public or private place in the City of Kenora.
- 2.2. Without limiting the generality of section 2.1, noise from the activities listed in Schedule “A” that is received at a point of reception during the time periods specified in Schedule “A” is deemed to be unreasonable noise.

3.0 EXEMPTIONS

- 3.1. Despite any other provision of this By-law, it shall be lawful to emit or cause or permit the emission of sound from:
 - a) bells, horns, whistles or sirens required for the purposes of public safety, including sirens when operated by police services, fire and paramedic services or bells, horns or whistles operated by rail or transit services;

- b) sound from emergency vehicles and measures undertaken for the immediate health, safety or welfare of persons under emergency circumstances;
- c) government work;
- d) bells or chimes or any other sound emitted primarily for religious activities associated with any church, chapel, meeting house or religious service;
- e) an activity for which a permit has been issued pursuant to sections 4.9 and 4.10, and the conditions of the permit are complied with;
- f) a “normal farm practice” as defined in the *Farming and Food Production Protection Act*, 1998, S.O. 1998, c. 1, as amended, and carried on as part of an “agricultural operation”, also as defined in *Farming and Food Production Protection Act*, 1998, S.O. 1998, c. 1, as amended; and
- g) an event that is organized by the City or is expressly authorized, in writing, by the City;

4.0 EXEMPTION PERMITS

- 4.1.** Any person may make an application to the City for an exemption from any of the provisions of this By-law.

The Process

- 4.2.** An application for an exemption from any of the provisions of this By-law shall be made to the City Clerk and shall be made at least thirty (30) days prior to the first date for which the permit is sought.
- 4.3.** The City Clerk may waive the thirty (30) day notice requirement provided for in section 4.2 of this By-law where it appears, in her or his discretion, just, appropriate and reasonable to do so.
- 4.4.** Without limiting the City Clerk’s authority to prescribe the form and content of an application for an exemption permit, an application for an exemption from the provisions of this By-law shall be made in writing, and shall include the following:
- a) the applicant’s name, address and contact information, including a contact email address;
 - b) the name, address and contact information, including email contact information, for the person(s) who will be supervising the event or other activity for which the exemption is being sought;
 - c) a description of the nature of the event or other activity, including whether it will be a public or private event or activity, and the proposed source of the noise related to such event or activity;

- d) the applicant's reason for requesting the exemption;
- e) the duration of the event or other activity and, more particularly, whether the request relates to an event or activity that is a one-time event or activity or one that will be occurring on multiple occasions and/or on multiple dates;
- f) the date(s), time(s) and locations(s) of the event or other activity for which the exemption is being sought;
- g) the applicable application fee; and
- h) any other information that the City Clerk, in her or his discretion, deems relevant in order to consider the exemption request.

4.5. The City Clerk may waive any applicable application fees for an exemption permit where it appears, in her or his discretion, just, appropriate and reasonable to do so.

4.6. The City Clerk may if, in her or his discretion, it is in the public interest to do so:

- a) require the publication of notice to the public by the applicant in an online news source, a newspaper of general circulation or otherwise as directed by the City Clerk;
- b) post a notice of any application for an exemption permit on the City's Website.

4.7. In considering an application for an exemption permit, the overriding consideration shall be the impact, as determined by the City Clerk in her or his discretion, on the public interest if the exemption request is granted.

4.8. Without limiting the generality of section 4.7, the City Clerk shall have regard to all of the following when considering a request for an exemption permit:

- a) any negative effects that the issuance of the permit may have on persons in the neighbourhood or the public generally;
- b) any benefits that the issuance of the permit may have on persons in the neighbourhood or the public generally;
- c) any previous violations of this By-law or any exemption permit by the applicant or any person on whose behalf the current exemption application has been made; and
- d) anything else that the City Clerk deems relevant in her or his consideration of whether it would not be contrary to the public interest to issue the requested exemption permit.

- 4.9.** The City Clerk, after reviewing and considering an exemption permit request, may, in her or his discretion:
- a) grant the requested exemption, with or without conditions;
 - b) refuse to grant the requested exemption; or
 - c) grant the requested exemption to a greater or lesser extent, with or without conditions.
- 4.10.** Without limiting the generality of section 4.9, the conditions that the City Clerk may impose on an exemption permit, include, but are not limited to, conditions relating to:
- a) the event or other activity that may generate the noise;
 - b) the specific part of the property on which the noise may be made;
 - c) the type and volume of the noise that may be made;
 - d) the times during which noise may be made;
 - e) the period of time during which the exemption permit is in effect; and
 - f) the monitoring of the noise by a qualified person and, if required, the filing of an interim and/or final report to the City Clerk respecting the event or other activity;
- 4.11.** Where the City Clerk refuses to grant an exemption or an exemption is granted with conditions, or a lesser exemption is granted, the applicant may appeal the City Clerk's decision to City Council by filing with the City Clerk a written notice of appeal within twenty (20) days of the date that the City Clerk's decision on the application was made.
- 4.12.** After receipt of a properly made notice of appeal, the City Clerk shall notify the applicant of the appeal hearing date, once established.
- 4.13.** If the Applicant does not attend on the hearing date for the appeal, City Council may deem the appeal to be abandoned or may consider it in the absence of the applicant and the applicant shall not be entitled to further notice of the proceeding.
- 4.14.** Upon consideration of an appeal, City Council shall have regard for the criteria established in sections 4.7 and 4.8 of this By-law and may uphold or vary, with or without conditions, the decision made by the City Clerk.
- 4.15.** No person who receives an exemption permit under this By-law shall fail to comply with all terms and conditions contained in such permit, including, without limitation, any term specifying the date and period of time during which the permit is effective.

- 4.16. Any breach of the terms or conditions of an exemption permit, or any error or omission in the information provided to the City pursuant to section 4.4 of this By-law shall immediately, and without notice, render the exemption null and void.

5.0 NOTICE

- 5.1. Any notice, decision or order made by the City under this By-law may be served:
- a) by email to the last known email address of the person being served, in which case service shall be deemed to have been made on the day of sending, unless the document was sent after 5 pm, in which case service shall be deemed to have been made on the following day;
 - b) by registered mail to the last known address of the person being served, in which case it shall be deemed to have been given on the third day after it was mailed; or
 - c) with respect to an order to be served on an owner of real property, by placing a placard stating the terms of the order in a conspicuous place upon or near the real property to which the order relates, in which case service shall be deemed to have been made on the day of posting.

6.0 ENFORCEMENT, OFFENCES AND PENALTIES

Orders Made Under Sections 444 and 445 of the *Municipal Act, 2001*

- 6.1. Any person who contravenes an order made under section 444 of the *Municipal Act, 2001* respecting a contravention of this By-law is guilty of an offence.
- 6.2. Any person who contravenes an order made under section 445 of the *Municipal Act, 2001* respecting a contravention of this By-law is guilty of an offence.

General Offence Provision

- 7.1. Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction is subject to a fine or other penalty as provided for in the *Provincial Offences Act*.

REPEAL

- 8.1. By-law No. 27-2007 of the City is hereby repealed.

EFFECTIVE DATE

- 9.1. This By-law shall come into force and take effect on the final passing thereof.

By-Law Read a First and Second Time this 21st day of September, 2021

By-Law Read a Third and Final Time this 21st day of September, 2021

The Corporation of the City of Kenora:-

.....
Daniel Reynard, Mayor

.....
Heather Pihulak, City Clerk

SCHEDULE "A" TO BY-LAW NUMBER 122-2021

NOISES THAT ARE DEEMED TO BE UNREASONABLE

ACTIVITY	PROHIBITED TIME OF DAY (All times are local times)
<p>1. Persistent barking, calling or whining or other similar persistent noisemaking by any domestic pet or any other animal kept or used for any purpose other than a "normal farm practice" as defined in the <i>Farming and Food Production Protection Act</i>, 1998, S.O. 1998, c. 1, as amended, and carried on as part of an "agricultural operation", also as defined in the <i>Farming and Food Production Protection Act</i>, 1998, S.O. 1998, c. 1, as amended.</p>	<p align="center">Prohibited AT ALL TIMES</p>
<p>2. The use of a siren, horn, whistle, alarm, bell, gong or other warning device, unless the sounding of the warning device is for a necessary purpose and for a reasonable period of time;</p>	<p align="center">Prohibited AT ALL TIMES</p>
<p>3. The detonation of fireworks.</p>	<p align="center">Prohibited AT ALL TIMES except 7:00 p.m. to 11:00 p.m. on New Year's Day, Victoria Day, Canada Day, Labour Day, New Year's Eve, and the U.S. Independence Day.</p>
<p>4. The detonation of explosive devices used in construction.</p>	<p align="center">Prohibited between 9:00 p.m. and 7:00 a.m.</p>
<p>5. The operation of an internal combustion engine without an effective muffler.</p>	<p align="center">Prohibited AT ALL TIMES</p>

<p>6. The operation of any tool which generates sound that is loud, unpleasant or otherwise unreasonable, including, without limitation, a compressed air tool, hammer, saw, nail gun, lawn mower, leaf blower, staple gun, hedge trimmer or drill.</p>	<p>Prohibited between 9:00 p.m. and 7:00 a.m.</p>
<p>7. The operation of construction equipment.</p>	<p>Prohibited between 9:00 p.m. and 7:00 a.m.</p>
<p>8. The undertaking of construction work.</p>	<p>Prohibited between 9:00 p.m. and 7:00 a.m.</p>
<p>9. Noise generated by the operation of speakers or any other sound amplification device that is loud, unpleasant or otherwise unreasonable</p>	<p>Prohibited AT ALL TIMES</p>
<p>10. Yelling, shouting, whistling or playing of musical instruments</p>	<p>Prohibited between 9:00 p.m. and 7:00 a.m.</p>