

By-law 2018-29

A By-law of the City of Greater Sudbury Regulating Noise

Whereas Sections 8, 9 and 10 of the *Municipal Act, 2001* authorize a municipality to pass by-laws necessary or desirable for municipal purposes, and in particular, paragraphs 5, 6, 7, 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 and the protection of Persons and property, including consumer protection;

And Whereas subsection 8(3) of the *Municipal Act, 2001* provides that a by-law under Section 10 of that Act respecting a matter may regulate or prohibit and, as part of the power to regulate or prohibit respecting the matter, may require a person to do things respecting the matter or may provide for a system of licences respecting the matter;

And Whereas Section 425 of the *Municipal Act, 2001*, authorizes a municipality to pass by-laws providing that a person who contravenes a by-law of the municipality passed under that Act is guilty of an offence;

And Whereas the *Municipal Act, 2001* further authorizes a municipality amongst other things, to delegate its authority, to impose fees or charges, to provide for inspections, and to make orders to discontinue activity or to do work;

And Whereas Council of the City of Greater Sudbury deems it advisable to enact a by-law providing for the reduction of noise so as to preserve, protect and promote public health safety, welfare, peace and quiet of the inhabitants of the City;

Now Therefore Council of the City of Greater Sudbury hereby enacts as follows:

Part 1 – Interpretation

Terminology

1. In this By-law:

“All-terrain Vehicle” means an off-road vehicle that:

- (a) has four wheels, the tires of all of which are in contact with the ground;
- (b) has steering handlebars;
- (c) has a seat that is designed to be straddled by the driver; and

- (d) is designed to carry,
 - (i) a driver only and no passengers, or
 - (ii) a driver and only one passenger, if the vehicle,
 - (A) has one passenger seat that is designed to be straddled by the passenger while sitting facing forward behind the driver, and
 - (B) is equipped with foot rests for the passenger that are separate from the foot rests for the driver;

“City” means the municipal corporation of the City of Greater Sudbury or the geographic area of the City of Greater Sudbury, as the context requires;

“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, 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 therewith;

“Construction Equipment” means any equipment or device designed and intended for use 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 and scrapers, pavers, generators, off-highway haulers or trucks, ditchers, compactors and rollers, pumps, concrete mixers, graders, or other material handling equipment;

“Hearing Committee” means the Hearing Committee authorized pursuant to the City’s Procedure By-law, as amended or replaced from time to time;

“Highway” includes a common and public highway, street, avenue, laneway, parkway, driveway, square, place, bridge, viaduct or trestle, designed and intended for, or used by, the general public for the passage of vehicles;

“Motor Vehicle” includes an automobile, Motorcycle, motor assisted bicycle unless otherwise indicated in the *Highway Traffic Act*, and any other Vehicle propelled or driven otherwise by muscular power, but does not include a streetcar or other Motor Vehicles running upon rails, or a Motorized Snow Vehicle, traction engine, farm tractor, self-propelled implement of husbandry or road-building machine within the *Highway Traffic Act*;

“Motorcycle” means a self-propelled Vehicle having a seat or saddle for the use of the driver and designed to travel on not more than three (3) wheels in contact with the ground, and includes a motor scooter, but does not include a motor assisted bicycle;

“Motorized Snow Vehicle” means a self-propelled vehicle designed to be driven primarily on snow;

“Municipal By-Law Enforcement Officer” means any Person appointed by Council of the City of Greater Sudbury as a Municipal By-law Enforcement Officer for the enforcement of this By-law or all City by-laws and includes a duly sworn member of the Greater Sudbury Police Service;

“Person” includes an individual, a sole proprietorship, a partnership, an unincorporated association, a trust and a corporation;

“Permit Issuer” means the employee of the City holding the position of Manager, Security and By-law Services from time to time or successor position, and includes his or her authorized designate;

“Point of Reception” means any point on the premises of a Person where sound is received;

“Sound Amplifying System” means any system of loudspeakers, amplifiers, microphones or reproducers or any combination of such equipment, including electronic devices or electro-mechanical transducers, used in the reproduction or amplification of music, speech or other sounds;

“Sound Reproduction Device” means a device intended primarily for the production or reproduction of sound including, but not limited to, any musical instrument, radio receiver, television receiver, tape recorder, phonograph or Sound Amplifying System;

“Special Event” includes an event of significant community profile which benefits the entire community; and a community celebration of special importance that will benefit the entire community; and an event where the public gather to participate in athletic, social, religious, cultural, recreational, educational or other activities with community objectives;

“User Fee By-law” means the City’s By-law 2017-222 being a By-law to Establish Miscellaneous User Fees for Services Provided by the City of Greater Sudbury, as amended or replaced from time to time; and

“Vehicle” includes a Motor Vehicle, trailer, traction engine, farm tractor, road-building machine, Motorcycle, bicycle and any Vehicle drawn, propelled or driven by any kind of power, including muscular power, but does not include a motorized snow Vehicle, or the cars or electric or steam railways running only upon rails.

Part 2 – General

Interpretation

- 2.-(1) Whenever this By-law refers to a Person or thing with reference to gender or the gender neutral, the intention is to read the By-law with the gender applicable to the circumstances.
- (2) References to items in the plural include the singular, as applicable.
- (3) The words “include”, “including” and “includes” are not to be read as limiting the phrases or descriptions that precede them. Any examples provided are intended to be representative examples and not intended to be an exhaustive list.
- (4) Headings are inserted for ease of reference only and are not to be used as interpretation aids.
- (5) Specific references to laws in the By-law are printed in italic font and are meant to refer to the current laws applicable with the Province of Ontario as at the time the By-law was enacted, as they are amended, restated or replaced from time to time.
- (6) The obligations imposed by this By-law are in addition to obligations otherwise imposed by law or contract.
- (7) Terms with capitals shall be read with the meaning in Section 1, and other words shall be given their ordinary meaning.
- (8) References to times of the day in this By-law are references to time in effect in the City of Greater Sudbury.

Severability / Conflict

- 3.-(1) If any section, subsection, part or parts of this By-law is declared by any court of law to be bad, illegal or ultra vires, such section, subsection, part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

(2) Nothing in this By-law relieves any Person from complying with any provision of any Federal or Provincial legislation or any other By-law of the City.

(3) Where a provision of this By-law conflicts with the provisions of another By-law in force in the City, or any of the provisions of any federal or provincial states or regulation, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail.

Administration/ Delegation

4.-(1) The administration of this By-law is assigned to the Manager, Security and By-law Services who is delegated the authority to:

- (a) make all decisions and determinations required of the Permit Issuer under this By-law;
- (b) perform all administrative functions, referred to herein and those incidental to and necessary for the due administration and implementation of this By-law; and
- (c) establish and amend from time to time, such protocols, procedures and standards and such forms and documents, as the Permit Issuer may determine are required to implement and administer this Bylaw.

(2) The Manager, Security and By-law Services may delegate the performance of any one or more of his or her functions under this By-law to one or more persons from time to time as the occasion requires and may impose conditions upon such delegation and may revoke any such delegation. The Manager, Security and By-law Services may continue to exercise any function delegated during the delegation.

Part 3 - Prohibitions

Unusual Sound

5.-(1). Except as otherwise specifically provided for in this By-law, no Person shall make or cause any unusual sound or authorize the making or causing of any unusual sound, or authorize or permit the continuation of any unusual sound, if the unusual sound, at the Point of Reception, is likely to disturb the inhabitants of the City.

(2) Without limiting the generality of subsection 5(1), of this By-law, each of the following shall be deemed to make or cause an unusual sound that is likely to disturb the inhabitants of the City, if heard at the Point of Reception:

- (a) the operation of an engine, motor, Construction Equipment or pneumatic device without an effective exhaust, intake-muffling or other sound attenuation device, which device is in good working order and in constant operation;
- (b) persistent yelling, shouting, screaming, whistling, hooting or singing;
- (c) the sounding of any alarm, bell, horn, siren or other warning device for an unnecessary or unreasonable period of time;
- (d) the operation of any air conditioner, heat pump, compressor, condenser, chiller, cooling tower or similar device, which is not in good working order;
- (e) the operation of any exhaust fan, exhaust system, intake fan, generator, including a combustion exhaust of a high efficiency furnace, which is not in good working order; and
- (f) the operation of any pump, filtration system or similar device for an outdoor swimming pool, hot tub, spa fountain or water feature, which is not in good working order.

Prohibited – All Times – If Disturbs

6. Except as otherwise specifically provided for in this By-law no Person shall at any time, make, cause or permit any sound from any of the following activities, if the sound, at the Point of Reception, is of a type likely to disturb the inhabitants of the City:

- (a) the operation of a Motor Vehicle, All Terrain Vehicle or Motorized Snow Vehicle other than on a Highway; or
- (b) the sound from or created by any Sound Reproduction Device.

Prohibited During Fixed Hours, If Disturbs

7. Except as otherwise specifically provided for in this By-law no Person shall at any time, make, cause or permit any sound from any of the following activities, during the hours from 9:00 p.m. of one day and 7:00 a.m. of the next following day, if the sound, at the Point of Reception is of a type likely to disturb the inhabitants of the City:

- (a) the loading, unloading, delivering, packing, unpacking or otherwise handling of any containers, products or materials, unless necessary for the maintenance of essential services or the preservation of perishable goods;

- (b) the operation of any manufacturing business;
- (c) the operation of any auto repair shop; or
- (d) Construction.

Prohibited Fixed Hours

8. Except as otherwise specifically provided for in this By-law no Person shall at any time, make, cause or permit of any sound from any of the following activities, during the hours from 9:00 p.m. of one day and 7:00 a.m. of the next following day;

- (a) the operation of Construction Equipment or a Vehicle or other engine or machine used in connection with Construction; or
- (b) the use or operation of a lawnmower, chain-saw, leaf-blower or other such noise-generating tool or device, other than a snow-blower.

Application- Multiple Prohibitions

9. Where a source of sound is subject to more than one prohibition in this By-law the most restrictive provision shall prevail.

Part 5 – Exemptions / Permits

Exemptions

10. Despite any other provision in this By-law, this By-law shall not apply to sounds arising from:

- (a) the use of bells or chimes normally associated with religious buildings or uses;
- (b) the operation of signalling devices utilized as traffic and pedestrian control devices at intersections and crosswalks;
- (c) the operation of Vehicles and equipment utilized for the clearing and removal of snow from public and private property;
- (d) the operation of Vehicles, including the sounding of sirens, of the Greater Sudbury Police Services, provincial or federal police, the Greater Sudbury Fire and Paramedic Services, while in the performance of their duty;
- (e) a matter of public necessity or public emergency;

- (f) any activity that is integral to the operation of any railway or airport within the legislative authority of the federal or provincial government;
- (g) the discharge of family fireworks or exhibition fireworks if such discharge complies with the City's Fireworks By-law 2011-100, as amended or replaced from time to time;
- (h) activities from industrial uses if 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 sound as a source of contamination;
- (i) the operation of machinery by or on behalf of a public utility where work needs to be done to minimize service interruptions;
- (j) the use of Sound Reproduction Equipment:
 - (i) as part of a Special Event, provided a temporary noise permit has issued pursuant to this By-law authorizing such sound and the sound is within the permitted hours and conditions of the temporary noise permit; or
 - (ii) within an enclosed structure that is licenced under the *Liquor Licence Act*, R.S.O. c. L.19, as amended or replaced, during the times that the Liquor Licence permits the sale of alcoholic beverages;
- (k) the operation of machines and equipment by or on behalf of the City for municipal activities or purposes, including but not limited to the operation of machines and equipment for the purpose of: collection or disposal of garbage, waste, compostable or recyclable materials; Highway clearing or maintenance; grass cutting or field maintenance equipment; tree or shrub pruning or mulching; painting of crosswalks and Highways;
- (l) the operation of Construction Equipment associated with the rehabilitation, reconstruction, general maintenance or emergency maintenance of City Highways;
- (m) despite 7(d) Construction conducted during the hours and in accordance with any conditions as set out in a temporary noise permit issued under this By-law; and

- (n) despite 8(a) the operation of Construction Equipment or a Vehicle or other engine or machine being used in connection with Construction during the hours and in accordance with any conditions as set out in a temporary noise permit issued under this By-law.

Permits

11.(1) Any Person may apply for a temporary noise permit to authorize the making of sound arising from one of the following activities:

- (a) Construction; or
- (b) the use of Sound Reproduction Equipment as part of a Special Event.

(2) An applicant for a temporary noise permit under subsection 11(1) shall submit to the Permit Issuer, at least twenty (20) days prior to the commencement of the activity for which the temporary noise permit is sought;

- (a) an application in writing, in the form determined by the Permit Issuer from time to time and including:
 - (i) the name and contact information of the applicant;
 - (ii) a description of the source of the sound and resulting noise in respect of which the temporary noise permit is sought;
 - (iii) the location of the Special Event or Construction activity for which the temporary noise permit is sought;
 - (iv) the provision or provisions of this by-law for which the temporary noise permit is sought and the terms being requested;
 - (v) the rationale for the temporary noise permit;
 - (vi) the days and hours for which the exemption is sought; and
 - (vii) the name and contact information of the contact Person or Persons who will be supervising the activities for which the temporary noise permit is sought and who will be available to address concerns raised by Persons with in the area where the noise is heard;

- (b) other information or documentation requested by the Permit Issuer to assist him or her to assess the application; and
- (c) any application fee established in accordance with the User Fee By-law.

(2) The application fee shall be non-refundable.

(3) The Permit Issuer may circulate the application to other City departments, affected ward Councillors and the Greater Sudbury Police Services for input.

Refusal of Permit

12.-(1) The Permit Issuer may refuse to issue the temporary noise permit if:

- (a) the application was not submitted in the time frame provide for in Section 11;
- (b) the application is not complete;
- (c) in the opinion of the Permit Issuer, the event or activity for which the temporary noise permit is sought does not qualify for a temporary noise permit in accordance with subsection 11(1); or
- (d) after due consideration of the factors in paragraph 13(1)(b), it is the opinion of the Permit Issuer that it is not appropriate to issue a temporary noise permit.

(2) The Permit Issuer shall notify the applicant of:

- (a) the decision and particulars of the reason for the refusal to issue or renew the temporary noise permit; and
- (b) any right to request a hearing before the Hearing Committee and the process to do so.

Issuance of Permit

13.-(1) The Permit Issuer may issue a temporary noise permit:

- (a) if there are no grounds to refuse the application pursuant to paragraphs 12(1)(a), (b) or (c);
- (b) in the opinion of the Permit Issuer it is appropriate to issue the temporary noise permit after a due consideration of:

- (i) any negative effects the issuance of the temporary noise permit may have on neighbouring properties or on the City;
 - (ii) any benefits the issuance of the temporary noise permit may have for neighbouring properties or for the City;
 - (iii) any previous violations of this By-law;
 - (iv) any previous violations by the applicant of conditions of a temporary noise permit;
 - (v) any input received pursuant to subsection 11(3); and
 - (vi) any other matter the Permit Issuer reasonably considers relevant;
- (2) In issuing a temporary noise permit, the Permit Issuer:
- (a) shall identify:
 - (i) the location and type of activity authorized;
 - (ii) the type of sounds that are authorized;
 - (iii) the days and times during which the sound is authorized; and
 - (b) may impose conditions suitable to the circumstances.

Permit

14.-(1) A temporary noise permit is issued by the Permit Issuer signing and dating the temporary noise permit.

(2) The Permit Issuer shall deliver the temporary noise permit to the applicant and notify the applicant of any right to request a hearing before the Hearing Committee and the process to do so.

(3) A temporary noise permit issued under this By-law, if not earlier revoked, shall expire on the date set out in the temporary noise permit.

Revocation of a Permit

15. The Permit Issuer may revoke a temporary noise permit issued under this By-law if, in the opinion of the Permit Issuer, there is a failure to comply with the terms and conditions of the temporary noise permit. Notice of the revocation may be given in writing, or may be given orally

and followed by notice in writing. Written notice may be addressed to the applicant at the address in the application for the permit. Notice is deemed effective immediately, if given orally and deemed effective the fifth day after mailing, if the notice is given only by mail, whether or not the notice is actually received.

Offence

16. No Person to whom a temporary noise permit permitting the making of sound contrary to this By-law has been issued, shall make, cause or permit the making of sound or the continuation of any sound contrary to the terms and conditions of the temporary noise permit.

Appeal to Hearing Committee

17.-(1) The applicant for a temporary noise permit under this By-law may appeal to the Hearing Committee:

- (a) a refusal to issue a temporary noise permit where such refusal is based on the exercise of the Permit Issuer's discretion under paragraph 12(1)(d); or
 - (b) any condition imposed by the Permit Issuer as a condition of the temporary noise permit.
- (2) An applicant entitled to request a hearing before the Hearing Committee pursuant to subsection 17(1), may apply in writing to the Permit Issuer for a hearing and shall submit with such application, an administrative fee in an amount determined in accordance with the User Fee By-law.
- (3) On receipt of a request for a hearing, the Permit Issuer shall review the request to determine if the request is based on grounds provided for in this By-law and that the administrative fee in an amount determined in accordance with the User Fee By-law has been paid and if same is in order, shall request the City Clerk to set a date, time and place for the hearing.
- (4) When asked to do so by the Permit Issuer, the City Clerk shall set a date, time and place for a hearing of the appeal before the Hearing Committee and give notice of the date, time and place of the hearing to the applicant for the hearing.
- (5) On the date and time scheduled for the hearing, or such later date as may be set or consented to by the Hearing Committee, the Hearing Committee may hear and view any evidence provided by the Permit Issuer and by the applicant for the hearing and may:

- (a) uphold the decision to refuse to issue the temporary noise permit, based on any grounds open to the Permit Issuer or may authorize the issuance of the temporary noise permit and set any conditions for the issuance of the temporary noise permit in accordance with subsection 13(2); or
 - (b) uphold, remove, alter or add any condition of the temporary noise permit based on any grounds open to the Permit Issuer.
- (6) Upon the Hearing Committee reaching a decision, the City Clerk shall give notice of the decision in writing to the applicant for the hearing, and the Permit Issuer shall, where appropriate, issue the temporary noise permit as directed by the Hearing Committee or issue an amended temporary noise permit reflecting the conditions imposed by the Hearing Committee.
- (7) Any conditions of a temporary noise permit issued by the Permit Issuer remain in effect unless and until altered or removed by the Hearing Committee.
- (8) The onus is on the applicant for a temporary noise permit to provide evidence to the satisfaction of the Permit Issuer that the applicant is entitled to the issuance of the temporary noise permit or to have any condition of the temporary noise permit altered or removed.

Enforcement – No Obstruction, Etc.

18.-(1) This By-law may be enforced by any Municipal By-law Enforcement Officer.

(2) No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Person exercising a power or performing a duty under this By-law.

Offence

19.-(1) Every Person who contravenes any of the provisions of this By-law and any director or officer of a corporation who knowingly concurs in such contravention is guilty of an offence as provided for in subsection 429(1) of the *Municipal Act, 2001*, and all such offences are designated as continuing offences as provided for in subsection 429(2) of the *Municipal Act, 2001*.

(2) A Person who is convicted of an offence under this by-law is liable, for each day or part of a day that the offence continues to a maximum fine of \$10,000.00 and the total of all daily fines for the offence is not limited to \$100,000.00 as provided for in subsection 429(3)2 of the *Municipal Act, 2001*.

(3) The making of a false or intentionally misleading statement or representation in any agreement or request for permission provided for by this By-law shall be deemed to be a violation of the provisions of this By-law.

Prohibition Order

20. When a Person has been convicted of an offence under this by-law, the Superior Court of Justice of any court of competent jurisdiction thereafter may, in addition to any penalty imposed on the Person convicted, issue an order

- (a) prohibiting the continuation or repetition of the offence by the Person convicted;
and
- (b) requiring the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

Confidential Information

21.-(1) All information submitted to and collected by the City, will, except as otherwise provided in this Section, be available for disclosure to the public in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 (MFIPPA).

(2) In the event that any person in submitting information to the City or to the Manager, Security and By-law Services in any form, as required under this By-law, where such information is confidential or proprietary or otherwise may be exempt from disclosure under the MFIPPA, the person submitting the information shall so identify that information upon its submission to the City or the Manager, Security and By-law Services and shall provide sufficient details as to the reason for its purported exemption from disclosure.

Short Title

22. This By-law shall be known as the "Noise By-law".

Repeal

23.-(1) The following by-laws and portions of by-laws of former municipalities are repealed:

- (a) By-laws 76-19, 90-5 and 99-42 of the former Town of Capreol;
- (b) By-law 72-25 of the former Township of Balfour;
- (c) By-law 567 and 66-42 of the former Town of Chelmsford;

- (d) By-law 246 of the former Town of Copper Cliff;
- (e) By-law 72-2 of the former Township of Falconbridge;
- (f) By-law 271 of the former Town of Levack;
- (g) By-law 857 of the former Township of McKim;
- (h) By-law 92-13 and 92-26 of the former Town of Nickel Centre;
- (i) By-law 784 of the former United Townships of Neelon and Garson;
- (j) By-law 92-10 of the former Town of Onaping Falls;
- (k) By-law 67-15 of the former Township of Rayside;
- (l) By-laws 74-20, 78-13 and 82-14 of the former Town of Rayside-Balfour;
- (m) By-laws 12, 2602, 3115, 66-183, 67-15, 69-48, 73-101, 84-25 and Chapter 776 of the Municipal Code of the former City of Sudbury;
- (n) By-law 85-33 of the former Town of Valley East;
- (o) By-law 93-424 of the former Town of Walden.


(2) Where a by-law is repealed by this By-law, the repeal does not:

- (a) revive any by-law not in force or existing at the time of which the repeal takes effect;
- (b) affect the previous operation of any by-law so repealed;
- (c) affect any right, privilege, obligation or liability acquired, accrued, accruing, or incurred under the by-law so repealed; or
- (d) affect any offence committed against any by-law so repealed or any penalty or forfeiture or punishment incurred in respect thereof; or affect any investigation, legal proceeding or remedy in respect of such privilege, obligation, liability, penalty, forfeiture or punishment.

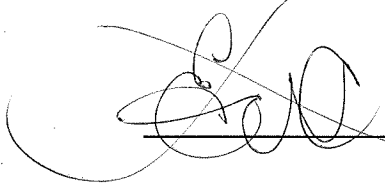
Effective Date

24. This By-law shall come into full force and effect upon passage.

Read and Passed in Open Council this 13th day of February, 2018



Mayor



Clerk